

GOVERNING IRREGULAR MIGRATION:
LOGICS AND PRACTICES IN SPANISH IMMIGRATION POLICY

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Abstract

Since the first substantive changes to Spanish immigration laws in the 1980s, immigration to Spain and the policies designed to govern it have changed greatly. The pace of this continuous transformation has recently slowed down, offering a good opportunity to reflect on the ways in which irregular migration has been governed over time. Taking stock of more than three decades of debates in the Spanish Congress, laws, policy documents, interview findings and practices, this dissertation offers a sociological analysis of the messy process of immigration governance in a border country of the European Union.

The dissertation starts by analyzing the early problematizations of irregular migration in Spain, understood as the result of discursive and non-discursive practices that provide specific ways of thinking about and acting upon objects. Complicating the assumption that policy shifts are a straightforward result of changes in the political orientation of ruling parties, the dissertation traces the existence of three intersecting sets of logics and practices that have shaped Spanish immigration policy over time: (1) *culturalization*: a set of logics and practices intimately tied to the history of Spanish colonialism and governing migrants as cultural subjects; (2) *labouralization*: a set of logics and practices that attempt to manage labour migration flows and frame irregular migrants as workers who contribute to the national labour market; and (3) *securitization*: a set of

logics and practices focused on the defence of state sovereignty, the prevention of irregular entry and the framing of irregular migrants as potential threats.

The organization of heterogeneous practices into three broad categories acts as a heuristic device to show how various complementary and at times contradictory logics and practices work together to create a practical regime of migration governance based on a long probationary period during which irregular migrants are scrutinized and policed. Ultimately, this dissertation posits the existence in Spain of *a regime governing immigration through probation*. This regime entails the rescaling of bordering practices across space and time, the deployment of a space of legal liminality in which irregular migrants are kept, and the use of conditionality and discretion in the assessment of desirability.

A Lavapiés, un barrio que no cree en fronteras

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Chapter 1

Introduction

We need balanced public strategies that, at minimum, combine the fight against clandestine flows, the ordering of arrivals according to the capacity of absorption of the labour market, and the promotion of integration into the societies of destination.

Consuelo Rumí
Secretary of State for Immigration and Emigration
2004-10¹

This quote by the former secretary of state for immigration and emigration highlights the three main concerns that have, to varying degrees, informed the governance of migration flows and immigrants in Spain since its return to democracy in 1978. While politicians and policy-makers often claim that a preoccupation with social and cultural integration, as well as the regulation of immigration based on the needs of the labour market, has recently been replacing an older security logic, these three dimensions have all, in fact, historically contributed to the problematization of irregular migration. This study traces how *culturalization*, *labouralization*, and *securitization* intersect in historically specific ways, and create a regime of immigration governance, based on a long probationary period,

¹ See Rumí 2007.

during which irregular migrants who successfully enter Spain are assessed and policed by a broad range of institutional actors. Analyzing the dynamics of Spanish immigration governance in this way sheds light on the logics and practices that have informed policy over time and makes visible the intersections of programs and strategies that may otherwise appear contradictory.

At first sight, Spanish policies regarding immigrants residing in the country irregularly may appear incoherent. On the one hand, Spain once had a reputation of having lax and generous immigration policies. Indeed, since 1986, extraordinary processes for the collective regularization of migrants living in Spain without authorization have played an important part in the regulation of irregular migration (Arango and Finotelli 2009; Maas 2010). On the other hand, Spain is known for its role in policing one of the southern borders of what some analysts call “Fortress Europe.” Indeed, the populist, anti-immigrant rhetoric used by the conservative Popular Party (*Partido Popular* - PP) in the early 2000s set the tone for a decade of restrictive immigration policies and strict border control. This restrictive dimension seems to be gaining ground. For instance, while Socialist José Luis Rodríguez Zapatero’s first government (2004-08) enacted a very important collective regularization process and developed institutions to facilitate the integration of immigrants, it also deported more migrants than ever before and dramatically tightened control over the southern borders (Ministerio del Interior 2006, 2008, 2009, 2011, 2012a). During the 2008 presidential election campaign, the Popular Party promised to end extraordinary collective regularization (Partido Popular 2008), and

in the ensuing March 2012 presidential elections, which it won, it promised to forbid the ordinary, case-by-case, individual regularization of migrants based on a demonstration of social rootedness (*arraigo social*) (Rodríguez-Pina and Pérez de Pablos 2011). While the government of Mariano Rajoy did not, in the end, limit this last means of regularization, in 2012 it cancelled the legal provision granting irregular migrants living in Spain access to healthcare services (*RD-L 16/2012*; De Benito 2012).

Not surprisingly, this more restrictive approach to immigrant rights has come hand-in-hand with more repressive techniques to address the issue of irregular migration. As in other parts of the world, the detention and deportation of migrants have become common means through which irregular migration is governed (Bosworth 2014; Inda 2006; Pratt 2005; Walters 2010). In addition to collective regularization, border control, and “retention-detention-deportation *dispositifs*” (Caloz-Tschopp 2004:53-57), a new strategy to govern irregular migration is gaining popularity. It involves a set of delocalized techniques that aim to pre-emptively stop irregular migrants before they reach Spanish territory or to force third country governments to provide protection to those who are asylum seekers. This upstream control takes the form of joint sea patrols, visa regimes, and migration regulation agreements with third countries (Belguendouz 2005; García Andrade 2010). This extra-territorialization of migration control changes the regional dynamic, as countries like Morocco, Algeria, and Mauritania collaborate with Spain and the European Union to prevent irregular migration to Spain.

At first sight, it appears that there is a clear evolution toward evermore repressive policies. However, the policy process is not at all straightforward. Indeed, these measures are also often used concomitantly in a seemingly contradictory and yet complementary fashion. For instance, in 2005, the same Socialist government that regularized more than 570,000 migrant workers (Arango and Finotelli 2009:83-89) also developed integration policies, reactivated the Malaga Agreement allowing Spain to deport sub-Saharan African migrants to Morocco, pledged to build highly securitized border fences at the enclaves of Ceuta and Melilla (Blanchard and Wender 2007; Ferrer-Gallardo 2008; Moffette 2010), and created several joint sea border patrols with Morocco, Mauritania, Senegal, Cape Verde, and the European FRONTEX² agency to surveil the territorial waters of these countries (García Andrade 2010). Therefore, the widespread image of the 2004-08 Socialist government rule as a time of implementation of integration policies and “labouralization” of migration does not tell the whole story. Similarly, since the right-wing Popular Party has been so keen to denounce the use of collective regularization processes as a solution to the presence of unauthorized immigrants, one might reasonably assume party politics is a key determinant of policy choices. Yet, the Popular Party has also relied on collective regularizations on three occasions—in 1996, 2000, and 2001—making it the party that has used this policy tool most often, and it was under a Popular government that universal health care was made available to all immigrants in 2001, regardless of their administrative status.

² FRONTEX, legally named the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, was created in 2004 and started its operations in 2005.

Since the early 1980s, regardless of which political party has been in office, government officials have relied on a combination of repressive and more progressive policies. That is to say that while the political ideology of the ruling party certainly affects policy choices, the latter cannot be deduced from the former. Given that political ideology cannot adequately explain the choice of policy tools, how can we account for the prevalence of some strategies for governing irregular migration? And given the complexity of the elaboration, implementation, and contestation of immigration policies, how can we make sense of the different, often contradictory, logics and practices that have governed migration in Spain since the 1980s?

Studying the Problematization of Irregular Migration

Drawing from the literature in governmentality studies and critical policy analysis, this research is based on the premise that governmental practices are problem-oriented, and that policy problems are themselves informed by these practices. Rather than regard irregular migration as a problem that preceded its identification by policy-makers, this study considers how irregular immigration became a policy problem in need of a solution.

Michel Foucault explained that his was an attempt to “produce a history of problematizations; that is, a history of the ways things are rendered problematic.”³ Similarly, the aim of this research is to trace the heterogeneous elements that contributed

³ My translation of: “Je dirais que je fais une histoire des problématiques, c’est-à-dire l’histoire de la manière dont les choses font problème,” in the documentary *Foucault par lui-même* (director Philippe Calderon, 2003, at 4m30).

to the constitution of irregular migration as a problem for governmental intervention. As

Nikolas Rose (1999) explains, this approach:

seek[s] to reconstruct the problematizations to which programmes, strategies, tactics posed themselves as a solution. If policies, arguments, analyses and prescriptions purport to provide answers, they do so in relation to a set of questions. Their very status as answers is dependent upon the existence of such questions. If, for example imprisonment, marketization, community care are seen as answers, to what are they answers? And in reconstructing the problematizations which accord them intelligibility as answers, these grounds become visible, their limits and presuppositions are opened for interrogation in new ways (P.58).

Similarly, this research asks: If the strengthening of border fences, the implementation of processes of collective regularization, the policing of urban immigrant neighbourhoods, the building of new detention centres, the ratification of repatriation agreements, the development of joint sea border operations, and the extension of radar-based detection technologies on Spanish coasts are answers, to what questions or problems are they the answers? Conversely, this research also asks: How do these practices provide specific ways of thinking about irregular migration that contribute to its problematization as an object of knowledge and government?

Indeed, problematizations emerge through historically situated discursive and non-discursive practices that provide specific ways of *thinking* about and *acting* upon a set of difficulties (Soguk 1999). That is to say that practices do not simply emerge as policy responses to a predefined policy problem; rather, they play an integral part in defining and redefining this problem. As Foucault explained with respect to his own research, while “the archeological dimension of the analysis made it possible to examine the forms of the

problematizations themselves, its genealogical dimension enabled me to analyze the formation out of the practices” (cited in Bacchi 2012:1). To make sense of how irregular migration is governed in Spain, this research thus inquires about the logics and practices that inform immigration policy. This strategy follows the one used by Nikolas Rose and Peter Miller (1993), who claim that

Problematics of government may be analyzed, first of all, in terms of their *political rationalities*, the changing discursive fields within which the exercise of power is conceptualised, the moral justifications for particular ways of exercising power by diverse authorities, notions of the appropriate forms, objects and limits of politics, and conceptions of the proper distribution of such tasks among secular, spiritual, military and familial sectors. But, we suggest, problematics of government should also be analyzed in terms of their *governmental technologies*, the complex of mundane programmes, calculations, techniques, apparatuses, documents and procedures through which authorities seek to embody and give effect to governmental ambitions (P.175).

This research relies on the analysis of more than 30 years of policy documents, laws, parliamentary debates, interviews with policy-makers and other actors involved in frontline policy implementation, as well as observations of police practices in Madrid and Ceuta, to provide a detailed analysis of the logics and practices at play in immigration governance. More specifically, this research asks the following questions:

- 1) Which political rationalities have informed the problematizations of irregular migration as an object of government in Spain, and which discursive regularities and changes can be identified in various programs of government?
- 2) Which programmatic forms has the governing of irregular migration taken in Spain, and what are the similarities and differences between different historically specific programs of government?

- 3) Which technologies have been mobilized to govern irregular migration in Spain, and how do these technologies contribute to the different ways in which irregular migration is problematized?
- 4) What are the power dynamics at play in policy-making, and how can temporary policy settlements resulting from these struggles account for shifts in the governing of irregular migration since the early 1980s?

I engage with these questions diachronically and synchronically, using a three-tiered methodological approach developed by Trevor Gale (2001) for Foucauldian policy analysis. This strategy, further discussed in Chapter 2, relies on a policy historiography (focusing on periodization and historical shifts in the immigration policy agenda), an archeology of policy rationalities (looking at discursive continuities and changes in how irregular migration is framed), and a genealogy of the policy process (focusing on power dynamics, negotiations, and tensions between various actors involved in immigration governance).

The genealogical dimension of this methodological strategy was key in mapping out the roles of a multiplicity of actors involved in governing irregular migrants in Spain. Indeed, beyond its usefulness for studying the problematization of irregular migration as an object of government, the approach used in this research also allowed me to account for the “messy actualities” of multi-scalar and multi-actor immigration governance (O’Malley, Weir, and Shearing 1997:504). In other words, it allowed me to map out and analyze the complex regime governing irregular migration in Spain.

Gregory Feldman (2011) argues that a governmentality approach to migration policy should engage with the heterogeneous *dispositifs* governing migration and try to account for both the discontinuities and the ways in which “disparate elements coalesce in particular conjunctures” (p. 32). This strategy helps to draw a more complex picture of the interactions, tensions, and negotiations involved than is possible through an institutional analysis of multi-level governance. Following Giuseppe Sciortino (2004), I use the concept of regime and highlight the idea that “the life of a regime is the result of continuous repair work through practices” (p.32). I analyze the governing of irregular migrants as a regime, to capture “the flexible, multi-scalar nature of the processes of governmentality and governance . . . as well as the heterogeneity of their actors and the growing intertwining of knowledge and power that characterizes them” (Mezzadra and Neilson 2013:179). This strategy allows me to take into consideration the role of a multiplicity of actors (politicians, bureaucrats, police officers, judges, migrants), situated in different jurisdictions, who mobilize various kinds of legal and non-legal knowledges to govern unauthorized migrants and irregular migration flows.

Defining “Irregular Migration”

The object of this research is not irregular migration, its characteristics, causes, or consequences, but the logics and practices involved in governing it. Indeed, this research looks at how this object is rendered thinkable and governable by policy-makers and other institutional actors. Following Dvora Yanow’s (2003) ethnographic approach to policy, the

research looks at how policy-makers, politicians, and officials name, define, and act upon this particular type of migration, as well as how legal categories contribute to reifying it as “irregular” or “illegal.” In other words, emic categories developed in the policy-making process are more important here than etic ones.

This, however, does not solve the problem of how to name this type of migration in the study, since the terminology used by policy-makers, civil servants, and scholars is unstable and open to contestation. As José María Ruiz de Huidobro (2006:20) explains, the main distinction in the legal literature revolves around the terms *extranjero* and *inmigrante*. Indeed, *extranjero*—foreigner or stranger—is a formal legal category referring to anyone who is living in Spain and who is not a Spaniard (including international students and tourists, for instance), while *inmigrante*—immigrant—is a sociological category referring to those who have left their country and are living in Spain with an intention to stay. While these are legal and somewhat objective distinctions, in common parlance, Spaniards often refer to racialized individuals who work in agriculture or in construction as *inmigrantes*, even if they are there temporarily, while white, middle-class, immigrants or retired European elders living in Spain permanently are often referred to as *extranjeros*, even though they may also be immigrants. The distinction is thus also racially marked (Calavita 1998, 2005). And yet, as will be examined more closely in Chapter 3, the meanings of these categories are flexible, and are sometimes used interchangeably in political discourse to refer to a variety of situations and in pursuit of a diversity of aims. In some instances, it is clear that policy-makers do not pay much attention to the terms

used, while in other cases the choice of expression is politically motivated. Indeed, when referring to individuals living in Spain without proper residence and work permits, policy-makers also use a diversity of terms, such as “illegal immigrants,” “irregular immigrants,” “foreign citizens,” or “illegal African citizens,” and utilizing their shifting terminology in this research is not an option.

The scholarship on irregular migration proposes a few different terms, and often points to the difficulty of defining this object. This difficulty stems from the fact that the category of irregular migration is a negative one, defined in contrast to regular migration and referring to individuals whose status is often unstable. As Stéphane De Tapia (2002) notes:

The terms “irregular migrant,” “clandestine migrant,” and “non-documented migrants” refer to categories that are often ill-defined as they are extremely fluid on the ground and within the migratory path of the same individual. Irregular migrants are by definition illegal, but not automatically clandestine; they have often entered the territory of residence perfectly legally (passport with or without tourist visa generally allowing a three month stay [in the EU], asylum seekers, fixed-term employment contract, seasonal contract, student status, etc.). It is the failure to leave the territory that makes them irregular migrants or, in some cases . . . the shortcomings of authorities responsible for controlling flows (P.17).

While capturing the ambiguity and the fluidity of the different categories, De Tapia also illustrates the ease with which the illegality of an act (being in the country without the proper authorization) is extended to the individuals themselves (“irregular migrants are by definition illegal,” p. 17). Indeed, it is important to note that, on the one hand, administrative irregularity does not equate neatly with illegality and, on the other hand, the unlawfulness lies with the act, not the subject (Bauder 2013; Coutin 2000, 2005;

Goldring and Landolt 2013; Menjívar 2006; Menjívar and Kanstroom 2014). “Irregular” tends to be used in the Spanish context as a progressive alternative to the negatively connoted phrase “illegal,” just like the terms “undocumented,” “non-status” or “*sans-papiers*” in other contexts. However, the terms “irregular,” “unauthorized,” “undocumented,” or “illegalized,” when applied to migration, migrants, or immigrants, are all overly generalized. Most immigrants have documents, papers, and a particular administrative status, even when their legal status in the country remains uncertain. In Spain, not only are most entries lawful and “regular,” but also people who become immigrants by over-staying their visas in contravention of the Alien Act are not the exception, but the norm. To the extent that migration and immigrants can only be considered “irregular” from a sociological or demographic perspective if conditions or movements do not correspond to regular patterns, what we call irregular immigration is in fact one of the most regular forms of immigration to Spain.

In strictly legal terms, the phrase “migrant in a situation of administrative irregularity” is more correct. To render this specific meaning explicit, some scholars prefer using “unauthorized” (Aliverti 2013; Ngai 2004; Varsanyi 2011; Walter 2010) or “illegalized” (Bauder 2013; De Genova 2004, 2013), two expressions that are more useful in many contexts. And yet, the level of “institutional irregularity” (Calavita 2005:45) reminds us that immigrants who do not comply with immigration regulation have been tolerated, if not encouraged. Indeed, just like their northern neighbours in the past, southern European countries such as Spain, Portugal, Italy and Greece are dependant on

irregular immigrant labour and tolerate or even encourage irregularity (Maas 2010). While it is true that the policy problem examined in this research emerged as a way of addressing the presence and movement of migrants whose activities were not sanctioned by the state, the term “unauthorized” is misleading since irregularity is informally encouraged. Finally, while the terms “illegalized immigrants” nicely conveys the legal and social conditions of immigrants whose presence in a country is illegalized and often criminalized, the process of illegalization is in itself a policy response. Since this research studies how this particular type of migration became illegalized in the 1980s, using this term as a generic name throughout this study would be analytically problematic. In this research, I thus rely on the emic terminology used by policy-makers when studying their framing of immigration and immigrants but, for lack of better terms, I use “irregular migration,” “irregular migrants,” or “irregular immigrants” when referring to immigrants who find themselves in a situation of administrative irregularity with regard to the Alien Act. The most widely used in sociological scholarship on immigration and immigration policies in Spain, this terminology is also less cumbersome than the more exact phrase “migrant in a situation of administrative irregularity.”

Scope of Irregular Immigration in Spain

The magnitude of the phenomenon with which Spanish immigration policy-makers are grappling is substantial. Since 1996, the best tool to estimate the total number of foreigners residing in Spain with and without residence permits is the municipal registry

(*padrón municipal*). Indeed, the Law Regulating Local Government (*LRBRL 7/1985*) requires that anyone living in Spain register as a resident at the municipal level regardless of immigration status. Before 1996, we have to rely on the number of residence permits issued annually and try to account for irregular immigrants by using estimates from the 1986 and 1991 regularization processes (Izquierdo Escribano 1996). Using these two sources, we can estimate that the numbers of foreigners living in Spain increased from roughly 241,971 in 1986 (0.6% of the total population) to 542,314 in 1996 (1.4%), 1,370,657 in 2001 (3.3%), 4,144,166 in 2006 (9.3%), and 5,730,667 in 2011 (12.2%), before stabilizing as a result of the economic crisis. On January 1, 2014, there were 5,023,487 foreigners registered on the *padrón*; 10.7% of the total population.⁴ According to Carmen González-Enríquez (2010), the existence of a dynamic informal labour market, especially during the construction sector boom between 1996 and 2007, and the ability of irregular immigrants to access essential social services such as education and healthcare from 2000 onward, contributed greatly to the rapid increase in size of the overall immigrant population.

It is harder to measure the number of immigrants in an irregular situation, as several authors have noted (Arango and Finotelli 2009; De Tapia 2002; González-Enríquez 2010; Maas 2010). The most common way of estimating this figure is to take the number of non-EU foreigners registered on the *padrón* in a given year and subtract the number of

⁴ Official data from the Instituto Nacional de Estadística (www.ines.es). It is important to note that these numbers refer to all foreigners, which means that they include citizens of EU member states even though they do not need residence and work permits to live in Spain, and do not account for immigrants who obtained Spanish citizenship or second-generation immigrants born with Spanish citizenship.

residence permits issued that year. From 2000 to 2012, all migrants had access to health care and other social services, irrespective of their immigration status, as long as they registered with this municipal census. Furthermore, to access a program of regularization, irregular immigrants need to document the length of their stay in Spain, and registering is still by far the best way to do so. It is thus assumed that most irregular immigrants chose to register and that the numbers are relatively accurate. As with any method for estimating the number of unauthorized immigrants, this strategy has its limits. Some of the problems often mentioned with respect to this method are: (1) those who leave the country may not remove their name from the registry, leading to inflated numbers until the obligation to renew one's registration was implemented in 2005 (and as a result, around 300,000 names were taken off the registry); (2) since 2003, police forces have access to the registry and, as a result, some migrants practicing illegal occupations might choose not to register despite the incentive of access to essential services; and (3) some people who do not reside in Spain may nevertheless try to register in order to access health care when they visit (González-Enríquez 2010). To this list, we need to add that immigrants living irregularly in Spain lost their access to health care in August 2012, which has significantly reduced the incentive to register, and also that municipalities sometimes make it difficult for immigrants to register, which may delay the process.

Because of these problems and attempts by demographers and quantitative sociologists to use other data, such as statistics gathered during regularization processes, to adjust their numbers, the estimates vary greatly. From somewhere between 260,000

and 477,500 irregular immigrants in 2001, to between 1 million and 1.65 million in 2005, until the numbers decreased and then stabilized as a result of the economic crisis that started in 2007 (Cebolla Boada and González Ferrer 2008; González-Enríquez 2010). Using the most recent data available, a simple estimate indicates that there were 472,217 more non-EU foreigners registered on the *padrón* on January 1, 2014 than there were non-EU foreigners with residence permits on December 31, 2013.⁵ We can thus estimate that there are still about half a million immigrants living in Spain irregularly.

Defining “Immigration Policy”

The high level of administrative irregularity was a central concern for policy-makers during the boom of the 2000s, but the preoccupation with irregular migration flows and the presence of immigrants without the proper authorization is not solely related to the quantitative significance of the phenomenon. Indeed, since at least the early 1980s, politicians, bureaucrats, and police officers have been debating the proper way to define and manage irregular migration. This research takes as its object of analysis the various policies used historically in attempts to govern irregular migrants (as individuals), as well as irregular migration (as a demographic phenomenon). Since “policy” is taken here to mean something much broader than concrete policy documents and includes logics, programs, and practices involved in governing irregular migration, a brief discussion of this notion of policy is in order.

⁵ Official data from the Instituto Nacional de Estadística (www.ines.es) for the *padrón*, and from the Ministerio de Empleo y Seguridad Social (<http://extranjeros.empleo.gob.es>) for the residence permits. Both general regime (*régimen general*) permits and study permits have been taken into account.

In *Security, Territory, Population*, Foucault ([2004] 2007) distinguished between law and “police” in seventeenth century France. As Mitchel Dean (2007) and Nikolas Rose (1999) explain, the term “police” was then used in a sense akin to what we now refer to as “policy.” In fact, when the course summary of *Security, Territory, Population* was first published in English in a collection edited by Paul Rabinow, the French term “police” was translated by Robert Hurley as “policy” (Foucault [1994] 1997:69, 71). It was only with the publication of the whole course in a translation by Graham Burchell that the term “police,” in scare quotes, was used. Rose (1999) also posits that in seventeenth century Europe, “police” was not seen “as a negative activity concerned with the maintenance of order and the prevention of danger, but as a positive programme (close to our contemporary notions of policy) based upon knowledge” (p.24). Foucault claimed that whereas laws set general rules and principles, police measures work through detailed regulations targeting specific populations or domains. In this sense, from a Foucauldian framework, policies can be distinguished from laws and considered more broadly as sets of tools deployed to intervene in a field of practices.

This does not mean, however, that we should view laws as limited to formal prohibitions that are antithetical to the logics of police or of liberal regulation. Indeed, Foucault understands government as a mode of power that is “not a matter of imposing laws on men, but rather of disposing things, that is to say to employ tactics rather than laws, and if need be to use the laws themselves as tactics” (Hunt and Wickham 1994:52). Following Alan Hunt and Gary Wickham (1994), this research does not reject laws as

irrelevant to governmentality, but considers them as tactics mobilized in creative and flexible ways by various actors involved in immigration governance. Therefore, in this research, “policy” includes, but is not limited to, laws, regulations, and other legal devices. It also does not only refer to the programmatic form that laws and regulations take or to their implementation by street-level bureaucrats. As with most sociological analyses of policies, this research is concerned with technologies of both a legal and non-legal nature, and pays attention to the ways policies are elaborated, legitimized, presented, adapted, implemented, and contested (Colebatch 2009; Gale 2001; Shore and Wright 2011).

The scope of the policies studied in this research is also vast, since irregular migration is governed by many measures that are not always developed within the context of the so-called “fight against illegal migration” (Ministry of the Interior 2008:1). Indeed, as Willem Maas (2010) explains, since “irregular migration is a function of the opportunities for regular migration, the distinction between authorized and unauthorized immigration is murky and constantly being transformed as states change their immigration policies” (p.235), rendering the distinction between policies to govern irregular migration hard to distinguish from policies to govern migration in general. Echoing this position, Rosa Aparicio Gómez and José María Ruiz de Huidobro (2010) explain that they use “immigration policy” as “a ‘conceptual construction’ in . . . light of the sets of policies and measures adopted . . . on foreigners and immigration, taking account of the fact that there are no official documents that expressly include the policy as defined” (p.24-25). Similarly, the policies under examination do not appear in one

unified package but often need to be deduced from various regulations, programs, and practices as they are developed and applied in various locations and by different actors. Indeed, policing practices, labour inspection raids, integration programs, and discourses about cultural diversity are considered alongside border control, detention, and deportation as policies contributing to the governance of irregular migration. Policies are thus studied as much from the angle of the practices through which they are enacted and the technologies of government they mobilize as from the angle of the rationalities that inform them and the programmatic forms they have historically taken (Shore and Wright 1997, 2011).

Literature on Immigration Governance in Spain

This approach to the study of immigration governance in Spain provides an original addition to the scholarship on immigration and immigration policy in this country. Indeed, the growing literature on immigration policies, border control, and immigrant integration in Spain provides some insights but no systematic analysis of the rationales, justifications, technologies, and practices that have informed immigration governance in Spain over time. While there is extensive scholarship on irregular migration, little is known about the processes of policy-making, or the logics and practices informing the work of police officers who patrol the streets of immigrant neighbourhoods, judges who decide whether or not to detain someone, or elected officials who debate the scope of the issue.

Since the pioneer works on migration and immigration policies in the 1990s emerged (Colectivo IOÉ 1987, 1989, 1994; Cachón Rodríguez 1995; Izquierdo Escribano 1990, 1996; Calavita 1998), the literature has grown exponentially.⁶ Originating in an effort to understand the causes of irregular migration, take stock of the number and characteristics of the immigrant population, and document policy responses, this scholarship now includes a growing interest in transnationalism, the experiences of immigrants, and pressing questions of integration in a plural society (Aparicio Gómez and Tornos 2000; Bruquetas-Callejo et al. 2008; De Lucas and Díez Bueso 2006; Izquierdo Escribano 2008; Martín Rojo 2003; Moreno Maestro 2006; Osos Casas 2009; Solanes Corella 2004; Solé and Izquierdo 2005; Suárez-Navaz 2004). There is also a long tradition of documenting the attitudes of Spaniards with regard to immigration and cultural and racial diversity (Cea D’Ancona 2005; Cea D’Ancona and Valles Martínez 2011; Checa, Arjona Garrido, Checa y Olmos 2010; Colectivo IOÉ 1994; Pérez Yruela and Desrues 2005; Valles Martinez, Cea D’Acona, Izquierdo Escribano 1999). However, little attention has been paid to how logics that appeared during Spanish colonial and nation-building projects still shape particular migration and border control policies.

Many reviews of Spanish immigration policies and laws exist. The end of a legislature, elections, legal reforms, and anniversaries of key immigration laws often provide the occasion for publishing analyses of policy developments during the preceding

⁶ For an annotated bibliography of the literature published between the 1980s and 2006, see Bardají Ruiz 2006.

years (Arango 2005; Cebolla and González Ferrer 2013; Moya 2009; Ruiz de Huidobro 2006; Santolaya 2009; Solanes Corella 2010). Some of this scholarship offers incredibly systematic and comprehensive historical overviews of immigration policies and laws enacted since the 1980s (Aja 2012; Ortega Pérez 2011). But these chronicles rarely offer a sociological analysis of the different logics and practices that inform immigration policy-making, nor do they provide a micro-political analysis of the uncertainties, negotiations, and struggles that characterize this process. Or when they do, it is only with respect to specific and very circumscribed legal reforms, such as the debates surrounding the adoption of a new Alien Act in 2000 (Ruiz de Huidobro 2006).

The scholarship that looks at the demographic phenomenon of migration and the experiences of immigrants in Spain tends to be less institutional and to focus on the structural causes of irregular migration, the characteristics of the unauthorized population, and the relative effectiveness of various policies. It provides a necessary assessment of these policies and discusses some of the criteria that policy-makers take into consideration, but without providing an in-depth analysis of the premises and rationales behind these decisions (Finotelli 2011; Finotelli and Arango 2011; González-Enriquez 2009, 2010; Izquierdo Escribano 2012; Maas 2010; Sabater and Domingo 2012).

The same can be said of the literature that focuses on the employment of immigrants and the structures of the labour market (Cachón Rodríguez 2009; Calavita 2003, 2005; Calavita and Suárez-Navaz 2003; Cornelius 2004; Márquez Domingo et al.

2013), the extra-territorialization of border control (Carling 2007; Casas, Cobarrubias, Pickles 2010; Ferrer-Gallardo 2008; Ferrero-Turrión and López-Sala 2012; García Andrade 2010), co-operation with third countries (Azkona and Sagatagoitia 2011; Belguendouz 2005; Ferrero-Turrión and López-Sala 2009; Rodríguez Mesa 2007) and the criminalization and detention of irregular immigrants (Brandariz García 2011; Brandariz García and Iglesias Skulj 2013; Martínez Escamilla 2008, 2014; Martínez Escamilla and Sánchez Tomás 2011). This scholarship is very valuable but it tends to compartmentalize the various dimensions of immigration governance. I rely on this body of work extensively when discussing particular tendencies in immigration regulation, but I seek to provide empirically and historically specific investigations into the diverse and sometimes contradictory rationales, programs, and practices that shape immigration policies in particular moments. This research thus contributes to this scholarship by shifting the attention away from the dynamics of irregular migration flows, the socio-cultural characteristics of irregular migrants, and the evaluation of policy results, inquiring instead into the specific logics and practices that have informed immigration policy since the early 1980s.

At the level of logics and rationalities, this project is similar to those of scholars who study political discourses on immigration in Spain, while at the level of practices it shares affinities with those who attempt to map the dynamics of multi-level immigration governance. Unfortunately, these scholars rarely examine logics and practices together. For instance, I found great inspiration in the work of Ricard Zapata-Barrero (2009) on

parliamentary debates about immigration between 1996 and 2008, but I was unsatisfied with his neat division of the parliamentary interventions into proactive (or positive) and reactive (or negative) discourses. I also wanted to account for more than the framing of irregular migration that occurs in Congress and go beyond a typology of arguments used by politicians. This is also one of the limits of the impressive discursive analyses conducted by Luisa Martín Rojo and Teun A. van Dijk (Martín Rojo 2000; Martín Rojo and van Dijk 1997; van Dijk 2004). Their approach provides detailed accounts of the rhetorical devices utilized in immigration debates, but can hardly be used to study policy-making and policy practices more broadly. Similarly, while the literature on multi-level immigration governance in Spain is becoming more prominent and provides important insights into the complexities of the policy process, it tends to rely mostly on institutional analyses of networks and actors formally acknowledged as stakeholders (Hepburn & Zapata-Barrero 2014; Zapata-Barrero and Pinyol 2008) and does not take into account the high level of contingency of the policy process (Gale 2001; Shore and Wright 2011), the intervention of actors who are not institutionally entitled to regulate immigration (Goldring and Landolt 2013; Varsanyi 2011), and the creative deployment in practice of laws and policies used as flexible technologies (Valverde 2009, 2012).

I thus turned to the literature in critical policy studies, governmentality studies, and socio-legal studies to find the tools to study the logics and practices involved in Spanish immigration governance. The point of departure of this research was the intuition that if processes of collective regularization, retention-detention-deportation measures, and

extra-territorialization of border controls are all answers to the phenomenon of irregular migration, they were answers to different ways of framing the problem. As critical policy analysts studying policy problems suggest (Boswell 2009; Gale 1999; Shore and Wright 1997, 2011), the framing of policy problems and the measures adopted to address them are intrinsically linked, and thus need to be studied together as elements of broader problematizations.

Key Findings and Structure of the Dissertation

Three complementary and intersecting sets of logics and practices have informed the problematization of irregular migration as an object of knowledge and government in Spain since the 1980s. While some periods, parties, and actors rely more on one dimension than on others, they are always articulated together. *Culturalization* refers to a set of logics and practices intimately tied to the history of Spanish colonialism and the governing of migrants as cultural subjects. *Labouralization* refers to a set of logics and practices that attempt to steer labour migration flows and frame irregular migrants as workers who contribute to the national labour market. *Securitization* refers to a set of logics and practices focused on the defence of territorial sovereignty, blocking all migration routes available to irregular migrants, and framing migrants as potential threats.

The organization of heterogeneous practices into these three broad categories acts as a heuristic device, putting some order to the complex *dispositifs* of people, objects, legal devices, and practices that form the regime. This dissertation traces the way that

culturalization, labouralization, and securitization work together in complementary and contradictory ways and create a practical regime of migration governance, based on a long probationary period, during which irregular migrants who reside in Spain can be scrutinized and policed. Ultimately, this dissertation posits the existence in Spain of a regime governing immigration through probation resulting from the rescaling of bordering practices across space and time, the deployment of a space of legally produced liminality in which irregular migrants find themselves, and the use of conditionality and discretion in the assessment of desirability.

In Chapter 2, “Studying the Governing of Irregular Migration,” I present the theoretical approaches that inform my research as well as the methodological strategy utilized. Drawing from scholars working within the fields of governmentality studies and critical policy sociology, I discuss a set of theoretical propositions that focus on *how* to study policies and government, more than substantive arguments about *what* specific contemporary governing practices look like. This means that despite the existence of a rich scholarship in governmentality studies, which makes substantive claims about such things as neoliberal modes of government, actuarial practices of risk management, or the role of community in governance (Rose 1999), I tried not to import these conclusions into my research design, keeping only the theoretical and methodological contributions that provided me with tools to ask better questions.

Throughout the dissertation, my analyses are often developed in dialogue with many theoretical debates in sociology, socio-legal studies, and criminology. Such debates touch upon, among other things, questions of illegalization and precariousness (Calavita 1998; De Genova 2002, 2004; Goldring and Landolt 2013; Menjívar 2006), the role of social sciences and statistics as political technologies (Inda 2006; Rose 1999), the relation between regulation and liberalism (Foucault [2004] 2007; Rose 1999), the extent and forms of the criminalization of immigration (Dowling and Inda 2013; Pratt 2005; Simon 1997; Weber 2002), the displacement of bordering practices (Rumford 2006, 2008; van Houtum and van Naerssen 2002; Varsanyi 2011), the racial dimension of securitization and governance (Amin Khan 2012; Bigo 2002; Huysmans 2006; Goldberg 1993, 2009; Mbembe 2003), and questions related to sovereignty and sovereign power (Brown 2010; Butler 2004; Lippert 2004, 2005; Mezzadra and Neilson 2013; Pratt 2005; Walters 2010). At the moment of building my research design, however, I insisted on thinking about *how* to study the governing of migration, not *what* had been said about it. After explaining the theoretical framework, I present my research questions and discuss my methodological strategy, which engages in policy historiography, policy archaeology, and policy genealogy (Gale 2001). This then leads to the more concrete or applied methodological considerations about data collection and interpretation.

Chapter 3, “The Making of ‘Immigrants,’ ‘Foreign Workers’ and ‘Illegals’: Early Problematizations of Migration as an Object of Government,” questions the narrative situating the birth of Spanish immigration policies in 1985 alongside the adoption of the

first Alien Act. This chapter engages with debates in Foucauldian socio-legal studies about the role of law in governance and contends that equating the origin of immigration governance with the adoption of the first Alien Act contributes to concealing the process of problematization through various practices. I trace the hesitant emergence of irregular migration as a problem throughout the parliamentary debates and policy practices of the 1980s, and document the crystallization of the policy agenda in 1990-91 around the three sets of logics and practices that I call culturalization, labouralization, and securitization.

Chapter 4, “Culturalization: Race, Culture, and the National Imaginary,” discusses the treatment of migrants as cultural subjects. The chapter uses the events that occurred during the 500th anniversary of the “Discovery of the Americas” in 1992 as an entry point for an inquiry into the role played by the notion of “Hispanic community” and the development of “Maurophobia,” or the fear and hatred of Moors, in the early construction of Spanish national identities. Drawing from the literature on racial governmentality (Goldberg 1993, 2009; Hesse 2004), I discuss the importance of race as a mode of thinking and governing constitutive of the juridico-political ordering of modernity, and show how the notion of Hispanic community and the historical phenomenon of Maurophobia that came out of Spanish colonialism inform contemporary immigration policies.

The literature on race, culture, and immigration in Spain tends to focus on discriminatory attitudes, racist public discourses, or problems of integration, but fails to

seriously engage with race as a system of meaning. It is therefore unable to account for the profound ways that race informs immigration governance. I claim that the easier access to citizenship for Latin American and other culturally preferred migrants that is embedded in the Civil Code of 1889 and continues to this day, their differential treatment in immigration law until recently, and the framing of Muslim immigrants as impossible Spanish subjects are all informed by cultural and racial logics and practices that can be traced back to Spanish colonialism. The chapter also engages with the critical literature on nationalism, official multiculturalism, and the liberal management of difference to examine instances when influential politicians present Muslims as “problems of integration.”

Chapter 5, “Labouralization: Flows, Workers, and the Labour Market,” looks at a second logic, one that often intersects with culturalization. Labouralization, an emic concept used by policy-makers, refers to both the process whereby immigration started to be managed more clearly as a labour market issue in the second half of the 2000s, and to the unattainable dream of ordering migration flows in the most optimal fashion. It is a logic that is often coeval with a preoccupation with integration and tends to be presented as oppositional to the logic of securitization.⁷ However, interestingly, labouralization shares with securitization a fascination with the mastering of flows. With its concerns for the harnessing of migration flows, the optimization of the economy, and a conception of the labour market as a natural entity to be known and steered, the labouralization logic is

⁷ Interviews, Madrid, September 29 and November 7, 2012; Barcelona, October 1 and 2, 2012.

the one that resonates most strongly with the kind of regulatory governmental rationality discussed by Foucault ([2004] 2007). The chapter inquires into this logic through an analysis of the labour policies developed to try to reduce irregular migration and channel labour migration flows since the early 1990s.

Chapter 6 is the last of the series of chapters highlighting the three logics. “Securitization: Threats, Crime, and State Sovereignty” covers what appear at first sight to be the most obvious set of logics and practices. I begin by discussing the concept of securitization and its theorization in critical security studies, questioning the flagrant lack of any consideration for the role of race in the securitization of immigration, and reframing the concept in a way that not only locates it as part of a governmentality of unease (Bigo 2002) but more broadly as an element of a racial governmentality (Goldberg 1993, 2009). The chapter then provides a mini case study of the first occurrence of securitization with regard to irregular migration at the land borders between the Spanish enclaves of Ceuta and Melilla and Morocco in the mid-1990s and the the frenetic process of wall building that ensued. Engaging with the desire expressed by many policy-makers to block all potential routes used for unauthorized migration, I follow this logic from the building of fences at the land borders to the diplomatic efforts aimed at externalizing the policing of irregular migration.

A central dimension of securitizing logics and practices is the reliance on criminal law and practices traditionally associated with the criminal justice system to target irregular

migrants and those who help them bypass border controls. Drawing from the literature on immigration penalty and the criminalization of immigration (Aas 2014; Brandariz García 2011; Martínez Escamilla 2008, 2014; Pratt 2005, 2011; Weber 2002), I analyze various reforms to the Penal Code made to facilitate the prosecution of people involved in smuggling, as well as irregular migrants and those who help them inside the country. I end this chapter by discussing the surprisingly recent insistence on framing irregular migrants as lawbreakers and on presenting deportation as a balanced and targeted technique aimed at excluding delinquents.

Chapter 7 studies how practices associated with culturalization, labouralization, and securitization intersect and work together in the everyday governance of irregular immigrants living in Spain. “Multi-Scalar Governing: Dispersed Borderwork and Assessment of Desirability” begins with the puzzling observation that, at the height of the securitization of immigration and the proliferation of border control strategies in the early 2000s, government officials and police officers allowed for the relatively easy entry of (mostly) Latin American irregular migrants travelling as tourists. Engaging with the literature in critical border studies (Balibar 2002; Gilbert 2009; Salter 2008; Rumford 2006, 2008, van Houtum and van Naerssen 2002; Varsanyi 2011), I suggest that this strategy is one of displacing some of the filtering work performed by borders and immigration selection across space and time. In this context, facilitating entry, policing the streets, regularizing “deserving immigrants,” and attempting to deport “undesirable foreigners”

are analyzed as complementary dimensions of a diffuse and flexible regime for governing migration through probation.

Questioning the apparent contradictory logics informing these varied practices, I claim that they work together and create a regime of migration management based on a long probationary period during which migrants are scrutinized and policed by a diversity of actors much broader than those readily identifiable as border security professionals. This chapter, which develops one of the central theses of the dissertation, also engages with the growing literature on the criminalization of immigration and suggests that, in Spain, how promises of inclusion work alongside practices of exclusion is best analyzed using the idea of probation.

The existence in Spain of a regime of immigration management organized around probation is further discussed in the conclusion. The concluding chapter, "Governing Immigration through Probation," summarizes some of the main findings of this research and further conceptualizes the Spanish regime that governs migration through probation. I claim that this form of immigration management is effectively produced in Spain by the spread of bordering practices across space and time, the production of an extended period of legal liminality, and the reliance on a multi-scalar assessment of desirability. This research on the ways in which migrants are governed through probation by a diversity of actors relying on complementary and contradictory sets of logics and practices helps us

make sense of the connections between precariousness, conditionality, and disposability in Spain.

Chapter 2

Studying the Governing of Irregular Migration

The theoretical framework and methodology that inform my research design are inspired by the work of Michel Foucault ([2004] 2007) on government, by the subsequent scholarship in governmentality studies organized around the concepts of political rationality, program of government, and political technologies (Inda 2006; Rose 1999; Rose and Miller 1992), and by the literature in Foucauldian policy analysis and socio-legal studies (Ball 1993; Gale 1999, 2001; Hunt and Wickham 1994; Scheurich 1994; Shore and Wright 1997, 2011; Valverde, Levi, and Moore 2005). In this chapter, I move from the general to the particular in presenting this literature. I begin with Foucault's concept of government and consider the ways his analytic has been taken up by governmentality scholars, paying particular attention to the early and important contribution of Nikolas Rose and Peter Miller (1992). Once the theoretical foundation is laid, I present my research questions, and explain the methodological strategies adopted in this research,

which are organized around what Trevor Gale (1999, 2001) calls policy historiography, policy archaeology, and policy genealogy.

Theoretical Framework and Research Questions

Foucault and Governmental Power

In the seminal course *Security, Territory, Population*, Foucault ([2004] 2007) discusses the emergence during the seventeenth and eighteenth centuries of a new modality and rationality of power, distinct from sovereignty and discipline, which he first calls “security,” then the “biopolitics of populations,” and eventually “governmentality.” In his attempt to offer a relational notion of power that displaces the traditional top-down view, Foucault had previously studied disciplinary techniques concerned with individuals, which he considered to be a dimension of the emergence of a new form of power concerned with life. This dual notion of biopower was composed of an anatomo-politics centered in the disciplining of individuals, and a biopolitics of population organized around logics and mechanisms of security (Foucault [1997] 2003). It is this latter dimension of biopower that Foucault sets out to study in this course. What he first dubs security is a number of knowledges and practices that aim to maximize the general health of a population, understood as a demographic and biological object. The population is perceived as a natural object that can be known and steered, and can be conceived “as a sort of technical-political object of management and government” (Foucault [2004] 2007:70).

Parallel to his inquiry about security, Foucault explores the literature on government produced in France between the seventeenth and nineteenth century. This leads him to broaden the scope of his investigation from the *dispositifs* of security targeting the population to include a political rationality concerned with the question of government in general. In his famous lecture on governmentality, Foucault ([2004] 2007) explains that in the mid-1600s, various authors argued that the art of government had to be applied at three levels: the government of the self, the government of the family, and the government of the state. Just as the head of a religious convent should exhibit an exemplary governing of himself, and govern his convent like a *pater familias*, the government of the state should be similar to the government of the household. As Foucault ([2004] 2007) explains:

In any case, you can see that the essential component, the central element in this continuity, both in the Prince's education and in police, is the government of the family, which is called precisely "economy." The art of government essentially appears in this literature as having to answer the question of how to introduce economy – that is to say, the proper way of managing individuals, goods, and wealth, like the management of a family by a father who knows how to direct his wife, his children, and his servants, who knows how to make his family's fortune prosper, and how to arrange suitable alliances for it – how to introduce this meticulous attention, this type of relationship between father and the family, into the management of the state? The essential issue of government will be the introduction of economy into political practice (P.94-95).

The new art of government that Foucault describes is thus an "economic government," as presented by Quesnay in the eighteenth century. Foucault argues that the word "economy," before acquiring its contemporary meaning as an aspect of reality to be governed, referred to a particular form of government in the sixteenth century. This form

of politics, much closer to the antique Greek notion of *oeconomia* than to the antique conception of politics, became much more central during the eighteenth century.

It is to account for both the political technologies that are used to know and regulate population and flows, and the broader political rationality concerned with the question of government, that Foucault reorients the program of his lectures around the concept of governmentality. In this now-famous lecture, Foucault ([2004] 2007) defines governmentality in this way:

By this word “governmentality” I mean three things. First, by “governmentality” I understand the ensemble formed by institutions, procedures, analyses and reflections, calculations, and tactics that allow the exercise of this very specific, albeit very complex, power that has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument. Second, by “governmentality” I understand the tendency, the line of force, that for a long time, and throughout the West, has constantly led towards the pre-eminence over all other types of power—sovereignty, discipline, and so on—of the type of power that we can call “government” and which has led to the development of a series of specific governmental apparatuses (*appareils*) on the one hand, [and, on the other] to the development of a series of knowledges (*savoirs*). Finally, by “governmentality” I think we should understand the process, or rather, the result of the process by which the state of justice of the Middle Ages became the administrative state in the fifteenth and sixteenth centuries and was gradually “governmentalized” (P.108-109).

This oft-cited definition is very broad, representing something closer to a vast research program than a concrete definition. Yet, as Michel S enellart ([2004] 2007) explains, as early as 1979, the concept “no longer designates the governmental practices constitutive of a particular regime of power (police state or liberal minimum government) but ‘the way in which one conducts people’s conduct,’ thus serving as an ‘analytical perspective for relations of power’ in general” (p.388). In this context, government “refers generally to the conduct of conduct—to the more or less calculated and systematic ways of thinking

and acting that proposes to shape, regulate, or manage the conduct of individuals and populations toward specific goals or ends” (Inda 2006:3).

While the government of populations is “more or less calculated and systematic” (Inda 2006:3), both the problematization of particular issues as objects of government and the governing of these objects are the result of the convergence of a diversity of practices and knowledges. Governmental power is exercised through decentralized networks or, more precisely, it is the effect of various *dispositifs*. This is important to note because the focus on the rational dimension of governmental power (through its reliance on expert knowledge and optimization of population) and the tendency of research in governmentality studies to focus on rationalities and programs of government (Rose 1999; Rose and Miller 1992) often takes attention away from the indeterminacy of governmental practices. In relation to policy processes, this tendency leads to accounts that emphasize the problematization of social issues in policy problems, their integration into programs, and the use of political technologies, while downplaying the discontinuities and the struggles at play in the policy processes. Yet, the indeterminacy of governmental power is also present in Foucault’s vague definition of governmentality quoted above, a definition whose wording is reminiscent of the concept of *dispositif*, defined as “a thoroughly heterogeneous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements,

philosophical, moral, and philanthropic propositions—in short, the said as much as the unsaid” (Foucault 1980:194).⁸

As Gregory Feldman (2011) explains in relation to his anthropological analysis of European migration policies, a governmentality approach to migration policy should engage with the heterogeneous *dispositifs* governing migration, and try to account for both the discontinuities and the ways in which “disparate elements coalesce in particular conjunctures” (p.32). In the following sub-section, I introduce key concepts from the literature in governmentality studies that are useful to the sociological analysis of policy, and that account for both the discursive regularities of discourse and the heterogeneous dimension of *dispositifs*.

Problematizations, Rationalities, Technologies, Programs

In their seminal article, Rose and Miller (1992) argue that we can productively draw from Foucault’s work on governmentality to research “problematics of government” (p.174). Most of Foucault’s research program is concerned with particular problematics or problematizations (of madness, crime, sexual practices, etc.), as a way to explore how objects of government are formed, as well as the relation between cognition and government. He explains:

⁸ The concept of *dispositif* has generally been translated as “apparatus,” a term that conveys a sense of structural organization and risks contributing to an “althusserization of Foucault” (Bigo 2006:35, n.40). I therefore follow Didier Bigo (2006) and others (including Dean 2013) who prefer to keep the French term “*dispositif*.”

Problematization does not mean representation of a pre-existing object, nor the creation by discourse of an object that does not exist. It is the totality of discursive and non-discursive practices that introduces something into the play of true and false and constitutes it as an object for thought (whether in the form of moral reflection, scientific knowledge, political analysis, etc.) (Foucault 1988a:257; cited in Soguk 1999:16).

Problematizations emerge through historically situated discursive and non-discursive practices that provide specific ways of *thinking* about and *acting* upon a set of difficulties. Foucault understood problematizations as emerging over the *longue-durée* (Foucault 1984; Rabinow 2003) but it is possible to adapt his concept to inquire into the ways things are rendered problematic over shorter periods of time (Bacchi 2012; Lippert and Stenson 2010; Soguk 1999). Indeed, Nevzat Soguk (1999) explains that he uses the concept to refer to “the conceptualization of difficulties as amenable and manageable problems (as in problem-solving theory) within a posited framework of practice” (p.50). In this sense, the problematization of “irregular” or “illegal” migrants in Spain is not simply the discursive framing of groups of people, but their inscription as objects of knowledge and government into grids of intelligibility. Instead of looking at a policy problem, or a problem of government, as something that is first identified objectively, and later managed through various strategies or solutions, the concept of problematization allows us to see these processes as simultaneous. “Irregular” or “illegal” migrants are constructed as objects of government at the same time as they are thought of as problems to be addressed in practice (Bacchi 2012; Foucault 1984; Moffette 2013). Problematizations reframe a variety of difficulties encountered through practice as discrete and intelligible problems that can be acted upon.

Rose and Miller build on this idea that “government is a domain of cognition, calculation, experimentation and evaluation” (p.175) and develop an approach that attempts to account for these discursive and non-discursive practices in problematics of government. In various interviews and texts, Foucault explained that he approached his investigations of problematizations through two methodological strategies, an archaeology that allows for the study of the discursive forms of problematizations, and a genealogy that focuses on their formation through heterogeneous practices (Bacchi 2012; Foucault 1984; Kendall and Wickham 1999). Rose and Miller translate this dual approach in their claim that problematics of government should be studied through *rationalities of government, programs of government, and political technologies*.

Rose and Miller argue that “political discourse is a domain for the formulation and justification of idealised schemata for representing reality, analyzing it and rectifying it” (p.178), and that while it is open to fluctuation, it is nonetheless possible to identify discursive regularities. These regularities are what form political rationalities. Akin to Foucault’s concept of discourse, political rationalities are sets of discursive elements that shape what can be said and thought during particular historical periods. According to Rose and Miller, political rationalities present three characteristics. First, “they are morally coloured, grounded upon knowledge, and made thinkable through language” (p.179). As they explain, political rationalities are informed by moral arguments about who should exert authority and how, and they “consider the ideals or principles to which government should be directed—freedom, justice, equality, mutual responsibility, citizenship, common

sense, economic efficiency, prosperity, growth, fairness, rationality, and the like” (p.179). Second, they are intimately tied to knowledge, as “they are articulated in relation to some conception of the nature of the objects governed—society, the nation, population, the economy” and the means to govern them. Finally, they are formed through language, a language that is seen “as a kind of intellectual machinery or apparatus for rendering reality thinkable in such a way that it is amenable to political deliberations” (p.179). Political rationalities are thus broad historically and culturally situated discursive formations that provide the discursive material to problematize objects of government.

While Rose and Miller are mostly concerned with very macro-level rationalities such as liberalism, the literature also inquires into sets of logics developing and operating at lower scales. As Randy K. Lippert and Miikka Pyykkönen (2012) explain, “Recurring rationalities in Foucauldian governmentality studies are liberalism and neo-liberalism (broad macro-scale rationalities with programmatic definitions of principles of governance); security, wealth and health of population (broad rationalities that receive their precise content contextually); and much more context-specific rationalities such as activeness, civility and sociality of human subjects” (p.2). In this research, I generally engage with rationalities at this more context-specific level, and often refer to them as sets of logics, rationales, or justifications, rather than more encompassing rationalities. It is at this level of analysis that one can study how programs claiming to “fight illegal migration,” “promote the burden-sharing model,” “oust bogus refugees,” or “defend our borders” are informed, for instance, by broader notions of legality, responsibility,

economic growth, deservedness, sovereignty, belonging, culture, nation-building, and so on.

Indeed, programs of government translate these broader ideals into more pragmatic and programmatic modalities. It is at this level that the problems and strategies of government are framed. Policies, bills, laws, political parties' platforms, and proposals made by various organizations and NGOs are all programs suggesting how a certain problem is to be governed and, as such, they provide a great entry point into the analysis of political rationalities. It is for this reason that Foucault's research projects were always organized around the problematizations of particular objects and the programmatic dimension of these problematizations was central (Foucault 1980, 1984). Indeed, the programmatic moment of problematizing is particularly interesting to study, since it is at the meso-level of government where ideals of government and a heterogeneous array of political technologies are organized together into programs.

For this reason, Rose and Miller argue that we should pay close attention to the mechanisms, devices, and techniques mobilized to actually govern. As they explain, "It is through technologies that political rationalities and the programmes of government that articulate them become capable of deployment" (p.183). Yet, as critical policy analysts have also shown, this relation is not a linear and rational process of implementation (Shore and Wright 1997). Indeed, policy programs often fail and have unexpected consequences. Further, the policy process does not start with the framing of the problem,

followed by practices of implementation; these practices also contribute to the construction of the very object they govern (Bacchi 2012; Rose 1999; Rose and Miller 1992). For this reason, while it is important “to study the humble and mundane mechanisms by which authorities seek to instantiate government” to better understand programs of government (Rose and Miller 1992:183), we also need to remember that these technologies are not the *realization* of any will to govern, and we ought to pay attention to the role they play in shaping objects of government. As Rose (1999) explains, a “technology of government, then, is an assemblage of forms of practical knowledge, with modes of perception, practices of calculation, vocabularies, types of authority, forms of judgment, architectural forms, human capacities, non-human objects and devices, inscription techniques and so forth” (p.52). It is thus clear that the very technologies mobilized to govern also contribute to rendering things into programmatic forms.

The unpacking of some of Foucault’s insights into the concepts of problematization, political rationality, program of government, and political technology offers a particularly useful set of conceptual tools for the project of studying migration policies. For instance, Jonathan X. Inda (2006) has built his research project on the governing of “illegal” immigration in the United States around these three concepts, while Feldman (2011, 2012) recently mobilized this approach more loosely in his analysis of European immigration policy-making. These endeavours have proven fruitful and I took inspiration from them as I developed the questions guiding this research.

Research Questions

As I have already mentioned, this research is concerned with the logics informing Spanish policies aiming at governing irregular migration, as well as the practices and discourses of actors involved in this process. The research design was organized to map out the discursive regularities that offer a kind of repertoire of what can be said and thought about irregular migration at a particular time, as well as the discontinuities that can be identified in the uneven processes of policy-making and in the historical development of the techniques mobilized to govern irregular migration. There are four main axes of interrogation that guide this research:

- 1) Which political rationalities have informed the problematizations of irregular migration as an object of government in Spain, and which discursive regularities and changes can be identified in various programs of government?
- 2) Which programmatic forms has the government of irregular migration taken in Spain, and what are the similarities and differences between different historically specific programs of government?
- 3) Which technologies have been mobilized to govern irregular migration in Spain, and how do these technologies contribute to the different ways in which irregular migration is problematized?

- 4) What are the power dynamics at play in policy-making, and how can temporary policy settlements resulting from these struggles account for shifts in the way irregular migration has been governed since the early 1980s?

These questions, which stem directly from the theoretical literature in governmentality studies, are not easily amenable to sociological enquiry. Perhaps because Foucault took social sciences and the humanities as objects of analysis and developed a methodology that aimed to go “beyond structuralism and hermeneutics” (Dreyfus and Rabinow 1982:xi), a tension always remains between governmentality studies and sociological theories and methodologies. Indeed, works focusing on analytics of government generally insist on the difference between this approach and realist sociologies of history, or critical realist approaches, but usually without successfully breaking with “the real,” despite their nominalism (Curtis 1995; Lippert and Stenson 2010; Power 2011). While their critique is officially aimed at the “sociological philosophers of history,” not sociological approaches that pay “attention to the humble, the mundane, the little shifts in our ways of thinking and understanding, the small and the contingent struggles, tensions and negotiations that give rise to something new and unexpected” (Rose 1999:11), governmentality scholars often remain skeptical of sociological methodologies. In the following section, I expose the strategy used to adapt this theoretical framework in order to make it more amenable to sociological analysis.

Methodological Strategy

While seriously considering the reservations about the dangers of naïve realism expressed in governmentality scholarship, I do not insist on eschewing realist descriptions and interpretations altogether. Following Randy K. Lippert and Kevin Stenson's (2010) advice, I prefer privileging the project of providing a detailed analysis of particular situations to that of trying to avoid realism at all cost, and I therefore borrow from scholars who do not hesitate to "sociologize" Foucault (Gale 2001; Kendal and Wickham 1999; Shore and Wright 2011; Stenson 2008). In this research, I draw from the work of Trevor Gale (2001), who systematized the methodological dimensions of Foucauldian and critical policy sociology. Gale developed a methodology based on policy historiography, policy archaeology, and policy genealogy, three approaches that are obviously inspired by Foucault's methodology, but have been substantially adapted for the purpose of engaging in a sociological analysis of policy. I amend and complement this approach by incorporating insights from the work of other Foucauldian policy analysts and socio-legal scholars (Feldman 2012; Kendall and Wickham 1999; Shore and Wright 2011; Wright and Reinhold 2011). The result is a somewhat unorthodox sociological take on Foucault's methodology, which has proven very useful.

Policy Historiography

Gale (2001) suggests that any policy historiography must consider policy domains in relation to the structural organization of society at various historical periods, and question

the nature of the shifts from one period to another. In his own research on Australian university entry policies, he documents various “historical epochs” to map the shifts in preferred policies. However, he insists that these shifts are not self-evident, structurally necessary, nor the result of progress. He offers “a critical examination of the data that is concerned not just with an episode in the history of ideas but also, and more crucially, with critical sociological questions about who benefits from particular university arrangements” (p.385-386). To offer a periodization of policy choices while also grasping the struggles at play in policy-making, he develops the concept of policy settlement. As Gale explains (1999), “Understanding these struggles of power and dominance involves an appreciation for ‘policy as settlement’ and for the strategies employed in its formation. By policy settlement I mean ‘a moving discursive frame’ (Ball, 1994a, p. 23) which at a particular historical and geographical moment defines the specifics of policy production” (p.400).

By this, he does not mean that policy settlements are compromises or truces, simply that they are temporary settlements of the power dynamics involved in making policy. It is in this sense that Gale (2001) understands “these hegemonic settlements to *contain* crises of other settlements ‘in waiting’” (p.386). He presents policy settlements as asymmetrical (since they “are defined by the specific discursive strategies of dominant policy actors”), temporary (“since their very asymmetry or imbalance is likely to produce unsettling effects of crises”), and context-dependent (Gale 1999:402). When discussing the third dimension, context dependency, Gale explains that settlements occur around particular

questions, and that we can distinguish between broader *settlement parameters*, such as liberalism, and *settlement particulars*, such as particular Keynesian economic policies. Hence, “while policy settlements are context-dependent, their discursive and strategic framing provides the settlement *parameters* (the ‘why now’ of policy), established broadly, within which settlement *particulars* (the ‘what now’ of policy) are specifically negotiated” (Gale 1999:402).

The relation that Gale establishes between broad settlement parameters and various settlement particulars is akin to that developed by Rose and Miller (1992) between political rationalities and programs of government, despite Gale’s depiction of policy settlements as hegemonic moments that result from asymmetrical power relations. Adapting Gale’s methodology, this study looks at policy-making as a field of struggles that can lead to unexpected consequences, map temporary policy settlements, and account for asymmetry and individual and collective strategies without mobilizing concepts of hegemony or ideology. This more Foucauldian version of Gale’s “historiographical” analysis of temporary policy settlements follows Susan Wright and Sue Reinhold’s (2011) methodological strategy of “studying through,” which, as they explain:

follows a discussion or a conflict [that is related to policy] as it ranges back and forth and back again between protagonists, and up and down and up again between a range of local and national sites [and one could add other levels]. The aim is to follow a flow of events and their contingent effects, and especially to notice struggles over language, in order to analyse how the meaning of keywords are contested and change, how new semantic clusters form and how a new governing discourse emerges, is made authoritative and becomes institutionalized. What is studied is a process of political transformation through space and time (P.101).

While Wright and Reinhold mention change, struggles, institutionalization, and “transformation through space and time” (p.101), they do not break down this process into periods because they want to retain the fluidity and messiness of the process in their accounts. I prefer to retain Gale’s historiographical periodization as a device that allows for the analysis of political transformations in a somewhat orderly manner, and for the study of finite temporary policy settlements as snapshots into this process, while avoiding the framing of these settlements as hegemonic. As will be evident in the discussion on policy archaeology and genealogy, the possibility of taking a snapshot of a political process by marking artificial boundaries can be a very useful methodological strategy, and Gale’s policy historiography certainly provides some good tools in this regard.

Policy Archaeology

The second dimension of Gale’s methodology is inspired by James J. Scheurich’s (1994) policy archaeology.⁹ Scheurich attempts to study “the intersection or, better, the constitutive grid of conditions, assumptions, and forces which make the emergence of a social problem, and its strands and traces, possible—to investigate how a social problem becomes visible as a social problem” (p.300). Scheurich is strictly concerned with the rules of formation of policy discourse and the conditions of their realization and, following Foucault’s archaeology, develops an approach that does not consider conscious subjects. For instance, when discussing regularities in the framing of policy problems, Scheurich

⁹ This approach, developed to study policy, is similar to that proposed by Kendall and Wickham (1999:24-34) in their book on the use of Foucault’s methods for social sciences.

argues that “the regularities are not intentional; that is, no particular individual or group consciously creates them” (p.301). While not intending to suggest that no individual or group benefits from or articulates the regularities, this point highlights the fact that his archaeology of policy does not consider the active struggles over the definition of policy problems, limiting itself to analyzing discursive formations.

While it needs to be complemented, Scheurich’s approach is compelling. In his own research, he develops his policy archaeology to encompass four broad arenas and corresponding sets of questions, which Gale (2001) summarizes succinctly as follows:

- (1) what are the conditions that make the emergence of a particular policy agenda possible?;
- (2) what are the rules or regularities that determine what is (and what is not) a policy problem?;
- (3) how do these rules and regularities shape policy choices?;
- and (4) how is policy analysis similarly regulated? (P.387)

Gale builds upon Scheurich’s archaeological methodology but modifies it. For instance, he includes in policy archeology a consideration of the “licensing of policy-makers and their relations as part of the policy formation” (p.387). While Gale pays close attention to the strategies used to legitimize and delegitimize certain policy agendas and types of policy actors, here he remains within the limits of a policy archeology. In this context, “what is important to uncover is not so much who speaks but what is spoken, what positions it is spoken from, and how this is mediated by the speaking positions of others; an architecture of policy positions” (p.389). Gale’s modification of Scheurich’s approach thus allows for the consideration of policy-makers and their positions; and yet for those

engaged in policy archeology, the interests lies not “in authorship but in vocality” (Gale 2001:389).

Policy Genealogy

Because of this focus on discursive regularities, an archeology of policy needs to be complemented by a genealogy of policy, according to Gale (2001). Not that a genealogical approach necessarily focuses on authorship, but it does allow for a consideration of policy-making as a site of struggle where temporary alliances and interests play. At the same time, a genealogical account of policy-making differentiates itself from incrementalist approaches focusing on “negotiation,” “mutual adjustment,” and “consensus building,” since it does not aim at producing accounts of a continuous and progressive process. Rather, it acknowledges in its description heterogeneous and discontinuous moments and aspects of the struggles to make policy.

Before abandoning the concept of archeology altogether, Foucault saw archaeology and genealogy as complementary, and some authors even see genealogy “as a way of putting archaeology to work” (Kendall and Wickham 1999:31). The main difference between the two is that archaeology “provides us with a snapshot or a slice through the discursive nexus [while] genealogy pays attention to the processual aspects of the web of discourse” (Kendall and Wickham 1999:30-31). So, while it might be useful to map regularities, it is important not to conceive them as abstract sets of rules. For this reason, genealogy complements the snapshot provided by archeology by highlighting the fact that

it is simply a snapshot of a process filled with discontinuities, singularities, and uncertainty. Genealogy is thus an analysis in terms of *dispositifs*, one that considers events (a specific programmatic form, or a policy, for instance) as effects of a multiplicity of power relations operating as a network (Foucault 1990).

As Foucault ([1997] 2003) explains, his own genealogical investigations are characterized by “a meticulous rediscovery of struggles and the raw memory of fights” (p.8) involved in the construction of discourse. But these conflicts cannot simply be acknowledged as a memory whose traces appear in a genealogical account; one needs a means of accounting for the way these conflicts unfold. At a conference in 1978, Foucault suggested completing genealogy with a focus on strategies. Genealogical analysis studies a particular outcome (for instance, a policy) not as the result of a cause but as the effect of a singular set of relations, relations that are constituted by individuals and collective strategies, and which should be studied as such. Foucault ([1990] 1996) explains:

relations that allow one to take account of this singular effect are, if not in their totality, at least in a considerable part, relations of interactions between individuals or groups, that is, that they involve subjects, types of behaviors, decisions, choices: it is not in the nature of things that one could find the backing, the support of this network of intelligible relations; it is logic proper to a game of interactions with its always variable margins of noncertitude (P.397).

In this sense, much like policy studies that draw from Actor-Network-Theory (Fenwick and Edwards 2010; Koyama 2011), inductive genealogical research allows one to map out the contingent “work” within a “net” (Latour 2005:132), and to describe the types of relations at play in the emergence of a particular policy. For instance, in his own research on

Australian education policymaking, Gale (2001) identifies *patterns* of bargaining, arguing, stalling, manoeuvring, and lobbying, as well as the *types and positions* of policy-makers employing them, in order to map the struggle of policy-making. Similarly, Feldman (2012) develops a “global ethnography” approach that allows him to show how particular problematizations of migration in the European Union are the effect of a set of dispersed discursive and non-discursive practices of various actors and institutions. Policy genealogy is thus a method that complements policy archaeology and policy historiography and that asks: “(1) how policies change over time. But it also seeks to determine (2) how the rationality and consensus of policy production might be problematized and (3) how temporary alliances are formed and reformed around conflicting interests in the policy production process” (Gale 2001:389-390). These three approaches were used to further operationalize the concepts developed by governmentality scholars and devise some of the questions informing this research, as well as to orient the data collection and interpretation.

Data Collection and Interpretation

The methodological strategy of data collection and interpretation used in this research can be considered a form of “triangulation” (Singleton and Straits 2010:431-434), as I used a balance of documentary information (found in the scholarly literature, newspaper articles, and NGO reports), archival material, interviews, and observation. The use of multiple methods of data collection is important in the sociology of policy if the analysis is

to focus on process. Indeed, as Irène Bellier (2005) observes, “the content of official documents tends to be limited to what has been agreed, letting aside sources of disagreement,” and while “official discourses are available for analysis, internal negotiations and day-to-day practices related to discourse production or to the policy field are difficult to observe” (p.256). For this reason, she argues that it is important to study the final policy texts in conjunction with interviews, minutes, or ethnographic accounts.

Similarly, Randy K. Lippert (2005) claims that governmentality scholars can gain from using interviews, since marginal discourses may not make it to the written form and may thus be only accessible orally or through the observation of practices. This argument also applies to other sources of oral discourses, such as the verbatim transcriptions of parliamentary debates. Not limiting the analysis to programmatic “tidy texts” and considering the oral discourses and everyday practices of various actors is also helpful in writing accounts of policy-making that render its messiness (Lippert and Stensen 2010:481). Gathering material from various sources is even more important when studying projects and individuals linked to security, the military, corporations, or state interventions, since the data collected through each technique, and at each site, tend to be fragmented and highly censored. For this reason, anthropologist Hugh Gusterson (1997) recommends that scholars working in these fields adopt a “polymorphous engagement,” by which he means “interacting with informants across a number of dispersed sites” and “collecting data eclectically from a disparate array of sources in many different ways” (p.118).

The different methods used and the data they produce do not all hold the same status. The purpose of this polymorphous engagement is not to gather more material that can be studied as one big corpus, but to use the data produced by one method to contrast, verify, and question the material gathered through another (Beaud and Weber [1997] 2010). During the active inquiry and throughout the interpretation process, this strategy allowed me to compare what politicians said in Congress with what was posited by legal and policy documents, and use practices observed in the streets to encourage interviewees to explain how they do things and what the everyday practices of their work consist of (Beaud and Weber [1987] 2010).

Archives

In this research, verbatim transcriptions of parliamentary debates on irregular migration that occurred between 1979 and 2013 provided the main material. Verbatim transcriptions are a particular kind of archival material, since they provide the whole discussion as it occurred at the time, not a summary of what was considered important. Nonetheless, when we analyze these debates for the insights they provide on policy practices occurring outside parliamentary sessions, we cannot uncritically take what is described in parliamentary interventions as representative of broader policy processes, especially considering that parliamentary debates are to a great extent a public performance (Abélès 2000). As with other archives, it is therefore essential to study them for the factual details, arguments, and rationales they provide, but also to place them

within the broader socio-historical moment and place in which they were produced (Israel 2010).

Table 1: Types of Parliamentary Initiatives Analyzed and Translation Used

Function	Type of Initiative
Función legislativa	Proyecto de Ley Translation: Bill
Legislative Function	Proposición de Ley Translation: Legislative Proposal
Función de orientación política	Proposición no de Ley Translation: Non-Legislative Proposal
	Moción (de interpelación urgente o no urgente) Translation: Motion (from an urgent or non-urgent interpellation)
	Comunicación del Gobierno Translation: Communication of the Government
	Planes y programas Translation: Plans and Programs
Function of Political Orientation	
Función de control	Comparecencia del Gobierno en Comisión Translation: Appearance of the Government in Commission
	Comparecencia de autoridades y funcionarios en Comisión Translation: Appearance of Authorities and Civil Servants in Commission
	Comparecencia de otras personalidades en Comisión Translation: Appearance of Other Personalities in Commission
	Interpelación urgente Translation: Urgent Interpellation
Control Function	

Most of the archival work was conducted at the *Archivo del Congreso de los Diputados* (Archive of the Congress of Representatives), mainly through its internet database, but also on-site at the Congress in Madrid when I needed to access documents

presented to parliament but not included in the digitalized minutes of sessions or the official bulletin. The online database allows for searches of parliamentary initiatives based on their official parliamentary category or function: a legislative function (such as a bill), a function of political orientation (such as a motion), or a function of control (such as a question or a request for a minister to appear before a committee).

In his analysis of Spanish parliamentary discourse on immigration between 1996 and 2006, Ricard Zapata-Barrero (2009) suggested that, in order to focus solely on relevant interventions, it made sense for him to only analyze initiatives serving a legislative function or a function of political orientation, and to exclude those with a function of control because of their fragmented character. I have taken inspiration from his methodological strategy, but since I was not looking for well-formed political discourses, and rather for the process of problematizing migration as an object of policy, I have also included in my data some parliamentary initiatives classified as having a function of control. These include the appearances of ministers, state officials, or experts at commissions and the debates that follow, as well as the debates produced by “urgent questions.” For the earlier period (1979-89), when debates were rather limited, I also included written and oral questions in an attempt to map out the emergence of the early and hesitant problematizations of irregular migration as an object of government. I consulted the *Boletín Oficial del Estado* (Official State Bulletin) for the text of the initiatives, and the *Boletín Oficial de las Cortes Generales* (Official Bulletin of the General Courts) for the minutes of the plenary sessions of Congress and of all relevant

commissions. In examining the period following the transition to democracy in 1979 (Legislature I) until 2013 (Legislature X), I collected and analyzed the initial initiatives (along with associated interventions) with titles containing any of the following words: *inmigrante* (immigrant), *inmigración* (immigration), *extranjero* (foreigner), *extranjería* (status of foreigners or “alien affairs”).

Whenever I reference a parliamentary initiative, I indicate the number of the legislature, as well as the reference number of the initiative, so that it can be easily found; for instance, (I – 161/000398) stands for first legislature, initiative type 161, number 000398. I do not list the initiatives in the “References” section of the dissertation. When citing an intervention that is part of an initiative debated over many sessions (such as a bill), I provide a more detailed reference to facilitate the location of the intervention in the *Boletín Oficial de las Cortes Generales*. Occasionally, I cite interventions that took place in the Senate or in the parliament of some of Spain’s autonomous communities, in which case, I provide the complete citation in a footnote. At the physical archive in Madrid, I also collected some reports, and other documents presented to representatives in Congress but not transcribed in the minutes. Whenever available, I also collected key ministerial memos, police directives, and governmental reports available online, or shared by interviewees. Laws, decrees, government programs, and party platforms have also been analyzed.

Interviews

In addition to the archival material, this study also relies on interviews and informal discussions with various actors involved in, or attentive to, immigration governance. The interviews were used as much as possible as a means to obtain information about the “hands-on” part of the policy-making process, which the policy documents and the parliamentary debates cannot account for, and about the practices, know-how, and everyday procedures of police intervention that are not codified in law. As Stéphane Beaud and Florence Weber ([1997] 2010) explain, interviewees who hold institutional positions as elected officials, judges, or spokespersons tend to speak in abstract terms about their work. Using observations and examples drawn from my archival material allowed me to ask about specific situations and about the details of how the work is done (Gusterson 1997). Interviewing people with political skills also means the researcher is confronted by the possibility that the informant is hiding elements of the process that may not be legal or politically correct. I always tried to corroborate the veracity of the interviewees’ claims through other interviews, observations, and the available literature, but I tried not to challenge interviewees during the interview process, asking instead for clarification, and inviting them to speak about the rationale behind their actions and the types of problems they encounter in practice (Kaufmann 2006).

Table 2: Interviews Conducted

Date	Position held by the interviewee
High-Ranking Officials	
26/09/2012	Sub-director, General Direction of Migrations, Ministry of the Interior; Director, General Direction of Migration Ordering, Ministry of Labour and Social Affairs; Senior advisor, General Direction of Labour Inspection and Social Security, Ministry of Labour and Immigration
01/10/2012	Director, General Direction of Immigration, <i>Generalitat de Catalunya</i>
01/10/2012	Civil servant, General Direction of Immigration, <i>Generalitat de Catalunya</i>
4/10/2012	Sub-director, Office of Alien Affairs, Ministry of the Interior
7/11/2012	Head of staff of the Secretary of State for Immigration and Emigration, Ministry of Labour and Social Affairs
Politicians	
29/09/2012	Elected member of Congress (<i>diputado</i>) specialized in immigration 1
24/10/2012	Elected member of Congress (<i>diputado</i>) specialized in immigration 2
Law Enforcement and Legal Experts	
16/07/2008	Spokesperson, <i>Sindicado Unificado de Policia (SUP)</i> , Ceuta
05/11/2012	Spokesperson, <i>Sindicado Unificado de Policia (SUP)</i> , Madrid
20/11/2012	Immigration lawyer
27/11/2012	<i>Juez de instrucción</i> (lower-court judge) N° 5 of Madrid <i>Juez de control</i> (Judge of control), CIE of Aluche (Madrid)
NGOs and Unions	
02/10/2012	Employee 1, Immigrant Workers Information Centre (CITE) <i>Comisiones Obreras</i> (Barcelona)
02/10/2012	Employee 2, Immigrant Workers Information Centre (CITE) <i>Comisiones Obreras</i> (Barcelona)
10/11/2012	Various members, <i>SOS Racismo</i> (Madrid)
06/11/2012	Organizer, Neighbourhood Brigades for the Observations of Human Rights

I conducted 15 semi-structured interviews (Marvasti 2004) with current and former high-ranking civil servants, elected officials, union representatives, a judge, and NGO members. The interviews each lasted between 50 and 90 minutes, and were conducted in the fall of 2012 during five months of fieldwork in Spain.¹⁰ In Table 2 on the following page, I include a list of the interviews conducted. To preserve the anonymity of the interviewees, while providing their positions as precisely as possible, I do not mention whether they currently hold that position or have held it in the past.

As a means to gain access to key officials and develop my understanding of the field of immigration policy-making in Spain, I also met with many senior academics working on immigration issues and immigration law, to ask for their advice on my research and discuss their work. While I did not conduct formal interviews with them, and therefore did not record or analyze them, I asked specific questions about Spanish immigration policies and legislation, and the information gathered in these discussions was very valuable in building my interview questions and developing my analysis. I sometimes refer to these personal communications in the dissertation.

Ethnographic Notes

While most of the data on the governing of migrants and migration came from parliamentary debates, policy documents, and interviews, I also took detailed notes of my

¹⁰ With the exception of one interview conducted in 2008 with the spokesperson of a police union in Ceuta, as part of another research project, which is included in the data analyzed for Chapter 6.

observations of the policing of immigrants in the streets of Madrid during the five months I spent living in the immigrant neighbourhood of Lavapiés and visiting other immigrant neighbourhoods. The policing of immigrants in the streets and public spaces of Spanish cities is a constant phenomenon that takes place quite openly. By sitting in public plazas for hours in immigrant neighbourhoods, I witnessed hundreds of cases of immigrants being controlled, questioned, or detained by police; I observed the dynamics, listened to the interactions, and sometimes asked questions of these immigrants or their friends afterwards. This was not participant observation, nor pure external observation. I interacted with some of the immigrants who spent time in these plazas, but rarely with the police officers whose practices interested me the most.

While I was trained as an anthropologist and have never abandoned the habit of considering all events as potential ethnographic material, the addition of these observations to the research strategy does not come close to making it an ethnography. I did, however, take systematic notes, describing the context (space, time, social setting, people involved), the nature of the interaction (sometimes asking immigrants for their interpretation), and the content of what was said by the various actors involved (Beaud and Weber [1997] 2010). The information gathered through these observations was mostly used to orient my interviews with actors involved in immigration control (a judge, a police union representative, an official at the Ministry of the Interior) and activists documenting these practices, but it also provided very useful material for the analysis of street-level immigration policing developed in Chapter 7.

Interpretation

The methodological discussion has thus far rendered explicit this study's commitment to bridging methodologies inspired by governmentality studies and others that clearly belong to more traditional sociological inquiry. The tensions reappear here at the level of interpretation. Once again, the "discourse analysis" performed by scholars inspired by governmentality studies often eschew positivist epistemologies without providing any serious alternatives. For instance, Jonathan Potter and Margaret Wetherell (1994) suggest that:

One of the difficulties in writing about the process of discourse analysis is that the very category 'analysis' comes from a discourse developed for quantitative, positivist methodologies such as experiments and surveys. Analysis in those settings consists in a distinct set of procedures; aggregating scores, categorizing instances, performing various sorts of statistical analysis and so on. It is sometimes tempting to think that in discourse work there is some analogous set of codified procedures that can be put in effect and which will lead to another set of entities known as 'the results' [but it is rarely the case] (P.53).

This is an exaggeration. In fact, distinct sets of highly technical analytical procedures are used for qualitative textual and discourse analysis based on methodologies developed in linguistics with impressive results. In Spain alone, the work of Teun A. van Dijk on racism and prejudice in parliamentary and media discourses is a great example of what this type of research can produce (van Dijk 1997, 2004; Martín Rojo and van Dijk 1997). Despite Potter and Wetherell's argument, the problem lies not in the understanding of analysis but in the definition of "discourse." Foucauldian discourse analysis is a misnomer inasmuch as what we study are discursive formations, grids of intelligibility,

problematizations, technologies, and practices, not modes of argumentation and rhetorical style (Bacchi 2012; Sharp and Richardson 2001; Jäger and Maier 2009).¹¹

For this reason, the interpretation strategy adopted in this research is one based on thematic content analysis and on the mapping of the logics and practices induced from parliamentary speeches, policy documents, interviews, and observations. This strategy allows me to move away from a strictly discursive level of analysis, to include practices, technologies, rationales, and justifications. The coding and analysis parts of the research took the form of a continuous process of interpretation and production of data that nonetheless included broad thematic categorization focusing on discursive regularities (Gale 2001; Kendall and Wickham 1999). I classified speech and text fragments into broad categories that I identified inductively or in the literature, and studied the interplay between these fragments, the constitution of various discursive convergences, and conflicts over how a policy problem should be defined and dealt with (Sharp and Richardson 2001).

¹¹ Despite some additional sociological or linguistic discourse analyses that draw inspiration from Foucault to varying extents (see Angenot 1989; Leps 2004; Mills 2004).

Table 3: Analytic Themes Created

Criminality as a justification for exclusion
Criteria for immigrant desirability and rights based on culture
Criteria for immigrant desirability and rights based on work
Control and order as a demonstration of state sovereignty
Discretion in application of regulation
Implementation of immigration regulation for other purposes
Justification of policies based on EU obligation or other countries' practices
Labour market as a manageable entity
Need of knowledge about immigrants
Need of knowledge about migration flows
Re-articulations of race in cultural terms + "we are not racist"
Relations between culture and integration (or lack thereof)
Relations between culture/origin and obligation of solidarity
Relations between governing/managing capacity and co-operation
Relations between governing/managing capacity and knowledge
Relations between governing/managing capacity and technology
Relations between irregular employment and criminality/exploitation
Relations between irregularity, illegality, criminality
Relations between labour market and "national" economy
Relations between work and integration
Respect and violation of laws as a strategy
Strategies of counting and statistics
Tensions between levels of government
Tensions between politicians and civil servants
Use of bureaucratic categories to classify people/ Need to develop definitions

While traditional thematic content analysis often calls for pre-analysis in the field, categorization, codification, and then interpretation (Robert and Bouillaguet 1997), I followed a less linear process. After pre-analysis during the period of data collection, I had already an idea of some of the themes that I would use. I started by attributing codes to text, interviews, and fragments of parliamentary debates, based on a method of open coding (Bailey 2007). Simultaneously, I started classifying some of these codes under the broader themes I had already identified, while other codes remained unclassified. I then went back to the material to refine my themes and reduce my data. The themes, listed in Table 3, provided a fragmented picture, and at the moment of writing the substantive chapters, I had to reintegrate them into a more cohesive narrative. The content classified in these themes was sometimes used in more than one chapter, sometimes not used at all. This material provided me with colours as I painted the story.

Return to the Literature

For the sake of avoiding the dangers of “over-interpretation” (Lahire 2007:43) that come with a deductive research strategy, and in an attempt to preserve at least part of the epistemological uncertainty that characterized Foucault’s intellectual endeavour (Latour 2005:86, n.106), I chose to build my research design around a framework that helped me figure out *how* to conduct a sociology of policy. Indeed, by focusing on the useful literature of Foucauldian policy sociology, I aimed to use theory to figure out *how* to approach Spanish immigration policies and the governing of irregular migration, not to

build hypotheses about *what* this governing looks like. In a sense, I intended to start this research by adopting the kind of critical empiricism promoted by Rose (1999):

An empiricism closer to that of Gilles Deleuze when he compares the work of his philosophy in part to a detective novel, in that 'concepts, with their zones of presence, should intervene to resolve local situations. They themselves change along with the problem . . .' Empiricism, here, is not a matter of a reaction against concepts, far less an appeal to the primacy of lived experience. It is a method of lived experience. It is a method of inventivity, the invention of concepts as objects of an encounter, a here-and-now encounter (P.12; citing Deleuze 1994:xx).

No research is truly inductive, however, as one always thinks within a certain paradigm (Kuhn 1962). The early process of designing this research was clearly informed by scholarly works that make substantive claims about nation-building, cultural racism, criminalization and securitization, borders and bordering, liberalism and neoliberalism. As much as possible, however, I tried to bracket them to avoiding starting the research with these claims in mind, and only went back to this literature later, during the interpretation and writing process. During this process, as I engaged with the data and tried to make sense of the patterns I saw emerging, I went back to this literature to help me further conceptualize the processes I was describing. I found it very productive to develop my analysis in dialogue with empirical and theoretical works produced by others. Indeed, the substantive chapters that follow engage with a large body of scholarly literature on immigration policies in Spain and elsewhere, as well as on theoretical debates in sociology, socio-legal studies, criminology, and border studies.

Chapter 3

“Immigrants,” “Foreign Workers,” and “Illegals”: Early Problematizations of Migration as an Object of Government

This chapter covers the emergence of irregular migration as an object of government in Spain in the 1980s, a period whose pivotal moment is the adoption of the first Alien Act (*LOE 7/1985*) in 1985. More specifically, it analyzes the *problematization* of irregular migration in Spain—understood as the result of historically situated discursive and non-discursive practices that provide specific ways of *thinking* about and *acting* upon an object of government—and the role that law plays in this process. Considering Michel Foucault’s desire to develop an alternative conception of power that would “cut the King’s head off” and decenter the analysis of power away from sovereignty and law, it may appear odd that this study commences with a discussion of the Alien Act. However, critical legal scholars working within a governmentality framework have shown that paying attention to law can be very productive (Hunt and Wickham 1994; Rose and Valverde 1998; Valverde 2003; Valverde, Levi, and Moore 2005; Walby 2007).

Foucault understands government as a mode of power that is “not a matter of imposing laws on men, but rather of disposing things, that is to say to employ tactics rather than laws, and if need be to use the laws themselves as tactics” (Hunt and Wickham 1994:52). Accordingly, law-as-governance scholars consider that law is but one of many tactics of government (Levi and Valverde 2001; Lippert 2005; Lippert and Walby 2014; Valverde 2012). From this perspective, processes of normative regulation first emerge outside of law, and only sometimes take the form of legal ordering. Therefore, in the law-as-governance approach, not only has the law no unity, it also holds no privileged position in the analysis. The strategy then is to focus on problematization, namely the ways in which social issues are constructed as problems in need of some regulation, which can sometimes be legal. As Nikolas Rose and Mariana Valverde (1998) explain:

While it might seem obvious to begin by asking ‘what does law govern?’, from the perspective of government we would not start from law at all. Instead, we would start from problems or problematizations (cf. Castel, 1994). A problematization, here, is a way in which experience is offered to thought in the form of a problem requiring attention (P.545).

However, decentering law does not mean abandoning it. Objects and problems of government do not, indeed, “form within the working of law itself,” but their inscription into law is part of the process that makes them into “problems requiring attention” (Rose and Valverde 1998:545). As a tactic, and as a powerful site for the construction and contestation of truth claims, law should not be underestimated. In fact, critical legal scholars have convincingly demonstrated the importance of analyzing the profound connections between our understandings of historically and culturally situated notions

such as race, gender, responsibility, or morality, and how they have been constituted and regulated through law (Anghie 1996; Haney López 1996; Mawani 2002; Scales 2006). Furthermore, considering laws and notions of legality and illegality is of particular significance when one analyzes objects of government intimately tied to projects of statehood such as immigration, nationalism, or colonialism (Mawani 2009; Thobani 2007; Soguk 1999). One should be careful, however, when making claims about the legal construction of social phenomena. I prefer analyzing this process as a social construction in which laws and notions of legality play an important role, and inquiring into the logics informing law-making, as well as the effects of legal practices on broader practices of governance.

While it is common to situate the beginning of Spanish immigration policies in 1985, when Spain adopted the first Alien Act (*LOE 7/1985*), I suggest that the emergence of migration as a political object started before that and remained unstable until at least the early 1990s. The period leading up to the adoption of the second decree providing new regulations for the Alien Act in 1996 (*RD 155/1996*) was filled with political debates, ranging from discussions about what the phenomena at hand should be called to legal challenges to the constitutionality of the 1985 law. A close reading of parliamentary debates during this period reveals that by 1990, political parties and even individuals within these parties were unable to agree on a definition of what was to be governed and how. Acknowledging this confusion, the government agreed to produce a report aimed at circumscribing this object of government and submitted it to Congress in December 1990.

This official “communication of the government to Congress,” titled *Situation of Foreigners in Spain: Basic Features of the Spanish Policy on Foreigners*, resulted in Congress almost unanimously adopting a policy orientation document in April 1991.¹² While it is true that Spanish adhesion to the Schengen Agreement provides the main immediate context for the policies developed in the late 1980s and early 1990s, the specificities of the Spanish rationales for governing irregular migration appear more clearly in this report to Congress. Not only did the problematizations of irregular migration delineated in the report inform the policy orientation document adopted by Congress, but the report was also later cited in the opening sentence of the decree providing the new regulations for the Alien Act in 1996 (*RD 155/1996*). Following Trevor Gale (1999), I consider the adoption of this 1990 report as a kind of policy settlement, a moment that marks the end of the first series of debates about immigration in Spain, soon to be followed by more passionate ones.

Not Everything Started in 1985

In most of her works on Spain, Kitty Calavita (1998, 2003, 2005, 2006; Calavita and Suárez-Navaz 2003) uses the following quote from anthropologist Mercedes Jabardo to make the case that the *LOE 7/1985* effectively illegalized irregular migrants: “The legislation . . . generates irregularity among the vast majority of the immigrant community . . . In other

¹² Report: *Situación de los extranjeros en España. Líneas básicas de la política española de extranjería. Comunicación del Gobierno al Congreso de los diputados*. General Archives of the Congress, reference number 18167 (1990). Non-legislative proposal: *Proposición no de ley ante el pleno relativa a la situación de los extranjeros en España* (IV - 162/000107).

words, the law creates the legal category of the immigrant and thereby generates the category of the ‘illegal’” (Jabardo 1995:86-87 cited in Calavita 2005:43). Calavita adds that this claim is true only insofar as the lack of a comprehensive immigration policy before 1985 meant that irregular migration was not technically a matter of legality or illegality. While she shows the limits of this statement and uses it as a starting point for a more subtle analysis of the ways in which Spanish immigration policies regularly push immigrants into irregularity, this claim, repeated over and over, ends up giving the impression that everything started with the *LOE 7/1985*. Calavita is, of course, not the only one who begins the story in such a way. In fact, it is part of a common narrative that most scholars, activists, and officials use as a shortcut when discussing the evolution of Spanish immigration policies. Indeed, many other prominent scholars have made a similar point, including Antonio Izquierdo Escribano (1996), who famously argued that, prior to 1985, irregular immigrants living in Spain had been able to work without being harassed by Spanish authorities for being in the country without the proper authorization. In a way, the argument suggests that there was no legal consciousness (Ewick and Silbey 1998) of illegality related to irregular residency or work prior to the adoption of the first Alien Act in 1985.

I am in no way questioning the accuracy of the many works which present this narrative of the founding moment. However, the illegalization of irregular migrants did not start with this legislation. As new research focuses on more recent events, these narratives tend to solidify and prevent us from inquiring about the governing practices in

place before 1985. In what follows, I examine what is commonly dismissed and largely ignored as an incoherent and incomplete set of regulations and instructions existing prior to the *LOE 7/1985*. I contend that to understand the early problematizations of irregular migration as an object of government in the 1980s—and the particular role that the *LOE 7/1985* played in this context—we need to reinscribe the Alien Act within the broader context of practices and problems from which it emerged.

Police Instructions in the Early 1980s

A document prepared “mainly for the officers of the Superior Police Corp” (Dirección General de Policía 1987:9), available at the Congress library in Madrid, offers a collection of all regulations, decrees, police instructions, and memoranda regulating police practices with regard to borders and foreigners before the adoption of the decree implementing the regulations of the Alien Act in 1986 (*RD 1119/1986*). The panoply of police instructions related to the control of foreigners published during the first few years of the democratic regime indicates that, in practice, those responsible for the governing of foreigners were adapting to the new political order by amending regulations adopted during the Franco dictatorship. Many of these instructions and memos clearly sought to fill the legal gaps, stating that some of the previous legislation had been deemed unconstitutional and, therefore, until the adoption of a new Alien Act, police actions needed to be modified in various ways.

The main tension was between the *Decree 522/74, of February 14, that Regulates the Regime of Entry, Stay, and Exit of Foreigners in Spain*,¹³ and the new democratic constitution adopted in 1978. Article 30 of the *Decree 522/14*, adopted in the last year of the Franco dictatorship, allowed for the detention of foreigners in jails or prisons until the moment of their expulsion. This disposition clashed with Article 25.3 of the Constitution of 1978, which stated that “the Civil Administration cannot impose sanctions that, directly or indirectly, lead to a privation of liberty,” a provision that also applied to foreigners (Art. 13.1). When, in the early 1980s, judges started ruling that the administrative incarceration of foreigners was unconstitutional, the police response was often dismissive. In a 1982 interview with *El País* (García 1982), then general chief of police José Luis Fernández Dopico declared:

I do not think that there is a juridical gap, like it is being said, and since there aren't other regulations, we have to use this decree because we cannot let foreign delinquents and undesirables that are not even admitted in by their countries of origin circulate freely in our country [The police action] is absolutely correct, until there is a constitutional development of the 1974 decree. We abide by the law and when they develop a new law, we'll abide by it, as it is our duty.

In fact, a look at police instructions from the months prior to this debate over the constitutionality of *Decree 522/74* suggests that the control of foreigners was a priority for police. The *Memorandum of 15-2-82, of the General Police Directorate, on the Creation of Operational Groups for the Control of Foreigners* ordered the creation of police units

¹³ *Decreto 522/74, de 14 de febrero, que regula el régimen de entrada, permanencia y salida de extranjeros en España.*

“dedicated exclusively to the control of foreigners”¹⁴ in Madrid, Barcelona, Alicante, Malaga, Palma de Mallorca, Las Palmas, and Cadiz-Algeciras. Beyond mining databases for information and monitoring foreigners in transit, the units had the task of chasing down irregular immigrants and deporting them:

Control in hotels, apartments, residences, hostels and other similar establishments used by foreign travelers, picking them up with police patrol cars. Whenever possible, the collaboration of the Computer Services will be requested to process their identification and, when it is appropriate, to search the premises where foreigners stay.

In the clubs and pubs, especially in those that have foreign employees, effective control should be implemented on a continuous basis.

The memorandum adds that “upon confirming the illegal presence of foreigners, a request of expulsion will be presented and should be processed urgently.” Eventually, the police responded to the critics of *Decree 522/74* by making pragmatic, temporary changes. Some of them are contained in the *Written Instruction from the General Office of Documentation of 27-9-82, on the Problem of Expulsions*,¹⁵ which introduces the new procedures with this justification:

In relation to the problem that occurred as a result of some judicial resolutions on the unconstitutionality of the Decree 522/74, of February 14, that Regulates the Regime of Entry, Stay, and Exit of Foreigners in Spain, related to the detention in jail of the above-mentioned foreigners while their expulsion order is being processed, and until the new Alien Act is approved, it is advisable that we all adopt the following measures . . .

¹⁴ *Circular de 15-2-82, de la Dirección general de la policía, sobre creación de grupos operativos de control de extranjeros.*

¹⁵ *Escrito Circular de la Comisaría general de documentación de 27-9-82. Sobre problemática de las expulsiones.*

This was followed by a list of alternatives to detaining foreigners. While it is true that the number of irregular immigrants was very limited at that time and that there was no coordinated effort, political will, or amount of large resources to control them, policing did occur, and the framing of foreigners without proper documentation—including “clandestine workers”—as criminals was underway well before the adoption of the first Alien Act in 1985. The period between the adoption of the Constitution of 1978 and that of the *LOE 7/1985* was a period of adaptation and conflicting views regarding the adequate problematization and management of irregular migration. This appears clearly in an analysis of police actions, but also of parliamentary initiatives submitted during the First Legislature (1979-82).

Two Precursors to the Alien Act during the First Legislature

Indeed, while debates about migrants and other foreigners were very limited prior to 1985, there were two attempts to define this object to be governed, demonstrating that the problematization of irregular immigrants that appeared in the first Alien Act could have been different. The first parliamentary initiative related to immigration was a non-legislative proposal submitted in 1980 by the Communist Parliamentary Group to the Special Parliamentary Commission on the Problems of Emigration, which pretended to set the “basic principles for a law of emigration and immigration.”¹⁶ The text, adopted by the commission, presented various incongruities, such as the principle that “foreigners who

¹⁶ *Principios básicos para la elaboración de una Ley de Emigración e Inmigración* (I - 161/000398) presented in the *Comisión especial de los problemas de la emigración*.

live in Spain illegally will only have their residence and work permit cancelled for grave reasons related to public safety”¹⁷ (Principle 43)—which is clearly incongruous, since one cannot live in Spain illegally and have residence and work permits. To a great extent, the principles were still in draft form. Nonetheless, the draft policy document is interesting, as it already includes the three logics that come to inform all subsequent policies, which I analyze in detail in Chapters 4, 5, and 6: the will to “labouralize” migration flows and consider immigrants as workers; the securitization and criminalization of irregular migration and the focus on policing borders; and what I call the culturalization and racialization of immigration, including the preference for Ibero-Americans and other immigrants with cultural and colonial ties to Spain.

Not surprisingly, considering that it was written by the Communist Party, this non-legislative proposal focused on immigration primarily as a labour issue, to the extent that it proposed to tie the very status of immigrant to a productive activity: “Will be considered as ‘immigrant’ any foreigner that resides in Spain legally and is engaged in a productive (labour) activity, as well as the members of his/her family” (Principle 34). It also suggested that immigrant workers be granted the same rights as Spanish workers. While the proposal treated immigrants as workers entitled to equal rights and recommended punishing employers, not workers, in cases of irregular employment, it also made clear that “the Government shall be strict in making sure to prevent any type of clandestine or

¹⁷ My translation of: “A los extranjeros que residan ilegalmente en España sólo les podrá ser retirado el permiso de residencia y trabajo por motivos graves que afecten a la seguridad pública por decisión judicial.”

fraudulent immigration” (Principle 46), and made all rights conditional to legal status. Finally, the proposal also stipulated that there should be preferential treatment for workers from “Ibero-American countries or countries that have had, or currently have, a particular connection to Spain” (Principle 39). At this time, this concern existed in legal form only in provisions of the Civil Code relating to the acquisition of Spanish nationality, but it informed debates about immigration policies in subsequent years.

What distinguishes this 1980 proposal from subsequent ones is the use of the term “immigrant” rather than “foreigner” to describe non-Spanish citizens who reside in Spain and, despite wishing to exclude irregular migrants to protect the labour market, that it did not approach the issue primarily from a police perspective. Here, immigrants, just like Spanish emigrants, were to be treated first and foremost as workers. This changed the following year, when the Union of the Democratic Centre-led government (*Unión del Centro Democrático* – UCD) introduced the first version of the Alien Act through the *Bill on the Rights and Liberties of Foreigners in Spain (Organic Law)*,¹⁸ four years before a very similar bill led to the adoption of the *LOE 7/1985*. It was indeed in April 1981, just after the adhesion of Greece to the European Economic Community (EEC), and while France was working to delay the entry of Spain, that the first draft of the Alien Act was tabled. It was then transferred to the Commission of Foreign Affairs an entire year later, and died with the dissolution of the First Legislature in October 1982, without ever having been debated in Congress. The document thus only reflected the perspective of the UCD government,

¹⁸ *Proyecto de Ley de Derechos y Libertades de los Extranjeros en España (orgánica)* (I – 121/000033).

and especially that of the minister of justice, minister of foreign affairs, and minister of the interior, in whose names it was submitted.

In contrast to the non-legislative proposal of 1980, this bill applied to “foreigners,” not “immigrants.” Its introduction clarifies:

The scope of application of this Law is delimited by the notion of foreigner. Its negative conceptualization, in opposition to nationals, leads to a concept of foreigner that describes a complex reality, based on the ways or finality with which the foreigner comes in contact with the national community as well as on whether or not this foreigner belongs to the population of another state. Reflecting the plurality inherent to the status of alien, the Law . . . establishes in Section VI, under the title “Special Regimes,” a series of dispositions that nuance its application with regard to stateless individuals, nationals of specific countries particularly tied to Spain, and students. (I – 121/000033).

The bill focused primarily on means to control the entry, stay, and exit of foreigners, and although it provided for some rights, it already contained most of the restrictive dispositions that would lead many authors to describe the *LOE 7/1985* as a repressive law (Aja 2012; Calavita 1998, 2005). The main differences between the 1981 and the 1985 versions are contained in the introductory section, where the justifications for the law are presented. The most significant difference is that whereas the first draft distinguished between types of foreigners based on the length of their stay in Spain, and whether or not they planned to work, the amended version submitted by the Socialist government in 1985 was clearly structured on the opposition between those who reside and work in the country *legally* and those who do so *illegally*. Indeed, the earlier version made clear references to the permits that one needed to enter, reside, or work in the country and included provisions for the deportation of foreigners who did not comply, but the

terminology of legality and illegality was totally absent from the text. It was only when the Socialist government reworked this draft almost four years later that the question of illegality became central.

Legal/Illegal Dichotomy in the LOE 7/1985

The bill presented by the UCD in 1981 mentioned the criterion of legality in relation to foreigners in only three instances, two of which confer greater rights or privileges which are not granted to all foreigners. Firstly, in Article 5.2, the bill stated that although foreigners could not vote, those who had resided legally and continuously in a municipality for five years or more could gain the right to vote at municipal elections, providing that their country of origin allowed Spaniards to do the same. Secondly, in Article 18.3, the bill conferred a preferential treatment in the allocation of work permits to various groups, including those born in Spain and residing legally in the country. Immigrants with residence and work permits were thus simply added to the select list of special guests, alongside those with family relations with Spaniards and the culturally preferred group comprised of Ibero-Americans, Portuguese, Filipinos, and Equatorial Guineans. Furthermore, in this first iteration, most rights were granted equally to all foreigners, irrespective of administrative status. Finally, in the section on expulsions, there was a clause mentioning that being in Spain illegally was one of the reasons to justify deportation (Art. 23.1.d).

When the same bill was resubmitted to Congress by the Socialist government in January of 1985, it included an entirely new prologue laying out the motivations for the law. In less than two pages, this prologue included seven references to legality and illegality. It clearly and repeatedly stated that legality/illegality was the central criterion in distinguishing between those who would have rights and those who would not. Here is a translation of the section where this distinction appeared more clearly:

In intimate harmony with the principle of legal certainty, we locate the situation of legality of foreigners as the point of departure, not only for the full exercise of the abovementioned rights and liberties, but also for the correct treatment of foreigners.

It is necessary to differentiate, with absolute clarity, situations of legality from situations of illegality, in such a way that—although in all instances foreigners should be treated with the consideration that their condition as persons requires—it cannot be forgotten that while those who are here legally, sometimes for many years, usually behave peacefully and even adapt to our social environment, the same cannot be said of those who are here illegally since their presence, in numerous occasions, can lead to an alteration of civic life, with negative consequences for labour relations and even for public order.¹⁹

Beyond a few aesthetic changes in the second paragraph of this excerpt, this is how the principle of the law was stated in the version adopted by Congress in July (*LOE 7/1985*). Members of the Socialist Party also amended the 1981 version to add the qualification “who are in Spain legally” throughout the document, as a condition for most rights granted to foreigners. After the prologue, there are eleven more references to variations

¹⁹ My translation of: “En íntima armonía con la seguridad jurídica se halla el respeto a las situaciones de legalidad de los extranjeros, como punto de partida, no sólo para el pleno ejercicio de los derechos y libertades, a que antes se alude, sino para un correcto tratamiento de la extranjería. Es necesario diferenciar, con absoluta claridad, las situaciones de legalidad de las de ilegalidad, de modo que, si en todos los casos, los extranjeros deben ser tratados con la consideración que exige su condición de personas, no debe desconocerse que, mientras aquellos que se encuentran legalmente, a veces desde hace muchos años, suelen desenvolverse pacíficamente, e incluso están adaptados a nuestro medio social, no sucede lo mismo con quienes se hallan de forma ilegal, pues su presencia, en ocasiones numerosas, puede ser un motivo de alteración de la vida ciudadana, con consecuencias negativas en el campo de las relaciones laborales e incluso en el orden público.”

of the word “legality,” numbering fourteen in the final text of the law. Of these, six instances appear in Title 1 on the “Rights and Liberties of Foreigners.” Provisions guaranteeing the right to freely circulate within the country (Art.6), to hold public meetings (Art.7), to education and teaching freedom (Art. 9), as well as to be part of a union and to strike (Art.10), were now to be recognized only for “foreigners who are in Spain legally.” Not only did the *Law on the Rights and Liberties of Foreigners in Spain*, as the Alien Act was titled, contained a mere ten articles on rights, compared to the 26 dedicated to the control of entry, access to work, detention, and various forms of deportation—as many analysts have pointed out (Aja 2012; Calavita 1998, 2005; Cebolla Boado and González Ferrer 2013)—it also bordered out irregular migrants, preventing them from accessing these rights. Beyond the number of occurrences, this demonstrates that government officials wanted to highlight their main priority as being the fight against irregular or “illegal” migration.

How can we explain the emergence between 1982 and 1985 of this new way of framing the issue? Scholars have pointed to a desire to please Spain’s European neighbours in the midst of negotiations to join the EEC (see Cebolla Boado and González Ferrer 2013). Considering that irregular migration was not a preoccupation of the Spanish population at the time (Valles, Cea D’Acona, and Izquierdo Escribano 1999), and that the period was marked by negotiations on Spanish access to the EEC, as well as the development of the Schengen Agreement by the first five member-states, it is clear that the Schengen logic informed the elaboration of the text (Maas 2005). It is indeed telling

that the final approval of the *LOE 7/1985* in Congress occurred on June 11, 1985, and Spain's adhesion to the EEC was ratified on June 12,²⁰ which, in turn, is just two days before the five first member-states signed the Schengen Agreement.

However, the 1981 version *already* contained the vast majority of this law's control measures: it restricted entry to those with documentation (except for asylum seekers), regulated work permits, and provided for the expulsion or devolution of those without permits. The idea of control contained in the *LOE 7/1985* is not new, only the insistent use of the trope of illegality. This trope was already strong north of the Pyrenees and in most of the EEC countries, and it is probable that the framing of immigration status in terms of legality/illegality was partly informed by the desire to join the ECC. In Spain, however, this trope emerged in political discourse during the Second Legislature only through interventions by members of the Popular Coalition (*Coalición Popular*)—comprised mainly of the party Popular Alliance (*Alianza Popular*)—after it took control of the opposition. Popular Alliance, a neo-Francoist party created in 1976 to ensure continuity with the Franco regime during the transition, was at the time negotiating its identity, navigating between an extreme-right current informed by nostalgia for the Franco regime and the ideology of the racist European extreme right, and the more mainstream conservative perspective, which would lead to the reformation of the party as the Popular Party in 1989 (Gallego 2008).

²⁰ In effect as of January 1, 1986.

Jorge Verstrynge Rojas, a controversial politician whose ideology at the time was influenced by French neo-fascism and who was the successor to Manuel Fraga as general secretary of the Popular Alliance, was the first to make an intervention in Congress focusing on the illegality of immigrants in 1983.²¹ His question, titled “Number and legality of foreigners who reside in Spain,” starts with the claim that of the “more than half a million foreigners living in Spain, only 65,666 obtained a work permit,” and then goes on to accuse immigrants of causing all problems confronting Spain. He denounces immigrants as “a labour force that invades us” in a moment of economic crisis, and seems to see most foreigners as “illegal,” either because they “work legitimately but [live in Spain] in condition of illegality” (and he refers here to Senegalese, Guinean, and Filipino workers), or because they are involved in “forbidden activities” such as “prostitution, clandestine labour market, contraband, drug trafficking, etc.” As a response to the Popular Alliance’s “detractors who might use this intervention as a pretext to say [they] are catastrophist,” he suggested that one only has to note “the social problems that our bad regulation of immigration brings us: underemployment, exploitation, illegal people trafficking, delinquency . . . and occupation of jobs” to be convinced that this lack of regulation is a plague (II – 184/001373).

Over the next two years, a few more interventions highlighting illegality followed. Until 1985, the only members of Congress who intervened to talk about the

²¹ See Initiative II – 184/001373. Prior to this intervention, only the expressions “foreigners who reside in Spain irregularly,” “foreigners who do not have a residence permit” (I – 184/002950) and “foreigner who resides in Spain legally” (I - 161/000398) had been used in reference to immigrant status.

legality/illegality of immigrants, generally in relation to African migrants, belonged to the Popular Alliance. It is hard to know to what extent the right-wing opposition influenced the Socialist government's decision to add this clause of legality throughout the new bill before it was even submitted to Congress—again the desire to please European partner states cannot be underestimated—but we can without a doubt locate the emergence of this trope in parliamentary debates during the Popular Coalition's rise to opposition status in the fall of 1982.

Legal Liminality: Inclusion through Illegalization

The inscription of this legal/illegal dichotomy into law later became instrumental in the overall illegalization of irregular migration. But what exactly did this process of illegalization achieve in terms of the governing of irregular migration? While we need to analyze the process of early illegalization throughout the entire decade, many scholars rightly suggest that the 1985 Alien Act, along with its 1986 regulations (*RD 1119/1986*), played a central role in illegalizing and criminalizing irregular immigrants. And yet, for all its focus on control and expulsion, the law as it was applied then and is applied today does not really aim to get rid of all irregular migrants. Instead, as Kitty Calavita and Liliana Suárez-Navaz observed (2003), it sets them “apart as illegal ‘others’ to be excluded—not so much from the territory (as they continue to play an important economic role), but from the social and moral life of the community” (p.106). Indeed, the resulting exclusion is very partial. There was certainly a dramatic increase in detention and deportation in the

years following the adoption of the law, especially after 1987 (Colectivo IOÉ 1989), but most irregular migrants present on the territory when the law was passed were able to remain and continue to work. The regularization process in 1986 provided temporary residence and work permits to 38,181 immigrants (Cebolla Boado and González Ferrer 2013:92), while others continued to reside and work without official authorization. And while the law did not prevent more migrants from arriving, it did legally circumscribe the modalities in which migrants were able to come.

This process of illegalization, which clearly allows for the presence of illegalized migrants on the territory, appears paradoxical. Far from excluding migrants, the law mainly contributed to “the structuring of strict differentiations that both organize and make common sense of systems of apartheid” (Sharma 2006:141). This notion of apartheid, as developed by Nandita Sharma (2006), is useful in making sense of a model that allows for the coexistence of different groups of people within the same space, governed by distinct legal regimes, and thus legally separated. Apartheid does not refer to radical exclusion, but to a legally sanctioned regime of subordinated or exclusionary inclusion. It describes a situation in which the “legal technicality” that is jurisdiction (Valverde 2009:139) can be used to take people who are geographically, temporally, and socially co-present, and border them into different legal “spaces.” Indeed, the Alien Act of 1985 and its 1986 regulations did not simply exclude, nor even illegalize all irregular migrants: It did make them illegal, but it also opened up avenues for temporary regularization and access to precarious immigration status. In this sense, it is most useful

to analyze the way the Alien Act provided a form of differential inclusion through illegalization (De Genova 2002, 2004), organized around the deployment of a time-space of legally produced liminality, and through which migrants are governed (see Chap. 7).

I borrow the concept of liminality from Cecilia Menjívar (2006), who uses it to describe what she calls “uncertain status—not fully documented or undocumented but often straddling both” (p.1001). Menjívar insists that she uses the expression “liminal legality” in an attempt “to express the temporariness of this condition, which for many [migrants] has extended indefinitely and has come to define their legal position” (p.1008). Building on the possible extension of this condition over time, she adds that “a situation of ‘liminal legality’ is neither unidirectional nor a linear process, or even a phase from undocumented to documented status, for those who find themselves in it can return to an undocumented status when their temporary statuses end” (p.1008).

This second dimension is particularly insightful, as it frames liminal legality not only as an individual *condition* that is precarious and transitional, but also as a dynamic *situation* in which migrants find themselves. This second meaning, which takes her away from a Turnerian notion of transitional liminality, is the most useful with which to conceptualize the role of liminal legality in the governing of irregular migrants in Spain since the mid-1980s. By focusing on the situation, we open up the possibility of theorizing not the liminal legality of migrants, but legal liminality as a zone of *indistinction* between legal exclusion and inclusion, linked to a spatial and temporal rescaling of borderwork and

thus dependent on the practices of various actors interacting with migrants. The use of jurisdiction as a technology of legal bordering that creates overlapping but distinct legal regimes within the same geographic and temporal space, as captured by the concept of apartheid, is a central dimension of this legally produced liminality. Building on Sharma (2006) and Menjívar (2006), I therefore use legal liminality not as a transitional condition, but as a legal-temporal space that is deployed through various tactics, including the illegalization of certain situations and actions that the *LOE 7/1985* enables.

This conceptual move is key to analyzing how the Alien Act and its regulations do not exclude or cast out irregular migrants, but rather include them by allocating them a particular place and role. By analyzing the extended space and time of legal liminality as central to the governing of immigration in Spain, I wish to highlight how those who are deemed “out of place” (as illegals) are actually very much attributed a particular place (as subordinated workers). To the extent that the illegalization of some immigration situations does not prevent them from occurring, and considering that irregular immigrants have the possibility of regularizing their status, what we often refer to as illegalization is more like a process of legal liminalization that actively captures migrants through a form of subordinated inclusion (Mezzadra and Neilson 2013). Drawing from works by feminist scholars (Crenshaw 1991; Federici 2004; Pateman 1988), Sandro Mezzadra and Brett Neilson (2013) use this phrase to highlight the extent to which “exclusion always operates in tandem with an inclusion that is never complete” (p.161) and capture how partial inclusion can serve a disciplining function, tied to the flexible and

fragmented regulation of the labour market. They situate this differential inclusion at the junction of the legal liminality produced by restrictive immigration policies and precarious incorporation into the labour market. This way of conceptualizing legal liminality partly echoes Nicholas De Genova's (2004) understanding of "illegality," a term which he defines as "a simultaneously spatialized and racialized social condition" that "is lived through a palpable sense of deportability" (p.161). Legal liminality as it operates in Spain should thus be understood as a tactic that is partly produced through law, is mobilized to govern migrants, is negotiated and resisted by them, and is premised upon deportability—that is, the possibility of deportation rather than deportation itself. De Genova's (2002, 2004) concept of deportability points precisely to the situation of precariousness created at the point of junction where legal liminality and the possibility of border and immigration enforcement meet.

By insisting on marking a difference in law between nationals and foreigners, and among them between "legals" and "illegals," Spanish politicians contributed to reclassifying existing race- and class-based distinctions in immigrants' ability to remain and work in the country on seemingly neutral legal terms. The organization of the debate around the legal character of foreigners was a good strategy since, as Sara Ahmed (2000) reminds us, "By defining 'us' against any-body who is a stranger, what is concealed is that some-bodies are already recognised as stranger and more dangerous than other bodies" (p.3-4). Through this process, concerns that were specific to the presence of Guinean, Senegalese, Moroccan, Filipino, and Dominican immigrants, and the place they should

occupy, were reframed in the legal terminology of foreigners and nationals, legality and illegality, without erasing the pre-existing racial referents attached to the social figure of the *extranjero* (stranger or foreigner).

Unstable Terminology for an Object under Construction

Despite this reframing of the issue, the association of illegality with African migrants in the debates of the 1980s, as well as the importance granted to the regulation of residence and work permits in the *LOE 7/1985*, demonstrates that it was not the presence of mere foreigners that the law was meant to regulate, but that of racialized immigrants. In fact, the law includes a brief acknowledgment that its main object is immigration when it stipulates: “The preoccupation of the Law to accord the respect of the rights and liberties of foreigners with an adequate treatment of immigration reaches one of its most significant levels in the regulation of stay.”²² Despite some preoccupation with members of international mafia organizations operating in Spain—and brief reference to European retirees—the real “problem” that politicians discuss in the 1980s is clearly immigration, primarily from Latin America and Western Africa. But the debates and text of the *LOE 7/1985* are effectively bracketed from the rest of the political and public debates taking place throughout the 1980s and are organized in such a way as to pretend they concern all foreigners. In all the debates about the adoption of the Alien Act in Congress (both

²² My translation of: “La preocupación de la Ley por conjugar el respeto de los derechos y libertades de los extranjeros con el adecuado tratamiento de la inmigración, alcanza uno de sus puntos mas significativos en la regulación de la permanencia” (*LOE 7/1985; Preámbulo*).

Plenum and Constitutional Commission) and in the Senate, there are only two references to immigration, including one particularly revealing comment by a member of the Mixed Parliamentary Group, who acknowledges that when he talks about “the problem of access to the Spanish territory for a portion of foreigners,” he is in fact referring to “the problem of immigration and of controlling this immigration.”²³

This statement reveals what many people understood to be the real issue at the time: the presence of immigrants, determined to live and work in Spain, and often coming from Africa and Latin America. In many of the debates around the *LOE 7/1985*, “foreigner” is a misnomer. Indeed, as Calavita and Suárez-Navaz (2003) explain:

A terminological curiosity reveals the disproportionate weight of third-world immigration in the public discourse. The official term for all foreign residents in Spain—regardless of how long they intend to stay—is *extranjero* (foreigner). But, in popular parlance a distinction is made between *extranjeros*, on the one hand, and *inmigrantes*, on the other, with the latter category reserved for those who come from the third world seeking work. Thus, when the “immigration problem” is discussed in government circles, in the media, among academics, or in public opinion surveys, it invariably refers to third-world immigration, leading one commentator to refer to first-world immigrants as “authentic *desaparecidos*” (Izquierdo 1996, 71) (P.100).

It is indeed the “problem of immigration” that is being addressed in these debates, not the situation of all foreigners. The tension between the legal category of “foreigner” and the sociological notion of “immigrant,” which does not have a legal definition in Spain, led to an obvious confusion in parliamentary debates, with elected officials often using the two terms within the same intervention (see Table 4 on p.93). While the choice of words is partly an ideological issue, the fact is that many members of Congress do not seem to

²³ *Diario de Sesiones, Pleno*, N^o 200, April 23 1985, p. 2903.

know what to call the non-Spaniards living in Spain, nor how to govern their presence. Besides the director of the Institute of Emigration, Raimundo Aragón Bombín, who made an appearance before the Commission on Social Policies and Employment in 1985 (II – 211/000358), no one who spoke in Congress appeared to grasp the complexity of the phenomenon. In fact, when asked to clarify the “fundamental axes, objectives and tasks of the immigration policy” at the end of 1986, the government responded by saying that the first thing it needed to develop such a policy was:

A study and knowledge of the social reality unto which we pretend to act. This study engages with the topic from a global perspective that includes the diverse contexts in which immigration occurs in our country: The economic/labour context, the specific ethnic and cultural context, and the political-institutional context, all of which determine the climate in which the problem at hand is forged as well as the frame for the possible ways to deal with it. (II - 184/000668)

After a decade of debates in Congress, negotiations with European neighbours, the first Alien Act, a decree providing the regulations of this law, the regularization of 38,181 immigrants in 1986 (Cebolla Boado and González Ferrer 2013), and a constitutional challenge of the law by Spain’s ombudsman leading to the cancellation of some of its provisions,²⁴ at the end of the Third Legislature, politicians still did not know how to name or act upon the problem.

²⁴ Decision *STC 115/1987* of the Constitutional Tribunal struck down parts of Art. 7, 8, and 26 and imposed a constitutional interpretation of Art. 26.2.

Table 4: Terminology Used in the 1980s (Legislatures I-III)

Spanish Expressions	Translation
Extranjeros	Foreigners
Extranjeros que residen ilegalmente en España	Foreigners who reside in Spain illegally
Extranjeros que se encuentran irregularmente en nuestro país	Foreigners who are in our country irregularly
Extranjeros sin legalizar	Foreigners who have not been legalized
Extranjeros en forma ilegal	Foreigners [in the country] in an illegal manner
Extranjeros indeseables	Undesirable foreigners
Extranjeros indocumentados	Undocumented foreigners
Extranjeros clandestinos	Clandestine foreigners
Extranjeros dedicados a la delincuencia	Foreigners involved in delinquency (often associated with African migrants or international mafia)
Mano de obra extranjera	Foreign labour force
Trabajadores ilegales	Illegal workers
Trabajadores extranjeros en condición de ilegalidad	Foreign workers in a condition of illegality
Trabajadores en situación irregular	Workers in an irregular situation
Inmigrantes extranjeros	Foreign immigrants
Inmigrantes clandestinos	Clandestine immigrants
Inmigrantes legales e ilegales	Legal and illegal immigrants
Los indocumentados	The undocumented
Indocumentados delincuentes	Undocumented delinquents
Ciudadanos no españoles	Non-Spanish citizens
Ciudadanos extranjeros	Foreign citizens
Los africanos	The Africans (often mentioning Gambians, Senegalese, Nigerians)
Flujos clandestinos y situaciones ilegales	Clandestine flows and illegal situations
Inmigración clandestina o fraudulenta	Clandestine or fraudulent immigration
Inmigración incontrolada	Uncontrolled immigration

Problematizations always form through heterogeneous discursive and non-discursive practices (Bacchi 2012) and we study them as a temporarily stabilized result of these contradictory and dispersed practices (Gale 1999). The focus on debates that took place in the Spanish Congress is analytically useful, as it provides an interesting entry point from which to observe traces of the object in formation over time. Nonetheless, it is clear that many competing ways of problematizing irregular migration were articulated outside of, but in dialogue with, the parliamentary debates which took place over a decade. For instance, a civil servant I interviewed explained how bureaucrats involved in the 1986 regularization process started developing firsthand knowledge of the demographic and qualitative dimensions of irregular migration through their administrative practices, and how higher-level civil servants co-ordinating the regularization process ended up knowing much more about irregular migration than politicians.²⁵ This informant also explained how civil servants who had gained experience regulating the temporary circular migration of Spanish agricultural workers to France and Germany in the 1970s and early 1980s were using this experience to make sense of new migration to Spain and to propose a similar model of labour migration regulation. Minutes from parliamentary debates in regions most affected by the arrival of irregular migrants such as the Canary Islands²⁶ and Ceuta and Melilla (Gold 1999) also reveal that local politicians were framing the issue differently than those in Madrid and trying to convince the central government of the validity of their knowledge. The construction of irregular migration as an object of government thus

²⁵ Interview, Madrid, September 26, 2012.

²⁶ See, for instance, the debates on delinquency in the Parliament of the Canaries in *Diario de Sesiones del Parlamento de Canarias*, N° 31, March 15, 1989.

occurred in various sites and institutions, and through the practices of many officials, not solely in the Congress in Madrid.

Parallel problematizations were also emerging at this time from a handful of scholars who were providing the first reliable studies on the numbers and characteristics of irregular migrants (Colectivo IOÉ 1987, 1989; Izquierdo Escribano 1990; Muñoz-Pérez and Izquierdo Escribano 1989; Roque 1990), as well as NGOs and trade unions, such as Workers' Commissions (*Comisiones Obreras*) in Barcelona, which worked directly with immigrants and were also developing an early expertise through their practices at the time. In the plenum of Congress and the offices where bureaucrats tried to develop the first policies, the early work of these scholars became essential in providing an informed understanding of the phenomenon. Most notably, politicians often mobilized statistics and other strategies of enumeration used by academic and other experts to circumscribe their object, and deployed them as resources to make irregular migration more visible. Indeed, as Jonathan X. Inda (2006) explains in the US context, official statistics, expert practices of enumeration, and media representations are the three key elements involved in the process of making “illegal” immigrants visible in the public arena. In the absence of systematic official statistics on migration, and with a limited analysis of the data available, Spanish politicians relied heavily on these early reports to quantify the problem in an attempt to make it real and tangible. Since numbers “are integral to the problematizations that shape what is to be governed, to the programmes that seek to give effect to government and to the unrelenting evaluation of the performance of government that

characterizes modern political cultures” (Rose 1999:199), it is logical that politicians were then number-hungry and somewhat troubled by a phenomenon hard to count. These early academic reports, along with the knowledge emerging from bureaucratic practices, provided the fundamental scientific basis to circumscribe a segment of the population, a part of human mobilities, and to provide positive empirical demographic content to the legal category of migrant irregularity.

Saying that this knowledge allowed for the very constitution of irregular migration as an object of government is not to say, however, that academics and elected officials worked hand in hand. These reports also highlighted particular difficulties faced by individuals without stable immigration status, denounced precarious employment conditions, and generally argued that the government needed to put in place policies to alleviate these problems. They provided qualitative analyses essential to any policy, including progressive ones. But at this point in time, elected officials were primarily looking to elaborate categories and typologies to allow for effective governmental action. And despite these emerging knowledges, one cannot say that immigration in general, and irregular migration in particular, formed a stable and well-defined object of government at the end of the 1980s. This was, once again, the conclusion of the government and most members of Congress during the first meaningful debate on immigration in 1990. This debate, however, led to the preparation of a report that clearly resulted in a process of categorization and typification, and which would act as a temporary policy settlement (Gale 1999), defining how immigration should be understood and governed.

The 1990 Report as Temporary Policy Settlement

In June 1990, the parliamentary group formed by the United Left and Initiative for Catalonia (*Izquierda Unida – Iniciativa per Catalunya*, IU-IxC) presented an *Urgent Interpellation on the Immigration Policy Measures that the Government is Thinking of Adopting to Promote the Regularization of the Situation of Foreigners in Spain*.²⁷ This intervention led to an extensive debate and the first temporary policy settlement on immigration. In this initiative and the motion that followed (IV – 173/000018), IU-IxC denounced what it considered to be a failed immigration policy, unsuccessful because it was focused on police control and a “wall mentality.” Speaking for IU-IxC, a congressman claimed:

It would be profoundly negative and mistaken, from a perspective of progress, to erect . . . a wall between the world that is comfortable, the rich and developed world, and the underdeveloped—third or fourth—world that, with a demographic growth much higher than the European one, may create a pressure that—if you’d allow the analogy—would appear similar to the one that the “Barbarians,” in scare quotes, imposed on the borders of the [Roman] Empire. (IV – 173/000018)

Notwithstanding this racist way of framing the issue, IU-IxC actually called for more regularization, easier access to family reunification, better protection for asylum seekers, and extended rights for all immigrants. The minister of the interior opposed this position, and argued that while it was important to provide protection to refugees, and give preferential treatment to immigrants from countries with which Spain has a special

²⁷ *Interpelación urgente sobre medidas de políticas general y de inmigración que piensa adoptar el Gobierno para promover la regularización de la situación de los inmigrantes extranjeros en España.* (IV – 172/000031)

connection, there should also be strict control of irregular migration, especially from Africa. He said:

I don't think that the solution is to allow that there be a wave of illegal immigration, mainly from North Africa, that would put us—not only Spain but also the whole European Economic Community—in a situation to which it would be impossible to provide a positive solution. We'll have to help these people so that they can satisfy their needs and, without a doubt, control illegal stays in our country. (IV- 172/000031)

Beside these opposing views, there is one thing that all political parties involved in the debate seemed to agree on: no one knew what they were talking about. The IU-IxC motion referred to foreigners, immigrants with and without residence and work permits, and the two legal categories of refugees existing at the time (*refugiado* and *asilado*), and was quite vague and confused. This chaos was denounced several times by those who opposed the motion, but the opposing views were also not exempt of confusion. For instance, the representative of Convergence and Union (*Convergencia i Unió* – CiU) asked what the object of the debate was and attempted to provide his own definition of the various categories. He agreed that immigrant rights should be defended—as IU-IxC had argued—but claimed that irregular immigrants could not be considered immigrants. This is how he suggested the distinction should be understood:

I'm convinced that we're not talking about foreign citizens who enter and live here illegally, because otherwise we wouldn't be talking about immigrants. Foreign immigrants are those who enter Spain according to the rules . . . if they are immigrants, then the problem is other, the problem is the humanitarian consideration that this topic deserves, from the point of view of social programs. (IV – 172/000031)²⁸

²⁸ My translation of: “Estoy convencido que tampoco estamos hablando de los ciudadanos extranjeros que entran o residen ilegalmente en España. Este es otro tema porque, sino, no estaríamos hablando de inmigrantes. Inmigrantes extranjeros son aquellos que entran en España en condiciones reglamentarias . . . ,

Overall, the Catalan parliamentary group regarded the regularization of immigrants as a paradoxical proposal because immigrants are those who enter legally and therefore do not need to be regularized, while those who enter illegally are by definition not immigrants and therefore the government has no responsibility toward them. Similarly, the Popular parliamentary group rejected the motion, claiming that it did not make sense: “You keep confusing different concepts. An immigrant is not the same as a legal resident, or an illegal resident, or a convention refugee, or a person who received asylum from Spain, and you keep confusing all the measures as though they apply to all” (IV – 173/000018).²⁹ Once again, the conclusion of the debate was that there was not enough information about the phenomenon to make decisions.

Using the language of disease, the Socialist group (then in power) argued that “to seriously attempt to find a solution to this problem . . . we previously need a diagnosis, a sufficient amount of precise and detailed information on all these situations and all the different categories that appear in the motion” (IV- 173/000018). In the interest of accurate diagnosis, they presented an amendment replacing the whole motion, proposing instead that the government present a report at the end of the year to clarify all these terms. In a curious inversion of causality, the amended motion was premised upon the idea that to fight the rise of xenophobia and racism in the country, the government had to

si son inmigrantes, el problema es otro, el problema es la consideración humanitaria que el tema merece desde el punto de vista de las medidas sociales.”

²⁹ My translation of: “siguen ustedes mezclando conceptos diferentes. No es lo mismo un inmigrante que un residente legal, o un residente ilegal, o un refugiado, o un asilado, y ustedes mezclan todas las medidas como si fueran buenas para todos.”

control immigration, since “migratory pressure worsens xenophobia” (IV- 173/000018), and that, to do so, the government needed more information. Produce a report that would clarify the terms of the debate, present empirical data, and outline an immigration policy to control migration to limit racism and fulfill Spain’s obligation toward its European partners—this was the mandate given to the government. This amended motion was passed and the report, which was submitted to Congress in December 1990, was the first of its kind to map out what the object to be governed was.

Situation of Foreigners in Spain: Basic Features of the Spanish Policy on Foreigners

The report starts by presenting immigration, dividing it into regular and irregular forms, and placing it within broader “demographic tendencies” and the existing legal framework, before outlining the fundamental features of a policy on foreigners.³⁰ This report represents a good synthesis of the problematizations emerging in the 1980s and can be understood as a temporary policy settlement that provided the blueprint for programs aimed at governing immigration throughout the following decade.

The report states that, in 1990, 60% of the regular foreign population is not working, since a large percentage is comprised of retired European nationals enjoying the good weather in touristic areas. Europeans represent 66% of all regular foreigners, Ibero-American 19%, Asians 7.6%, and although Africans form the smallest group, the report

³⁰ *Situación de los extranjeros en España. Líneas básicas de la política española de extranjería. Comunicación del Gobierno al Congreso de los diputados.* General Archives of the Congress, reference number 18167 (1990).

insists that the African proportion of the total number of regular foreigners “has almost tripled over the last decade, going from 2.5% in 1980 to 6.5% in 1990.” A much longer section dedicated to irregular migration—the real policy problem—follows. The report observes that irregular administrative status used to be a temporary situation for some foreigners but that it now often extends over many years. This, it explains, is due to the fact that irregular migration is now mostly the result of the “flows of clandestine immigrants,” and that 70% to 80% of the 90,000 to 170,000 estimated irregular immigrants are from developing countries. In a subsection on “geographic distribution,” the report describes “the illegal African population” (who have a low level of education and less than a fifth of whom speak Spanish), “the population of illegal Portuguese workers,” “illegal Asian immigrants” (two thirds of them Filipinos working in the service industry, as well as Chinese, Koreans, and Indians), and finally “the Ibero-Americans” (without the word “illegal”), who are presented as “a well-integrated emigration [sic] that is semi-skilled and whose irregularity tends to only represent a more or less protracted period of transition” (p.4-5).

The government dedicates the longest part of this section on irregular immigration to the “abusive use of the asylum system,” which it considers to be “probably the principal means of entry of irregular immigration to Spain today.” Asylum seekers can stay in the country while their claim is being processed, according to a principle that is consequent with the logic of asylum, but that, according to the report,

opens the door to a fraudulent means of entry in the majority of developed countries for a portion of the foreigners who would not be able to access them if they applied as economic immigrants and who therefore do it as refugees and that, because of the administrative paralysis resulting from the great volume of demands, are guaranteed to stay in the host country for a period that may extend to several years and can later apply for regularization for humanitarian reasons. (P.6)

While the numbers of asylum seekers are still low in Spain, the report mentions other European countries where the “phenomenon has reached massive proportions” and, based on the fact that the rate of success is only 7% in Spain, concludes that most claims are abusive.

The section on “demographic tendencies” makes the assumption that, “in the medium term, the EEC will not need an immigrant population in absolute quantitative terms” (p.8), a claim contested by most research tracking the rise of the old-age dependency ratio available at the time (King 1993; McIntosh 1981; OECD 1988, 1991). The rationale presented in the report is that the pre-1973 economic growth will probably not happen again, thus limiting the need for external labour power, and that if ECC countries made better use of the labour power of the youth, women, and those over 55 years old, it could cover all the needs of the labour market: “The rationalization and optimization of European labour markets could reduce even more the need for foreign labour force” (p.8).³¹ But while Europe can do without immigrants, the report claims, the demographic growth in African countries (and especially, with respect to Spain, in the Maghreb), as well

³¹ While the report does not provide any reference, this argument echoes that of researchers who, at the time, acknowledged a demographic deficit but argued that government should develop policies that address this issue without recurring to immigration, which they see as problematic. See, for instance, Coleman 1992.

as political liberalization in Eastern Europe, is bound to increase the “immigration pressure.”

This is the context that made the adoption of the *LOE 7/1985* essential, according to the report. Five years after the debates surrounding the adoption of this law, the government is more straightforward in stating its objectives:

- a) To systematize, in the interest of legal certainty, the legislation related to the entry and stay of foreigners in Spain.
- b) To protect the national labour market in the face of the increasing presence of foreign job seekers, given the high level of unemployment.
- c) To guarantee that the foreigners who settle among us do it in dignified conditions and according to the legal requirements, in order to prevent the creation of pockets of marginalization and the generation of xenophobic sentiments and racism and prevent situations of illegality, that fundamentally harm foreigners themselves, supporting the integration of those who want to stay in Spain legally and enforcing a strict regime against those who attempt to evade the law in order to stay.
- d) To harmonize our legislation with that of the other countries of the European community, as the process of adhesion to the ECC made necessary (P.10-11).

The report then concludes its overview of this issue by stating that the law clearly responded to a challenging situation and was appropriate, but that the means to tackle the problem were too weak. In so doing, it responds to the critique levelled by NGOs and echoed by IU-IxC in its motion contending that the law is racist and harsh. The last paragraph before the exposition of the policy orientation makes this clear. It concludes: “Therefore, the problems with which we are actually confronted do not originate, as some argue, from the supposedly repressive or even ‘racist’ character of the Law, but in the lack of an effective management of immigration flows and of a global policy on foreigners” (p. 12).

This global policy would have eight axes, six of which are oriented toward more control. This is not surprising, since “controlling the volume of the flows and channelling at the same time the increasing demographic pressure” is the overall objective of the whole policy. As presented in the report, the main orientations are:

- a) Control of Entry, Visa, and Border Control
- b) Fight against Clandestine Work
- c) Promotion and Social Integration Policies
- d) Reinforcement of Police Action
- e) Better Administrative Coordination and Centralization
- f) Reform of the Asylum Process
- g) European Dimension of the Policy on Aliens
- h) Strengthen Spanish Co-operation and Development Aid

More precisely, for Axis A, this means the reintroduction of the visa requirement for Algeria, Morocco, and Tunisia, soon to join the other 113 countries on the tourist visa list, while maintaining the visa exemption for Ibero-American countries;³² an increase in control at the southern border and the border with Portugal (to prevent the entry of African migrants); and the negotiation of a readmission agreement with Morocco. Axis B focuses, on the one hand, on higher sanctions for employers who hire an “illegal labour force” and, on the other hand, on an active policy to recruit migrant workers. It plans to “direct, orient and fix a quota on migration flows, programing in advance the size and essential variables [of the quota] such as origin, temporal dimension, professional profile, possibility of integration, etc., all of which in collaboration with the countries of origin”

³² This commitment to upholding the visa exception for Ibero-American countries did not last long. Around the time Spain ratified the Schengen Agreement, visas were reintroduced for Dominicans and Peruvians.

and will also “facilitate particularly the arrival of groups who, for linguistic, cultural, social and professional reasons, can achieve a higher level of integration in a shorter period of time” (p.17).

This association of good integration with the cultural and social characteristics of immigrants seems to refer to the cultural preference for Ibero-American migrants, but also provides a means to justify the exclusion of North and West African immigrants. Indeed, Axis C on integration is surprisingly restrictive and denounces the inability of some immigrants to integrate. It starts by mentioning that Spain faces problems of integration with respect to those who migrate from less-developed countries “with social habits quite different from ours” and that, although the law allows foreigners who reside in Spain legally “a full integration into the national community without any type of discrimination” (which is, of course, an exaggeration), there is a need for some programs to address questions of unemployment, education, housing, and health care. The government is also looking at ways to regularize irregular migrants, so that it is possible to “justify their insertion into the national community,” as well as agreements to allow Dutch, Danish, Norwegian, Swedish, and Irish citizens living in Spain to vote in the upcoming local elections. This is the extent to which the content deals with integration, before the policy document goes back to questions of control.

With regard to this objective, Axis D is key. It focuses on an increase in policing to eradicate “delinquency,” a problem that the government contends has spread “as a result

of the situation of illegality and marginality that characterizes clandestine immigration.” It announces that the government will encourage judges to apply Article 21.2 of the Alien Act, which allows for the expulsion of foreigners as a substitute sentence for crimes, and pursue the creation of immigration detention centres. To this increase in police action, Axis E adds a consolidation of administrative structures to coordinate the decision-making process, as requested by the Office of the Ombudsman of Spain. These include an Inter-Ministerial Commission, the creation of Foreigners Offices in every province to permit migrants to perform administrative formalities, as well as an Immigration Service that would design and implement integration programs. While the two former institutions were indeed created soon thereafter, the latter, concerned with integration, was never created. Certainly, the Institute of Emigration was transformed into the General Directorate of Migrations in 1992, but it was charged with managing migration flows, not with developing integration strategies.

Axis F of the policy document announces a reform of asylum procedures that, as in many other countries, is mainly preoccupied with distinguishing between those the government deems “deserving victims” and those it casts as “masters of confusion” (Pratt and Valverde 2002). In accordance with the principles of the Dublin Convention signed on June 15 of that year, the report suggests accelerating the treatment of asylum claims, “with the objective that clearly unfounded claims can be rejected in a relatively short period of time, and that it is possible to organize the departure of abusive asylum seekers from the country,” while also “protecting the true political refugees that are really

persecuted in their countries of origin” (p.23). This preoccupation with supposedly “abusive” asylum claims, so central in this report and in the early 1990s, will disappear in the following years as irregular migration continues to increase and the number of asylum claims continues to be very low compared to other European countries. Finally, under its Axis G, the report simply reasserts that all nationally designed immigration policies should follow the criteria and orientations that inform the Schengen project.

The report concludes that, as the decade of the 1990s is beginning, Spain is becoming a country of immigration and has to develop a policy that would “preserve our economic interests and social cohesion, take into consideration our historical and cultural relations, and guarantee . . . the complete integration of foreign residents who have chosen to live and work in our country,” (p.10) provided, one assumes based on the rest of the document, that they are in Spain regularly.

Temporary Policy Settlement

In 1991, all parties except IU-IxC collectively submitted a non-legislative proposal using the exact wording of the report to orient government action. The proposal (IV – 162/000107) was adopted with 219 votes in favour and 11 abstentions, and the government congratulated itself for having reached such a broad consensus. I argue that this moment represented, as Gale (1999) would put it, a policy settlement. As he explains, policy settlements are temporary agreements informed by broad “settlement parameters” and organized around more concrete “settlement particulars” (p.203-204). In terms of the

particulars of the 1990 report and subsequent 1991 proposal, there was a general agreement that actions should be organized around (1) border control, police action, and the imposition of visas; (2) the channelling of migrant labour, an effective control of workplaces, and the protection of the national labour market; (3) the integration of regular immigrants and the regularization of some irregular migrants; and (4) an increased co-operation with third countries in terms of coordination of flows, border control, and development aid. These were still rather broad categories of policy orientation, and the task of developing the details of these particulars fell upon high-level officials who ended up prioritizing the first two dimensions in the 1990s: border control and the management of labour flows. Indeed, while the need for integration and international co-operation policies was acknowledged early on, policies seriously tackling these issues did not appear until the mid-2000s.

Through these policy particulars, we can identify broader policy settlement parameters or general criteria that inform particular policy actions. While it is true that the Spanish adhesion to the Schengen Agreement in 1991 provides the main immediate context, the specificities of the Spanish rationales for governing irregular migration appear more clearly in this report. The temporary policy settlement that this report documents exposes three complementary and sometimes contradictory logics, or premises, that would orient any policy action in the future:

- 1) A police logic of control that governs irregular migrants as threats (strengthening borders, fighting delinquents, deporting illegals and false refugees);
- 2) A labour management logic that governs irregular migrants as workers (managing flows, protecting the national labour market, inspecting workplaces);
- 3) A cultural preference logic that treats irregular migrants as more or less compatible cultural subjects (integrating immigrants, prioritizing Ibero-Americans and Europeans; attributing particular work permits to particular groups).

These three broad logics, which I refer to as securitization, labouralization, and culturalization, will provide the underlying grammar of all subsequent programs of government, including those related to integration or international co-operation. These logics were not invented in 1990, nor did they appear in exactly the same form thereafter, but we can nonetheless identify this report as representative of a policy settlement that occurred around that time and that gave institutional legitimacy to these ways of looking at and intervening on migration.

Questioning the usefulness of reifying 1985 as the natural point of departure of inquiries about Spanish immigration policies, this chapter traced the hesitant problematizations of irregular migration as an object of government in the early 1980s, showing that the terms through which it is understood today did not always appear obvious. Careful not to downplay the importance of laws, the chapter discussed the role

that the inscription of this object into law played in the creation of an institutional regime that maintains irregular immigrants in a situation of legal liminality. This chapter traced the emergence and consolidation, around 1990, of the three sets of logics and practices under investigation in the following chapters. It would have been possible to analyze these three broad logics as parts of a macro-level political rationality informed by liberalism (Rose and Miller 1992), although in the Spanish context, it is a form of liberalism that is deeply intertwined with Catholicism at both the philosophical and practical level (Vásquez García 2009). But instead of trying to generalize about the thesis of a liberal or neoliberal mode of governance, or study rationalities at this level in Spain, this research looks at how the three logics identified in the 1990 report inform other historically specific policies developed since then.

Indeed, most governmental practices targeting irregular migration, then and now, have drawn upon these three complementary and sometimes contradictory logics to various degrees. For this reason, it is often hard to separate them analytically. For instance, the framing of Muslim immigrants as a potential threat to national identities (Spanish and Catalan) is informed in Spain by both securitizing and culturalizing logics, just like the allocation of quotas for the recruitment of foreign workers based on cultural preference combines the management of labour flows with assumptions about cultural criteria of assimilability. The ways in which these complementary and sometimes contradictory logics and practices are assembled together in Spain will appear clearly in Chapter 7, where I analyze this regime governing immigration through probation and pay

close attention to the intersecting logics and practices of various actors on the ground. In the next three chapters, however, I isolate these logics for analytic purposes, in order to highlight their specificities, trace their genealogies, and discuss the policies in which each of them appears more centrally. The first of these chapters considers culturalization.

Chapter 4

Culturalization: Race, Culture, and the National Imaginary

In the previous chapter, I discussed the ways that irregular migration was thought of and acted upon as an object of government during the 1980s. I also identified three logics that were emerging, still poorly articulated in these early and hesitant political debates and that I identify as securitization, labouralization and culturalization. In this chapter and the two that follow, I discuss each of these logics along with the practices they inform, as they appear in specific immigration policies since the 1980s. While the securitizing and criminalizing logic is the most obvious, and the desire to manage migration flows and migrants as a labour issue the most popular, culturalization—the framing and governing of migrants as cultural subjects—appears to be the logic that runs the deepest and that informs them all. The previous chapter mentioned that the most obvious manifestation of the cultural logic in early policy debates was the preferential treatment that policy-makers considered was owed to immigrants from Ibero-American countries. The present chapter

starts by going back in time and tracing the genealogy of this preference through a discussion of the differential treatment of Muslims and Latin Americans historically. Briefly revisiting Spanish colonial history as well as political texts from the early twentieth century, I discuss the emergence of the notion of Hispanic community and the role it played in Spanish nation-building. I also analyze the complementary development of Maurophobia, the fear and hatred of “Moors,” as a cultural thread that continues to inform contemporary policies. The chapter then moves on to an analysis of how these cultural logics informed the Civil Code and the regulations of the Alien Act, granting preferential treatment to Latin Americans (and a few other groups) in the access to Spanish nationality and to work permits. The last section of this chapter deals more specifically with the framing of migrants as cultural subjects and the understanding of integration as a cultural problem by policy-makers especially since the beginning of the twenty first century.

Before delving into history, however, it is useful to start this genealogical analysis where the last chapter ended, in 1991-92, and use the events that occurred during the 500th anniversary of the “Discovery of the Americas” in 1992 as an entry point for an inquiry into the role that the notion of “Hispanic community” and the development of “Maurophobia” played in the early construction of Spanish national identities. Following the 1990 report on immigration and the subsequent adoption of the non-legislative proposal on immigration policy in April 1991, the three logics identified in the previous chapter became more explicit. The 1991-93 period marked a turning point. As assessed by

Antonio Izquierdo Escribano (1996), "With regard to the question of foreigners, 1992 was a decisive year for Spain. It marks the end of hesitation on this issue and opens the era of immigration policies" (p.239). It was indeed a frenetic time: the government created or reorganized various institutional structures to study and manage migration, implemented a regularization process in 1991 that issued permits to 109,000 workers and 7,000 of their relatives (Izquierdo Escribano 1996:134), and in the same year imposed a tourist visa on Moroccans, Algerians, Tunisians and Peruvians. The government also signed a repatriation agreement with Morocco in 1992 allowing Spain to deport any irregular migrant who has transited through this country.³³ With regard to labour, Spanish officials increased labour inspections to detect irregular employment as of 1991, created a system of quota (the contingent system) to hire migrant workers in 1992 and used it for the first time in 1993. Significantly, Spain also ratified the Schengen Agreement in June 1991.³⁴

With the signing of the Maastricht Treaty in January, 1992 is also an important year for the European community, and for Spain's new identity as a European state on par with its northern neighbours. The year 1992 is also symbolically charged since it marks the 500th anniversary of the *Reconquista*, a "process of de-Africanization, de-Judaization and cultural Europeanization" of Spain (Milhou 1991:39-40) that included the expulsion of the Jews and the take-over of the last Moor stronghold in Granada in 1492, as well as the subsequent Christianization and eventual expulsion of Muslims and *Moriscos* (Fuchs

³³ *Acuerdo entre el Reino de España y el Reino de Marruecos relativo a la circulación de personas, el tránsito y la readmisión de extranjeros entrados ilegalmente*. Signed on February 13, 1992.

³⁴ *Acuerdo de adhesión del Reino de España al Convenio de aplicación del Acuerdo de Schengen*. Signed on June 25, 1991.

2009). Of course, 1492 is also the year of the arrival of Columbus to the Americas and the beginning of the Spanish colonial expansion that will provide the basis for the idea of a transatlantic Hispanic community. It also coincides with the publication of the first grammar codifying Castilian as a language distinct from Latin by Antonio de Nebrija. Taken together, these events, mythologized and symbolized by the year 1492 have been central to the historical development of Spanish (Castilian) national identity. These are the historical events that Spaniards celebrated in 1992, a year marked by so many changes in immigration policy. Parliamentary debates of the time remind us that the historical present is always deeply informed by the historical past, and that to understand contemporary notions of nationhood, one needs to inquire into notions bearing the weight of history. One such notion is that of *hispanidad*.

The Franco dictatorship (1939-75) made such an extensive use of the expressions “nation” and “*hispanidad*” (Hispanity or Spanishness) in its populist rhetoric that political elites avoided using the phrase “the Spanish nation” in the first years of the democracy. In spite of this, the Congress passed a law in 1987 making October 12—the day Columbus landed on the island of Guanahani—Day of National Celebration, continuing the tradition set during the Franco dictatorship under the name *Día de la Hispanidad (Ley 18/1987)*. The text of the law does not mention *hispanidad*, preferring instead to frame this day as a celebration of cultural diversity, but it justifies the choice of this day by arguing that October 12, 1492 “initiated a period of linguistic and cultural projection beyond the European limits.” According to various authors (Aguilar Fernandez and Humlebaek 2002;

Rein and Weisz 2002), the decision to choose this date as national holiday instead of other competing dates—such as the day the democratic constitution was signed—is directly related to the upcoming 500th anniversary.

In the words of the secretary of state for international co-operation and Ibero-America, as well as president of the National Commission for the Commemoration of the Vth Centenary of the Discovery of America,³⁵ Juan Antonio Yáñez-Barnuevo, the aim of the event was to:

highlight the accomplishments of Spain in America that are less known than other deeds that are traditionally covered, including by Spanish historians—the epic accomplishments, or those related to conquest—forgetting or giving less importance to something we have wanted to highlight in this commemoration, that is the scientific work, mainly during the reign of Carlos III, in the 18th century, and the civil work of urbanization of Spain in America. (IV – 212/000397).

This celebration was also the occasion to launch the now well-known Cervantes Institutes, centres whose mission was to become not simply “a network of language academies, but instead, like in other countries that are linguistic and cultural powers, authentic centres for the projection of Spanish language and culture” (IV – 212/000397).

While this celebration is not directly related to the signing of the readmission agreement with Morocco, the imposition of a visa for citizens of states from the Maghreb, or the preference for Ibero-Americans and nationals of other countries with colonial ties to Spain, it helps us see that in the 1990s this idea of Hispanic community (*comunidad*

³⁵ This is a translation of *Comisión Nacional para la Conmemoración del V Centenario del Descubrimiento de América*, the official name of the commission.

hispanica) still informed—albeit discreetly and in a more progressive fashion—the cultural preference for Latin American immigrants in Spanish immigration and citizenship policies. By juxtaposing new immigration policies with manifestations of a Spanish identity informed by the *Reconquista*, the year 1992 made the relationships between these elements manifest. As will be explored in this chapter, the idea of Hispanic community, as well as the persistence of Maurophobia are central elements of the logic of culturalization in Spanish immigration policies to this day.

Comunidad Hispánica, Maurophobia and Racial Governance

Spaniards' relationship to the Muslim and Ibero-American communities is complex and cannot be simply presented in dichotomous terms. While progressive Spaniards are usually more open to Muslims than conservative ones, the framing of North Africans as conservative and pious by Franco also led to a historical prejudice against them by the Left (Aguilar Fernandez and Humlebaek 2002). Similarly, while there is a preference for Ibero-Americans in immigration policies (Izquierdo Escribano, López de Lera, and Martínez Buján 2003; Pérez Yruela and Desrues 2005), the treatment they receive is not exempt of racism and discrimination (Domingo 2005). The repression of Indigenous protests during the 500th anniversary of 1492 in Spain clearly exposed the colonial relations that formed the basis of the idea of *hispanidad* and of the now exalted Organization of Ibero-American States. In fact, Walter Mignolo (2006, 2010) traces back the existence of both contemporary Islamophobia *and* Hispanophobia in the United States to the imperial

rationality that informed colonial modernity, starting with 1492. The racist assassination of Lucrecia Pérez, a black Dominican immigrant, by an agent of the *Guardia Civil* and three other men in Madrid in November 1992 also dramatically illustrated that anti-Latino discrimination and violence is present in Spain.³⁶

Nonetheless, it can be argued that the notion of Hispanic community as it developed through the concept of *hispanidad* contributed to the development of a preferential treatment for immigrants from Ibero-American countries. This preference for Latin American over other non-European immigrants should not be understood as resulting from a simple binary logic opposing the culturally good and bad immigrants. Instead, the ambiguity in the treatment of Latin American migrants helps us understand that, as Enakshi Dua (2007) puts it, “producing a racialized nation can take place not only through practices of exclusion, but also through practices of inclusion” (p.446). The reinterpretation of Spanish imperialism in the Americas and the anti-Muslim and anti-Jewish dimensions of the *Reconquista* are central dimensions of the national imaginary, and they provide a substantial underlying discourse that informs the contemporary treatment of immigration.

³⁶ The assassination of Lucrecia Pérez in the Madrid neighbourhood of Aravaca, where raids targeting irregular migrants were frequent, was the first to be publically recognized as a racist anti-immigrant murder. For an in-depth analysis, see Calvo Buezas [1993] 2012.

The Concept of *Hispanidad*

The concept of *hispanidad* (Hispanity or Spanishness) emerged both as an attempt to recast the Spanish sphere of influence in cultural terms after the loss of the last Spanish colonies in 1898, and as a way of reclaiming the superiority of the Spanish “spirit” in the face of a Europe that treated Spain with disdain. Ricardo Pérez Montford (1992) associates the concept with the project of building a spiritual empire to replace the territorial one, and describes the early Hispanism of the turn of the twentieth century in this way:

Combining imperial ideas . . . with the integration of the foundations of a mother culture elaborated by Marcelino Menéndez Pelayo, Hispanism is based on a principle that considers the existence of a transatlantic “great family” or “community” or “race” that distinguishes all the peoples that belonged to the Spanish Crown at some point. This Hispanic identity lies in the conviction that Spaniards developed, in the process of empire formation, a series of particular life and cultural forms that differentiate them clearly from all the other peoples on the globe (P.15).

In this sense, it was also a representation of the spiritual superiority of Spain that aimed to oppose the Black Legend, this historiographical tradition of depicting Spanish colonialism as cruel and Spanish culture as underdeveloped and influenced by Islam. Who coined the term “Hispanism” is the subject of much debate, and it is clear that there existed many visions of the concept (García de Tuñón Aza 2004; Lombardero Álvarez 1999). It is through the work of Ramiro de Maeztu that the concept, in its conservative Catholic variation, was integrated into the National-Catholic ideology of the Franco era. The ideas published in 1934 in his *In Defence of Hispanity* were used by the Franco regime to construct a “White

Legend” of the missionary effort of Spanish imperialism, develop ties with Ibero-America in a time of European exclusion, and fight national minorities in the country.³⁷

As we have seen, it took several years after the return to democracy for the term to begin to be used again by political elites, and when it returned the emphasis was put on the Ibero-American community, not on the spiritual glory of Spain. The *Día de la Hispanidad* (Day of Hispanity) was renamed *Día de la Fiesta Nacional* (Day of National Celebration) and the festivities of 1992 insisted on the theme of the re-encounter. The idea of an Ibero-American or Hispanic solidarity takes various forms today: many policy-makers and politicians locate the justification for a preferential treatment toward Ibero-Americans in the generosity they showed when Spaniards had to emigrate for political or economic reasons, while others insist on the civilizational ties between these nations. For instance, a high-level official for immigration at the Ministry of the Interior explained to me that while his ministry wanted to impose tourist visas on various Latin American countries in 2000-02, it was hard for the Ministry of Exterior Affairs to implement them “because of the great Spanish policy with regard to Ibero-America, countries with which we have an extraordinary proximity, a common culture and civilization.”³⁸ Whether politicians and civil servants insist on Spain’s obligation to be generous to the peoples that have welcomed them during hard times, or on the civilizational alliances that links Spain to Ibero-America, most mention the historical and cultural ties that link Ibero-America to

³⁷ On the White Legend, see Molina Martínez 2012.

³⁸ Interview, Madrid, October 14, 2012.

Spain, a connection that does not extend to Moroccans despite the existence of similar ties.

Maurophobia

In the versions of *hispanidad* that mobilize religious and civilizational arguments to explain the proximity between Spaniards and Ibero-Americans, Spanish identity is often presented as opposed to Islam. In recent years, the Popular Party has been particularly concerned to highlight the Christian dimension of both the Hispanic community and Europe. José María Aznar (Spanish president from 1996 to 2004) represents the values and ideas of a Spanish Catholic right that has reinvented itself through a commitment to neoliberalism and an alignment with American neoconservatives in the 1990s (Carmona, García, and Sánchez 2012). In 2003-04, Aznar lobbied intensely for the inclusion of a reference to “the Christian heritage of Europe” in the text of the European Constitution, claiming that “without the Christian heritage, Europe cannot be explained. Not only for its religion, but for all that has been achieved in freedom, equality and human rights” (cited in *El País*; see Schwartz 2003:n.p.). He received the support of several heads of state and Pope John Paul II congratulated him for his efforts, but the Spanish initiative was controversial among European officials and the mention did not make it in the final version of the European Constitution (El País 2004).

This defence of the Christian heritage is not detached from the understanding of Spanish identity and culture as resulting from a Catholic war against “Muslim invaders.”

Already in *Defence of Hispanity*, De Maeztu ([1934] 1941) insisted on the positive dimension of Hispanism, but located the emergence of Spanish spiritual superiority in the

Reconquista. He claimed:

The Spanish character has formed in the multi-secular struggle against Moors and Jews. Against Muslim fatalism, the Hispanic persuasion in the liberty of man became solidified . . . In front of the Jews, which is the most exclusivist people in the world, we forged our Catholic sentiment of universality . . . The fundamental traits of the Spanish character are due, therefore, to the struggle against Moors and Jews and to its secular contact with them (P.210, 211, 213).

One might assume that the anti-Muslim and anti-Semitic conception of Hispanity is a relic of early twentieth century National-Catholicism and racism, but it reappears regularly in the ideology of a branch of the Spanish right nowadays. While there has been a decrease in openly anti-Semitic discourses by politicians since the return to democracy, and the inclusion in 1982 of Sephardic Jews on the list of persons who have an easier access to Spanish nationality, anti-Muslim sentiments are still regularly expressed and the fight against the Moors is still mentioned as a founding moment in the construction of Spanish identity. This is not surprising since, as many scholars have shown (Goode 2009; Grosfoguel and Mielants. 2006; Hentsch [1989] 1992; Mignolo 2006; Said 1979), this expulsion is a central dimension of the relational and historical processes of Spanish and European identity formation.

Once again, former president Aznar provides a good example of how this othering contributes to contemporary notions of Spanish identity. Just after losing the 2004 elections, he was appointed Distinguished Scholar in the Practice of Global Leadership at

Georgetown University where he delivered a talk titled “Seven Theses on Today’s Terrorism.” The speech provides an Islamophobic twist on the rhetoric of the clash of civilizations by tracing the connections between the War on Terror and the *Reconquista*. He explains that to understand the fight against Islamist terrorism today: “You must go back no less than 1,300 years, to the early eighth century, when a Spain recently invaded by the Moors refused to become just another piece in the Islamic world and began a long battle to recover its identity” (Aznar 2004:n.p.). In an address to the right-wing think-tank *European Ideas Network* in 2005, Aznar argued that Europe would change dramatically if there were to be a shift from a Christian majority to a Christian minority, but assessed that “this is the inevitable path of the demographic catastrophe that we live.” Therefore, the former president added, it would be appropriate to implement “a strong policy for the recuperation of values based on the classic values of our Western civilization, on the Christian character of our roots and our origins, and based also on the intent of transmitting to people [the idea that] when our civilization is threatened, we have to know how to defend it and we have to fight for it” (Aznar 2005:6, 7).

Because of the historical significance of anti-Muslim sentiments in Spain, Ricard Zapata-Barerro (2006) argues that the contemporary treatment of Muslims cannot be explained through a generic notion of Islamophobia, and suggests that *Maurophobia* (the fear and hatred of Moors) is a more appropriate concept. He contends “that there is a *Maurophobia* in Spain that has been constructed throughout history and that this picture is not a contingent fact but a substantive element of the process of Spanish identity

building, without which Spanish citizenship cannot be understood” (Zapata-Barerro 2006:144). Despite a crystallization of the Spanish debate on the hijab at a particular moment echoing French politics and legislation, the civilizational dimension of Spanish Islamophobia is not informed by a similar colonial experience and commitment to *laïcité*. Similarly, the global War on Terror rhetoric and the cultural racism that informs politics targeting Muslims in other European countries also play a central role in contemporary Islamophobia in Spain, but North African Muslims are primarily understood through the figure of the Moor.

Racial Governance

Beyond the direct references to the Hispanic community in policy documents and obvious contemporary expressions of Islamophobia, we also need to bear in mind the centrality of this double process of the colonization of the Americas and the expulsion of the Moors for the constitution of race as a mode of governing constitutive of the juridico-political ordering formed under colonial modernity (Grosfoguel and Mielants 2006; Mariscal 1998; McKinley 2012; Mignolo 1995, 2006, 2010). Not only is 1492 a symbolic marker of early modernity, a period that saw the emergence of social subjects problematized and governed in explicitly racial terms, but Spanish colonialism was central in the elaboration of racial schemas that were “necessary for the demarcation of racial exclusions and inclusions enabled under colonial rule and [that] relied upon the demarcation of certain

bodies as inferior and incapable of reason, morality and self-determination” (Moffette and Vadasaria 2014:4-5).

This double process whose traces are captured here through an analysis of Maurophobia and the Hispanic community contributed to the emergence of a particular Spanish conception of race, simultaneously organized around the notions of purity of blood (*pureza de sangre*) and of mixing and hybridity (*mestizaje*). In his study of notions of race from the eighteenth to the twentieth century Spain, Joshua Goode explains that Spanish racial thought is premised upon a celebration of hybridity that marked Spanish nationalism. Quoting George Frederickson (2002), Goode (2009) argues:

One might say that the Spanish version [of the notion of race], the idea of fusion, is a racism of inclusion, “incorporating groups on the basis of a rigid hierarchy justified by a belief in permanent, unbridgeable differences between associated groups.” Yet, Spanish notions of race prove that a simple bifurcation of inclusive or exclusive racial thought is unnecessary. Modern Spanish racial thought rooted in fusion was in a sense inclusive, while the purposes to which it was put always led to [a] divisive sense of ethnic isolation. There is nothing benign or surprising in the Spanish notion of fusion or its social use or deployment. Inclusive racism does not preempt the creation of crude racist practices (P.14).

Indeed, the notion of *mestizaje* does not exclude the fascination for racial purity, nor should it be separated “from the historical realities of genocide, domination, and sexual violence that brought about multiracial beings” (McKinley 2012:118). While the notions of Hispanic community and Hispanic race (*raza hispana*) that made their way into the twentieth century were framed more in cultural and spiritual terms than in biological ones, they cannot be understood without the historical specificity of a concept of race as inclusive and hierarchical that was also influenced by the notion of purity of blood that

excluded Jews and Muslims. Furthermore, as I have argued elsewhere (Moffette 2013), the notion of *mestizaje* and the fantasy of medieval Spanish tolerance that has accompanied the historical debates over the religious/racial living-together in medieval Iberia continue to inform the contemporary notion of *convivencia*, or positive living-together, that is the Spanish version of official state multiculturalism.

Indeed, in a European context that sees a decrease in biological discourses of race and a diffusion of what David Theo Goldberg (2009:152) calls “European racial denial,” the notion of Hispanic hybridity and the nationalist myth of a historically tolerant Spain (Soifer 2009) organized around the concept of *convivencia* plays a role similar to that of official multiculturalism in Anglo-Saxon countries. It provides for a way of governing and pacifying differences through a racism of inclusion that is recast in cultural terms (Balibar 1991; Bannerji 2000; Bonilla-Silva 2006; Meer and Modood 2009). Indeed, as Goldberg (2009) explains, “this is a wishful evaporation that is never quite enacted, never satisfied. A desire simultaneously frustrated and displaced. As diffuse as they are, racist implications linger, silenced but assumed, always already returned and haunting. Buried, but alive. Odorless traces but suffocating in the wake of their nevertheless denied diffusion” (p.152). The rationalities through which Maurophobia and the notion of the Hispanic community have been articulated historically cannot be separated from race as a mode of governing, a mode of thinking about and acting upon subjects, that is constitutive of modernity. And this is true as much in its early colonial manifestations as in the contemporary versions marked by a desire for racial evaporation.

In the two remaining sections, I examine the logics informing Spanish identity and immigration policies, showing how they draw simultaneously from an identification with Europe (and the West) as civilization, a commitment to Ibero-America based on Spain's role as head of the Hispanic community, and the real and symbolic expulsion of Muslim heritage. I explain how the traces of Maurophobia and the notion of Hispanic community continue to haunt the present. In what follows, I focus on how these elements directly inform Spanish immigration and citizenship policies.

Preferential Treatment for Access to Nationality and Work Permits

As an immigration lawyer commented to me, "the preference for Ibero-Americans is a central feature of the Spanish legislation: it appears in the Civil Code of 1889 and in the Constitution of 1978 with reference to nationality, and made its way into the Alien Act in various forms."³⁹ In this section, I trace the ways this preferential treatment was effected through the regulations of the Alien Act governing the legal selection of immigrants and the Civil Code provisions on naturalization. I also discuss the traces of this preference that persisted after 2000 when legal reforms removed explicit references to preferential treatment based on cultural proximity from the Alien Act.

³⁹ Interview, Madrid, November 2012.

Civil Code and Access to Nationality

The first legal codification of preferential treatment for the acquisition of Spanish nationality dates back to the Constitution of the Spanish Republic of 1931, which provided that “based on international reciprocity . . . citizenship will be granted to citizens of Portugal and the Hispanic countries of America, including Brazil [sic], as long as they request it and are residing in Spain, without modifying or losing their citizenship of origin” (Art. 24). This provision thus recognized the possibility of dual citizenship for the first time. The same year, a decree clarified that foreigners living in Spain for 10 years would be able to apply for naturalization, a situation that was reduced to 2 years for nationals of “Hispano-American republics, Portugal, Brazil, and those that are native of the Moroccan Zone under Spanish Protectorate.”⁴⁰

With the end of the civil war, Franco abolished the constitution, reinstated the Civil Code of 1889 and started promoting his vision of the Hispanic community. Diplomatic efforts to develop relationships with Latin America intensified after the newly formed Organization of United Nations refused to include Spain in 1945, to the extent that the most important discourses pronounced by the minister of foreign affairs of the time have been published under the title *Toward an Hispanic Community of Nations* (Martín Artajo 1956). It is in this context that Franco, despite what he owed to the Moroccan troops from the Protectorate, decided in 1954 to reform the Civil Code to include a preference only for

⁴⁰ *Decreto disponiendo se ajuste en lo sucesivo a las reglas y condiciones que se establecen la justificación y declaración de haber ganado vecindad los extranjeros en España*. Published in *Gaceta de Madrid* No 120, April 30, 1931, p.408.

Ibero-Americans and Filipinos. The new iteration thus excluded inhabitants of occupied northern Morocco. The legislation established the possibility of double nationality and the acquisition of Spanish nationality after only two years for the preferred group, justifying this clause “as a tribute to the profound social reality derived from the particular condition of a person who pertains to the community of Ibero-American and Filipino peoples, and in order to strengthen the ties [between these peoples].”⁴¹

Finally, with the return to democracy in 1978, there was a new reform of the Civil Code that expanded this list to other groups that could claim belonging in the Hispanic community (Andorrans, Portuguese, and Equatorial Guineans) but also Sephardic Jews (*Ley 51/1982*). Because the 1982 law does not contain a prologue outlining the motivation of the legislator, no justification is given for the addition of Sephardic Jews but not of *Moriscos*, the Christianized Moors expelled from Spain in much greater number around the same period. Despite attempts by the progressive United Left party to modify the list, it remains the same to this day.⁴² In the current version of the Civil Code (valid 23/07/2011 to 15/07/2015), these provisions fall under Article 22.1. The standard number of years of residency is established at ten years, reduced to five for refugees and two years for Ibero-Americans, Filipinos, Andorrans, Portuguese, Equatorial Guineans and Sephardic Jews.

⁴¹ Prologue of *Ley de 15 de Julio de 1954 por la que se reforma el Título Primero del Libro Primero del Código Civil, denominado “De los españoles y extranjeros.”*

⁴² Unlike for other members of this group, however, the Civil Code does not allow Sephardic Jews to hold dual citizenship. A bill currently before the Justice Commission (May 2015) and soon to be adopted will lift this prohibition of dual citizenship and allow Sephardic Jews who can provide some proof that they are descendents of Jews expelled from Spain access to citizenship without having to reside in Spain (X – 121/000099).

Putting an end to debates about whether these “years of residency” meant legal residency, Article 22.3 now explains that “in all cases, the residency will have to be legal and immediately prior to the request [for naturalization].”

While these dispositions do not concern the treatment of irregular migrants—who cannot apply—they do have an impact on irregularity. As detailed in the previous chapter, the legal liminality in which migrants are kept is linked to their precarious immigration status and their inability to renew their permit. In this context, the longer they are forced to renew short-term permits, the more likely they are to fall into administrative irregularity and be deported. Therefore, the difference between a two-year and a ten-year legal residency requirement to apply for citizenship, while it is based on a legal distinction that applies only to regular immigrants, also contributes to maintaining non-privileged groups in longer periods of legal liminality and is thus implicated in the governing of irregular migrants.

Preferential Treatment in the Regulations of the Alien Act and Beyond

The cultural preference inscribed in the Civil Code can also be found in all iterations of the Alien Act and its regulations, thus affecting migrants at almost every step from their entry into the country to their naturalization. Even when a permanent residence permit was added in 1996 to the list of permits available under the regulations of the Alien Act to provide migrants with greater stability (*RD 155/1996*), the cultural preference criterion made it very hard for anyone from the non-preferred groups to ever obtain it. Indeed, to

acquire permanent residency, one needs to obtain and renew many short-term permits, and non-preferred immigrants were discriminated against throughout the complex system of work permits (see Table 5).

Table 5: Work Permits as Regulated by RD 155/1996

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Class A Seasonal Max 9 months After: Exit or Irregular Preference applies	Repeat or apply for other permit	Repeat or apply for other permit	Repeat or apply for other permit	Repeat or apply for other permit	Repeat or apply for other permit	Repeat or apply for other permit
Class b Employee Max 1 year After: Get a B, or Exit or Irregular Preference applies	Class B Renewed Employee Max 2 years After: Get a C, or Exit or Irregular At Year 2: Preferred group can apply for naturalization and get out of the permit system		Class C Renewed Employee Need a 3 year contract Only 2 years needed for preferred group After: Get a Permanent Permit, or Exit or Irregular			Permanent Indefinite but needs to be renewed every 5 years If permit C or D was obtained for 2 years, those of the preferred groups can get it at Year 6
Class d Self-Employed Max 1 year After: Get a D, or Exit or Irregular Preference applies	Class D Renewed Self-Employed Max 2 years After: Get a E, or Exit or Irregular At Year 2: Preferred group can apply for naturalization and get out of the permit system		Class E Renewed Self-Employed Need a 3 year contract Only 2 years needed for preferred group After: Get a Permanent Permit, or Exit or Irregular			At Year 10, those of the non-preferred groups can apply for naturalization

Source: RD 155/1996, Chapter IV.

Article 77.2 stated that preferential treatment for the emission of the *initial* work permit could be accorded to citizens of Ibero-American countries, Filipinos, Andorrans, Equatorial Guineans and Sephardic Jews. Migrant workers without preferential treatment could also obtain initial permits. Initial permits included class “A”(seasonal employee), “b”

(employee), “d” (self-employed) and “F” (for trans-border workers working in Ceuta and Melilla but residing in Morocco). From outside the country or while living in Spain without status, one could apply and obtain a Permit A, used specifically for seasonal work, valid for the duration of the contract (maximum 9 months) and not renewable. This person would then leave the country or remain in the country irregularly. Often throughout the 1990s, irregular migrants would obtain this permit through the temporary work permit quota system, work the season, lose their status when the permit ended but stay in the country, and start over the next year. This situation would be the same for all migrants, except for the privileging of those of the preferred groups in the granting of this initial permit.

The same is true for the two other initial permits that were renewable. Class b (employee) and d (self-employed) permits were initially valid for a maximum of a year, but then renewable for up to two years as permits B and D respectively (Art. 75; Para. I and II). After two years, those on the preferred list for obtaining citizenship became eligible to apply for naturalization if their country of origin accepted double citizenship or if they agreed to give up their original nationality (this is still the case today). Those from groups not deemed culturally and historically tied to Spain would need to continue renewing these permits—if the conditions for the permits persisted—or lose status. Through this mechanism, “culturally similar” migrants are granted a way out of precariousness earlier.

At the end of their renewed permits, migrants with a renewed class B (employee) or D (self-employed) permit could apply for the more stable class C or class E, respectively.

The coveted permanent permit was only available to holders of a class C or E permit, so following this renewal chain was the fastest way for non-preferred migrants to secure their permanence in the country. But to change a renewed B permit for a C, or a renewed D permit for an E, one needed to present a three-year contract or business investment. The requirement was nevertheless reduced for the preferred cultural groups as well as for British nationals from Gibraltar, who only needed to have a two-year contract or investment plan (Art. 79). At the end of the C or E permit—which lasted two years for the preferred groups and three for the others—migrants could finally apply for a permanent work permit, renewable every five years (Art. 75; Para. IV). After ten years of legal residency in Spain, non-preferred migrants could finally apply for citizenship.

This dizzyingly complex regime of work permits—further complicated by the necessity to obtain both residence and work permits—made it easy for migrant workers to fall into administrative irregularity and resulted in years of very precarious immigration status that included periods of regularity and irregularity. Despite various changes to immigration law and regulations, this institutionally created precariousness continues today.⁴³ What is significant about this regime as it operated in the 1990s is that it produced a greater level of precariousness for those who were not qualified as culturally preferable.

⁴³ While the number of years of legal residency necessary to access permanent residency has been reduced to five, the permit has also been renamed “authorization for long-term residency,” highlighting that it is not in fact permanent and that conditions apply. Clauses preventing migrants already living in Spain irregularly from applying for work permits also prolong the period of legal liminality of those who lose their status, although avenues for regularization do exist. For current regulations on work permits for immigrants, see *RD 557/2011*, Titles IV, V, and VI.

The inscription of cultural preference in law during the 1990s also reflected a more complex framing of migrants as cultural subjects informed by race, language, gender and class. This is especially visible in the attribution of permits for seasonal work through the quota system (or system of contingents). As I discuss in greater detail in the next chapter, this tool was developed mainly to provide workers with papers to employers who were using irregular migrants, either by replacing them with regular workers coming from outside of Spain, or by granting irregular migrants living in Spain a temporary A permit.

The contingent program was based on a system of quotas that were divided by country of origin and sector, based on the needs and preferences of the labour market. As a high-level official involved in developing and implementing the contingents program explained, “the two variables were supposed to be kept separate: we established the number of permits per sector based on need, and we broadly divided the overall number between the countries that provided the bulk of irregular migration.”⁴⁴ But for the 1995 contingent, the government was more transparent, linking specific countries of origin to specific sectors, attributing the quotas as follow:

1. A quota of up to 2,500 work permits for the domestic and care sector, to be issued preferably to nationals of Ibero-American countries and Filipinos, as follows:

Republic of Peru: 900
Dominican Republic: 900
Republic of the Philippines: 400
Other countries: 300

⁴⁴ Interview, Madrid, September 26, 2012.

2. A quota of up to 5,500 work permits for the realization of seasonal agricultural work, to be issued preferably to countries of the Maghreb, as follows:

Morocco: 4,500

Other countries: 1,000⁴⁵

Considering the increasing importance of immigrant women in domestic and care work during this period (Oso Casas 2009), the 1995 quota clearly expresses the cultural and gendered preferences of the labour market: Peruvian, Dominican and Filipina women who speak Spanish well to clean houses and care for the elderly, and Moroccan men to work in the strawberry greenhouses and to fulfill other needs in agriculture. During a conversation in the fall of 2012, Lorenzo Cachón Rodríguez, a sociologist of labour and immigration who acted as director of the Forum for the Integration of Immigrants from 2006 to 2010, explained to me that this intersection of nationality with the sector of activity was widely criticized and as a result was never again explicitly mentioned.⁴⁶ But as a high-level official explained, “listing it this way was a political mistake, and also absolutely unnecessary: this is how the work permits ended up distributed anyway because they were based on labour market tendencies. It was distributed that way with irregular employment, and therefore in a similar way with the quotas.”⁴⁷

The new Alien Act that was adopted in 2000, and amended many times since, abandoned any clear reference to this list of culturally preferred workers, choosing

⁴⁵ *Resolución de 9 de junio de 1995, de la Subsecretaría, por la que se dispone la publicación del Acuerdo del Consejo de Ministros de 9 de junio de 1995, por el que se fija el contingente de autorizaciones para el empleo de ciudadanos extranjeros no comunitarios en el año 1995.* Published in the *Boletín Oficial del Estado* N^o 141 of 14 July 1995.

⁴⁶ Personal communication, Madrid, October 23, 2012.

⁴⁷ Interview, Madrid, September 26, 2012.

instead to give priority to countries that would sign global immigration management agreements. Because the first agreements were signed with Ecuador and Colombia, and not with Morocco, at a time when Spain was letting hundreds of thousands of irregular Latin American migrants enter as tourists (see Chap. 7), activists and scholars concluded that excluding Moroccans was a way to limit immigration from this country (Izquierdo Escribano, López de Lera, and Martínez Buján 2003). In fact, an agreement was signed with Morocco just a few months later. As table 6 below shows however, key symbolic distinctions in the preamble make clear that Morocco is treated differently. For instance, unlike in the agreements with Colombia and Ecuador, the preamble does not contain a reference to historical and cultural links, or to the positive character of immigration. Further, among the rights granted to workers in the agreements signed with Colombia and Ecuador is a right to family reunification (Art. 6), whereas the agreement signed with Morocco makes no such reference to a right to family reunification.

Table 6: Labour Regulation Agreements with Colombia, Ecuador, and Morocco

Colombia and Ecuador	Morocco
<p>[The parties,]</p> <p>Driven by their common desire to reaffirm their special historical and cultural ties through the fluid and permanent contact of their populations . . .</p> <p>Wishing to regulate in an ordered and coordinated manner the migration flows that exist between [Colombia or Ecuador] and Spain;</p> <p>Driven by the objective that [Colombian or Ecuadorian] workers that arrive to Spain effectively enjoy the rights recognized by the international instruments to which both states are parties;</p> <p>Convinced that migration is an enriching social phenomenon . . . that can contribute to economic and social development, promote cultural diversity and encourage the transfer of technologies;</p> <p>Conscious of the necessity to respect the rights, obligations and guarantees that are present in their national legislations and in the International Convents of which they are parties; with the objective of deepening the general framework of co-operation and friendship between the two contracting parties; adding their efforts to those taking place at the international level to promote the respect of human rights, prevent clandestine migration and the labour exploitation of foreigners in irregular situation, regulate readmission; and in the context of the common Ibero-American interests,</p> <p>Have agreed to the following . . .</p>	<p>[The parties]</p> <p>Wishing to regulate in an ordered and coordinated manner the migration flows that exist between the two countries.</p> <p>Conscious of the necessity to respect the rights, obligations and guarantees that exist in their respective national legislations.</p> <p>Remembering the International Convents of which they are parties.</p> <p>Wishing to deepen the links of co-operation and friendship existing between the two contracting parties, and add their efforts to those realized at the international level to prevent the labour exploitation of foreigners in irregular situation; and in the context of the common Mediterranean interests,</p> <p>Have agreed to the following . . .</p>

Source: *Acuerdo entre España y Colombia relativo a la regulación y ordenación de los flujos migratorios laborales; Boletín Oficial del Estado*, N° 159 on July 4, 2001. *Acuerdo entre España y la República del Ecuador relativo a la regulación y ordenación de los flujos migratorios laborales; Boletín Oficial del Estado*, N° 164 on July 19, 2001. *Acuerdo sobre mano de obra entre el Reino de España y el Reino de Marruecos; published in Boletín Oficial del Estado*, N° 226 on September 20, 2001.

Not only do the contrasting tones and substance of the agreements suggest that Ibero-Americans continue to be the preferred immigrants, but administrative practices in the early twenty first century confirm this tendency (Izquierdo Escribano, López de Lera, and Martínez Buján 2003; Izquierdo Escribano and Martínez-Buján 2014). For instance, the rate of successful applications to regularization under the process that accompanied the new Alien Act in 2000 is explicit. As Table 7 below shows, the acceptance rates were much higher for Latin Americans and Europeans than for Africans, with a rate of only 51.02% for Moroccans who presented the highest number of regularization files by far.

Table 7: Rate of Success in the 2000 regularization per nationality

Country of Origin	Applications Submitted	Permits Granted	Rate of Success
Brazil	2,985	2,261	89.14%
Argentina	2,927	2,349	80.25%
Colombia	14,271	11,023	77.24%
Equator	20,666	15,840	76.74 %
Poland	3,636	2,571	70.71%
Bulgaria	2,839	1,805	63.58%
Romania	9,044	5,679	62.79%
Ukraine	3,551	2,125	59.84%
China	10,492	6,265	59.71%
Algeria	8,318	4,449	53.49%
Mauritania	2,959	1,535	51.88%
Morocco	63,170	32,229	51.02%
Senegal	6,684	3,104	46.44%
Pakistan	6,241	2,285	36.61%
Nigeria	5,005	1,586	31.69%

Source: Delegación del Gobierno para Extranjería e Inmigración, Ministerio del Interior. Table provided by a high-level official during an interview in Madrid, October 4, 2012.

While we cannot conclude from these results alone that they were informed by an attempt to prioritize Ibero-American and European immigrants over Moroccans, Algerians and sub-Saharan Africans, they also coincide with statements made in the early 2000s by the government delegate (*delegado del gobierno*) for immigration in the Ministry of the Interior, the president of the Forum for the Social Integration of Immigrants, as well as the Spanish ombudsman, all claiming that Spain should encourage culturally compatible immigration. I discuss some of these statements in the following section and offer an analysis of this framing of immigrants as cultural subjects whose ability to conduct themselves ethically cannot be separated from their cultural practices and beliefs. The section considers this problematization in relation with debates about the appropriate use of governing practices associated with the regularization and integration of irregular immigrants.

Cultural Subjects and “Problems of Integration”

Throughout the 1990s, integration is a word that appears in every policy document, but never results in any concrete programs. This changes at the turn of the century, with the debates related to the adoption of, and the many reforms to, the new Alien Act in 2000. The arrival of integration at the forefront of political discussion coincides with a period marked by an attempt by the Popular Party to capitalize on anti-immigrant sentiments to satisfy its electorate (2000-04). Interestingly, the politicization of immigration decreased after the election of a Socialist government in 2004. This is somewhat surprising since the

elections occurred just after the bombing of four trains by Islamist militants in 2004, and a survey commissioned by the government that year showed that 49.3% of respondents said that immigrants from the Arab world did not inspire trust and 70.7% considered that immigration in general increased delinquency “a lot or quite a bit” (Pérez Yruela and Desrues 2005:41, 71). It is only with the electoral campaign of 2008 that topics such as the use of various forms of Islamic veils and integration contracts for immigrants resurfaced in the public debates. But even integration plans that offered progressive views of immigration treated migrants as cultural subjects. This situation is clearly demonstrated by the struggles over the right to assess the degree of social and cultural integration of irregular migrants applying for regularization as well as arguments about integration, regardless of whether they are expressed in clearly xenophobic policies and discourses or in more progressive ones.

Integration as a Cultural Problem in the Early 2000s

As discussed above, the notion of cultural affinity first informed Spanish immigration policy through the establishment of groups that received preferential treatment. In the late 1990s, the notion also started to influence the debates about integration when some politicians claimed that cultural proximity had an impact on migrants’ ability to integrate. Just after the regularization process of 2000-01 that seemed to favour Latin Americans, it is Enrique Múgica, a Socialist and former minister of justice who had recently been appointed ombudsman of Spain by President Aznar, who first linked cultural affinity to

integration. He argued that Spain should prioritize immigration from Latin America for reasons of cultural affinity (El País 2000). Later, Enrique Fernández-Miranda, the delegate of the government for alien affairs and immigration who was described as “defending a very hard line” by two officials I interviewed, became the main figure making cultural practices a question of integration.⁴⁸

In a 2001 radio interview that created much controversy, Fernández-Miranda claimed that “In addition to a common language and culture, practicing Catholicism is an element that facilitates the integration of foreigners in Spain” (cited in El País 2001). This statement was made less than a month before the adoption of the Global Program on the Regulation and Coordination in Matters Related to Foreigners and Immigration (or GRECO Plan) that highlighted the importance of integration and linked it to freedom of religion. Later that year, Fernández-Miranda named Mikel Azurmendi president of the Forum on the Social Integration of Immigrants, a consultative body composed of NGOs, immigrant organizations, and various governmental representatives. This professor of anthropology in the Basque Country had just published a controversial book on the situation in El Ejido in which he defended his assimilationist views on integration.⁴⁹ In an appearance before the Senate Commission on Immigration, Azurmendi explained his position:

⁴⁸ Interviews, Madrid, September 26, 2002 and November 7, 2012.

⁴⁹ The incident of El Ejido is infamous: Upon learning that a local woman had been killed by a Moroccan who had mental health problems, thousands of residents of this town that relies heavily on migrant workers in agriculture started to protest. On February 5, 6 and 7, 2000, racist violence against Moroccan workers reached extreme proportions with protesters chasing and beating immigrants. At least 22 had to be taken to the hospital, and no one was charged.

The problem of immigration is very similar to that of a disintegration of civil society [as in the case of Nationalist violence in the Basque country], it needs to be reintegrated in a new way and it is necessary to reinsert people—the foreigners—associate them in a civic project. They are people that generally come from cultural horizons where human rights, pluralism and tolerance do not rule . . . I spent a month in the United States (because my Department sent me), seeing between the 123th street] and the north of Manhattan up to the Bronx, the black ghetto and I've been frightened by the books I've read. That's to say that I saw that multiculturalism is a gangrene for a democratic society.⁵⁰

He explained that he believes in assimilation, and considers that multiculturalism was the foundation of apartheid South Africa. While his comments were met with criticism from all senators who spoke during this session, they were nonetheless in sync with the views of the government delegate for immigration who named him. In his speech, Azurmendi explains that he was working on an integration plan for the province of Alicante when Fernández-Miranda came to recruit him for his ideas, a claim corroborated by the highest official on matters of immigration himself when he stated that he shared Azurmendi's view. In an intervention in the parliamentary Justice and Interior Commission where he was asked to clarify his position with regard to Azurmendi's comments, Fernández-Miranda, further elaborated this argument at length.

First, Fernández-Miranda presented multiculturalism as a Neo-Marxist conspiracy to attack the foundation of liberal societies, ignoring that despite some anti-liberal critiques (Parekh 2000), the most important theorists of multiculturalism at the time are strongly grounded in the liberal tradition (Kymlicka 1989, 1995; Modood 1998), including in its

⁵⁰ *Diario de Sesiones del Senado. Comisión especial sobre la inmigración y la extranjería. Legislature IV, N°236, February 18, 2002, pp. 235-236.*

conservative communitarian version (Taylor 1992). Citing Giovanni Sartori (2001),

Fernández-Miranda claimed:

[I will] say that we speak of principles, values, norms of living-together, norms embedded in our culture; and our social culture, our culture of living-together, our political culture are written in our Constitution and are written in identical manner in all other constitutions of European Union member states, and in all democratic societies, in all free societies, in all societies with liberal roots. And maybe here is the problem. Mr. Sartori claims in his book . . . that it is known that after the attempt of changing liberal societies through class struggles had failed, given that Marxism as an ideology has not been useful in its time, these Neo-Marxist or Post-Marxist professors from the United Kingdom have brought up the confrontation of cultures as an instrument to change liberal societies and go once again toward the paradise, well protected by, for instance, the Berlin wall, that have fallen on us all but some still haven't realized. (VII – 212/000847)

This rejection of Anglo-Saxon multiculturalism is thus presented as a defence of liberalism, but it is also clearly a defence of conservative values. Furthermore, this opposition to multiculturalism doubled with a support for a multi-ethnic *convivencia* (living-together) presented in other parts of his intervention shows similarities with the French republican position on cultural difference, Charles Taylor's (1992) view of multiculturalism, and more significantly, with the Quebec intercultural model (which has now been taken up by Catalan politicians).⁵¹ Indeed, while there is no clear rejection of cultural and racial difference, the defence of common civic values, majority culture and a conservative view of liberalism is tainted with obvious racist undertones. As Fernández-Miranda's speech reveals:

⁵¹ For a recent discussion of the concept of interculturalism, see Bouchard 2011, Taylor 2012 as well as Modood's (2014) commentary on these articles.

If we're talking about principles, about values and norms for living together, it has to be said that there are cultures that are simply irreconcilable . . . If our Constitution says that Spain is a social and democratic state governed by the rule of law, tell me how we can reconcile this definition of our Constitution and our culture with a theocratic state governed by clerics of various religions . . . How do we combine [the right to physical and moral integrity] with the death sentence? Because it has been abolished. And I'm not even talking about the stoning of women, not to keep talking about women . . . How do we combine it with physical punishment, with lashing? They are a part of these cultures. A representative of a Moroccan organization, when commenting on whether or not a dowry was paid in the case of the girl from Almeria, said: No, this in Morocco is perfectly regulated, it even has a name . . . This is not reconcilable with our culture. (VII – 212/000847)

The diatribe goes on much longer, regularly coming back to examples explicitly referring to Moroccans and to Islam, and claiming that these cultural practices are incompatible with Spanish cultural and civic values. These positions render explicit the type of problematizations through which integration is approached as a necessary dimension of immigration governance during this period. The debates that took place during the reform of the Alien Act in 2000 made it clear that while conceptions of human rights and the wellbeing of immigrants were central to the promotion of effective integration plans, the Popular Party government considered the issue differently. An official of the Socialist party told me that the Popular Party never cared about integration, but I disagree.⁵² Since 2000, the Popular Party has indeed been thoroughly concerned with problems of integration, but from the point of view of the “receiving society.” The main object of integration discourses and practices is not the immigrant population, but the nation. Indeed, the Popular Party's primary concern lies with maintaining and transmitting Spanish values, “assimilating” immigrants as Azurmendi put it, and rejecting any policy that may call into question traditional Spanish identity. The unacceptable behaviours

⁵² Interview, November 11, 2012.

listed by Azurmendi and Fernández-Miranda, most of which associated with negative stereotypes of Islam, show the importance of Muslims as historical others in the construction of this particular understanding of Spanish culture, and is representative of the way they are portrayed as a cultural threat to the constitutional order.

Inspired by the French *Contrat d'accueil et d'intégration* implemented progressively between 2003 and 2006, the Popular Party made the adoption of a similar contract an electoral engagement in the national elections of 2008 and 2011. The Popular Party did not win the 2008 elections but tried to pass its idea through a non-legislative proposal in Congress. According to the proposal (IX – 162/000070), the contract was to be voluntary but necessary for the first renovation of a work and residence permit, and would include the following engagement:

- a) The immigrant will commit to follow the norms, respect the constitutional principles and values of the Spaniards, learn the language, pay his/her taxes and deductions, work actively to integrate, and return to his/her country if for a time he/she lacks work or resources.
- b) The Spanish administration will commit to guarantee him/her the same rights and benefits as a Spaniard to the extent provided by the laws, to help him/her in his/her integration, respect his/her values and beliefs—as long as they are not contrary to Spanish laws, human rights and equality enshrined in our Constitution—, facilitate the learning of our language, help him/her find work, and collaborate in his/her return if he/she lacks work or resources.

The logic informing the desire to impose this contract is telling. The congressman who presented the proposal to Congress clearly defended it as a tool to govern immigrants as cultural subjects, and made the argument that Latin American immigrants are the least problematic of all:

Many of them, almost half from Ibero-America, have the good fortune of knowing and sharing our language, our values, our customs, even our norms and laws, which without a doubt contribute to their integration, but many others no. Therefore, it is necessary that the Administration develop measures that favours the integration of these people into our society and allow them to learn our language and know our institutions, norms, customs and values, because integration will be easier if based on the mutual respect and understanding between foreign citizens and Spanish citizens. Spain is an open country, but it is a country that respects the democratic and constitutional rights and freedoms that we have obtained over time and that now are social gains that we have assimilated, that are a part of our system and our cultural and normative heritage, and that we should not abandon in the name of an inane multiculturalism that appears sometimes in support of those who promote anti-democratic values (IX – 162/000070, debate in *Diario de Sesiones*).

Seemingly, Ibero-American immigrants could not possibly be posing problems since they share not only the language and the culture but also the values and norms of Spanish society. During the election campaign, the head of the Popular Party and former minister of the interior Mariano Rajoy had mentioned that his contract would help combat genital mutilation and would include, among other customs, an obligation to maintain good hygiene (Bárbulo and Guarriga 2008; El País 2008). The referent objects of this discourse appear to be African and Muslim immigrants who—in opposition to the Ibero-Americans who allegedly share similar values—are clearly framed as barbaric. The dichotomy of good and bad immigrants clearly falls on this cultural divide in the proposal presented to Congress. The Popular Party could not gather the support needed from the rest of the opposition for their proposal to be adopted. Indeed, the vast majority of the interventions from the opposition denounced these essentialist claims as simplistic and dangerous, and this type of overtly xenophobic discourse in mainstream politics has so far generally been limited to the Popular Party.

Just before the Spanish elections, the Popular Party of Catalonia had presented a similar project—this time a bill—in the Catalan Parliament, a bill that has also been rejected.⁵³ This time Islam was named directly:

The principal question is: Do we have problems of integration in our house? And the answer is: yes . . . We have problems when we see burkas on our streets that harm and violate the dignity and freedom of women . . . We have problems when the Wikileaks papers, the famous Wikileaks papers, said that that our house is a nest of radical Islamism . . .⁵⁴

A law on integration that included a “commitment to integrate” had also been approved in the Parliament of the Valencian Community in 2008, but without the repressive dimension that the Popular Party’s proposal in Catalonia and in the Spanish Congress had (*Ley 15/2008*).

Problems of Integration and the Impossibility of a Muslim Spanish Subject

While the proposals put forth by the Popular Party were never adopted and never received support from the other parties, they should not be considered insignificant or anecdotal. The Popular Party is not an extreme-right party like the French *Front National*, it has run the country from 1996 to 2004 and again since 2011, and has otherwise been the main opposition party since 1983. These interventions about an integration contract also occurred during a decade that saw President Aznar demand that a reference to Christian heritage be integrated in the text of the European Constitution and explain in

⁵³ *Proposició de llei del contracte d'integració de les persones nouvingudes a Catalunya (202-00027/09)*, published in *Butlletí oficial del Parlament de Catalunya*, N° 37, March 15, 2011.

⁵⁴ *Diari de Sessions del Parlament de Catalunya*, Series P, N° 14, May 4, 2011, p. 51-52.

Washington how Spanish national identity was recovered through the expulsion of the Moors. Furthermore, since 2010, at least 30 Catalan municipalities have voted on motions to ban the burka, motions that were adopted in 17 of them (Baquero 2014), while the debate over whether or not Muslim girls should be allowed to wear the hijab at school in the Community of Madrid led many elected officials to take position for and against a prohibition (El País 2010). In a country where many old Catholic women cover their head for traditional and religious reasons, the focus on hijab appears particularly hypocritical. These policies, even when not adopted or rarely enforced, are nonetheless effective at a performative level and contribute to framing Spanish Muslims as impossible subjects.⁵⁵

The historical narrative that is constitutive of Spanish identity now recognizes the contribution and presence of Islam in the past, but not as Spanish. The jurist and legal scholar Javier de Lucas told me that he has been asking for years during talks that his audience name some of the most important Spanish scholars that have made great contributions to humanity. Not surprisingly, he told me, people do not think of Ibn Rushd (Averroes) because he is not considered to be Spanish.⁵⁶ Just as medieval Spain is understood as non-European because it was mostly Muslim (Asad 2000), so is *Al-Andalus* viewed as non-Spanish. Cultural influences are acknowledged, but only as traces.⁵⁷ Conversely, in the common historical narrative that Aznar champions, Catholic kingdoms

⁵⁵ For a detailed analysis of the Spanish take on the *affaire du foulard*, the protests against mosques in Catalan cities, and the revival of “Moors and Christians” festivals reenacting and reinterpreting the historical relationships between the two communities, see Zapata-Barerro 2006, 2011. For a study of the framing of Muslims as threats in the enclave city of Ceuta, see Moffette 2010, 2013.

⁵⁶ Personal communication, Valencia, November 12, 2012.

⁵⁷ See also Hentsch [1989] 1992, Kabbani 1989, Labanyi 2002.

were already essentially Spanish. Similarly, there is a broad recognition of the contribution of Moroccan immigrants to contemporary Spain, but they are rarely considered as Spaniards. The two processes are related. As Sarah Ahmed (2000) explains:

The encounters we might yet have with other others hence surprise the subject, but they also *reopen the prior histories of encounter that violate and fix others in regimes of difference* . . . The particular encounters hence always carries *traces* of those broader relationships. Differences, as markers of power, are not determined in the 'space' of the particular or the general, but in the very determination of their historical relation (a determination that is never final or complete, as it involves strange encounters) (P.8-9).

In a similar vein, Jo Labanyi (2002), drawing from Jacques Derrida, has argued that theorizing Spanish culture means engaging with ghosts, highlighting the importance of a past that is haunting the present and contributes to contemporary identity formation. This double bind of Muslim absence and presence contributes to the difficulty in considering Islam as constitutive of Spanishness in a way that is not articulated around the purging of the Islamic culture(s) of Moors. It is in this sense that we can consider Spanish Muslims as impossible subjects, borrowing from Mae M. Ngai's (2004) analysis of the ways former colonial subjects become undesirable aliens through a historical process in which conquest, racialization, illegalization, and nation-building are coextensive.

Governing Cultural Subjects and Building the Nation(s)

Thus far, I have mapped out some of the traces of this process and demonstrated that Maurophobia and *hispanidad* played a role in the constitution of Spanish identity and still inform the treatment of immigrants as cultural subjects to this day. The governing of

immigrants as cultural subjects is also evident in policies that aim to foster social and cultural inclusion.

Indeed, it appears that the preferential treatment for Ibero-Americans at the institutional level has now diminished, or at least has become more informal than in the 1990s and the early 2000s. Despite the debates about the prohibition of various types of Muslim veils and the efforts by the Popular Party to impose integration contracts, there has been strong opposition from policy-makers and politicians. With regard to immigration policy, the preference is now only formally recognized in the Civil Code in relation to access to citizenship. The framing and governing of immigrants as cultural subjects continues but, at least officially, the tendency is toward a decoupling of adaptability and origin. The governing of irregular migrants as cultural subjects is nonetheless still evident in the cultural criteria used to assess integration when irregular migrants apply for regularization.

Indeed, we can consider various measures involved in regularization programs as a form of what Barbara Cruikshank (1999) calls citizenship technologies, that is, technologies “that endeavour to reinsert the excluded into circuits of responsible self-management, to reconstitute them through activating their capacity for autonomous citizenship” (Inda 2006:19). These involve a mix of pedagogical and assessment tools that aim to contribute to subject formation. Indeed, as Aihwa Ong (1996) explains, we need to consider citizenship as “a cultural process of ‘subject-ification,’ in the Foucauldian sense of

self-making and being-made by power relations that produce consent through schemes of surveillance, discipline, control, and administration” (p.737). Despite the tone of Ong’s representation, it is important to note that this process is also organized around a discourse of help, self-help, and empowerment (Cruikshank 1999; Rimke 2000).

Indeed, since 2000, the Alien Act includes the possibility for irregular migrants to achieve regularization based on their “rootedness” (*arraigo*) in Spanish society (*LO 8/2000*; Art. 31.4.) The 2004 regulations (*RD 2393/2004*; Art. 45-46) set the criteria for this type of regularization for the first time. Three forms currently exist: *arraigo laboral* (seldom used because it implies denouncing the employer who has hired the migrant irregularly), *arraigo familiar* (only available to descendants of Spaniards), and *arraigo social* (based on family ties or an integration report). Of these, the most popular form is the *arraigo social*. In its current version, the regulations stipulate that regularization through *arraigo social* is accessible to “foreigners who can demonstrate a continuous stay in Spain for a period of at least three years,” provided that they “do not have a criminal record in Spain, in their country of origin, or in any country where they lived within the last five years,” that they have a “work contract signed by the worker and employer at the moment of the request and whose duration should not be for less than a year,” that they can prove “family relations with foreigners with residence permits” (husband, wife, child,

mother, father) or “present a report of *social insertion* provided by the autonomous community where they reside.”⁵⁸

The report of social insertion, though not a contract per se, is a process aimed at verifying various criteria of integration. It is produced by municipal civil servants and, in some cases, reviewed and formally approved at the level of the autonomous community before being processed by the Spanish Ministry of the Interior. As I analyze in detail in Chapter 7, the ability to determine and assess the criteria of desirability is the object of power struggles between the various levels of government. At play in these struggles is the capacity to determine to what extent irregular migrants have to speak regional languages to be able to access regularization.⁵⁹

Officially, cultural criteria of desirability have been decoupled from questions of ethnic preference: throughout the country, the focus is on civic values, a commitment to Spanish laws, and the knowledge of one or more of the official languages of the area where one lives. The question remains to what extent does ethnic origin play a role when frontline municipal civil servants evaluate an irregular migrant’s commitment to civic values, participation in social life and languages ability. Officials I interviewed at the General Directorate of Immigration in Catalonia told me they consider that Latin Americans are not the best candidates for Catalonia because they already speak Spanish

⁵⁸ The conditions for the *arraigo social* are described in Title V, Chapter I, Art. 124.1 of the latest Regulations of the Alien Act (*RD 557/2011*).

⁵⁹ Interviews, Madrid September 26, 2012 and Barcelona, October 1st, 2012.

(Castilian) and are thus less likely to learn Catalan.⁶⁰ Since the evaluation of integration assesses current language knowledge and past efforts to learn it, as demonstrated by the courses taken, there is no evidence that this assumption about Latin Americans' lack of desire to learn Catalan affects their ability to achieve regularization in Catalonia, but it does suggest that cultural background is still relevant. In other parts of the country where Castilian is the only official language, being Latin American provides a clear advantage since knowledge of Spanish is considered a key indicator of integration. More revealing, however, is the high value given to the ability to set the criteria of desirability and the tug-of-war between various levels of government for the control of this competence. This struggle—further analyzed in Chapter 7—shows that the governing of irregular migrants as cultural subjects is viewed as a part of competing projects of nation-building.

However, nation-building and the national management of territories and populations do not rely only on what I called “culturalizing logics.” Indeed, the capacity of the state—or regional government—to control a territory (understood as national), protect a culture (also framed as national), and regulate a labour market (interestingly imagined as national as well) are central components of the national management of immigration (Hage [1999] 2000; Sharma 2006). If nationalism is not only an idea about who belongs in the nation, but also a set of practices that aims to govern various spaces deemed national, it ensues that the governing of migrants as cultural subjects is not the only set of logics and practices addressing the place of irregular migrants within the

⁶⁰ Two interviews, Barcelona, October 1st, 2012.

nation(s). This cultural dimension—informed as it is by a long process of identity formation—is central to understanding the positioning of irregular migrants in the national imaginary but it is not the only one. In the following chapter, I continue my exploration of the three broad logics influencing Spanish immigration policy-making with an analysis of “labouralization.”

Chapter 5

Labouralization: Flows, Workers, and the Labour Market

In 2009, Secretary of State for Immigration and Emigration Consuelo Rumí wrote: “We need balanced public strategies that, at minimum, combine the fight against clandestine flows, the ordering of arrivals according to the capacity of absorption of the labour market, and the promotion of integration in the societies of destination” (Rumí 2009:7). This statement, combining concerns for security, culture, and the labour market, was published in an issue of the *Journal of the Ministry of Labour and Immigration* reviewing immigration policies of the Eighth Legislature (2004-08), a legislature celebrated for having achieved a “labouralization” of immigration policies. Broadly defined, the term *laboralización* is often used to describe the process that leads to the management of a sector of employment according to the logics and laws that regulate the labour market. For instance, the labouralization of public sector jobs refers to their privatization. According to Pablo Santolaya’s (2009) analysis of the Eighth Legislature in the same issue

of this journal, the labouralization of immigration governance can be seen at various levels: (1) institutionally, the responsibility for immigration is transferred from the Ministry of the Interior to the Ministry of Labour and Social Affairs, accompanied by greater involvement of trade unions and employers' associations in the policy-making process; (2) at the level of policy, more complex mechanisms are developed to assess the needs of the national labour market and recruit migrant workers based on this assessment; and (3) symbolically, there is a shift in discourse that tends to frame immigrants as workers entitled to rights.

According to a high-level official and close collaborator of Consuelo Rumí, all policy initiatives related to migration in the 2004-08 period—even those more closely linked to integration, policing, or co-operation with autonomous communities or third countries—were understood as contributing to this general project of labouralization. He insisted: “What I really want to emphasize is that there was a necessity to achieve a labouralization of immigration. [The various programs] were not isolated steps . . . the idea that brought all our policies together was the concept of labouralization.” He also argued that this logic was absolutely novel: “All of this had a unity that was labouralization, and this didn't exist before; until then, there were only contingents [of migrant workers] that provided businesspeople with sporadic and urgent solutions, no real integration of immigration with labour market dynamics.”⁶¹

⁶¹ Interview, Madrid, November 7, 2012.

While it is true that the Eighth Legislature (2004-08) marked a shift away from the populist, anti-immigrant discourse being put forth by the Popular Party since 2000 and saw the development of policy tools and integration programs that did not exist before, the change was not as important as insisted upon by this Socialist official. Nor was the attempt to manage irregular migration according to the needs of the labour market new. As analyzed in Chapter 3, this objective was a central dimension of the 1990 report on migration and the policies that ensued over the next decade. Further, the heightened focus on the labour market in the mid-2000s did not represent a radical shift from cultural- and security-based preoccupations. Once again, the logics are more intertwined than it appears.

The Dream of Labouralizing and Steering Migration Flows

In industrialized countries, the association of immigration with work is socially and legally anchored. Indeed, the need for labour is often the primary criterion for the acceptance of both permanent and temporary immigrants. In this model, family reunification appears as a corollary of this primary function, and entry based on asylum is seen as an exceptional measure to alleviate suffering or respond to international obligations. In Spain, like elsewhere, even before there was any immigration policy in place, migrants were attracted by the availability of work. There has always been a clear, if not always direct, relationship between the two variables (Cachón Rodríguez 2009). But in Spain in the 1980s and 1990s, the capacity to steer migration flows in a way that was optimal for the

economy was seen as a feature of developed countries, not of a country still affected by decades of dictatorship like Spain. In early debates on immigration, France, Germany, Canada, and the United States are often mentioned as examples of respectable, developed countries that learned how to harness the potential of immigration to develop their economy. This ability to steer migration flows according to economic needs was seen as a symbol of modern statehood, and Spanish politicians dreamed of achieving it.

To a great extent, the labouralizing logic resonates strongly with the naturalism that Michel Foucault ([2004] 2007, [2004] 2008) associates with liberalism. It is based on the idea that if one can understand the natural processes that create various phenomena, then one can intervene to influence their progression. While the dream of labouralizing migration flows involves a fantasy of control, it is not primarily a project for exerting control. The problem is framed, time and again, as a problem of knowledge. The inability to understand the needs of the labour market and the push and pull factors driving labour migration are seen to prevent the government from being able to effectively manage migration flows. This preoccupation echoes Foucault's ([2004] 2008) analysis of the naturalist logic adopted by the Physiocrats, who claimed that the government should

arm its politics with a precise, continuous, clear and distinct knowledge of what is taking place in society, in the market, and in the economic circuits, so that the limitation of its power is not given by respect for the freedom of individuals, but simply by the evidence of economic analysis which it knows has to be respected. It is limited by evidence, not by the freedom of individuals (P.62).

Policy-makers considered that the challenge was to understand both the labour market and migration patterns, and to try to make them coincide. On the one hand, they tried to manage migration flows to support the labour market and, on the other hand, they wanted to utilize job offers as a means to regulate economic migration. This second dimension was expressed clearly by a high-level civil servant involved in developing the various generations of annual migrant worker contingents. He explained:

The basic necessary condition to organize migration is that there be available jobs. If they don't exist, there is nothing that you can do, you have nothing to offer and you can't channel the flows. People use their own networks, and it's not good. So [a] condition is that employers get involved and reserve some jobs for us, so that we can use them to organize migration.⁶²

This management of economic migration is linked to the governing of the overall population within a territory, and migration becomes an object of government only inasmuch as it is seen as a variable in this broader situation. The desire to labouralize migration flows comes from a concern with limiting the negative impact they could have on the population as a whole, while optimizing their positive economic contributions. It is tied to an effort to intervene in the division of labour, as well as to contribute to the multiplication of labour (Mezzadra and Neilson 2013). This desire to steer migration flows in a way that would be optimal to the economy is what guided efforts to develop a program of temporary work permits in the 1990s.

⁶² Interview, Madrid, September 26, 2012.

The Quota System of the 1990s

This desire to labouralize migration flows became central to the 1990 report on immigration and the first policy plan put forth in 1991. Indeed, the report insisted on the importance of “protect[ing] the national labour market in the face of the increasing presence of foreign job-seekers, given the high level of unemployment” (p. 10) and listed the control of “clandestine work” as one of the key policy axes. This led to the elaboration of a system of yearly quota for the hiring of foreign workers mentioned briefly in the previous chapter. A high-level official who was instrumental in the development of this system and in the negotiation of the yearly quota throughout the 1990s explained the logic that informed this first attempt at a policy focusing on labouralizing migration flows:

In our view, and the view of people in successive governments, the real border is located in the business. When there is a job that workers can access without being in a regular situation, it produces this flow. Right? This means that someone obtains a job outside the law, and this happens with any aspect of our daily lives . . . With traffic control, people go too fast, if you don't try to catch anyone, they keep going too fast. You can't prevent all speeding, but you can find mechanism to reduce it. In this way, there is no difference with any other type of regulation. Our idea was that we had to find a hole, a way, so that people who are outside of the country and want to come work in Spain could do so legally. That these businesses that are willing to hire, that they are the border really, that they leave at least a part to us—as small as it may be—so that people who want to come work wouldn't have to go through family networks, trafficking networks, or through the risks that [irregular] migration involves. This is really what we wanted.⁶³

This quota program, also known as a “system of contingents” (*sistema* or *programa de contingentes*), was based on negotiation between employers' associations, trade unions, politicians, and civil servants, in which the interests of migrant workers counted for little.

⁶³ Interview, Madrid, September 26, 2012. The following quotes are also from this interview.

For the bureaucrats involved, to govern meant having the capacity to regulate migration flows based on the needs of the labour market, and this could only be achieved through negotiation with institutional actors who had vested interests in the acceptable level of yearly quotas. Officially, this regime was described as a program of yearly contingents of migrant workers, but all actors involved used the term quota, because it really was centred in establishing quotas for each sector of the economy and each country of origin. They were in effect asking employers to commit to hiring some of their workers regularly through this program. As explained further by the senior official quoted above, “We had to struggle with a series of factors, fundamentally with businesses that want[ed] to count with an important lubricant, that want[ed] to have more flexibility, that [were] not ready to sacrifice even a small part of their profit to organize migration flows.” At the time, NGOs and trade unions were also involved. Before 2000, the system allowed irregular migrant workers in Spain to get their employer to request a permit for them, and this gave an important role to NGOs whose missions were to support these immigrants. According to this same official:

NGOs were also part of the balance, and the client that interested them most was the one that was already here irregularly. The client who was in America or Morocco was not on their mind. So there were a series of interests, including of businesses, irregular migrants, NGOs, unions, which foreclose the willingness to facilitate the orderly arrival to Spain of those who want[ed] to work with a permit.

In effect, the negotiated system of quotas led to a certain level of agreement between government officials, trade unions, and employer associations, a situation that prompted some analysts to describe them as “strange bedfellows” (Watts 1998), but the program

failed in its ability to manage labour migration flows. Indeed, in an intervention in the Congress Commission on Social Policy and Employment in 1997, the general secretary of social affairs acknowledged that on average “over the years, only 10 percent of those who solicit a work permit [through this system] come from outside” (VI – 213/000198). As I explain in Chapter 7, however, such a policy failure can be productive in the sense that it maintains the precarious situation of migrant workers.

Table 8: Quotas Announced During the 1993-1999 Contingent Program

Year	Agriculture	Construction	Domestic Service	Other Service	Not Specified	Total
1993	10,000	1,110	6,000	3,500		20,600
1994	5,000	1,000	11,000	3,600		20,600
Extra					17,000	17,000
1995	5,500		2,500			8,000
1996	No contingent due to a regularization process					0
1997	5,820	600	5,620	2,940		15,000
Extra					9,690	9,690
1998	9,154	1,069	16,836		941	28,000
1999					30,000	30,000

Source: Annual contingent agreements and instructions, published in the *Boletín Oficial del Estado*. See BOE 1993, N° 144; BOE 1994, N° 180; BOE 1995, N° 141; BOE 1997, N° 31 and 247; BOE 1998, N° 63; BOE 1999, N° 14.

Beyond problems related to the negotiation process, various elected and appointed officials I interviewed pointed to a lack of adequate knowledge as a limit to effective governance.⁶⁴ The basis for deciding on the quota appeared anything but scientific. The first quota was established at 20,600 for 1993, but only 5,220 people applied. Realizing

⁶⁴ Interviews, Madrid, September 26, November 11, and October 10, 2012; Barcelona, October 2, 2012.

that the applications from migrant workers were concentrated in the domestic service sector, and much less so in agriculture, officials decided to readjust the proportions but keep the total quota at 20,600 for the following year. The national origin of workers also changed. In 1993, preference was explicitly given to migrants from countries with which Spain had migration agreements, as well as to those who had a family member legally residing in Spain, while the quota became more specific in 1994: Ibero-Americans, Filipinos, and North Africans, as well as those with family members in Spain, were preferred. That year, the estimates were not better: The number of applications was almost double the total set quota and, in June 1995, officials announced that, instead of opening a 1995 program, it would retroactively accept an extra 17,000 permits, in order to process the backlog of applications made in 1994. Since almost half of the 1994 contingent was going to be in effect in 1995, the 1995 program only issued 8,000 new permits.

Cultural, racial and gender preferences also played a role in the 1995 program, in an attempt to reflect the biases already present in patterns of employment, demonstrating how culturalizing and labouralizing logics intersect. Types of work were directly associated with nationalities: Most of the 2,500 permits for domestic service were pre-assigned to Peruvians, Dominicans, and Filipinas (mostly women who could speak Spanish), while 4,500 of the 5,500 permits in agriculture were reserved for Moroccans who had traditionally worked in the fields of southern Spain. With the shift in government in 1996, a new regularization process was launched and since the quotas were mainly used to

regularize irregular migrants, no further quota was deemed necessary for that year. When new openings were announced in 1997, the government decided to stop legislating the type of work that should be taken by migrants of specific origins, a strategy that had attracted much criticism from advocates claiming that the practice was discriminatory. Explaining the logic that led to the establishment of a 15,000-permit quota for 1997, the general secretary of social affairs demonstrated, once more, that the methodology was weak:

This year the criterion of the Government has been to establish the contingent at 15,000. The reason, which appears sensible, is that if in 1995 a quota of 8,000 was established, then taking into account that we are in a regularization process and, on the other hand, [taking into account] the decision for the 1995 quota, the number of 15,000 appears right or, at least, exact and rigorous in the sense that it reflects the needs of the market. As the year passes, we can study what modifications would be necessary [through various governmental commissions]. (IV – 213/000198)

Not surprisingly, the numbers needed to be adjusted again. In November, the government announced that “From the study of the [job] offers submitted and the existing data on the evolution of the labour market, it is deduced that the number of authorizations anticipated for 1997 are insufficient if we are to continue . . . with the progressive channelling of the unfilled job offers.”⁶⁵ The quota of 15,000 was thus extended to a total of 24,690. In 1998 and 1999, the established quota finally seemed to match the demand for permits, with numbers of permits actually issued slightly under the 28,000 and 30,000

⁶⁵ *Resolución de 14 de noviembre de 1997, de la Subsecretaría, por la que se dispone la publicación del Acuerdo del Consejo de Ministros de 7 de noviembre de 1997 por el que se adecua el contingente de autorizaciones para el empleo de ciudadanos extranjeros no comunitarios en el año 1997, fijado en el Acuerdo del Consejo de Ministros de 24 de enero de 1997.* Published in *Boletín oficial del Estado*, N° 274, November 15, 1997, p. 33606.

quotas. Despite better results at the end of the program, most migrant workers continued to work without permits and those who obtained a permit were generally already living in Spain irregularly. We thus have to conclude that the dream of channelling labour migration flows that emerged in the 1980s could not be fulfilled through this program in the 1990s.⁶⁶

I have mentioned that policy-makers attempted to understand the patterns and characteristics of the labour market on the one hand, and the dynamics of labour migration flows on the other, and tried to make them coincide. In the 1990s, the primary object to be governed appeared to be the labour market, and programs of work permits for migrant workers were a way to provide a legal work force to employers. This was not the only reason, but it was clearly a central one. In 1999-2000, policy-makers reflecting upon their inability to successfully channel migration flows during the 1990s started to reverse this logic. The question became how to use job offers—that is, a structural demand for workers in the labour market—as a means to regulate and steer labour migration. To understand this shift in the ways policy-makers thought about the relation between migration and the labour market after 2000, we first need to consider the evolution in the ways policy-makers engaged with the notion of a “national labour situation.”

⁶⁶ This is also the conclusion reached by various policy-makers I talked to (Interviews: Madrid, September 26; Madrid, September 29; Madrid, October 24; and Madrid, November 7, 2012).

Managing a Labour Market Constructed as a National Object

As Foucault explained, liberalism is based on an economy of power aimed at balancing interests and is premised upon the idea that, to ensure freedom, various strategies of security need to be deployed to reduce the dangers inherent to it. Foucault ([2004] 2008) states:

Liberalism turns into a mechanism continually having to arbitrate between the freedom and security of individuals by reference to this notion of danger. Basically, if on one side . . . liberalism is an art of government that fundamentally deals with interests, it cannot do this—and this is the other side of the coin—without at the same time managing the dangers and mechanisms of security/freedom, the interplay of security/freedom which must ensure that individuals or the community have the least exposure to danger (P.66).

In the context of labour migration, the referent object of these security mechanisms is what is often called the “national labour market;” that is, a labour market which is framed as national. The labouralizing logics and practices are primarily oriented toward regulating the input of workers into a labour market always imagined as already constituted, and therefore having a limited capacity of incorporation. Thus conceived, the “national labour market” is the product of a process of enclosure, of a nationalization of spaces, subjects, and markets. Since, as Nandita Sharma (2006) argues, “The common sensical character of notions of national entitlement is found in the idea that labour markets are naturally national” (p.144), it is essential to interrogate this notion, and inquire into the different roles it plays at different moments in labour migration governance.

Taking the “National Labour Situation” into Account

While the Alien Act of 1985 was implicitly taking the labour market into consideration, it is in the 1986 Regulation of the Alien Act (*RD 1986/119*) that a reference to the “national labour situation” was included. In the 1986 and 1996 regulations, however, the consideration of the “national labour situation” appeared primarily as a corollary to the logic of cultural preference based on origins. It simply granted the government the power to refuse any work permit to a foreigner “if the national situation recommends it” (Art. 37.4.a), a strange formulation that seems to consider the labour market as an actor itself. In fact, the regulation identified “the labour authorities” as those responsible for considering the labour situation, but provided little information about how any assessment should be done.

Later, with the increasing importance of the labourizing logic that considers the labour market a natural entity, the notion that policy-makers need to understand the empirical reality of the “national labour situation” in order to manage immigration became more prominent. The very notion of quotas developed through the 1990s guest worker program was premised upon the idea that a threshold of tolerance exists beyond which a positive input of immigrants becomes negative, but the yearly quota was seen as more representative of the balance of interests between stakeholders, rather than as a scientific calculation based on the objective reality of the market. In 2001, the logic took a slightly different form in the section of the Plan GRECO concerned with “Regulating

Migration Flows to Guarantee a [Positive] Coexistence in Spanish Society.” This policy document states:

But we cannot forget that Spain has some of its own citizens without work and 2,000,000 emigrants many of whom want to return to work in their country, [and] a limited capacity to welcome [immigrants] that must be based on a strict calculation of the jobs that it can offer to foreigners who migrate for economic reasons seeking among us opportunities that they do not find in their own country. Precisely because we have to respond with jobs to the demand of these persons, clandestine immigration and illegal stays among us of these people cannot be permitted.⁶⁷

This document, published during a period in which immigration policies and the quota system were being revamped, clearly poses what the French right calls *préférence nationale* (Le Gallou and Le Club de l’Horloge 1985) as the basic principle from which any immigration policy should unfold. This notion is often invoked in the case of cultural integration, but it reappears here under the guise of mathematical objectivity. This principle is not new, but as the notion of the “national labour situation” becomes a central component of the legal regulation of labour migration in 2000, it contributes to the naturalization of the national character of the labour market.

Since the first reform of the Alien Act in 2000 (*LOE 4/2000*, and later in all the versions of the *LOE 8/2000*), the law clearly states that, in relation to immigration policies, all levels of government “will base the exercise of their competences related to immigration in line with [among other principles] the ordering of labour migration flows in accordance with the necessities of the national labour situation” (*LOE 8/2000*; Art. 2 bis).

⁶⁷ *Plan Global de Regulación y Coordinación de la Extranjería y la Inmigración (GRECO)*; published in *Boletín Oficial del Estado*, N° 101, April 27, 2001, p. 15327.

Article 38.2 of the Alien Act explains how this national labour situation will be defined and assessed. It states:

The national labour situation will be determined by the Public Service of State Employment [*Servicio Público de Empleo Estatal*] with the information provided by the autonomous communities and with the information derived from official statistical indicators and will be reflected in the Catalogue of Occupations Hard to Fill [*Catálogo de Ocupaciones de Difícil Cobertura*]. This catalogue will contain a list of jobs that could potentially be covered through the hiring of foreign workers and will be approved through consultation with the Tripartite Labour Commission on Immigration.

Just as nations are imagined communities resulting from historical processes of identity building (Anderson [1983] 2006), subjects and spaces are also not naturally national (Hage [1999] 2000; Sharma 2006, 2008; Thobani 2007). Ghassan Hage ([1999] 2000) explains that the assessment of the number of immigrants as “too many” or “just enough” based on the idea of a threshold always presupposes a space imagined as limited and thus relies on “categories of spatial management” (p.38). The spatial dimension of immigration governing, especially as it relates to the circulation of flows and the management of populations, is well analyzed by Foucault ([2004] 2007, [2004] 2008). But while it is important to decentre the state in analyses of immigration governing, we should not be oblivious to the fact that the spaces and populations that are being governed are often understood primarily, albeit not exclusively, as national.

Indeed, it is through the nationalization of space that subjects who consider themselves nationals feel entitled to an opinion about the types and numbers of migrants that can circulate through this space. Hage ([1999] 2000) explains that the process of

expressing any opinion about the kinds and numbers of immigrants that are desirable “assume[s], first, an image of a national space; secondly, an image of the nationalist himself or herself as master of this national space and, thirdly, an image of the ‘ethnic/racial other’ as a mere object within this space” (p.28). This principle of “empowered spatiality,” he claims, applies to the good and tolerant nationalists, as much as to the evil, intolerant ones. While they may be in strong disagreement over where to place the threshold of tolerance and on how to assess the benefits of immigration, all nationalists assume that, as nationals, they have a right to say how the space framed as national should be managed. Drawing from Hage, Sharma (2006) extends this analysis to inquire into the logics of inclusion and exclusion at play in what she calls “nationalized labour markets.” Sharma (2006) explains:

Nationalist ideological practices contribute greatly to the creation and restructuring of national labour markets and the differential categorization of various groups of workers within the state . . . The reproduction of labour markets *as national* is an important part of nation-building exercises that assists in the reproduction of not only the state but also global capitalism. Nationalized labour markets, then, are as much *ideological* boundaries between different ‘imagined communities’ of people as they are *material* boundaries between different physical spaces controlled by national states (P.49).

The nationalization of space and the labour market does not, however, foreclose the possibility of their appropriation at other levels. As the territorial dimension of jurisdictions clearly illustrate, identity-based captures of space are often contested and multi-layered. Indeed, while the referent object of labour migration regulation in Spain has always been the nationalized labour market, considered at the central level of government as the Spanish labour market, regional and local territories and markets have

always been taken into consideration. For instance, in the 1990s, the countrywide quota was presented as a total of the amalgamated quotas of each autonomous community. Continuing in this tradition, the “national labour situation,” as defined in the *LOE 4/2000*, is constructed as an amalgamation of regional and local labour market needs. In fact, as demonstrated by the cases of mayors who claim the right to restrict or facilitate the settlement of irregular migrants on their town’s territory, the scale of the territory imagined as one’s own can vary dramatically.⁶⁸

However, the importance of the concept of a “national labour situation” should not be underestimated. Its relevance is not due to the novelty of considering the labour market as a national entity, but rather is derived from the efforts made to circumscribe this object and analyze its dynamics and characteristics as a means to govern labour migration flows. While in previous years the objective had been to intervene at the level of migration to have an impact on the labour market, now the idea is that the labour market itself can be the dependant variable to help steer labour migration. As a close collaborator of the Socialist secretary of state for immigration and emigration Consuelo Rumi (2004-10) told me, “When we got to power in 2004, immediately, the first problem that we had to face was the problem of irregularity. And we understood that what attracts irregular immigration is the existence of irregular hiring, and this is where we needed to intervene . . . we wanted to be able to negotiate with the trade unions and the business

⁶⁸ Some of these cases are discussed in Chapter 7.

associations so that we could have an impact on irregular migration.”⁶⁹ During the interview, he repeatedly expressed his conviction that understanding the national labour situation and creating openings in certain sectors in collaboration with unions and employers associations were the only ways the government could actively “channel migration flows.”

New Quotas After 2000

Despite the Socialists’ insistence that 2004 marked the beginning of the true labourization of immigration, the process had in fact started earlier. A shift in policy-making already emerged around the year 2000. According to the previously cited high-level official, who negotiated the quotas in the 1990s and contributed to the transition to the new quota system developed in the early 2000s, the process started even before this policy instrument was modified by the reform of the Alien Act in 2000. According to this official, the first attempt at using the contingent, not to regularize irregular migrants but to steer labour migration flows, occurred in 1999. He explained:

In reality, this was our bet that we could work with businessmen, make sure that they commit a number of jobs to us, and that we could use these as a way to organize the migration. It worked until the crisis, because without jobs you can’t steer migration. So the bet we made, I remember of the first meetings [in 1999], in Andalusia, with business associations, was to say: “Don’t worry about the number of work permits, you will get as many as you want, we only ask one thing: That you tell us what are the needs that you foresee, that you commit to order [*encuadrar*] immigration, and that you provide, in the case of agriculture, decent housing.” Just like they did with us in other countries [in the 1970s and 1980s].⁷⁰

⁶⁹ Interview, Madrid, November 7, 2012.

⁷⁰ Interview, Madrid, September 26, 2012.

When I told him that this looked exactly like the contingent system that was used throughout the 1990s, he replied that they decided to include a clause that limited the recruitment to those outside the country:

That was precisely the idea, that it could not be used to regularize irregular migrants. We had the experience of managing contingents like this. The first contingents were, despite our best intentions, saturated by irregular immigrants because it was a nominative system with workers presenting their requests directly to employers. And NGOs got involved, various lobbies, etc. So what we do now for the contingent is that those responsible say: "If you have needs, tell me for how many, and give me [job] offers, but you have to give me an open offer. You can't give me names, identities. What I can guarantee is a mechanism that ensures that the people that come here will be ready, and you will even do the selection, but you will select them outside the country, with the intervention of the country of origin, with the intervention of the Spanish administration, and therefore these people that will come won't be people that had to pay bribes, and they'll come at low cost [to them] because you'll pay for the trip. And that's how it worked, mainly for seasonal work.

This system is precisely what became law in 2000. Article 37 of the *LOE 4/2000* stated that the government was to establish a contingent every year, a formulation that seemed to leave little room for discretion in the decision whether or not to use this policy instrument, and did not specify the origin of the migrant workers. In the text emerging from the counter-reform of the Alien Act (*LOE 8/2000*) a few months later, the restrictions were made clear. Article 39 of the *LOE 8/2000* stated that the government would establish a contingent annually "as long as labour shortage exists," the numbers and characteristics of the job offers would be established in consultation with autonomous communities, trade unions, and business associations, and, significantly, the positions would only be available to foreign workers who were not in Spain, and who were not Spanish residents.

Table 9: Quotas Announced in the Contingent Program Since 2002

Year	Seasonal	Stable	Total
2002	21,195	10,884	32,079
2003	13,672 + 9,910	10,575	34,157
2004	20,070	10,902	30,972
2005	Collective regularization process: No new permits offered		
2006		16,878	16,878
2007		27,034	27,034
2008		15,731	15,731
2009		901	901
2010		168	168
2011		14	14
2012	No new quota – 2011 extended		
2013	No new quota – 2011 extended		
2014	No new quota – 2011 extended		

Source: Resolutions and Orders announcing the annual contingent agreements, published in the *Boletín Oficial del Estado*. The numbers do not include the visas that allow foreigners, especially descendants of exiled Spaniards, to enter Spain in search of work. The numbers reflect the announced quotas, not the numbers of actual permits issued. See BOE 2002, N° 11; BOE 2003, N° 14; BOE 2003, N° 313; BOE 2005, N° 11; BOE 2006, N° 14; BOE 2007, N° 8; BOE 2008, N° 11; BOE 2009, N° 6; BOE 2009, N° 313; BOE 2010, N° 317; BOE 2012, N° 6; BOE 2013, N° 1; BOE 2013, N° 312.

The same system that had been used throughout the 1990s as a means to regularize irregular migrants was thus being transformed into a tool to continue fulfilling the needs of the labour market, while limiting the jobs available to undocumented workers. The Popular Party government also attempted to restrict all recruitment of foreign workers through nominative work permit applications outside of the contingent, leaving only the generic application and limiting it to people outside the country. This strategy, included in the Agreement for the 2002 contingent, was further developed in an internal memo sent by the General Directorate for the Ordering of Migrations (*Dirección General de Ordenación de Migraciones*) to the delegations and sub-delegations of the central

government, instructing bureaucrats not to process any request made outside of the contingent system through the so-called “general regime.” The idea behind only allowing recruitment through the contingent regime was that officials could use this quota of generic job offers to control migrant workers’ input and their distribution by region and sector. The Spanish Supreme Court eventually cancelled this provision in 2004 and the nominative recruitment of foreign workers has now resumed as a complement to the generic contingents.⁷¹

The shift in policy represented an attempt at reducing the number of jobs available to undocumented workers by filling vacancies with temporary seasonal workers coming to the country through the contingent and leaving after their contracts ended. In an appearance before the Senate Special Commission on Immigration and Foreigners on October 30, 2002, then secretary of state for foreigners and immigration Ignacio González expressed this position clearly:

Precisely, one of the basic questions on which we all agreed when we made some modifications to the current regulation is that we cannot use the covert regularization through the old conception of the contingent so that persons who are working here illegally find a form of regularization through this path because, precisely—and I believe we all agree on that—this is what produces an indirect negative effect that encourages illegal immigration and we can’t put those who come illegally in a better position than those who want to do so legally. If they find a formula through which, while being here illegally, they can achieve regularization only by having a job offer, by finding a job, we wouldn’t be acting well, considering that [it is] the effect that we try to avoid, [we want] to fight illegal immigration.⁷²

⁷¹ *Tribunal Supremo, Sala de lo Contencioso. STS 2343/2004.*

⁷² *Diario de Sesiones del Senado, Legislature VII, N° 357, October 30, 2002, p. 14.*

The use of contingents resumed in 2002, but with very limited numbers, until virtually disappearing with the economic crisis, trickling down to a symbolic 901 posts in 2009, 168 in 2010, and 14 in 2011, most of them for highly qualified professionals. Since then, the government has announced each year that it will renew the quota of 14 posts authorized for 2011. When there is a need for seasonal agricultural labour, the government now tends to sign less binding memoranda of understanding with nearby countries such as Morocco.

Another key policy innovation of the mid-2000s, part of the process of labouralization, is the addition of a new requirement for regularization. Most of the regularization programs required that unauthorized immigrants present a legitimate work offer to obtain a residence and work permit, but no one verified if they later worked for this employer. During the 2005 regularization program, not only were employers the ones responsible for “normalizing” their workers, the permits could be revoked if regularized migrants and employers did not make their contributions to social security. Around the same time, inspectors enforcing labour regulations were required to identify workplaces that employed immigrants irregularly.

Labour Inspection and Contribution to Social Security

The 2004 election of the Socialist government led to the transfer of responsibility for immigration from the Ministry of the Interior to the Ministry of Labour and Social Affairs, renamed the Ministry of Labour and Immigration in 2008. A former high-level bureaucrat

of this ministry explained that “The institutional change was based on a desire to give visibility to the change of orientation, but also so that we would be able to negotiate with unions. Between [the Ministry of the] Interior and unions there are no contacts, but they exist with [the Ministry of] Labour.”⁷³ The nomination of Consuelo Rumí, a long time high-ranking member of the national union General Union of Workers (*Unión General de Trabajadores* – UGT), as secretary of state for immigration and emigration also set the tone. According to her head of staff, Rumí “understood very well that it was necessary to build an institutional space to negotiate with unions and business associations on matters of immigration, starting with the normalization of 2005.” Interestingly, normalization is the name given by the Socialist government to the 2005 regularization process, a program that issued 578,375 new permits to irregular migrants (83.6% of all applications) and favoured mostly Latin Americans and Romanians (Aja 2012:86; Finotelli and Arango 2011). This time, it was employers who regularized their workers, and the permits were only valid once the worker was registered and started contributing to the regime of social security.

While the process of labouralization contributed to framing migrants as workers with rights and deserving of solidarity, it also portrayed irregular migrants as economic cheats and queue jumpers. Indeed, by focusing on migrants’ contribution to social security as a strategy for both integration and control, irregular immigration was reframed as a problem of tax fraud, rather than a problem of security. Labour inspections came to be

⁷³ Interview, Madrid, November 7, 2012. The following quote is also from this interview.

understood as a way to catch fraudulent employers and workers, and convince businesses to declare their workers. However, in a country where undeclared work is common, this reframing of immigrants working under the table as queue jumpers and economic cheats who fail to contribute to the social security system is not a central component of populist anti-immigration discourses, unlike in other countries (Cruickshank 1999; Gelber 2003; Pratt 2005; Pratt and Valverde 2002). This discourse does not tend to crystalize around the figure of the undeserving individual who exploits the system, but rather around the idea of irregular migration and the irregular employment of immigrants as a widespread, structural problem that should be addressed by teaching Spaniards and immigrants alike about the social harm it is seen to cause.

As a civil servant working in the labour inspection department of the Ministry of Labour explained with respect to the irregular employment of immigrants:

It's a matter of social mentality. It's hard because in Spain the harm that fraud causes to the equality of opportunity is not well acknowledged. Irregular immigration is a fraud with regard to the equality of opportunity because it favours the person that doesn't respect the regulations and penalizes the person that is patiently waiting to see if he or she gets a contract . . . in this situation of course the contract will never materialize.⁷⁴

While labour inspections primarily target employers, resulting in fines when employers do not comply with the regulation, inspections in the countryside often involve the deployment of police officers to catch irregularly employed workers, many of them migrants, who try to escape. As the table below shows, the period between 2003 and

⁷⁴ Interview, Madrid, September 26, 2012.

2008 is marked by an increase in the proportion of irregularly employed foreigners caught by labour inspectors, a trend that ends with the economic crisis.

Table 10: Infractions Detected by Labour Inspectors (1998-2013)

Year	Foreigners Irregularly Employed (Without Work Permit)	Total Irregularly Employed Workers (Foreigners and Nationals)
1998	2,533	42,606
1999	2,952	51,914
2000	4,229	45,385
2001	6,813	53,551
2002	8,413	55,836
2003	10,152	45,007
2004	13,800	54,035
2005	9,535	46,467
2006	10,981	52,201
2007	11,637	46,421
2008	12,453	55,804
2009	7,220	55,984
2010	5,821	72,793
2011	4,993	70,787
2012	5,386	77,688
2013	4,809	79,483

Source: *Dirección General de la Inspección de Trabajo y Seguridad Social* (2006:127, 2007:205, 2014: 162).

It is impossible for me to verify what proportion of these immigrant workers suffered immigration-related consequences as a result of labour violations, but this type of inspection shows that the labouralizing logic should not be understood simply as a shift from control to integration, as Socialist officials often suggest. In a summary of the policies targeting the hiring of irregular migrants, which is very much in synch with official

government analyses, Rosa Aparicio Gómez and José María Ruiz de Huidobro (2010)

explain the multi-dimensional rationale for focusing on irregular employment:

First, because irregular employment keeps workers in a situation of social precariousness, makes them the victims of abuse and employment malpractice, and makes it impossible for them to claim their legitimate rights as workers, giving rise to judicial discrimination. Second, because the exclusion that irregular employment leads to hinders the social integration of the immigrants, which is considered necessary in order to safeguard social peace and the security of all citizens [sic], both Spaniards and immigrants. Third, it is due to the serious malfunctioning provoked by the underground economy as regards unfair competition in the markets, which entails the loss of financial contributions to sustain the burdens of the welfare state. Finally, regulating the flow of immigrants is considered necessary in order to make the necessary provisions for carrying out the policies for the social integration of immigrants (P.26).

Using these arguments, officials have also sought the collaboration of third countries, linking the labouralization of migration flows to the willingness of these partners to control irregular emigration toward Spain. Indeed, since 2002, the recruitment of migrant workers has been reoriented to favour countries that have signed comprehensive migration agreements with Spain, agreements that often include an obligation to control irregular migration and facilitate the deportation of their nationals living in Spain irregularly.

The Politics of the Carrot: Negotiating Migration Agreements

Since the labouralizing logic is strongly informed by a desire to steer migration flows and relies on job offers as a variable that can be mobilized to order migration, it is not surprising that the new contingent system has favoured countries with whom Spain has signed comprehensive migration agreements. The Plan GRECO (for 2000-04) already

contained provisions for the negotiation of such agreements, and these policy orientations were made into law in the 2003 reform of the Alien Act. Indeed, Article 39 relating to the contingent of foreign workers stipulates that “The jobs offered through the contingents will be oriented preferably to countries with whom Spain has signed agreements relative to the regulation of flows” (*LOE 4/2000* as modified by *LOE 14/2003*; Art. 39.6).

In fact, during the two years between the publication of the Plan GRECO and the *LOE 14/2003*, the government had already ratified four such agreements with the Dominican Republic, Ecuador, Colombia, and Morocco. Since the beginning of these negotiations, the objective was to use jobs as a bargaining chip to gain the support of third countries in controlling irregular migration. The first agreement was signed with Ecuador after the death of twelve Ecuadorian workers in an accident in Lorca (Murcia), as a way to calm the anger of the Ecuadorian government and Ecuadorians living in Spain, but also as a strategy to reduce irregular migration. As Gabriel Alou, the Spanish consul in Ecuador, explained at the time, the bilateral agreement was put forth because “we have to regulate migration flows in an ordered manner. Spain needs labour, but what we can’t do is open the doors in an indiscriminate manner and provoke a pull effect, a stampede of illegal immigrants that arrive to Spain hoping to be regularized” (cited in *El País*, see Relea 2001).

The first set of agreements, the “agreements relative to the regulation and ordering of labour migration flows,” includes those with Colombia (2001), Ecuador (2001), the Dominican Republic (2001), and Morocco (2001). Followed by Peru (2004), Mauritania

(2007), and Ukraine (2009). At the time, agreements were also signed with Poland (2002), which subsequently joined the EU in 2004, as well as Romania (2002) and Bulgaria (2003), which joined in 2007. Unless prior readmission agreements already existed, a clause about this obligation was included. After 2004, these labour migration agreements were followed by what came to be known as “new generation agreements” (*acuerdos de nueva generación*), at a time when the Socialist Party was insisting on its new labourizing approach to migration management. These new agreements did not focus solely on labour migration flows, but adopted a more global approach, linking this ordering to the granting of development aid to fund programs to alleviate poverty, as well as an obligation for third countries to tighten border and immigration control.

Ruth Ferrero Turrión and Ana López Sala (2009) suggest that the turning point for this strategy was the collective irregular crossing of hundreds of migrants into Ceuta and Melilla in 2005, and the “*crisis de los cayucos*,” when boats started arriving in great numbers on the coasts of Andalusia and the Canary Islands in 2006. While this is true with respect to diplomatic efforts oriented toward sub-Saharan African countries, Morocco had started increasing its collaboration as early as 2000, exercising border controls in exchange for development aid and a substantial proportion of the work permits issued annually through the contingents. Indeed, after the Summit of Tampere in 1999, a special action plan for Morocco was devised as part of the High Level Working Group on Migration and Asylum. Half of the measures contained in this plan were aimed at fighting irregular migration. Morocco was also an early beneficiary of aid distributed through the

Euro-Mediterranean Partnership (MEDA I and MEDA II programs) and, in exchange, adopted a law in 2003 that criminalized irregular emigration, a measure contrary to international law (Belguendouz 2005; El Qadim 2010, 2014; Krienbrink 2007; Mekki-Berrada et al. 2013; Rodríguez Mesa 2007).

In fact, as the head of staff for Consuelo Rumí explained, the crisis at Ceuta and Melilla and at sea in 2005-06 was partly seen as the result of this new strategy of externalizing border control:

Around 2005, there is a boom of African migration in Ceuta and Melilla because the co-operation with Morocco starts to work. We went to Morocco twice, in April [2004] with the president of the government [and the secretary of state for immigration and emigration] who said at the table “We want you to help us fight irregular migration.” And in June we went back, we had a meeting and set the bases. The Moroccans feel well treated by us and we start to cooperate. Of course, from the Gibraltar Strait . . . and from the South—those were the two main points—as they started to control, [migrants] started to jump the fences, and when we could, with the co-operation from Morocco, reduce the crossing of the fences, then they went down to Senegal, because back then there was nothing with Senegal. So it took us six months to start setting the co-operation until they stopped coming—because now they don’t come anymore—but this temporary increase was the bad side of our effectiveness.⁷⁵

During our interview, this high-level official insisted that the success of the government’s approach, from 2004 onward, was due to its ability to negotiate simultaneously on issues of labour, border control, and international co-operation. While he was trying to highlight the importance of an integrated strategy, his representation of the negotiation process clearly indicates that granting work permits was also a trade-off in a carrot-and-stick policy aimed at obtaining a better collaboration regarding border control. He explained:

⁷⁵ Interview, Madrid, November 7, 2012.

Every 6 months we [from the Ministry of Labour] were going to Morocco or they came here, and at the meetings there were always the secretary of state for security from [the Ministry of the] Interior, and a high-level official from the Ministry of Foreign Affairs. If there hadn't been good relations between us and Interior, it wouldn't have worked. But the two secretaries of state got along. We wouldn't have been able to face the crisis. The Moroccans were at the same table with all the interlocutors. And we said: "Collaborate and we will facilitate the arrival of Moroccan immigrants to the whole south of Spain, to the strawberry [greenhouses]. The only topic on which we couldn't get an agreement was the issue of minors, because they had a lot of difficulties."⁷⁶ But what I want to tell you is that it is very important the methodology of the negotiation. We didn't go each separately, Interior, Foreign Affairs, Immigration, etc. No. The highest officials of Morocco and Spain would get together and on the Spanish side you would always see the people from Interior, Foreign Affairs and the secretary of state for immigration . . . And like this, we went on negotiating with various countries as the [migration] pressure moved.⁷⁷

The first step taken to limit the recruitment of migrant workers to countries that had signed "agreements relative to the regulation and ordering of labour migration flows" (2000-04) led to a new generation of "agreements of co-operation in matters related to migration" in which conditional development and co-operation aid money became the new carrot (since 2004).

Despite the insistence by commentators close to the Socialists that their arrival to power in 2004 marked a shift away from the security discourse championed by the Popular Party since 2000, and toward labouralization, these two logics are in fact closely intertwined. On the one hand, by framing irregular migrants as workers who deserve rights, this orientation certainly portrayed migrants in a more positive light and limited the rise of racism fuelled by the populist and xenophobic rhetoric of the Popular Party government. The second half of the 2000s also saw the development of the first serious

⁷⁶ An agreement on the readmission by Morocco of minors living in Spain irregularly was finally ratified in 2007 and came into effect in 2011 (see Chap. 6).

⁷⁷ Interview, Madrid, November 7, 2012.

integration programs linking cultural and social inclusion to the integrating role of employment. On the other hand, since deploying technologies to steer labour migration was also seen as a strategy to curb irregular migration, the period marked by a labouralization of immigration policies was also a period of a heightened fight against irregular migrants. While labouralizing logics and practices may appear at first sight to be at odds with the securitizing ones, they are in fact complementary and coeval. When labour becomes one of the principles through which irregular migration can be prevented and through which previously unauthorized workers can be regularized and integrated, irregular migration becomes framed as a threat to the labour market, and the irregular employment of immigrant workers as an attack on the ability of authorities to protect state sovereignty. As discussed in the next chapter on securitization, the third and final set of logics and practices at play during this period, the fight against “illegal” and “clandestine” migration flows, also included the ratification of bilateral labour agreements as leverage to secure better collaboration from third countries on border control and the readmission of deportees. This once again demonstrates that labouralization and securitization are closely intertwined.

Chapter 6

Securitization: Threats, Crime, and State Sovereignty

While there has been an increase and intensification since 2000 of border control initiatives and the scope of immigration detention and deportation, the securitization of irregular migration is not a new phenomenon in Spain. Indeed, migrants trying to enter the country irregularly or residing in Spain without authorization have been framed and governed as potential threats to both public safety and national security since the 1980s, as evidenced by the early debates linking the “illegality” of irregular migrants to problems of public order. During this period, politicians often coupled irregular migration and crime, referring for instance to the problem of “undesirable foreigners, dedicated to delinquency and more precisely to drugs” (III – 161/000070). Similarly, the early representations of irregular migrants as a cause of insecurity and the association of “terrorism, clandestine immigration, and . . . drugs” (III – 184/013932) show that the framing of irregular migration as a threat to security is not new. More recently, the recriminalization of street

vending in 2014—an activity mainly performed by irregular immigrants, especially in times of economic crisis—is a good reminder that the framing of irregular migrants as criminals and threats to public safety continues today. However, the heyday of the securitizing logic lasted from 1995 until 2006, a period that roughly coincides with the first two terms of the Popular Party. The beginning of this decade of securitization was also marked by the implementation of the Schengen Agreement in 1995, garnering public interest during the debates surrounding the reform and counter-reform of the Alien Act in 2000 (*LOE 4/2000* and *8/2000*), and culminating with the *crisis de los cayucos* (boats) and the collective climbing of the border fences in Ceuta and Melilla in 2005-06.

In this chapter, I look at what I call “securitizing logics and practices.” This notion encompasses all measures governing irregular migrants and migration flows as potential threats to national security and public safety. Therefore, this chapter also includes elements that typically fall more neatly under the umbrella of criminalization. This inclusion is not uncommon. As Ana Aliverti (2013:159, n.4) explains, political scientists and international relations scholars often include in their study of securitization processes that sociologists and criminologists tend to study as criminalization. However, the two categories should not be conflated. Traditionally, the governing of security and the governing of crime differ in their targets but also in their temporality, with security practices oriented toward pre-emption and anticipation, and crime control focused mostly on responding *a posteriori* to the breaking of laws. But the temporalities and technologies involved in prevention and punishment are often deployed jointly (Dubber and Valverde

2006). Indeed, national security policies also include a dimension of deterrence and incapacitation, while the criminal justice system's reliance on actuarial technologies of risk management has increased in many countries since the 1980s (Feeley and Simon 1992; Gilbert 2009; Pratt 2005; O'Malley 1999). Furthermore, over the past twenty to thirty years, the blurring of security and criminality issues as well as that of internal and external policing (Bigo 2000; Pratt 2005, 2011; Weber 2013) justifies that we look at crime and security in tandem when studying immigration governance. Indeed, as Anna Pratt (2005) explains in the Canadian context:

The very category of security has come to include an increasing number of criminal threats to the population that are judged to have a significant international dimension . . . This crime-security nexus coupled with distinctly neoliberal preoccupations with certain kinds of fraud and system abuse has produced a powerful hybrid rationale for the policies and practices of border control and immigration penalty (P.2).

While neoliberal preoccupations with fraud and reliance on punishment in immigration governance in Spain are less important than in many Anglo-Saxon countries, concerns about crime and security also converge to inform the treatment of irregular migration. While distinguishing between the two categories, this chapter considers them together under the broad category of securitization.

The chapter starts by engaging with the literature on securitization in international relations, addressing some of its limits, and adapting the concept to make it compatible with the framework that informs this research. Decentering the analysis from the usual discussion of parliamentary debates, the chapter first explores securitizing logics and

practices as they become more significant on the national scene, after immigration becomes a political issue in the border towns of Ceuta and Melilla in the mid-1990s. I analyze this first period of securitization at the physical land borders separating Spain from Morocco, the European Union from Africa. I examine the process of wall-building between 1995 and 2005, when an immigration crisis took place at these borders, followed by the construction of a peculiar type of border fence in Melilla that created a “no-man’s land” between Morocco and Spain where, through a jurisdictional fiction, migrants can be trapped between national territories.

Moving from this very limited form of extra-territorialization of control, I inquire into the institutional strategies deployed to intercept transiting migrants. In contrast with the regulatory features of labouralization, this strategy of blocking all irregular migration routes relies upon an (inevitably unsuccessful) attempt to exert strict control over who enters the country, a project defended in the name of national sovereignty. I then move from this extra-territorialization of migration controls to look at an increasing tendency to govern irregular migration using instruments developed to combat crime. The chapter ends with a more theoretical section, presenting occurrences of securitization as attempts to assert state sovereignty and enact a fantasy of control, in a context where globalization and migration transform people’s confidence in the ability of state officials to perform this sovereignty. I argue that the uninhibited violence and widespread violation of human rights and legal principles at the Spanish-Moroccan border need to be understood in this context.

Processes of Securitization

When it emerged within critical security studies in the 1990s, the concept of securitization promoted a constructivist conception of security in a field still strongly influenced by Cold War realism (Buzan, Wæver, De Wilde 1998). While studies of securitization in the domain of migration have proliferated in recent years, the concept often lacks a clear definition, or is used in lieu of empirical analysis (Boswell 2007; Bourbeau 2011). In this section, I review some incarnations of the concept to address important lacunae and to articulate it within the broader framework of this research.

From Speech Act to the Governmentality of Unease

When introduced by Øle Wæver in the 1990s, securitization was understood as a speech act that, when performed by authorized individuals in the proper context and for a receptive audience, could successfully transform a normal social issue into a security problem. Challenging realist conceptions of security, Barry Buzan, Øle Wæver, and Jaap De Wilde (1998) explained:

The way to study securitization is to study discourse and political constellations: When does an argument with this particular rhetorical and semiotic structure achieve sufficient effect to make an audience tolerate violations of rules that would otherwise have to be obeyed? If by means of an argument about the priority and urgency of an existential threat the securitizing actor has managed to break free of procedures or rules he or she would otherwise be bound by, we are witnessing a case of securitization (P.25).

By this definition, the concept points to the discursive framing of an issue as an existential threat, justifying exceptional measures that would otherwise not been seen as acceptable

by the audience. The problem with such a framework is that it tends to be linear, always starting with the utterance, and failing to consider how the responses to the supposed threat also play into the securitization dynamics. It also locates security measures in the realm of exceptionality, understood as a legal and normative space outside of normal politics (Huysmans 2011; Moffette 2012).

From a Foucauldian perspective, Didier Bigo ([1998] 2002, 2005) and Jef Huysmans (2006) suggest that, instead of looking for speech acts, it is more useful to identify how various domains of insecurity converge on particular objects such as immigration and contribute to their securitization. Huysmans (2006:150) explains:

The notion of 'domains of insecurity' . . . emphasizes the importance of looking at security framing as a multidimensional process in which various policy questions are knitted together by means of security technologies, skills, expert knowledge and discourses. Speech acts of insecurity are less important in securitization than various social and political processes that govern migration and asylum on the basis of logics of insecurity (i.e. security rationality).

Following a similar approach, Bigo ([1998] 2002) describes a "governmentality of unease," in which securitization is conceived as the result of a multiplicity of converging practices and knowledges that contribute to the objectification of threats to security, broadly defined and encompassing public safety, economic well-being, and cultural identity. Bigo ([1998] 2002) contends that:

the securitization of immigration then emerges from the correlation between some successful speech acts of political leaders, the mobilization they create for and against some groups of people and the specific field of security professionals . . . It comes also from a range of administrative practices such as population profiling, risk assessment, statistical calculations, category creation, proactive preparation (P.62).

In both cases, the authors shift the analysis from the emission-reception model suggested by Wæver (1995) to a more Foucauldian analysis of politics and securitization (Foucault [1975] 1995). Adapting this framework, I consider securitization as a set of historically specific problematizations that pretend to define and act upon irregular migrants and migration flows as potential threats to public safety and national security. Securitization intersects with culturalization and labouralization in the multi-scalar and multi-dimensional governing of irregular migration in Spain.

Mobilizing the concept of securitization with a Foucauldian analytic of governmentality also allows me to avoid the claims of exceptionality that often reify securitization processes as political ruptures, and to instead consider the practices of securitization as a feature of everyday governance. In the post-September 11 context, the scholarship on the securitization of immigration, influenced strongly by Giorgio Agamben's ([1995] 1998, [2003] 2005) work on exception, tends to highlight the exceptionality of security measures (C.A.S.E. Collective 2006; Neal 2010: Chap. 5).⁷⁸ But the political significance of securitization does not lie in its *actual* exceptional character, but rather on the ways in which it allows for *claims to* exceptionality to be mobilized in everyday governance. It is thus important to pay attention to what Huysmans (2011:371) calls "little security nothings," but also to how claims to exception allow certain practices to take place. Indeed, instead of insisting on the exceptional rupture that supposedly provokes a

⁷⁸ For a critique of the reification of exceptionality and bare life in Agamben's work, see Agier 2008 (Chap. 10), Muhle 2007, and Rahola 2007.

return to sovereign power à la Agamben ([1995] 1998, [2003] 2005), it is more useful to follow Judith Butler's (2004: Chap. 3) analysis of sovereignty as part of governmentality, and study police officers' and politicians' claims to exceptionality as technologies of government. This allows us to study how the suspension or ignorance of the law is used at the individual and institutional levels as one governmental tactic among others. Just as Foucauldian socio-legal studies allow for an analysis of discretionary decisions as an integral part of the working of law (Pratt 1999, 2005; Pratt and Sossin 2009), such a move opens up space for a consideration of the deployment of diffused and mundane claims of exceptionality in everyday governmental practices (Rosas 2006).

Securitization and Racial Governance

A major weakness of the scholarship on securitization generated in the field of international relations, including even those works specifically concerned with the securitization of immigration or anti-terrorism measures, is the almost systematic absence of race in the analysis (Amin-Khan 2012; Moffette and Vadasaria 2014).⁷⁹ And yet, the concept of securitization, in its speech-act and Foucauldian iterations, seems to demand it. Indeed, if we follow Thierry Balzacq's argument, developed within the securitization-as-speech-act approach, that "securitization is a sustained strategic practice aimed at convincing a target audience to accept, *based on what it knows about the world*, the claim that a specific development . . . is threatening enough to deserve an immediate policy to

⁷⁹ Indeed, although Bigo ([1998] 2002) and Huysmans (2000, 2006) analyze the framing of migrants as a threat to national culture, they do not really engage with race. For some theoretical discussions on the concept of securitization that seriously engage with race, see Amin-Khan 2012 and Ibrahim 2005.

alleviate it” (2005:173; my emphasis), we need to consider this knowledge seriously. Here, although securitization is understood as a process built upon already established grids of intelligibility, the racial dimension of these grids is rarely acknowledged. The failure of this approach to consider “what race *means* in a particular discursive practice and the ways in which both social structures and everyday experiences are racially *organized*” (Omi and Winant [1986] 1994:56) limits its usefulness in providing an understanding of the framing of some migrants as threats.

Similarly, governmentality scholars working on security encourage us to “see security as an interlocking system of knowledge, representations, practices, and institutional forms that imagine, direct, and act upon bodies, spaces and flows in certain ways” (Burke 2002:2); that is, as a particular problematization located within a broader set of power relations and discursive formations. Accordingly, to account for the mundane use of claims to exceptionality as a political technology deployed within liberal governance to authorize the use of violence by “petty sovereigns” (Butler 2004) against irregular border crossers in a defence of society (Foucault [1997] 2003), we need to analyze securitization as taking place within the context of modern racial governance (Goldberg 1993, 2009; Moffette and Vadasaria 2014). Indeed, beyond the scholarship on securitization theory, many scholars who analyze security measures and what could be considered processes of securitization have demonstrated that these processes are always deeply informed by race (Elbe 2005; Jiwani 2011; Kapoor 2011; Oikawa 2012; Pratt 2011; Razack 2007; Richter-Montpetit 2014). This is how I engage with securitization in this

chapter, showing how the first bold occurrences in Ceuta and Melilla in 1995 and 1996 cannot be understood without a consideration of racial projects, and analyzing how claims to exceptionality facilitate the exercise of violence against irregular migrants at the border.

Building Walls and Blocking Routes

The period surrounding the reform and counter-reform of the Alien Act in 2000 marked a shift in the politicization of immigration in Spain. The rhetoric centred on the argument that progressive immigration policies risked creating a “call-effect” that would lead to “hordes of illegal immigrants” flooding the borders. While the legislative debates focused on access to social services and other domestic policies, the objects of concern of the securitization of immigration tended to crystallize around borders and questions of state sovereignty.

Huysmans (2000) has shown that the securitization of migration in the European Union centres on three categories of threat: physical threats to internal security, cultural threats to national identity, and economic threats to the welfare state or the labour market. In this sense, this set of logics and practices, which I gather under the category of securitization, is intertwined with the ones discussed in the previous two chapters. But as I explained, while debates about the hijab or irregular migrants’ access to social services can sometimes be framed using the language of threat, debates about culture are more often presented and governed through technologies and discourses of integration and

preference, and concerns about the economy are translated into programs that are primarily regulatory in nature. Whereas the project of labouralizing migration flows is the most representative of the liberal regulatory practice of steering, the securitization of irregular migration at Spain's southern borders reflects a will to reassert a fading state sovereignty in the face of what appear to be ungovernable phenomena.

The Crisis of El Ángulo: Ceuta, 1995

Not surprisingly, one of the first occurrences of blunt securitization related to immigration in Spain centered on the crossing of irregular migrants into the Spanish enclaves of Ceuta and Melilla in 1995, the year the enclaves effectively became part of the Schengen zone. When hundreds of migrants from the Maghreb and sub-Saharan Africa entered these Spanish enclaves, located on the coast of northern Morocco, crossing what had become a Schengen border, the first Spanish "border crisis" occurred. Local politicians, police officers, and other security professionals panicked as they realized that they were unprepared for the Schengen era. As Wendy Brown (2010) observed with respect to the post-Westphalian order, "This landscape signifies the ungovernability by law and politics of many powers unleashed by globalization and late modern colonization, and a resort to policing and blockading in the face of this ungovernability" (p.24). Securitizing logics and practices emerged at various sites and were relayed across various levels of government, but in the Spanish context, politicians, police officers, and other security professionals located in EU borderlands (Ceuta, Melilla, Canary Islands, the Strait of Gibraltar) played

and continue to play a central role in the securitization of immigration. For this reason, this analysis begins not with parliamentary debates, but at the borders of Ceuta.

In October 1995, ten months after the Convention on the Implementation of the Schengen Agreement came into effect, an incident occurred that residents of Ceuta called “the crisis of *El Ángulo*.” As little pieces of Schengenland (Walters 2002) on the African continent, Ceuta and Melilla emerged as desirable points of entry for migrants who wanted to reach Europe. The first transiting migrants hoping to cross the strait started arriving in Ceuta and Melilla in 1992 (Gold 2000; Pérez González 2005). At this time, the border fences in both cities were mostly symbolic: some signposts and low, intermittent old fences marked the separation between the enclaves and Morocco.⁸⁰

Technically, the Schengen border is located south of Ceuta and Melilla, but the most effective control in 1995 occurred at the moment of crossing the Strait of Gibraltar. Indeed, Ceuta and Melilla benefit from a special clause in the Convention on the Implementation of the Schengen Agreement that allows Moroccans from the neighbouring provinces of Tetouan and Nador to enter the enclaves to work or shop without a Schengen visa, as long as they do not cross the strait.⁸¹ For this reason, systematic identity checks occur at the ferry terminal heading to mainland Spain. Therefore, as it was easier in 1995 to sneak into the city than to continue onward or to obtain refugee status, the population of transiting, irregular migrants started to grow, and

⁸⁰ Despite border infrastructure being slowly built since 1992 (see V – 184/008927).

⁸¹ See *Agreement on the Adhesion of the Kingdom of Spain to the Convention on the Application of the Schengen Agreement*; Final Act, Declaration III-1.

ended up stuck in border cities located, for all intents and purposes, between Morocco and the European Union. According to the local government in Ceuta, in September 1995 around 300 migrants were living in the streets near the old walls of the city at *El Ángulo* (the corner), a few hundred metres from downtown Ceuta (Aznar 1995a).

On October 2, a group of more than 70 Kurdish asylum seekers started a hunger strike in front of the Delegation of the Central Government (*Delegación del Gobierno*) in Ceuta to give weight to their demand for regularization and transfer to continental Spain. The city government also became impatient and requested that Madrid find a solution that would (1) force the migrants and asylum seekers to leave the city; (2) prevent new ones from crossing the border; and (3) deploy the military to control the border if necessary (*El Faro de Ceuta* 1995a). The same week, the Kurds were arrested and later transferred to Malaga, in continental Spain, to be deported. In the following days, local journalists from Ceuta depicted these migrants as liars and stated that some of them had been previously deported from Germany for “antisocial conduct and offences” (Aznar 1995b:6). Journalists also published articles, based on local police statements, about Moroccan migrants being arrested without proper documentation and detained for begging, digging through trash containers, stealing money from a car, and driving a motorcycle without a license, before being deported to Morocco (*El Faro de Ceuta* 1995b; Peña 1995). Similarly, the local congressman for Ceuta, Sergio Gómez-Alba Ruiz, insisted in Congress on the rise of delinquency in Ceuta, linking it directly to the increased presence

of “illegal immigrants,” despite police records showing no significant increase in reported crime in the 1984-94 period (V – 184/010029).

On the day the Kurds were transferred to continental Spain to be deported, a rumour spread among sub-Saharan African migrants. They thought that the Kurds’ cases were being processed and that they were finally accessing Europe. Angry about having to stay behind, and not knowing that the Kurds were being deported, many African migrants started to riot. At least, this is how Ceutíes with whom I spoke, and the local media, recall the events. As a large segment of the police force was out of the city, busy deporting the Kurds, many Ceutíes took it upon themselves to “defend the city.” The riot lasted many hours until every migrant had been arrested. Some were freed the same day, when police became certain they had not taken part in the riot; some were detained and later charged; and others were detained without charge.⁸²

This event marked a turning point in the way Ceutíes considered the “problem of immigration.” Migration had already started to be framed as a security issue by local politicians and journalists in the months prior to *El Ángulo* but the first calls for exceptional measures emerged in 1995. In the weeks following this crisis, the migrants of *El Ángulo* and all non-European migrants were regularly depicted in the media as unworthy of the “generous hospitality” of the people of Ceuta; “They are nationals of war-torn countries and they carry this reality along with them, even if most of them are

⁸² The reconstitution of these events is based on articles published in the local newspaper *El Faro de Ceuta* on October 12 and 13, 1995 as well as on information gathered during fieldwork conducted in Ceuta in 2008.

generally peaceful,” a person told me during fieldwork. This image of refugees contaminated by the violence of war, which builds upon racist characterizations of uncivilized Africans (Agier 2002), thrived in the weeks following the event.

On October 13, 1995, a well-known cartoonist at the least sensationalist of the two local daily papers, *El Faro de Ceuta*, drew a full-page storyboard depicting the riot. He represented the migrants as mad individuals (with big noses, thick lips, and protruding eyes) screaming in front of the Delegation of the Central Government building in Ceuta: “We not care die, not have nothing to lose! We fed up. Entire world will know!” and starting to throw rocks (Álvarez Martínez 1995). On the previous day, he had drawn a character who demanded: “Solution now!! Not even one illegal in *our* city!” This visual representation of African irregular migrants as dangerous relied heavily on colonial iconography of violent, irrational, and monstrous characters, a symbolic repertoire that also appeared in political speeches. This illustration bluntly demonstrates how the framing of migrants as threats is informed by broader processes of othering that rely on race as a grid of intelligibility central to colonial and post-colonial modernity (Moffette 2010, 2013).

All local political parties called for two measures to protect citizens: the expulsion of the migrants from the city (either by transferring them to continental Spain or by deporting them), and the sealing of the border to prevent new migrants from entering the city. In an “extraordinary and urgent” assembly of the local government days after the events, political parties unanimously adopted a motion demanding that the central

Spanish government (responsible for border and immigration issues) act to protect Ceuta's residents.⁸³ The mayor even issued an ultimatum to the central government in Madrid, threatening to use illegal procedures to personally transfer migrants to mainland Spain "in the eventuality that [the government] does not expel the migrants and guarantee the safety of Ceutíes" (cited in *El Faro de Ceuta*, see De Juan 1995). Eventually, most migrants who were transferred to the Spanish peninsula either ended up in immigration detention centres or were deported. Other migrants who did not face legal charges after the riot were transferred to Calamocarro, an open space outside Ceuta, where the Red Cross and other NGOs attended to their basic needs.

While Ceutíes did not succeed in expelling the migrants, they did, however, secure tighter control of the borders. In the days following the events, some 110 members of the *Guardia Civil* and a helicopter were sent to patrol the border, while soldiers installed a 1.8 metre high fence composed of three spirals of barbed wire. This was announced as a temporary measure to stop migrants from entering pending the completion of a project aimed at definitively sealing the 8.3 kilometre border. Between 1995 and 1999, the government built a border patrol route lined by two 2.5 metre fences. It was not even completed when a new project began in 1999 to build two more 3.1 metre fences and seventeen watch towers, complete with spotlights and cameras, to better control the border.⁸⁴ The delegate of the central government in Ceuta presented this project as an

⁸³ See *Actas de la sesión pública extraordinaria y urgente, celebrada en primer convocatoria por la Asamblea de la Ciudad de Ceuta el día diecisiete de octubre de mil novecientos noventa y cinco* (October 17, 1995).

⁸⁴ Interview, Ceuta, July 16, 2008. See also articles by Cué (1999) and González (1999) in *El País*.

attempt at building a border wall like the one in Hong Kong, “one of the hardest borders that ever existed and that nobody could pass” (cited in *El Faro de Ceuta*, see Echarri 1999:6).

Indeed, officials called for the “sealing” (*impermeabilización*) of the border (Moffette 2010). The first stages of the “sealing” of the border were thus clearly related to this first migration crisis and the subsequent local securitization of migration. This is not to say that these measures were undertaken solely as a result of a local process of securitization. As Huysmans (2006) and Bigo ([1998] 2002, 2005) have shown, securitization is not a linear process and there are always a multitude of actors and institutions involved in it. This local problematization of migrants as a threat to public safety, and the corollary demand for developing a more effective border *dispositif* took place within a wider Spanish and European context. Nevertheless, the local dynamics of *El Ángulo* played an important role in the enhancement of border controls shortly after the implementation of the Schengen Agreement. In fact, the Fifth Legislature ended shortly thereafter, and all initiatives related to Ceuta that had been submitted to Congress were made void, and no further debate took place that year. It was only when the newly elected minister of the interior authorized the deportation of 103 migrants from Melilla the following year that the securitizing logic became a central feature of the framing of irregular migration in the capital.

The Southern Borders as a National Problem: Melilla, 1996

Despite pressures on Spain from the EU to increase control of its southern borders, it was not until the local securitization of immigration in Ceuta and Melilla in the mid-1990s that border control became a highly debated topic among officials in Madrid. While it is obvious that much of the immigration control agenda was developed at the European level, the shift in policy also owes much to the local political dynamics at the borders. A situation similar to that of *El Ángulo* occurred the summer of 1996, when a group of around 40 sub-Saharan African migrants stranded in Melilla marched to the Delegation of the Central Government, carrying sticks and rocks, to demand a solution to their situation. The government's response was bold, deploying military airplanes to carry members of security forces to the city, swiftly transferring 103 irregular migrants to the detention centre in Malaga, and deporting the migrants to various African countries. When NGO workers, lawyers, and journalists revealed that many of the migrants had been misidentified and quickly deported to third countries, and that drugs were used to tranquilize many of them, the incident became an issue of national interest. Responding to the critiques, the newly elected Spanish president, José María Aznar, infamously answered: "There was a problem and we solved it!" (VI – 214/000018)

In two appearances before the Justice and Interior Commission of the Congress (VI – 214/000018 and 213/000315), Minister of the Interior Jaime Mayor Orteja summarized

the incident and general “problem” following a clear securitizing logic.⁸⁵ The minister acknowledged that tranquilizers were used and that migrants were deported to the wrong places, but justified these actions as absolutely legal and necessary due to the “singular” situation of Melilla, the “menacing” and “violent” character of these migrants, as well as their “illegality.” In his discourse, we see clearly that irregular migrants are considered a threat to the safety of other residents and to public order. But there is a second element to the securitizing discourse related to the threat to national security that these migrants represent, which is precisely because the tensions occurred in Melilla. The border, as a site of danger (Haddad 2007), provides a fertile ground for the reframing of public disorder and petty criminality as problems of national security (Pratt 2005, 2011). Indeed, the minister starts by explaining that it is important to put everything in context:

Remember that a set of circumstances converge in Melilla, that without a doubt . . . denote a situation of a singular character, not only because Melilla constitutes a singular enclave but also because we are in a singular year, a singular anniversary, and for this reason, aside from all the considerations that we may want to make about immigration policy, what is obvious is that a series of circumstances that concur in this city results in situations of public disorder . . . having a special gravity. (VI – 214/000018)

The minister was likely referring to the 500th anniversary of the incorporation of Melilla under the Spanish Crown in 1556, an anniversary that is contentious in the context of the Moroccan claim of sovereignty over Ceuta and Melilla. Indeed, 1996 also marked 40 years of Moroccan independence from the French and Spanish protectorates, and thus 40 years

⁸⁵ Using a critical discourse analysis methodology, Luisa Martín Rojo and Teun A. van Dijk (1997) developed an extensive and detailed account of the legitimation process mobilized during the first of these interventions.

of the Alaouite king claiming sovereignty over the cities that Moroccan authorities call “occupied military strongholds” (*présides occupés*). Like anything that has the potential to provoke tensions in the precarious social ordering in Ceuta and Melilla, the crisis associated with the presence of irregular migrants was considered a question of national security.⁸⁶

To address this issue, the National Police put forth the same two sets of practices employed in 1995: deporting migrants as soon as possible and sealing the border. In this case, however, officials in the Ministry of the Interior took the lead in defending the necessity of these practices. In an operation characterized by its urgency and lack of concern for due process, police and military officials sent an airplane to Guinea-Bissau, deporting nineteen passengers who turned out to be Nigerians. In the first of two military aircrafts heading to Senegal, there were five Senegalese, four Liberians, three Nigerians, one Malian, and one person from Guinea-Bissau on board. In the second one, there were fifteen migrants from Zaire, three from Ivory Coast, and one from Morocco, who were all deported to Senegal because, according to the minister, “It’s a francophone country [like these migrants’ home countries, and] because without a doubt it is the country that has the highest level of welfare and democracy in the region, and provides us with the best democratic guarantees” (VI – 214/000018, p. 849-850). A fourth airplane that went to Mali actually transported nineteen Malians. And, finally, a fifth military airplane stopped

⁸⁶ For an example of the way in which the status of Ceuta and Melilla is sometimes framed as a question of national security, see García Flórez 1999; for a more detailed analysis of the relationships between local social orderings and securitization of immigration, see Moffette 2013.

in Cameroon to drop off ten Cameroonians, continuing on to Guinea-Bissau, where it left twelve people from Cameroon, six from Guinea-Conakry, two from Rwanda, one from the Central African Republic, and one from Togo (VI – 214/000018).

The minister explained this confusion by citing the necessity to act promptly and the difficulty in distinguishing among sub-Saharan African migrants. The argument that it was logical to send non-Senegalese Africans from other francophone countries to Senegal simply because it is a safer country suggests that the citizenship status of these individuals, that is to say their quality as political and legal subjects, mattered very little in the decision to deport them. They became African bodies having to return to African countries, and their differing nationalities were an obstacle to their swift expulsion. This logic also reveals early traces of the notion of “burden-sharing,” the idea that African states should be made responsible for migrants and refugees from neighbouring countries and should collaborate in their repatriation.

The other dimension of this process was the strengthening of the physical fence. The Ministry of Defence deployed soldiers to both Ceuta and Melilla to help guard the borders until both fences were completed (VI - 213/000380). The construction in 1998 of a set of double fences, three to four metres high, complete with a set of cameras and acoustic sensors, as well as watchtowers, appeared to be too big an obstacle for irregular migrants, who changed their routes around that time (Fernández Fuertes 1998). After 2005, the border apparatus was extended to stop migrants before they reached Melilla, and it now

includes a sort of spiderweb, in which migrants get stuck before reaching the main fence, and from which they are sent back before they officially enter the country. It is the first step of extra-territorialization, a measure that allows for the interception of migrants only a few metres away from Spanish territory, but within the Spanish border.⁸⁷

Around the same time, members of the *Guardia Civil* and the Maritime Rescue teams worked on the installation of a complex system of radars and cameras to detect *pateras*, the small boats that migrants used to cross the strait. The implementation of this Integrated System of External Surveillance (*Sistema Integrado de Vigilancia Exterior*—SIVE) started in 1998, with the first command centres active in 2002 (Guardia Civil 2003). By 2010, most of the Spanish coastline was covered. As a high-level official at the Ministry of the Interior explained:

The SIVE is an instrument whose objective is the control of the maritime border, it is not an instrument primarily destined for the control of irregular migration . . . because it cannot actually prevent it . . . What it can do is anticipate the arrival of an embarkation that, for instance, can be carrying drugs, can be in danger, and provide the means to react and intercept this embarkation, or to detain the people who are committing a crime . . . What happens is that by establishing a system for controlling arrivals, it's dissuasive . . . I put a case to you: a *patera* that gets to the coast, without the SIVE, in many cases it could arrive without being detected, disembark the immigrants, and the owner leaves. But now, if this type of *patera* arrives, it will be identified, it will be detected, the immigrants will be intercepted, the owner will be detained, and the sentences in the Spanish Penal Code for someone who promotes human trafficking, like potentially the boat owner, are very high. This has had a tremendous dissuasive effect for the [trafficking] networks because it's harder to find a boat owner [willing to carry migrants]. But it intercepts irregular immigrants only once they reach the Spanish coasts . . .⁸⁸

⁸⁷ Visual representations of the Ceuta and Melilla border apparatus in 2005 can be viewed on the website of *El País* (http://elpais.com/elpais/2005/09/29/media/1127991434_720215.html). The 2014 version of the Melilla border apparatus, with the barbwire, moving sections, spiderweb cables, tear gas, and surveillance technologies can be viewed on the website of *El Diario* (www.eldiario.es/desalambre/valla_de_melilla/).

⁸⁸ Interview, Madrid, October 4, 2012.

The strengthening of the southern borders has continued apace to this day. With the first attempts at “sealing” the Ceuta and Melilla borders (1995-2000) and the deployment of the SIVE in the Strait of Gibraltar (2002), irregular migrants had to find other routes. For those attempting to reach Spain, this led to an increase in arrivals by boat to the Canary Islands. Indeed, irregular migration routes moved south and became ever more dangerous, with migrants leaving the coast of Morocco, Mauritania, and eventually Senegal, to reach the Canary Islands in the Atlantic (Carling 2007). The SIVE was eventually extended to the Canaries and, by the mid-2000s, Spain’s control over its own jurisdiction had become quite extensive. But as the high-level official at the Ministry of the Interior explained, beyond their dissuasive effect, these measures did not prevent irregular migration; they only intercepted migrants once they entered Spanish territory or reached its physical borders. They did not prevent migrants from attempting to reach Ceuta and Melilla or risking their lives on boats headed to the Spanish territory. Spain and the European Union then furthered their policy of externalizing the policing of irregular migration to the countries of transit and of origin in an attempt to prevent migrants from ever reaching their borders.

Plan Africa and Bilateral Agreements on Migration Control

Spanish diplomatic efforts started with Morocco and were soon extended to many other countries. The number of bilateral state agreements, memoranda of understanding, technical police co-operation agreements, and operations secured by Spanish authorities

since the early 2000s is astounding. If one adds the multilateral, EU-led negotiation fora and policies, such as the Barcelona Process and its MEDA programs, which led to the Euro-Mediterranean Partnership (EUROMED), the 5+5 Dialogue in the Western Mediterranean, the Rabat Process, the European Neighbourhood Policy, the Global Approach to Migration Policy, as well as the immigration and border policing missions operating under FRONTEX or as part of EUROSUR, the magnitude of the European diplomatic offensive is impressive.

Bilateral agreements that focus on the readmission of nationals in the eventuality of a deportation, dubbed “first generation agreements,” are often hard to implement. For instance, the 1992 agreement with Morocco, signed after sub-Saharan African migrants started arriving in Melilla, which forced Morocco to take the migrants because they had transited through the country, was not implemented until 2004. In comparison, the so-called “second generation” agreements offer something in exchange to encourage implementation, as the head of staff of a former secretary of state for immigration and emigration explained.⁸⁹ The labour migration agreements discussed in Chapter 5 thus generally include a clause on readmission, unless a readmission agreement was already in place, as in the case of Morocco. After ratifying a series of labour migration agreements, Spanish authorities started to engage actively in the so-called “new generation” agreements, based on co-operation in matters of border and immigration control, including development aid to alleviate the conditions leading to migration (and provide a monetary incentive to co-operate). In the case of Senegal and Morocco, these

⁸⁹ Interview, Madrid, November 7, 2012.

negotiations were also the occasion to push for agreements allowing for the deportation of unaccompanied minors.⁹⁰

In the previous chapter, I described how the promise of access to the Spanish labour market was used to obtain better collaboration, in a kind of carrot-and-stick strategy aimed at regulating flows by intervening at a distance.⁹¹ I showed how labouralization and securitization are intertwined in these strategies but did not insist on the importance of these programs in the fight against irregular migration. Indeed, the Global Approach to Migration developed at the European level (Council of the European Union 2005) promotes the use of co-operation agreements as a key strategy to curb irregular migration. In Spain, the broader policy framework for the aforementioned agreements is provided by *Plan África 2006-2009*, and *Plan África 2009-2012* (Ministerio de Asuntos Exteriores y de Cooperación 2006, 2009).⁹²

The police perspective prevailing at the Ministry of the Interior differs from that of the Ministry of Employment and Social Security, in that it views extra-territorialization not primarily as a strategy for regulating flows by using job offers to channel legal migration,

⁹⁰ Simple bilateral readmission agreements have been signed with Morocco (1992), Portugal (1995), Romania (1996), Bulgaria (1996), Lithuania (1998), Slovakia (1999), Latvia (1999), Estonia (1999), Italy (1999), Nigeria (2001), France (2002), Poland (2002), Algeria (2002), Guinea-Bissau (2003), Mauritania (2003), Switzerland (2003), and Macedonia (2006), including some specific to the readmission of minors, with Romania (2005), Morocco (2007), and Senegal (2007). Broader bilateral agreements on labour migration flows, often including a clause on readmission, currently exist with Colombia (2001), the Dominican Republic (2001), Ecuador (2001), Peru (2004), Mauritania (2007) and Ukraine (2009). Finally, “new generation” agreements on co-operation, labour, and migration control have been ratified with Algeria (2003), Gambia (2006), Guinea (2006), Senegal (2006), Cape Verde (2007), Mali (2007), Niger (2008), and Guinea-Bissau (2008).

⁹¹ Interview, Madrid, November 7, 2012.

⁹² For critical analyses of the first plan, see Azkona and Sagastagoitia 2011 and Romero 2008.

but rather as an attempt to block all possible routes for irregular migrants. As the high-level official I interviewed put it, it is about “plugging the holes.” He explained the importance of externalizing immigration controls:

The person that is immigrating in a *patera* is obviously immigrating illegally, doing it through a criminal network, putting his or her life at risk. So, of course we have to fight this illegal immigration . . . Thanks to the co-operation with other countries, to the Spanish deployment off [the Atlantic coast of West Africa] and FRONTEX operations at sea in areas like Mauritania, Senegal, etc., what used to be exit points came to be controlled. And we believe that for this type of migration, considering that our job is to control and prevent that from happening, the best measure is the prevention at the source. Because once a boat leaves the African coast, the risk of death occurs, the human trafficking network has been able to act, and the obligation to react becomes very complex, through deportations, etc. So the work in [this zone] is illustrative of what has been done to block this flow . . . We believe that from the perspective of the control of illegal immigration from Africa, it's very important for Spain (and for Europe since Spain is the European point closest to Africa) . . . it's fundamental that we control it and that we do it preventively. We believe that prevention is what works best.⁹³

With this increase in diplomatic efforts, we also see a shift toward more secret negotiations, inter-ministerial informal agreements, memoranda of understanding, and technical agreements between police forces, which has made the agreements, and especially their content, hard to track. This is not surprising, considering that these agreements often aim to prevent emigration, which contravenes Article 13 of the Universal Declaration of Human Rights protecting the right to leave one's country of origin, and arguably also violates the principle of *non-refoulement* (Art. 33.1) of the 1951 Convention Relating to the Status of Refugees (Andrade García 2010; Golash-Boza and Menjívar 2012). With the rise in securitizing logics and practices comes a displacement of responsibilities toward the ministries of Foreign Affairs and Defence, as well as toward

⁹³ Interview, Madrid, October 4, 2012.

police forces that negotiate directly with their counterparts in third countries and make bilateral “technical agreements” that are rarely made public.⁹⁴ In policies of extra-territorialization of border control, there is an especially obvious blurring of the traditional demarcation between external and internal security, as police officers adopt logics that usually inform external security work to deal with something that was, until recently, mostly of internal concern (Bigo 2000; Weber 2013). When I asked him about the potential lack of transparency associated with the signing of secret agreements, a high-level official at the Ministry of the Interior responded simply that “all agreements are published in the Official State Bulletin.” When I pointed out that many of these agreements are more informal police or ministerial memoranda unavailable to the public, he explained:

Well, all international agreements are in the BOE. Another thing are the instruments like the memoranda of understanding: legally they are not international agreements but administrative ones. Their publication is not necessary because they are not norms, just administrative acts . . . Some activities do not require an international agreement. We’ve had very important operational missions with African countries, and there’s a very fluid co-operation. For instance, our current relation with Morocco is excellent; it would be very hard to combat irregular migration without it. It’s a great co-operation that is based on agreements, but also on other

⁹⁴ Memoranda of understanding containing provisions for police collaboration in border and immigration control have been signed with ministries or security forces of the following countries: Morocco (2004), Mauritania (2006, 2008, 2009), Senegal (2006, 2009), Algeria (2007), Cape Verde (2008), Gambia (2008), Guinea (2008), Guinea Bissau (2008), and Mali (2009). In addition to these memoranda, the Red Europea de Migraciones (2011) also mentions the presence of liaison agents from the Ministry of the Interior in other countries such as Cameroon, Egypt, Ghana, Libya, and Tunisia (see also Ministerio del Interior 2006). Beyond collaboration during FRONTEX missions, we also know that Spanish bilateral border policing operations *Atlantis* and *Cabo Blanco* (with Mauritania, 2006), *Seahorse* (with Cape Verde, Mauritania, Morocco, and Senegal, 2006-2009) and *Noble Centinela* (Cape Verde, Mauritania, and Senegal, 2006) led to the deployment of joint patrols, liaison agents, the training of staff, and the supply of surveillance equipment (García Andrade 2010). The Spanish Congress also passed legislation allowing for the transfer of more than €10.5 million worth of material to Morocco for the detection and interception of irregular migrants, as well as €650,000 of communications and electronic equipment to Mauritania (*RD 845/2006*; *RD 187/2007*). See also García Andrade 2010 and Ministerio del Interior 2008, 2009, 2011.

types of actions that don't require an agreement, that are based essentially in the implicit relations that inform international co-operation.⁹⁵

Indeed, memoranda do not generate the same level of obligations under international law and are therefore preferred for police interventions because they are more flexible and less open to scrutiny (García Andrade 2010). And when it comes to fighting “the mafia,” all methods seem valid. As the secretary of state for security explained in 2014, not doing enough, not pushing migrants back from Ceuta and Melilla, and simply “confirming the success of the mafia in the irregular entries would be like playing their game,” something this official refuses to do because “the fight against networks of organized crime and of human trafficking is greatly related to the phenomenon of irregular migration” that needs to be stopped (X – 212/000469).

Considering the strengthening of the border fences in Ceuta and Melilla, the extension of the SIVE to most of the Spanish coast, and the number and locations of bilateral and FRONTEX patrols, we clearly observe an attempt to saturate the geographical and legal space with *dispositifs* of control that strive to block all routes. The use of military terminology such as “invasion,” “assaults,” “fronts,” and “defence” reveals a militarization of both the practices and logics at play (X – 212/001517). The other dimension of this securitization is a reliance on the Penal Code to prosecute migrants and those who make irregular migration possible. In the following section, I look at this criminalization as it occurs both inside and outside the country.

⁹⁵ Interview, Madrid, October 4, 2012.

Criminalization: “It’s delinquents we’re after”

Another central element of securitizing logics and practices is captured under the umbrella concept of criminalization. Leanne Weber (2002) describes the criminalization of immigration as a three-tiered phenomenon that includes (1) rhetorical or symbolic criminalization resulting from the discursive coupling of immigration and criminality, (2) procedural or quasi-criminalization resulting from the use in immigration governance of technologies and strategies traditionally associated with the criminal justice system, and (3) formal or literal criminalization consisting of the criminal prosecution of activities related to immigration or engaged in only by immigrants. This section discusses this three-tiered phenomenon. I analyze the reliance on immigration detention and deportation, aptly described by Anna Pratt (2005) as “quasi-administrative, quasi-criminal rituals of exclusion” (p. 23) sanctioning violations of an administrative law, the discursive justification of detention and deportation as tools used primarily to incapacitate criminals, and the use of the Spanish Penal Code (*Código Penal*), as well as specific international agreements related to the policing of crime to fight irregular migration.

Anti-Trafficking Rhetoric and Laws

In the early 2000s, the convergence of crime, terrorism, and irregular migration in policy discourses and programs at the Spanish and European levels became more important. The fight against terrorism, a favourite topic of President José Maria Aznar, was a central element of the 2002 Spanish presidency of the Council of the European Union, and

Spanish representatives boldly attempted to link criminality and immigration at the Seville European Council, which ended the presidency. Although French and Swedish officials pushed back against this association, the Council meeting still included a strong focus on the fight against “illegal immigration” (Council of the European Union 2002; Morata and Fernández 2003). In 2005, Spain, Germany, France, Belgium, Luxembourg, the Netherlands, and Austria signed the Prüm Convention “on the stepping up of cross-border cooperation, particularly in combatting terrorism, cross-border crime and illegal migration,” clearly highlighting that illegal migration should be combatted as a criminal activity.

Around the same period, Spanish authorities increased their efforts to reach cooperation agreements with third countries in matters related to “delinquency.” These agreements, generally made between the Spanish Ministry of the Interior and its counterparts, all consistently begin by mentioning “illegal migration” and “human smuggling,” and list “human trafficking” alongside terrorism, contraband, drug trafficking, and crimes against the life and integrity of persons, all of which are portrayed as criminal activities against which the parties will collaborate to fight.⁹⁶ The Ministry of the Interior signed such agreements first with Bulgaria (1998), Russia (1999), Slovakia (1999), China (2000), Poland (2000), Ukraine (2001), and Latvia (2003). However, after Prüm and the shift toward “new generation agreements” in immigration, the focus moved to countries

⁹⁶ The only exception is the agreement signed with the U.S.A. in 2009, which does not refer to migration. The agreement with Israel, ratified in 2007, also differs since the list of criminal activities appears not in Article 1, but further down, embedded in a paragraph.

with which collaboration had increased in the fight against irregular migration, such as Cape Verde (2006), Romania (2006), Senegal (2006), Brazil (2007), Cyprus (2007), Israel (2007), and Mali (2008). More recently, Albania (2009), Turkey (2009), Cameroon (2011), Croatia (2011), Jordan (2011), Kazakhstan (2011), Serbia (2011), and Ivory Coast (2012) also signed similar documents.

In 2007, the Socialist government presented a bill to amend the Penal Code and the Law of Judicial Power to be able to prosecute people involved in facilitating irregular migration even when the “crime” happened outside Spain’s territory. The bill, eventually adopted as *Organic Law 13/2007 for the Extraterritorial Prosecution of Illegal Trafficking and Clandestine Immigration*,⁹⁷ adds these two different phenomena to the list of crimes over which Spain claims universal jurisdiction. As a result, Article 23.4 of the Law of Judicial Power (*LO 6/1985*) states:

The Spanish jurisdiction will also have competence in hearing actions committed by Spaniards or foreigners outside of the national territory when they are susceptible to being classified, under Spanish criminal law, as one of the following crimes:

- a) Genocide
- b) Terrorism
- c) Pirate activities and illicit take-over of ships
- d) Counterfeiting foreign money
- e) Crimes related to prostitution and the corruption of minors and legally incompetent people
- f) Illegal trafficking of psychotropic, toxic or narcotic drugs
- g) Illegal trafficking or clandestine immigration of people, whether or not they are workers
- h) Those relative to feminine genital mutilation, as long as those responsible are in Spain
- i) Any other that, according to international conventions, can be prosecuted in Spain.

⁹⁷ *Ley Orgánica 13/2007 de 19 de noviembre, para la persecución extraterritorial del tráfico ilegal o la inmigración clandestina de personas.*

In a recent reform of the Law of Judicial Power aimed at addressing questions of universal jurisdiction, the crimes listed have been more clearly defined. “Illegal trafficking or clandestine immigration” has been replaced by “human trafficking” (*trata de personas*) and limited to trafficking by or of Spaniards or of people living in Spain (*LOE 1/2014*). But the amalgamation of trafficking, smuggling, and mere clandestine migration seems to have been intentional, aimed at linking mafia activity, violations of human rights, and irregular migration. As the minister of justice explained in defence of the bill:

The arrival of boats coming from the African coasts are being intercepted more successfully by our patrols and that of FRONTEX, but behind these boats hide the authors of some of the crimes that most need to be prosecuted: human trafficking and clandestine immigration, which is nothing other than the new form of exploitation, the new slavery of the 21st century. To fight against this scourge, it was decided that we needed to clarify once and for all the polemic around whether or not our tribunals are competent to hear these crimes, even when the detention of these boats occurs outside of our territorial waters. (VIII – 121/000142; *Diario de Sesiones* N° 293, October 18, 2007)

As with anti-trafficking rhetoric mobilized in other countries, the amalgamation of smuggling and trafficking by the minister contributes to the portrayal of irregular migrants as victims who cannot exercise agency and need to be saved, and anyone who helps them as being not only criminal but also immoral (Sharma 2005; Andrijasevic 2010; Kempadoo 2005). While parliamentary concerns about trafficking first emerged in debates about immigration, they spread and were rearticulated by feminist and women’s rights NGOs as well as members of Congress working on gender equality. To a great extent, the problematizations of trafficking/smuggling in immigration policy, and of trafficking/sexual

violence in gender equality policy remain separate. Debates in the Equality Commission⁹⁸ rarely focus on the smuggling of irregular migrants and the gendered dimension of anti-trafficking discourses is not often highlighted in debates about smuggling. Nonetheless, the two sets of policy preoccupations cross-pollinated each other and converged on a number of legislative changes that criminalized both people trafficking (with a focus on women and girls) and the smuggling of immigrants. Indeed, for the purpose of sanctioning people involved in these activities, the abovementioned 2007 bill also included a reform of the Penal Code that further entrenched the criminalization of actions that facilitate irregular migration.

This process of criminalization has been ongoing for years. The original version of the Penal Code of 1995 stated in Article 313.1 that “Those who promote or favour [*favorezcan*] by any means the clandestine immigration of workers to Spain” would face imprisonment of six months to three years, and a fine of six to twelve months.⁹⁹ This article was modified in 2007 to include EU countries as part of the extra-territorialization of the criminal prosecution of smuggling (*LO 13/2007*). The law reforming the Alien Act in 2000 (*LOE 4/2000*) added the infamous Article 318 bis to the Penal Code, criminally prosecuting broadly defined “smuggling.” Point 1 of the Article first read: “Those who promote, favour or facilitate the illegal trafficking of people from, transiting through, or to Spain will be condemned to six months to three years in prison and a fine of six to twelve

⁹⁸ The Equality Commission was previously named Commission on Women’s Rights (until 2004) and Commission on Women’s Rights and Equality of Opportunities (2004-2008).

⁹⁹ Fines are calculated according to the “day-fine system,” ranging from €2 to €400/day or €60 to €12,000/month and decided based on income, wealth, and family obligations (Penal Code, Art.50)

months.” This wording could be interpreted as being limited to trafficking—that is, moving people without their consent—but, in 2003, a law designed to fight sexual exploitation also added “or clandestine immigration” after “illegal trafficking” and raised the prison time to a four to eight year sentence, clearly indicating that irregular migration was also targeted. This law also raised the sentence to five to ten years when trafficking is carried out with the intent to commit sexual exploitation (*LO 11/2003*). As Kamala Kempadoo (2005) explains, national legislations based on international obligations under the 2000 United Nations’ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, while attempting to protect women, clearly focus on fighting international criminal networks. In this context, “the link between policies to curb trafficking and those for immigration control is more explicit and visible” since “punishment of those who assist others to circumvent national immigration restrictions and disrupt older patterns and flows of migration . . . stands at the very heart of the contemporary UN anti-trafficking policies” (Kempadoo 2005:xiii).

In Spain, people who have tried to help migrants, sometimes even family members, have been charged and sentenced under Article 318 bis of the Penal Code in cases where it was argued that the harm caused was not to an individual person, but to Spanish society, vaguely understood (see Martínez Escamilla 2008, 2014). In September 2013, the Popular Party government submitted a new bill to reform the Penal Code (currently before the Senate, March 2015). This bill proposes to exempt those who aid and abet irregular migration for humanitarian reasons, but it will also criminalize helping

irregular migrants circulate inside the country or giving them work (X – 121/000065). Although the justice minister presents the reform as offering nuanced and flexible treatment of illegal migration (Ministerio de Justicia 2013), the reform maintains the strategy of criminalizing irregular migration. So far, many experts consulted by the Justice Commission suggest this is unnecessary. Among them, the chief prosecutor for the province of Seville, who was asked to testify about the reform of the Penal Code at a Commission hearing in April 2014 and stated:

With respect to illegal immigration, it is true that Europe demands a strengthening of the State's efforts to avoid illegal immigration, but in my opinion, I have to say that what is being criminalized are administrative violations that are already dealt with adequately in the administrative order. I do not understand that it would be necessary to make these reforms to allow for the punishment in Spain of conduct performed even outside [of Spain], because it refers to the whole territory of the Union. I believe that the fight against illegal immigration, with Spain being a border country, is twofold: security and collaboration with neighbouring countries, and criminalization, even including an absolution for those who act with altruistic reasons and all, I do not think that it is necessary, in my humble opinion. (X – 212/001560)

Legal scholars who testify in Congress may not consider criminalization to be a useful legal measure in combatting irregular migration, but it does seem that many politicians involved in devising immigration policies over the last two decades have considered it to be politically useful. Indeed, beyond the actual prosecution of people who aid and abet migrants to enter or circulate in the country, the mere framing of these activities as criminal, and the depiction of irregular migration as a problem of international criminal networks, relies on a securitizing logic and contributes to the governing of irregular migration as something dangerous.

“Qualified” Deportations and the Criminalization of Street Vending

Using criminal law to target irregular migration is a strategy also mobilized internally to prosecute migrants themselves and frame some of them as a threat to public safety (*seguridad ciudadana*). Since 2009, civil servants at the Ministry of the Interior have included in their annual *Report on the Fight against Illegal Immigration* the proportion of expulsions that are “qualified”; that is, deportations based not on a mere administrative violation of immigration law, but on criminality. In the last few years, various officials have used this argument to justify internment of irregular migrants in immigration detention centres (*Centros de Internamiento de Extranjeros – CIEs*), as well as expulsion. For instance, in an intervention in Congress in January 2012, Minister of the Interior Jorge Fernández Díaz claimed:

Furthermore, we should not lose sight of the fact that while the number of unqualified expulsions declined in the last years, the number of qualified expulsions, that is, those due to having a police or criminal record [or “history:” *antecedentes*], or both, increased in an obvious way, going from 57 percent in 2009 to 80 percent last year. We are talking about forced returns. This means that a great number of the detainees [in CIEs] have committed crimes, which adds special complexity to the management of the CIEs. (X – 214/000006)

This argument about the increase in the deportation of “delinquents” is constantly repeated in the press and in Congress, and has been explained to me by members of Congress from different parties, high-level officials at the Ministry of the Interior and the Ministry of Employment and Social Affairs, and a police union representative. But while this may be a successful political argument to justify deportations, the numbers just do not add up. To clarify these statistics, I will explain the different legal categories used in

these yearly reports. Deportation or refusal of entry can take many legally defined forms; most of them are administrative sanctions and are defined in the Alien Act.

Table 11: Numbers and Types of Repatriations 2008-2013

Year	Refusal of Entry	Devolutions at Border	Readmissions	Expulsions Qualified and Not		Total Repatriations
2008	17,317	12,315	6,178	5,564	5,052	46,426
2009	12,226	7,526	5,099	7,591	5,687	38,129
2010	9,453	7,297	1,959	8,196	3,258	30,163
2011	11,092	7,064	1,278	9,114	2,244	30,792
2012	8,647	6,271	1,409	8,140	2,015	26,457
2013	8,703	5,002	1,119	7,582	1,402	23,889

Source: Ministry of the Interior's yearly *Informes sobre la lucha contra la inmigración ilegal* (Reports on the Fight against Illegal Immigration). See Ministerio del Interior 2008, 2009, 2011, 2012a, 2013a, 2014.

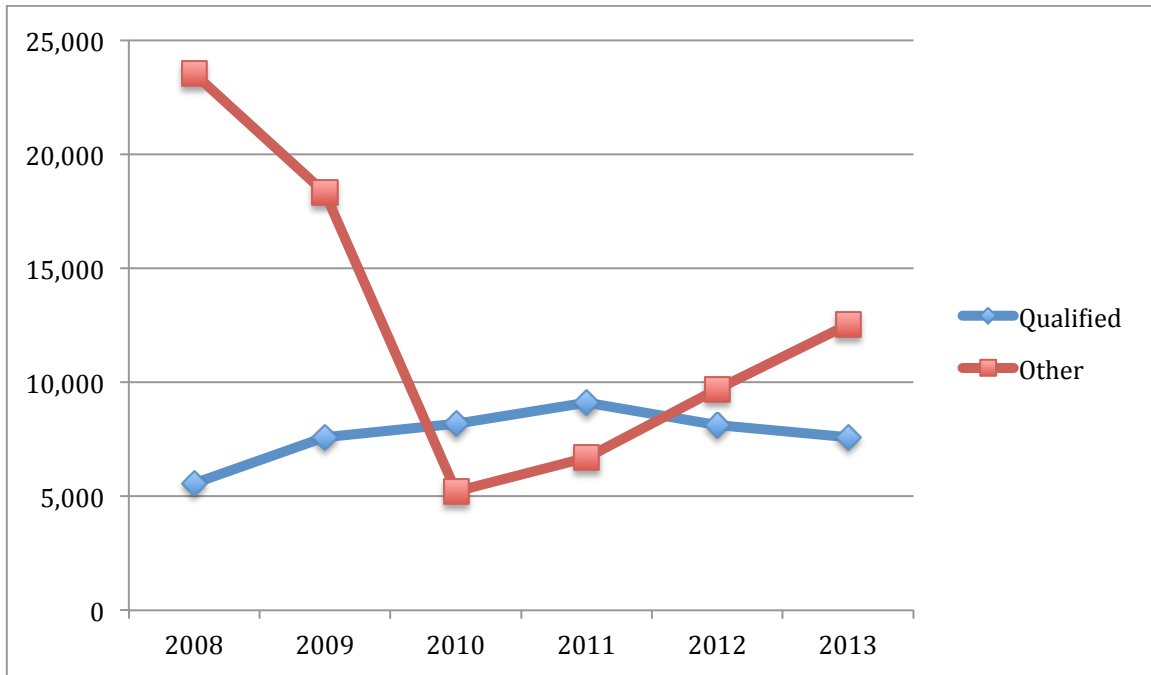
A “refusal of entry” (*denegación de entrada*), sometimes referred to as a “return,” occurs when the officer at the port of entry refuses to let a foreigner inside the country for lacking sufficient monetary resources, being seen as a potential threat, being the object of a prohibition of re-entry from a previous offence, or other reasons (Art. 26, 60). Among those who are refused are tourists lacking the proper visa and migrants turned away at the border. Technically, these are not deportations, but the Ministry of the Interior lists them alongside deportation in its annual *Report on the Fight against Illegal Migration*. Another category that does not legally qualify as an expulsion is devolution. Devolutions are expulsions of foreigners who have (1) entered the country through an unauthorized channel, or (2) entered the country while being the object of a prohibition of re-entry if they are sent back within 72 hours of their entry (Art. 58). They do not require the same

judicial process, nor the same judicial protections, as expulsions and are not counted as such. Most migrants entering the enclaves of Ceuta and Melilla who are sent back to Morocco either right away or within 72 hours are counted as devolutions in the Ministry's statistics, including some of those expelled on the spot without any paperwork (often referred to as "hot devolutions" or "hot returns"). Finally, the yearly reports also include a category that does not appear in the Alien Act: readmission. Readmissions are commonly understood as expulsions or transfers of migrants to third countries based on readmission agreements.

By adding even only devolutions and readmissions to the numbers of expulsions, we can see that when the minister and other officials claim that more than 80% of all expulsions are targeting delinquents (Ministerio del Interior 2014), they are stretching the truth. In fact, even if we remove the refusals of entry—which are not really deportations, even though the Ministry of the Interior counts them in its repatriations statistics—and compare the number of qualified expulsions to the total number of readmissions, devolutions, and unqualified expulsions, we get a very different picture. The percentage of qualified expulsions does rise between 2008 and 2010, reaching 60%, but this increase is mostly due to a dramatic drop in the number of non-qualified deportations and the relative stability of qualified expulsions over the same period.¹⁰⁰

¹⁰⁰ Similar arguments have been made by Martínez Escamilla et al. (2013) and by Moffette and Orgaz Alonso (2015).

Figure 1: Numbers of Qualified Expulsions and Other Repatriations (2008-2013)



Source: Ministry of the Interior's yearly Reports on the Fight against Illegal Immigration. See Ministerio del Interior 2008, 2009, 2011, 2012a, 2013a, 2014. This graphic does not include refusals of entry.

These numbers refer to the administrative expulsion of foreigners who are deemed to be delinquents, not expulsion due to a criminal conviction. The Penal Code allows judges to replace all or part of a jail sentence of less than six years and the last 25% of a sentence of six years or more with an expulsion if the person convicted is a foreigner (Art. 89).¹⁰¹ But year after year, the proportion of foreign convicts whose sentence is partially or completely substituted by a deportation based on Article 89 of the Penal Code is roughly 6%, suggesting that expulsions are not considered a proper sanction by criminal judges (Brandariz García and Iglesias Skulj 2013:258).

¹⁰¹ For a detailed legal analysis of Article 89 of the Penal Code, see Brandariz García 2011 (Chap. 3).

The Alien Act does not use the term “qualified expulsion” but considers that the primary sanction against the irregular presence of foreigners should be a fine while administrative expulsion can be considered in various circumstances (LOE Art. 57). These include simple administrative infractions, such as being in Spain with a permit that has expired more than three months prior or working while living in Spain without a permit, as well as more serious offences, such as involvement in human smuggling or other criminal activities. One case when expulsion can be deemed appropriate is when a foreigner who is in Spain irregularly is charged with a criminal or administrative offence that could result in a sentence of less than six years, and the judge cancels the judicial process and allows police officers to carry out an administrative deportation (Art. 57.7.a). This would most likely fall under the vaguely defined category of “qualified expulsion,” a situation that becomes especially significant when economic activities performed only or primarily by immigrants with precarious status, such as the selling of counterfeit products or of sex are criminalized (Melossi 2003). In these cases, victimless crimes of survival are redefined and policed as “crimes of arrival” (Webber 2006:2).

Indeed, many migrants without work permits survive by working as street vendors, selling copied DVDs, CDs, and fake luxury purses and perfumes, which they display on sheets on busy streets. Because of this technique of displaying the goods on blankets (*mantas*), they are called *manteros*, a term that has come to refer specifically to “third-world” migrants without status who sell merchandise to survive. Until the reform of the Penal Code in 2010 (*LO 5/2010*), selling counterfeit merchandise in the street was a

serious criminal offence, and the policing of *manteros* by municipal and national police officers resulted in many deportations. The activity was mostly decriminalized as a result of very effective migrant justice organizing. For small street vendors violating intellectual and industrial property rights in this way (a violation of Article 274.2), the Penal Code now only considers fines (Art. 623.5), and although selling in the streets without a permit is also a violation of most municipal bylaws, it cannot be the basis for an expulsion under Article 89.¹⁰² However, on March 30th, 2015, the Popular Party government passed a new bill reforming the Penal Code (*LO 1/2015*). As a result, as of July 1st, 2015 the street vending of counterfeit products will be an offence with a possible sentence of six months to two years of incarceration, reclassifying the deportation of *manteros* charged with this offence as “qualified” (*LO 1/2015*, Point 153; see also Martínez Escamilla 2014).

When asked in Congress to clarify whether the 2012 statistic concerning “qualified” expulsions included *manteros*, the written government response stated, “By qualified expulsions we understand the repatriation of foreign delinquents with long criminal and/or judicial histories [*numerosos antecedentes penales y/o judiciales*], linked to terrorism, organized gangs, gender-based violence, or any other particularly serious offence that poses a threat to public safety” (X – 184/027310). The listing of dangerous threats alongside the catch-all category of “any other particularly serious offence” works rhetorically to present deportations as targeting only delinquents and leaves the door

¹⁰² Although unpaid fines can eventually lead to imprisonment (Penal Code, Art. 53), and thus to deportation on these grounds.

open to including any other offence under this category. In the quote by the minister of the interior discussed at the beginning of this section, we also see that this statistic is not only used to justify deportations, but also the internment in CIEs of irregular migrants facing deportation. This claim is also dubious since many detainees are not successfully deported (Fiscal General del Estado 2012) and are therefore not counted in the expulsion statistics, while many people facing deportation under Art. 89 of the Penal Code may never be detained in immigration detention centres.

But this rhetorical device effectively criminalizes all irregular migrants who have been detained or deported. The insistence on framing detention and deportation as a fight against crime, highlighting that “it’s delinquents we’re after,” as a high-level official at the Ministry of the Interior told me,¹⁰³ works as an ongoing dividing practice that allows this set of securitizing logics and practices to operate alongside labouralizing and culturalizing ones to designate some irregular migrants as redeemable and others as only deportable. I discuss the articulations of these complementary logics and practices in the everyday governing of irregular migrants in Spain in greater detail in the following chapter. In the last section of this chapter, I return to the border where I located the emergence of the securitizing logic in 1995 and where it is still deployed with the most force today.

¹⁰³ Interview, Madrid, October 4, 2012.

Claims of Exceptionality and Violence against Migrants

The securitization of immigration often develops around questions of borders and the defence of Spanish territory. This is the case not because borders are the epitome of security, turning Europe into a fortress. Indeed, border *dispositifs* work primarily as filters, selecting who can circulate, how, and for what purposes; they are but one element in the broader regulation of movement (Moffette 2013; Rumford 2006; van Houtum and van Naerssen 2002; Walters 2006). And yet, as Brown (2010) explains, it is at borders that the fading sovereignty of states is most evident, and it is there that attempts to reassert the right to defend the country against people seen as invaders are commonly manifest. At play here is not only the real failure at regulating migration flows in a way that appears optimal for European policy-makers, but also the politics of representing—through “invasion maps” and other devices (van Houtum 2010:965)—the complex relationships between irregular migration and European borders as a situation of siege. Faced with what Boaventura de Sousa Santos (2007) calls the “return of the colonial” (p.6), through the figure of the irregular migrant, policy-makers and other actors involved in immigration governing insist on reaffirming “abyssal lines,” dividing “social reality into two realms, the realm of ‘this side of the line’ and the realm of ‘the other side of the line’” (p.1).

The desire to assert state sovereignty and hold the defensive line is evident in most parliamentary and public discourses put forward by representatives of the Ministry of the Interior in support of measures used to guard and defend the Ceuta and Melilla borders.

One such example can be found in the secretary of state for security's recent appearance before the Interior Commission of Congress in October 2014. Responding to questions about the dubious legality of pushing migrants back at the border with force, and handing those who get into Ceuta and Melilla over to Moroccan officers without taking the time to process asylum claims, he justified these actions based on the notion of state sovereignty.

Says the secretary of state for security:

Unlike at other borders, in Ceuta and Melilla there is a necessity for years now to avoid the illegal, clandestine, often violent, massive entries that happen in a way that breaches the security apparatus of the border perimeter. I believe that no one would ever expect a state governed by the rule of law to passively witness acts that violate the legality of our borders, and by extension the European legality . . . Therefore, the actions of the *Guardia Civil*, the actions of the Security Forces and Corps of the State, performed in compliance with the law, when pushing back those who try to enter illegally, enjoy full legal coverage since it is nothing else than the very consequence of the concept of a border and its intrinsic legality, that forbids the existence of such a thing as a right to enter irregularly. At times, stopping them from entering means opposing violent assaults, motivated in many cases—I don't doubt it—by desperation, that can only be aborted effectively through the physical coercion of people . . . (X – 212/000469)

This type of justification is interesting in that it claims the legality of defending the border against illegal invaders, marking the abyssal line between European legality and African chaos, but it does so as a means of justifying the exceptionality of practices that in other contexts would not be acceptable, such as the “hot returns” of migrants to Moroccan authorities in violation of the principle of *non-refoulement*. The logic at play here is that as the site of defence of European legality, the border has to authorize extra-legal or not-quite-legal practices. Within this logic, the double bind of internal/external sovereignty is rearticulated in a way that echoes Santos's (2007) analysis of the “abyssal divide” of concerns for regulation/emancipation in the colonial metropole and a rule based on

appropriation/violence on the other side of the colonial divide. As he explains, “On the basis of these legal and epistemological abyssal conceptions, the universality of the tension between regulation and emancipation, applying on this side of the line, is not contradicted by the tension between appropriation and violence applying on the other side of the line” (2007:n.p.). Similarly, the take on sovereignty in securitizing logics and practices involves both the liberal understanding of sovereignty as the condition for the autonomy of the state and its people under the rule of law, and a notion of sovereignty that involves “the right to kill, to allow to live, or to expose to death” (Mbembe 2003:12; Foucault [1997] 2003).

The justification for exposing people to death within biopolitical governmentality is, as Michel Foucault ([1997] 2003) explains, tied to the desire to optimize populations and regulate flows. The death of irregular migrants is mostly understood as collateral damage of the regulatory character of what William Walters (2002) calls “the biopolitical border” (p.562). However, the imposition of violence, the reliance on military techniques, and the use of wartime analogies in narrating the fight against irregular migration reminds us that sovereign power is also at play. Explaining the beating of irregular migrants by Moroccan forces, and the death by drowning of 15 individuals who were trying to circumvent the Ceuta border fence while Spanish police forces were firing rubber bullets close to them in February 2014, the secretary of state for security described a scene of war. He discussed early detection, lines of defence, the sealing of the border, and surveillance through camera systems. He cited intelligence information stating that 40,000 sub-Saharan African

migrants were in Morocco, waiting to jump the fences into Ceuta and Melilla. He explained how 40 agents of the *Guardia Civil* fired 145 rubber bullets near the intruders, including when they were in the water, potentially contributing to their deaths. And he described how Spanish agents detained anyone who succeeded in entering and handed them back to Moroccan agents, once again without any processing of asylum claims. His presentation depicted a situation of siege and violent clashes. Fifteen people died but the secretary of state reassured Congress that they died on the Moroccan side, and that the *Guardia Civil* had no responsibility.¹⁰⁴ Not only do hundreds of migrants die each year trying to reach Spain, on various occasions these deaths are related to confrontation with police forces.¹⁰⁵

Foucault's account of the decline of sovereign power sometimes suggests that this modality of power is being replaced by disciplines and the biopolitics of populations, but as many authors have suggested (Butler 2004; Lippert 2004, 2005; Mbembe 2003; Mezzadra and Neilson 2013; Pratt 2001), the rise of governmentality does not preclude the deployment of a sovereign type of power. In the case of the "hot returns" at the border, performed despite being in violation of international and national laws, "the law is suspended in the name of the 'sovereignty' of the nation, where 'sovereignty' denotes the task of any state to preserve and protect its own territoriality. By this act of suspending

¹⁰⁴ The appearance of the secretary of state for security resulted from various parliamentary initiatives, including X – 212/001517. It is worth reading in its entirety: see *Diario de Sesiones, Comision Interior, Legislature X*, N° 525, March 19, 2014.

¹⁰⁵ For yearly estimates, see Asociación Pro Derechos Humanos de Andalucía 2006, 2008, 2009, 2010, 2011, 2012, 2013, 2014. Other estimates include Carling 2007, United Against Racism 2009 and van Houtum 2010. Accounts of the deaths at the Ceuta border in 2005 can be found in Blanchard and Wender 2007.

the law, the state is further disarticulated into a set of administrative power” (Butler 2004:55), that is, governmentalized. When the law is in the way of effective border control, officials simply do not respect it, or they attempt to change it. For instance, in response to legal challenges against the use of “hot devolutions” to expel migrants, the government included a clause in its new Law of Citizen Safety (*Ley de Seguridad Ciudadana*) to legalize a practice performed illegally every day. This legislative change—effective as of July 1st, 2015—creates a “special regime” for Ceuta and Melilla that legalizes the “rejection” (*rechazo*) of migrants at the border (*LOPSC 4/2015*; First Final Disposition). This move will not make the practice legal with regard to international or EU law, but the Ministry of the Interior claims that European representatives who have concerns about the legality of these practices are hypocritical.¹⁰⁶ The *refoulement* of potential asylum seekers at the border and the collaboration with Moroccan forces, who regularly transport those expelled from Ceuta and Melilla to the desert between Morocco and Algeria and leave them there to fend for themselves or die (Blanchard and Wender 2007), are instances of a suspension of the application of the law as a response to a situation deemed exceptional.

The non-application of laws in the name of European legality is justified through claims of exceptionality. References to the peculiar and special situation of Ceuta and Melilla and the state of siege under which Spain is placed are used to present the situation as exceptional. The governing of migrants as either security threats or humanitarian

¹⁰⁶ For a legal opinion on the practice of hot devolutions, see Martínez Escamilla et al. 2014.

victims, not as political subjects, is informed by this exceptionalism, which serves to justify the deployment of sovereign power in liberal societies. But to understand how claims to exceptionality are used in processes of securitization to justify the use of measures that may be not be acceptable in other circumstances, we must be careful not to ontologize this exception as Agamben ([1995] 1998, [2003] 2005) does. In line with the analyses developed by Butler (2003) and others (Brown 2006; Mezzadra and Neilson 2013), I consider that securitizing logics and practices do not operate in a generalized state of emergency that is now the norm. Instead, they are part of broader historical processes of racial governance (Goldberg 1993, 2009), contributing to them by marking the limits of liberal tolerance and justifying the suspension of law and the use of violence (Moffette and Vadasaria 2014).

Claims to exceptionality, fed in part by a real sense of being under siege and further by a position of empowered spatiality (Hage [1999] 2000), enable citizens and members of police forces to act as petty sovereigns, disregard the law, inflict violence upon irregular migrants, and push them back into the space beyond Europe. In their most acute manifestations at the border, securitizing logics and practices treat irregular migrants as non-persons (Dal Lago [1999] 2009), either as racialized victims or as foreign threats. Claims to exceptionality do appear to produce a qualitative shift in the continuum of racial governmentality, activating a right to kill or expose to death, but we should be careful not to ontologize the exception or the baring of life as *homo sacer* (Agamben [1995] 1998), remembering that the supposed “voicelessness of the refugee . . . is the *effect* of the

refugee discourse, not the refugee's essence or the particularity of the refugee's existence in life" (Soguk 1999:9). Borderlines are sites of struggle and conflict where migrants' desires and need to move are met by state officials' attempts at regulating who can circulate, how, and for what purposes. Not-quite-illegal, extra-legal and potentially lethal means associated with securitization are mobilized as a supplement to the smooth governmental regulation of flows.

I have mentioned that the labouralizing logic is the one most congruent with the regulatory dimension of migration governance, insisting as it does on steering flows and working with the market, and that the securitizing logic tends to insist on risk management but also on control and a sovereign defence of territoriality. While they are often presented as contradictory, these two sets of logics and practices are complementary parts of the regime for governing irregular migration in Spain. To use Sandro Mezzadra and Brett Neilson's (2013) words:

The fantasy of a just-in-time and to-the-point migration effectively produces a governmentalization of the border regime . . . But this is just a fantasy, although it produces very real effects. To fill the gap between the fantasy and the reality . . . a different form of power is required, often entering the state in the form of a militarization of the border (P.302).

The regulatory tendency of labouralization is complemented by the control and defence-oriented approach of securitization. Security measures are justified in the name of liberty and free circulation.

As I conclude this last chapter on the three sets of logics and practices that inform the governing of irregular migration in Spain, I want to insist on the complementary and fragmented dimensions of these logics, which may otherwise appear as contradictory and monolithic ensembles. In Chapter 4, I began the analysis by mapping out the uncertain emergence of irregular migration as an object of policy in the 1980s, insisting on the hesitant problematizations, contestations, and confusion. I then worked my way through the three main logics informing Spanish immigration policy, summarizing them in an artificially orderly manner to highlight their specificities. However, this strategy should not lead the reader to consider them as three radically different logics. In the next chapter, I jump back into the “messy actualities” of governance (O’Malley, Weir, and Shearing 1997:504) through an engagement with the many layers and multiple dimensions of the multi-scalar and multi-actor governing of irregular migration as it operates in contemporary Spain.

Chapter 7

Multi-Scalar Governing:

Dispersed Borderwork and Assessment of Desirability

The previous chapters presented culturalization, labouralization, and securitization separately for analytic purposes, but they are anything but discrete categories. This chapter looks at the intersections between these sets of logics and practices as they are deployed in the everyday governance of irregular migration. Based on the picture I have painted so far, it appears that the culturalization logic decreased somewhat after 2000, and that despite an interest in labouralizing migration flows after 2004, the temporary policy settlement that stabilized at the turn of the twenty-first century prioritized the securitization of irregular migration. Indeed, the first decade of the new millennium was marked by a dramatic increase in surveillance and interceptions at the southern borders, and this violent response to irregular migration led many scholars to insist on this “Fortress” logic. While this linear representation accounts for some of the changes in

policy preference, it is also simplistic. Indeed, while Spanish authorities were erecting higher border fences in Ceuta and Melilla (Ferrer-Gallardo 2008; Moffette 2010), implementing the Integrated System of External Surveillance (SIVE) in the Gibraltar Strait and the coasts of the Canary Islands (Carling 2007), and participating in bilateral and FRONTEX patrols at sea (Belguendouz 2005; García Andrade 2010), they were also leaving a door open for irregular migrants by applying rather lax entry policies at international airports. Indeed, lacking an effective recruitment strategy and wanting to satisfy the demand for immigrant labour, Spanish authorities have facilitated the entry of (mostly) Latin American “tourists” for years, knowing that many were entering the country to reside and work irregularly (Izquierdo Escribano 2012).

This strategy is one of displacing the borderwork; that is, a strategy of rescaling much of the filtering work performed by borders and immigration selection across space and time. In this context, the most extensive borderwork actually happens inside the country: through the evaluation of irregular migrants’ files when applying for regularization years after crossing the border; through the constant policing of migrants in the streets; and through the threat of deportation. In this chapter, I follow this borderwork as it moves inward and extends over time. I argue that facilitating entry, policing the streets, regularizing “deserving immigrants,” and deporting “undesirable foreigners” are complementary dimensions of a diffuse and flexible regime for governing migration. I suggest that these practices amount to a form of governing that we can conceptualize as the governing of immigration through probation. Despite the apparent

contradictory logics informing these varied practices, they work together and create a regime of migration management based on a long probationary period during which migrants' desirability can be assessed and policed using many of the criteria described in previous chapters. The governing of immigration through probation is a regime that implies three interrelated dimensions: a spatial and temporal rescaling of borderwork; the deployment of a zone of legal liminality that increases irregular migrants' deportability; and the multi-scalar use of discretion in the assessment of contested criteria of desirability.

Spatial and Temporal Rescaling of Borderwork

The model for governing migration in Spain has always been a reactive one, organized around the management of irregular migration (Cachón Rodríguez 2009; Calavita 2005). Antonio Izquierdo Escribano (2012) dubbed it a "system of tolerated irregularity" (p.49) but it is more accurate to call it a regime of encouraged "institutional irregularity" (Calavita 2005:45) since irregularity is not a residual consequence of an otherwise effective immigration policy but a central feature of the regime. Indeed, Lorenzo Cachón Rodríguez (2009) explains that "the legal channels are too narrow and slow to allow for the circulation of the immigration needed by the labour market and [that] this leads to the construction of a model based on the entry of immigrants ... as undocumented that is later 'compensated' by processes of regularizations" (p.117).

Policy-makers I interviewed also explained that all attempts at designing effective recruitment programs throughout the 1990s had failed. As discussed in the chapter on labouralization, the main tool used then was the “Contingent of Authorizations for Foreign Workers,” a quota for the recruitment of migrant workers set annually by the government. From 1993 to 1999 however, it functioned as a means to regularize a yearly average of 20,000 workers already living in Spain without the proper documentation, not to attract new immigrants (Cachón Rodríguez 2009). The model has always been one in which migrants entered Spain, generally as tourists, lived and worked in Spain for years avoiding detention and deportation, and potentially obtained temporary residence and work permits through one of the avenues for regularization. According to policy-makers I interviewed, in the mid-1990s many of their colleagues considered that border and immigration controls were ineffective, that there was a clear gap between Spain’s attempt at ordering migration flows and the result on the ground (Cornelius 2004; Cornelius and Tsuda 2004), that the state was losing control (Sassen 1996). This period saw the development of the three complementary approaches to irregular migration analyzed in this dissertation.

The debates that led to the adoption of a new and more liberal Alien Act in 2000 (*LOE 4/2000*), followed a few months later by a conservative counter-reform (*LOE 8/2000*), can be read as a political struggle over the proper way to deal with this perceived lack of control (Ruiz de Huidobro 2006; Zapata-Barrero 2009). The electoral victory of the Popular Party in 2000, secured through calls for better border control and a hard stance

on so-called “illegal immigrants,” marked a clear shift toward a securitizing agenda, which echoed a similar tendency at the European level and led to an exponential increase in border and immigration controls (Calavita 2003; Carling 2007; Ferrero-Turrión and López-Sala 2012; Huysmans 2006). This spectacular securitization of the Euro-Mediterranean border makes the metaphor of “Fortress Europe” compelling, but despite the rhetoric of control, Spanish borders continue to work primarily as filters, selecting who can circulate, how, and under what conditions based on an actuarial calculation of risks (Huysmans 2006; Rumford 2006, 2008; Walters 2006). In fact, at the height of the securitization of borders, the mesh of this filter at Spanish international airports was set rather wide to facilitate the entry of irregular migrant workers, mainly Latin Americans travelling as tourists. While the entry of hundreds of thousands of migrants as “tourists” in the early 2000s could be viewed, as a congressman put it to me, as “a total lack of control,” I argue that it is more useful to study it as a rescaling of borderwork, a displacement that contributes to the deployment of a spatial and temporal zone of probationary legal liminality.

Displacing the Border: Multi-Scalar Borderwork

It is now commonly accepted in the social sciences that borders are not fixed lines in the sand, and that if they ever were located at the limits of states’ territories, they have now been displaced. The rather extensive use of Étienne Balibar’s (2002) expression “borders are everywhere” (p.80) as a shortcut gives an idea of the extent to which this notion has

spread. Mark B. Salter (2008) is right to argue that the claim is exaggerated and we should be careful not to lump together inspections performed at state border points by authorized agents, surveillance technologies, and self-governing. While I agree with Salter (2008) that it is important to recognize that specific “border functions occur at specific sites” (p.371), I think we also need to acknowledge that these sites have multiplied and shifted, and are now diffuse and dispersed. There is an ever-growing literature on the extra-territorialization of border controls (through visa regimes, bilateral and multilateral patrols, interception technology, carrier sanctions, offshore processing of asylum seekers) and internalized border and immigration control (border patrols within the national territory, immigration raids, gatekeepers preventing access to services).¹⁰⁷ While it is important to distinguish them analytically and discuss their empirical specificities, I contend that it is useful to consider a multiplicity of practices as contributing to various forms of borderwork.

Another well-established thesis in border studies is that borders do not act as walls, but as filters selecting who and what can circulate, how, and for what purposes (Huysmans 2006; Berg and Ehin 2006; Rumford 2006, 2008). For Chris Rumford, this has an implication for how we analyze borders. He claims that “seeing borders as ‘asymmetric membranes’ allows us to study borders as diffuse, differentiated and networked and is a prerequisite for understanding the dynamics of borderwork” performed by various actors,

¹⁰⁷ The literature on this topic is vast. For a general overview, see, among others, Lahav and Guiraudon 2000, Rumford 2006, and Weber 2006.

at various scales (Rumford 2008:3). This proposition is important, because by focusing on the borderwork performed by various actors dispersed through space and time, we can move away from a conception of borders as objects to an analysis of the complex and dynamic articulations of bordering *practices*. Indeed, as geographers Henk van Houtum and Ton van Naerssen (2002) have argued, “the word ‘borders’ unjustly assumes that places are fixed in space and time, and should rather be understood in terms of bordering, as . . . ongoing strategic effort[s] to make a difference in space” (p.126). Following this research agenda, some scholars working within a relational framework have shifted the attention away from the formal filtering work performed by borders and immigration selection to questions of cultural and personal bordering, and to a focus on what borders mean for people (Berg and van Houtum 2003; Linde-Laursen 2010; Paasi 2013). Others have kept the focus on the borderwork itself, but extended the analysis to non-state actors such as private corporations and citizens (Rumford 2008).

The main contribution of the critical border studies scholarship for an understanding of the governing of immigration through probation is its claim that in order to account for borders as diffuse, networked and differentiated, we need to go beyond an examination of the changing location of borders, and ask who performs the borderwork, where, when, and according to what logics (Rumford 2008). As I have explained, since the Spanish authorities have facilitated the entry of some migrants travelling as ‘tourists’ at international airports, and since other irregular migrants get in by other means, most of the filtering work performed by borders and immigration selection takes place inside the

country. This borderwork is performed at various sites by a variety of actors according to various and at times contradictory logics.

As we will see in detail below, these actors form a broad network: National Police officers who work at borders and decide whether or not someone entering as a tourist should be let in, municipal civil servants who judge whether an immigrant's proof of address is sufficient to be registered on the municipal registry, municipal civil servants who assess an immigrant's integration at the moment of writing their report for regularization, civil servants at the level of the autonomous community who assess this report, civil servants at the Ministry of the Interior who have the final word on regularization, National Police officers who patrol the streets and conduct identity checks, judges who rule on internment and on whether a deportation order is valid, and National Police officers working in immigration detention centres (*Centros de Internamiento de Extranjeros* – CIEs). To these, we could add other actors such as employers who decide whether or not to employ someone irregularly during the first few years that they have to work without a permit, the same or other employers who later decide whether or not to provide an official work offer to help migrants regularize their status, NGOs and cultural or religious organizations that might write a letter or certificate to help an immigrant get a favourable integration report, and many more. This rescaling of borderwork at various sites inside the country is made possible by the legal liminality and differential inclusion of immigrants, and this differential inclusion is conversely actively reproduced through the continuous and dispersed assessment of desirability.

Temporal Rescaling: Bordering a Probationary Period

Each of these sites where borderwork occurs can also be analyzed temporally. Indeed, as expressions such as “over-staying a visa,” “expiration of a work permit” or “maximum period of detention before release” make explicit, the blurring of legality and illegality involved in legal liminality also has an important temporal dimension (Mezzadra and Neilson 2013). Yet, the spatial dimension of migration has often over-shadowed the temporal dimension in migration studies, despite the importance of the literature on the generational aspect of integration and some work on the periodization of the history of international migrations (Griffiths et al. 2013). There is a growing interest in considering time in migration, but the research often focuses on the temporalities of mobilities and migration journeys, or time as experienced by migrants. Within this literature, Melanie Griffiths’ (2013a) analysis of the lived experience of frenzied, decelerating, and suspended time by failed asylum seekers and detained migrants in the United Kingdom is particularly insightful for a conceptualization of probation. So is the literature on the experience of waiting (Jeffrey 2008; Kobelinsky 2010; Makaremi 2011), and on temporariness and uncertainty (Bailey et al. 2002; [Bridget] Anderson 2010; Griffiths 2013b; Hyndman and Giles 2011; Mountz 2011; Mountz et al. 2002; Simmelink 2011).

Indeed, temporariness and suspended or decelerating time are two central aspects of probation. In line with the older literature on waiting in general (Schwartz 1974; Sallerberg 2008), research on migration and suspended time provides insights into the

impact of these dimensions of time on migrants (the experience of “being stuck,” of “wasting time”), but it rarely considers this slowing down of time as a governmental tactic. In fact, slowness, delays, and bureaucratic “red-tape” are often seen as organizational problems due to the complexity of modern democracies, rather than as a technologies of government deployed intentionally. If we are to understand the use of probation in the governing of migration, we need to grasp the ways slowness and suspended time operates as a tactic rather than as a residual effect.

Roos Pijpers (2011) looks at slowness in this light. Studying how “labour pools of migrant workers” from new European member states are organized by temporary work agencies that specialize in providing “just-in-time” workers to corporations, she (2011) suggests:

A perhaps provocative but nonetheless important question to ask, bearing in mind the observed inertia and bureaucratic slowness, is whether the migration state actually functions by virtue of waiting. Is waiting *just* a by-product of state institutions and bureaucracies or might it be a tactic, a management technique that is not outside but fully part of the state, struggling as it does to strike a balance between sedentarist and flexible ideologies? (P.432)

Building from a segmented labour market approach (Massey et al. 1993), she argues that in the management of migrant workers, we need to consider both spatial and temporal bordering. This temporal dimension of bordering is made obvious in the increase of states’ reliance on temporary foreign workers (Anderson 2007; Goldring and Landolt 2013) who are authorized to cross the border and work in a country for only a short period of time. But temporal bordering can also be used when workers are already inside the country. For

instance, Xiang Biao (2006) discusses the practice of “benching” whereby information technology consultant firms in India regularly take some of their workers off the market for a certain period of time to create a demand and increase the price for their service. Not unlike the workers studied by Pijpers, these information technology workers are “benched,” that is, kept aside as a pool of reservist workers. Mezzadra and Neilson (2013) discuss this practice as a case of temporal bordering understood as “the deployment of technologies of temporal delay and filtering [that] has become central to the spatial functioning of many of the world’s most contested borders [but that does] not necessarily coincide with territorial borders and their various extensions and extra-territorializations” (p.138). They analyze not only temporary work permits and flexible employment in this light, but also immigration detention as a decompression chamber that allows for the “benching” of illegalized migrant workers in accordance with the needs of the labour market (Mezzadra and Neilson 2003, 2013).

While this claim may be hard to prove in most places, and I certainly do not have any empirical evidence to suggest that detention is used as a decompression chamber in Spain, the practice of allocating temporary work permits to regularized migrants in Spain can usefully be studied through Mezzadra and Neilson’s framework. Indeed, in the case of regularization through *arraigo social*, irregular migrants need to spend at least three years surviving without residence or work permit before they can present an official work offer valid for at least one year as a partial condition for regularization. After an apprenticeship in “illegality” (De Genova 2002) of three years, they move to a less precarious position as

temporary legalized workers, but their regularized status beyond the first year is contingent on the renewal of the work offer for another two years, and then two more. The capacity to retain a status as authorized immigrant worker is thus contingent on one's utility to the labour market.

My interest in conceptualizing the use of a temporal rescaling of borderwork in the flexible governing of immigrants does not, however, solely lie in its usefulness for the labour market. It is not so much temporal bordering as a means to create a new temporally and spatially bounded reserve army of labour (Balibar 2009; Mezzadra and Neilson 2013) that interests me. Rather, my focus is on the temporal extension of borderwork beyond the territorial border, creating a space-period of probation that literally gives *time* and *space* for various institutional actors to engage in an in-depth assessment of desirability based on a variety of legal, cultural, social, and economic criteria. And while this temporal dimension of the logic of risk management has been the object of research on externalized and pre-emptive control (see [Ben] Anderson 2010; Rumford 2006; Weber 2006), the temporality of what we could call, albeit awkwardly, post-emptive or *post factum* screening is less often the object of scrutiny. The governing of immigration through probation in Spain makes use of this spatial and temporal rescaling of borderwork. In this context, the decisions involved in selecting or rejecting a candidate for immigration happens not mainly pre-emptively and externally through visas or immigration applications completed in the country of origin, nor primarily at the border check point when and where documents and intents are scrutinized, but *internally* and

after crossing the border. The risk management logic of governmental power is not the sole prerogative of future-oriented anticipatory action and vision ([Ben] Anderson 2010); it is also enacted through the continuous assessment of performance and risks and the management of population in the present. This is certainly the case in contemporary Spain, where a relative facility of entry for some migrants at international airports and the displacement of much of the work performed by borders and immigration selection across space and time contribute to the governing of migration through probation.

Facilitating Entry and Extending Borderwork

It is hard to know whether the Spanish authorities deliberately chose to facilitate the entry of Latin American irregular migrants. Interviews I conducted with high-level bureaucrats suggest that, in the early 2000s, the decision to postpone the imposition of a short-stay visa on the hundreds of thousands of Ecuadorian (and other Latin American) “tourists” who were known to be migrants was based on a series of factors. Among these, the failure to anticipate such important migration flows and the diplomatic difficulty of imposing visas on citizens of former colonies appear central. But interviewees also pointed to the Popular government’s desire to lower the proportion of Moroccan immigrants (historically the most numerous group), and the necessity to provide immigrant labour to the booming economy in the absence of an effective recruitment program. As a high-level bureaucrat of the Ministry of the Interior explained:

You can't simply pass from zero control to full control without creating a crisis. Even when we cracked down on illegal employment in agriculture after the deaths of Ecuadorians workers, and everyone agreed it was a good thing, well this led to workers leaving the fields, and we had to regularize them to compensate for stricter control otherwise the harvest would have been threatened.¹⁰⁸

His explanation of what he referred to as “difficulties in putting order in immigration” exposes a contradiction common to other countries: the need to satisfy a conservative electoral base that supports a tough stance on irregular migration, while not upsetting the employers who rely heavily on immigrant labour (for various cases, see Calavita 1989; Cornelius and Tsuda 2004; López-Sala 2005; Wihtol de Wenden 1992). To a great extent, this contradiction is why Spanish authorities waited to lobby the European Commission for the imposition of a Schengen visa on Ecuador (2003) and Bolivia (2007), the two main sources of irregular migration at the time.

What is certain is that the government was aware that these “tourists” provided the bulk of Spain’s new immigrants. An Ecuadorian consul to Spain shared this view, explaining:

The Ecuadorian population arrived by air at the Barajas Airport, this is to say there was an opening. I believe that the authorities were aware of what was happening, but because of the conditions of the labour market . . . the need for workers . . . the fact that various sectors of the Spanish society would allow the presence of this group, this led to facilitating the entry. Otherwise, you cannot explain that 3 or 4 planes arrived everyday and left empty . . . It's possible that they said that there was control while knowing that in fact, about 1100 persons entered daily from Ecuador, and of these only 20 or 30 left . . . There were zones where they

¹⁰⁸ Interview, Madrid, October 4, 2012.

needed this labour force and where it was essential to be able to count on this contribution. I think this is what permitted the entry of these [Ecuadorian] citizens.¹⁰⁹

Yearly statistics available at the time confirm these assertions. As I explained in Chapter 1, we can estimate the number of irregular migrants living in Spain by subtracting the number of foreigners with residence permits from the total of all non-EU nationals on the municipal registry. In the case of the Ecuadorians alone, this method reveals an increase of around 100,000 new irregular residents from 1999 to 2000, 67,000 more in 2001, and another 100,000 more by January of 2002, and this despite two collective processes of regularization held in 2000 and 2001 (Izquierdo Escribano 2012:87). In addition to these statistics, Spanish authorities also had access to police reports estimating that in 2002 alone 101,432 Ecuadorians entered the country and only 874 left (Rodríguez 2003). By November 2002, the numbers were so high that the government decided to ask the European Commission to impose a Schengen visa on Ecuadorians, a policy that was implemented in the summer of 2003 and led to a drastic decrease in the number of entries. Indeed, the European Migration Network estimated that while the monthly average of entries in the 6 months prior to the imposition of the visa was of 12,132 Ecuadorians, this number dropped to 4,903 in the 6 months following the imposition of the visa (Red Europea de Migraciones 2011).

¹⁰⁹ I would like to thank Antonio Izquierdo for granting me access to the transcription of this interview conducted in 2007 by members of the *Equipo Sociológico sobre las Migraciones Internacionales (ESOMI)* at the *Universidad de Coruña*.

But why not target other Latin American countries? After all, according to the same police estimates, it was not only Ecuadorians who entered as tourists and did not leave. For all Latin Americans, there were 86,000 departures for 550,000 entries (Rodríguez 2003).¹¹⁰ For a government that securitized immigration and prided itself on its strict border control and aggressive expulsion policies, this is somewhat surprising. However, considering that stricter immigration control at the border would need to be complemented by a functioning recruitment strategy, this policy appears less contradictory. Indeed, in the same period, the annual quotas to legally recruit foreign workers, the contingents, were incredibly low. In 1999, the last year that the contingent could be used to regularize workers already in Spain, the quota was 16,264.¹¹¹ In 2000 and 2001, because there were already collective processes of regularization underway, not a single permit was granted through the contingent. Then in 2002, the quota was set at 31,979, of which 21,095 were to be attributed for short duration seasonal work, but in fact only 11 064 workers were eventually incorporated in the workforce through these permits, almost all of them seasonal. This situation was repeated in 2003 when 34,157 permits were announced, 69% of which were seasonal permits, but later only 18,075 were finally issued, 82% of them seasonal (Cachón Rodríguez 2009:185-189).

¹¹⁰ It is not known whether the 86,000 departures came from the 550,000 entries. It is also possible that some of the tourists who entered the European Union through Spain left through another country, but this is as likely as tourists entering through another country and leaving through Spain, and this possibility cannot account for such an important gap.

¹¹¹ Since 2000, in an attempt to turn the quota system into a real recruitment tool, foreign workers can only apply for a permit from outside the country.

After the election of a Socialist government in 2004, the possibility of entering Spain with residence and work permits in hand increased slightly. On the one hand, the reintroduction of the General Regime (*Régimen general*) allowed employers to recruit individual migrant workers abroad to take on positions classified as “hard to fill” in the *Catálogo de puestos de trabajo de difícil cobertura* (provided that employers know of potential migrants abroad willing to take this job).¹¹² On the other hand, the number of permits attributed through the quota system also increased slightly, although it did not become significant until 2007, and permits are still attributed mainly for short-term seasonal work (Cachón Rodríguez 2009:185-189).

During this period of economic boom, this was highly insufficient. As a result, other “tourists,” mainly Bolivians and Argentines, but also by then Romanians, replaced Ecuadorians as incoming irregular migrants, and soon enough airplanes of Bolivian “tourists” started landing full and leaving empty, reaching a peak of several flights per day in the weeks prior to the delayed imposition of a short-stay visa on Bolivians in 2007. As a result, the total number of Bolivians on the municipal registry grew from 28,432 individuals in 2003 to 242,496 in January 2008, before going down as a result of the imposition of the visa, and the gradual access of Bolivians to regularization and eventually citizenship (Instituto Nacional de Estadísticas 2013). Carmen González-Enríquez (2009) estimated that, “At the beginning of 2008 those from Argentina, Bolivia, Brazil, Chile, Colombia, Mexico, Paraguay, Uruguay and Venezuela entailed two thirds of the whole

¹¹² The *Catalogue of Jobs Hard to Fill* is a yearly assessment of the needs for foreign workers per sector.

irregular immigration” (p.27). She adds that Bolivians and Argentines contribute the most to this number at the time, with 165,000 and 99,000 individuals in administrative irregularity respectively in 2008. This represents a level of irregularity of 70% among Bolivians and 51% among Argentines. In absolute numbers, they were followed by 79,000 Brazilians residing without permits (67% of all Brazilian residents), 52,000 Paraguayans (79% of all Paraguayan residents), 30,000 Uruguayans (49% of all Uruguayan residents), and 27,000 Venezuelans (45% of all Venezuelan residents) (González-Enríquez 2009:27-28).¹¹³

Many officials I interviewed, as well as conservative politicians and journalists promoting anti-migrant legislations in the media, tend to frame this situation as a total lack of control. For instance, when asked why he thought visas were not imposed on more countries earlier, a spokesperson for the *Sindicato Unificado de Policía* (SUP), the main police union whose members include officers working at airport customs, claimed:

The government was acting impulsively. We took action on immigration depending on how was the economy, depending on the political situation, on third countries. And this is not the appropriate way. I mean, you can't combat migration flows through improvisation. That is: today it's convenient to bring in people, we let them in to do what they want, later we end up with a big pocket of irregular immigrants . . . and we regularize them. There was no strategy, no effective control.¹¹⁴

But whether the relative facility of entry by air for some migrants is the result of a policy design or a policy failure—and the data shows that it is a mix of both—these practices do

¹¹³ The ratio of irregularity among Bolivians is particularly striking considering that many of those with residence permits have obtained them through regularization in 2005 and before (see Finotelli and Arango 2011).

¹¹⁴ Interview, Madrid, November 5, 2012.

not amount to a lack of control. Rather, they are premised upon the logic of temporally and spatially displacing control by letting many migrants in as “tourists” and tackling the issue of immigration enforcement later and elsewhere through two distinct strategies: on the one hand, the constant policing of immigrant neighbourhoods, preventive detention, and attempts at deportation that force irregular migrants to live in fear, act discreetly, and self-police; on the other hand, various paths to regularization that provide reasonable prospects of obtaining residence and work permits for immigrants who live their lives in an exemplary way, fulfilling the requirements set by the various levels of government. This strategy effectively creates a regime of migration management based on a lengthy probationary period during which migrants’ desirability can be assessed and policed. The buffer zone that the rescaling of borderwork creates is not only spatial but also temporal. By simultaneously giving some migrants a chance to get in and try to prove that they deserve to stay, and enabling border controls to occur beyond the time and space of the physical border crossing, the rescaling of borderwork becomes instrumental in the (re)production of this space-time of probation.

Multi-Scalar Assessment and the Multi-Directionality of Immigration Governing

While I have thus far focused on the spatial and temporal dimensions of the rescaling of borderwork, this rescaling also has a legal dimension. Indeed, the lengthy probationary period is one characterized by what I have described in Chapter 3 as legal liminality and inclusion through illegalization. In that chapter, I had discussed the legal construction of

illegality in relation to the adoption of the first Alien Act and had argued that liminal legality should not be understood as a characteristic of individuals, but rather as something that is deployed as a technology of government and is better described as legal liminality. Here, I want to highlight the role that this legal liminality plays in the governing of migrants through probation by keeping them in a situation of protracted deportability and linking their ability to stay in the country to the administrative and juridical decisions of various actors.

De Genova's (2002, 2004) concept of deportability points precisely to this situation of precariousness that is created at the point of junction where legal liminality and the possibility of border and immigration enforcement meet. For him, deportability and precariousness are what characterizes what he calls the apprenticeship in "illegality." Indeed, he explains that the "legal production of 'illegality' provides an apparatus for sustaining . . . migrants' vulnerability and tractability—as workers—whose labour-power, inasmuch as it is deportable, becomes an imminently disposable commodity" (2004:161). While this is true, I argue that we need to pay more attention to the term "apprenticeship" and suggest that this apprenticeship in "illegality," along with probation more broadly, should be understood primarily as a period during which the desirability of each migrant can be assessed and policed. This idea of assessment is key in providing an account of precariousness and liminality that goes beyond the valid but obvious argument, demonstrated in many instances, that "undocumented workers provide capitalist economies with a source of labour that lacks the power of domestic labour to

exact concessions from employers,” as Kitty Calavita (2003:400) has deplored. Indeed, the notion of apprenticeship does not simply convey the idea of a mandatory period of illegality or liminal legality, this legally produced precariousness allowing for exploitation, although it is certainly the case in Spain (Cachón Rodríguez 2009; Romero 2010). It is also, just like any internship, a moment of examination, a period of probation. The assessment of the relative desirability of migrants during this period can be helpfully understood as a dimension of borderwork performed at various sites by a range of actors wider than those readily identifiable as border security professionals.

This internal borderwork is deployed in Spain through two sets of complementary technologies of government that, following Jonathan X. Inda (2006), we can organize analytically into two types: “technologies of citizenship” and “anti-citizenship technologies” (p.19). Inda explains that “technologies of citizenship” are technologies of inclusion “that endeavour to reinsert the excluded into circuits of responsible self-management, to reconstitute them through activating their capacity for autonomous citizenship” (p.19). Alongside these are “anti-citizenship technologies . . . that deem the exclusion of certain anti-citizens to be unavoidable, and endeavor to regulate these individuals . . . through operations that seek to contain the threats they and their actions pose” (p.19-20). In the governing of irregular migration in Spain, technologies of citizenship include practices associated with municipal registration, regularization, and integration, and are framed as being oriented toward inclusion. The assessment of desirability through these practices is purportedly meant to *select in* responsible prudent

migrants, while leaving the undesirable in their current situation. Conversely, identity controls in the street, and even more so detention and deportation, are framed as ways of *casting out* those deemed dangerous and irresponsible, while leaving those who are not a threat in their current situation. During their apprenticeship in “illegality” and throughout the entire probationary period, migrants have to govern themselves in such a way as to meet various authorities’ expectations of the prudent desirable subject, walking a fine line between the prospect of regularization and the threat of deportation.¹¹⁵

While, these two sets of practices are often presented as belonging to two distinct logics, they are in fact complementary and coeval dimensions of the regime that governs irregular migrants. For instance, for many bureaucrats at the Ministry of Employment and Social Services or in autonomous communities, regularization is the ideal and primary strategy. As a bureaucrat at Catalonia’s General Office for Immigration explained: “at the level of autonomous communities, our role is to do all we can to facilitate integration, because we are the ones who live with [immigrants] on a daily basis. But in some cases,

¹¹⁵ It is important to understand that the binary opposition between these technologies does not refer to a clear division between citizenship and anti (or non) citizenship as a legal status or a political condition. Neither does the distinction between technologies of citizenship and anti-citizenship entail that they are radically different or antithetical. As Mariana Valverde (2010) rightly explains, “particular legal technologies can be seen as enacting various logics simultaneously—thus avoiding sterile debates about whether law X is essentially inclusionary or exclusionary, good or bad” (p.227). Methodologically, we must thus assume that the result of the use of these technologies is indeterminate. Therefore, the binary opposition refers neither to the socio-legal position of migrants, nor to an essential conceptual opposition between the two types of technologies. Instead, it refers to the *alleged function* of these technologies of government organized around dividing practices that are “actively involved in producing and naturalizing a highly racialized division between the prudent and the anti-prudent, the autonomous and the dependent, the citizen and the anti-citizen, and the ethical and the unethical” (Inda 2006:18; see also Rose 1999:Chap. 7).

for instance for criminals, it's a problem if they stay."¹¹⁶ On the contrary, at the Ministry of the Interior, and among police officers responsible for implementing the Alien Act, regularization is seen as a means of last resort. As a high-level bureaucrat at the Ministry of the Interior argued, for them the possibility of regularization "comes out of a practical necessity to provide a solution in the cases where the first response, expulsion, the logical juridical consequence . . . of irregularity, could not be enforced". He added: "In these cases, it's essential to provide a way out of irregularity . . . but it needs to be done in a way that is coherent with fundamental principles of the immigration policy: fighting irregular migration and promoting orderly and legal immigration."¹¹⁷ These preferences are not stable however, and on the ground, a plethora of actors, each enjoying a certain level of discretion, intervenes to decide who deserves to access the inclusion stream and who ought to be put on the exclusion tract, often with the effect of prolonging the probationary period of liminality. Indeed, the result of every encounter is indeterminate and decisions by institutional actors can all potentially lead migrants in one direction or the other. In fact, the tension between the two types of technologies is central to the notion of targeted governing (Moore and Hannah-Moffat 2005; Valverde and Mopas 2004) based on multi-scalar and continuous assessment, but also often contribute to an extension of the space-time of legal liminality.

¹¹⁶ Interview, Barcelona, October 1st, 2012.

¹¹⁷ Interview, Madrid, October 4, 2012.

In their analysis of probationary statuses in Canadian immigration policies, Luin Goldring and Patricia Landolt (2012, 2013) compare the situation of migrants in probationary periods with that of players in a game of chutes and ladders. They (2012) find this metaphor useful, because

it reframes the orderliness and unidirectionality of [previous models] by recognizing multidirectional movement between tracks. [It] invites attention to the role of policies and institutional actors in precipitating movement along or across tracks. Policy changes may redraw the boundaries of immigration categories and change the rights associated with categories. Front-line workers, teachers, landlords, doctors, legal consultants, employers and other institutional actors may act as catalysts, moving people from one legal status category to another, and toward more or less secure status (P.10)

This metaphor brilliantly captures the situation of irregular migrants in Spain: the ever-shifting character of their legal status, the multiplicity of institutional chutes and ladders, and the tremendous impact that decisions by a myriad of actors can have on them moving closer to regularization or closer to deportation. Most importantly, it highlights the fact that the duration of the probationary period is undetermined, since a chute such as immigration detention will, when not leading to deportation, cast migrants back to square one, forcing them to spend many more years going over the same steps again in the hope of achieving regularization.

The regime that results in this chute and ladder model may therefore not amount to a well-defined system developed intentionally by policy-makers, but it nonetheless defines how irregular migrants are actually governed in practice. Indeed, as Giuseppe Sciortino (2004) explains, “the life of a regime is the result of continuous repair work

through practices” (p.32). I thus analyze the governing of immigrants through probation as a regime to capture “the flexible, multi-scalar nature of the processes of governmentality and governance . . . as well as the heterogeneity of their actors and the growing intertwining of knowledge and power that characterizes them” (Mezzadra and Neilson 2013:179). The use of discretion by a multiplicity of actors involved in the multi-scalar assessment of desirability is a central feature of this regime. While its importance appears to be the result of the patchwork approach to immigration policy-making, it cannot simply be understood as a residual category. The governing of immigration through probation relies as much on the use of administrative discretion in the multi-scalar assessment of migrant desirability as it does on the spatial and temporal rescaling of borderwork and the extension of a space of legal liminality.

In the following sections, I discuss the complementary governing strategies deployed at various levels, and describe the logics and practices of policy-makers, police officers, judges, and bureaucrats. In doing so, I pay attention to the role that discretion and competing institutional interests play in the assessment of desirability. By insisting on the complementarity of seemingly unrelated actions, I wish to illustrate the cumulative character of discretionary power. As Anna Pratt (1999) has demonstrated in the case of immigration detention in Canada, “The ultimate decision to detain, or to release, is not a single event. The ‘case’ is constructed over time and is contributed to by a myriad of discretionary decisions, made by different agents at different points in the process” (p.218). The same is true in the Spanish context, where a myriad of seemingly unrelated or

even contradictory actions have the cumulative effect of moving irregular migrants into the inclusion stream or setting them on the exclusion one, often effectively keeping them in a protracted space-time of legal liminality. For analytical clarity, these varied practices have been organized according to a general distinction between technologies of citizenship and anti-citizenship technologies.

Regularizing “Desirable Immigrants”

For irregular migrants living in Spain, there has always been a reasonable prospect to eventually obtain temporary residence and working permits, although it has become harder in recent years. I have already mentioned the annual quota of work permits that has worked as a disguised regularization measure from 1993 to 1999. In addition to this, until 2005 regularization occurred mainly through occasional but frequent (although officially dubbed “exceptional”) collective processes of regularization. Such processes occurred in 1985/86, 1991, 1996, 2000, 2001 and 2005 and granted a total of 1,162,979 residence permits (Cachón Rodríguez 2009; Finotelli and Arango 2011). Generally, these processes issued an initial renewable permit valid for a year and were only available to migrants without criminal records who were able to demonstrate that they had been living in Spain before a set date.¹¹⁸ In 2007, following pressures from the European Union, Spain forbade the use of collective processes of regularization. Since then, the only means of regularization is an individual path known as *arraigo*, or rootedness, briefly discussed in

¹¹⁸ In the 2005 regularization, the initial permit was valid for two years, making it somewhat easier to prepare for its renewal.

Chapter 4. In the next section, I describe the long process that can lead to regularization through the category of *arraigo social* and discuss how various individuals intervene in this process, performing what amounts to a form of multi-scalar internal borderwork.

Limiting and Facilitating the Inscription to the Municipal Registry

Upon arriving in Spain, often as tourists, migrants look for work and a place to stay. When regularization through *arraigo social* is the objective, the first key step to take is to register as resident on a municipal registry (*padrón*) to be able to later document two years of residency in Spain.¹¹⁹ This should be simple since the law makes it mandatory for municipalities to register everyone who reside within their jurisdiction, regardless of their immigration status.¹²⁰ And yet, discretionary power (legal or not) makes the experience far from standard.

In extreme cases, municipal authorities have refused to register immigrants without residence permits even though the law demands only that they verify a person's identity (through an identity document), as well as a one's address (through a lease, ownership certificate, electricity bill, etc.). For instance, the municipal governments in the Spanish enclaves of Ceuta and Melilla situated in Northern Morocco have always refused to register irregular migrants arguing that, because of their situation as border towns, this

¹¹⁹ Registration, which is mandatory for anyone living in Spain, also allows irregular immigrants to access services including, until September 2012, health care, thus making it very advantageous to register.

¹²⁰ The main legislation is the *Ley 7/1985 de abril Reguladora del Regimen Local*, Art. 15-17. See also the legal opinion of the state attorney on the illegality of municipal actions preventing registration (Abogacía General del Estado 2010).

policy would lead to abuses if implemented. In 2010, the conservative mayor of Vic (Catalonia) announced that his town would not register migrants without residence permits, while the town of Torrejón de Ardoz (Madrid) only registered residents who lived in apartments with a minimum of 20m² per person, two strategies aiming at reducing the number of immigrants living in their municipalities (Clota 2010; Gimeno 2010). In the town of Robledo de Chavela (Madrid), the mayor recently defended his policy of not registering immigrants without working permit, claiming his right to control who can reside on the town's territory. He explained: "I don't care if people like it or not. Immigrants who don't work, they can't come here to scrounge. It's as simple as that." And when reminded that his actions were illegal, he responded: "What can they do to me? If no one here applies this legislation..." (Otero 2013:n.p.).

While these cases were very politicized, similar cases occasionally make the news. In a 2008 report based on a survey conducted with Catalan municipal authorities, the ombudsman of Catalonia noted that municipalities with a greater immigration population are now more restrictive, and denounced that they are in fact using their registration power to control immigration. The report notes, for instance, that while municipalities can choose to accept pieces of identification other than a passport or a Spanish identity card, municipalities with more immigrants tend not to accept any other document.¹²¹ A similar tendency appears in relation to rejection based on the number of individuals living in the

¹²¹ Indeed, towns whose immigrant population represents 5-10% or more than 10% of the total population refuse any other document 96.6% and 86.4% of the time respectively, while those with less than 5% of immigrant tend to be more generous and will refuse other documents only in 63.2% of the cases (Síndic de Greuges 2008).

same house, or the number of individuals per square meter, a measure used mainly in municipalities with more immigrants to limit their registration (Síndic de Greuges 2008).

However, migrants also share tips about welcoming municipalities that accept affidavits from religious figures or social workers to confirm a person's identity, or that find creative ways to verify a person's address when documentation is missing (see also Síndic de Greuges 2008). Some do so for humanitarian reasons, but other municipalities facilitate registration to increase their population and access governmental funding available only to municipalities over 20,000. As a high-level official of the Catalan General Immigration Office explained: "You have everything: cases like Vic who stalled registration, but I also know mayors who tell me 'We're only 200 residents short of 20,000, so we do all we can to register everyone' or 'we were 23 000 and 5,000 left but we can't afford to take them off the registry'."¹²²

These institutional disparities result from local political decisions and are often established as a means for facilitating or limiting the settlement of immigrants at the local level. This strategy is representative of the multi-scalar governing of immigrants and can be considered a form of municipal borderwork aiming at filtering who can and cannot live in the community based on local and largely discretionary assessments of their desirability.¹²³ Indeed, while critics were right in arguing that the mayor of Robledo and Vic

¹²² Interview, Barcelona, October 1st, 2012.

¹²³ Cases of municipal borderwork similar to this have been documented in many other countries, including Canada (Gilbert 2009), Italy (Ambrosini 2013), France, Germany, and the Netherlands (Guiraudon and Lahav 2000) and the United States (Armenta 2012; Gilbert 2009; Varsany 2008a, 2008b, 2011).

expressed xenophobic attitudes, racism itself is not sufficient to explain this assessment of desirability. As Ghassan Hage ([1999] 2000) explains, “Generally speaking, the classification of an object as ‘undesirable’ always assumes a space where the undesirable is defined as such . . . Consequently, categories such as ‘too many,’ while embodying some form of ‘racist’ belief, are primarily *categories of spatial management*” (p.38). Considering the assessment of migrants’ desirability as a multi-scalar technique of space management helps us understand why the capacity to define criteria and perform this assessment is the object of power struggles between local, regional, and central governmental institutions. In this sense, the rescaling of borderwork discussed in the previous chapter is not the result of a planned decision to govern immigration through probation. Rather, it is part of a regime for governing migrants that is largely the result of ongoing struggles over what level of government should be able to manage the presence of immigrants on their overlapping jurisdictions (Rumford 2008; Zapata-Barrero and Pinyol 2008). This situation invites us to question the “Russian doll” model of jurisdictions and scales as nested hierarchies, and look instead at jurisdictions as flexible technologies that can allow municipal employees, for instance, to use municipal bylaws to intervene in the city, but on a space imagined as national (Brenner 2004; Ford 1999; Valverde 2009, 2015).

The cases discussed here are informed by institutional guidelines provided by mayors and reflect assessments of desirability often applied to an entire population of irregular migrants, rather than that of particular individuals. But NGO workers, migrants, and immigration lawyers I talked to also denounced the difficulties that immigrants face in

their interactions with individual frontline bureaucrats who have to use discretionary power to assess what counts as proper documentation and can, to a certain extent, choose to facilitate or hinder registration. The importance of administrative discretion in the assessment of desirability appears even more clearly in the sets of practices discussed next: the evaluation by street level bureaucrats of the level of integration of immigrants applying for regularization. As we will see, the ability to define and assess integration is also the object of political struggles between various levels of government.

Assessing Rootedness and Integration at the Local Levels

Once registered on the *padrón*, irregular immigrants are able to access many services and to document the length of their stay in Spain for the purpose of regularization. Under the current legislation, they have to spend three continuous years residing in Spain without authorization before they can apply for regularization based on *arraigo social*. During this apprenticeship in “illegality,” they have to avoid deportation, keep their distance from any criminal activities to avoid getting a criminal record, gather proof of their integration to obtain a favourable social insertion report, and work in the underground economy in precarious conditions, ideally trying to please their employers so that they will eventually agree to provide them with the one year legal work offer they will need to apply for regularization. As mentioned in Chapter 4, regularization through *arraigo social* is accessible to “foreigners who can demonstrate a continuous stay in Spain for a period of at least three years,” providing that they “do not have a criminal record in Spain, in their

country of origin, or in any country where they lived within the last five years,” that they have a “work contract signed by the worker and employer at the moment of the request and whose duration should not be for less than a year,” providing that they can prove “family relations with foreigners with residence permits” (husband, wife, child, mother, father) or “present a report of *social insertion* provided by the autonomous community where they reside.”¹²⁴

While the work contract and the lack of criminal record are obvious means to distinguish between “desirable employable and responsible immigrants” and those deemed “undesirable foreign delinquents,” the social insertion report is a more interesting and subjective means through which migrants’ desirability is assessed. The legislation provides general guidelines, but the means of assessment vary depending of the jurisdiction. For instance, in Madrid, applicants need to complete a course titled *Know the Laws* and pass a Spanish language test if it is not their first language, while many other municipal offices assess this knowledge only through interviews. Furthermore, while the new Regulation of the Alien Act (*RD 557/2011*) makes autonomous communities responsible for the emission of the report, in most places it is still municipalities that write them, making the discrepancies even greater.¹²⁵

¹²⁴ The conditions for the *arraigo social* are described in Title V, Chapter I, Art. 124.1 of the latest Regulations of the Alien Act (*RD 557/2011*).

¹²⁵ In the autonomous cities of Ceuta and Melilla, as well as in the autonomous communities of Catalonia, Canaries, Madrid and Euskadi (Basque Country), local governments produce the final integration report.

In the Autonomous Community of Catalonia, where it is the Catalan government who ultimately submits it to the central government, the report is still produced first by the municipality where the immigrant resides. Frontline municipal employees collect documents provided by immigrants and interview them to assess their level of social integration (indicators of integration include: use of municipal services, interactions with neighbours, membership in sport clubs or local associations, and participation in educational and integration programs), as well as their knowledge of the Spanish and Catalan languages. They then grade the integration as acceptable or unacceptable and transfer the report to the Catalan government, which makes the final recommendation to the central Spanish government.¹²⁶ In 2011, Catalan nationalist politicians, always trying to gain more autonomy vis-à-vis Madrid, secured the responsibility of producing the report as an attempt to better control immigration. As a bureaucrat of the Catalan General Immigration Office explained:

We have no control over visas, over matters of the Ministry of the Interior such as expulsion of course, but thanks to the work of some Catalan members of Congress we obtained the right to assess integration for the *arraigo social*. We also tried to have a mandatory report at each renovation of the residence permits, so we could have our word heard not only for irregular immigrants but for all immigrants. But without success . . . Having the evaluation centralized here is important, because if we do all the work of integration, we need to be able to select our immigrants. And of course, language is key for us. For now, the municipal staff does an interview and decides whether or not an immigrant's language skills are good enough. But it's very subjective: maybe if the staff is a Catalan nationalist he'll be more demanding, while if he's more Spanish-speaking he will think that knowing two words of Catalan is good enough. Now that we have this power, we're slowly trying to get a consensus on criteria. To get a favourable report, immigrants don't need to *know* Catalan well; all we ask is that they prove that they *made an effort* to learn it. So, for now, if in an interview someone cannot understand Catalan,

¹²⁶ The procedures for the emission of the report can be found in written instruction sent to municipalities by the Catalan General Immigration office on March 20, 2012 (*Instrucció 1/2012*) and updated in 2013 (*Instrucció DGI/BFS/1/2013*).

we ask that he proves that he has taken 20 hours of language class, but we're thinking of being more strict in the future, maybe asking 45 hours.¹²⁷

Individual regularization through *arraigo social* is thus a means developed by the central Spanish government to select irregular immigrants based on their desirability, a filtering tool that is the object of power struggles between municipalities, autonomous communities, and the central government. At all levels, the assessment of desirability is intimately tied to immigrants' capacity to convince civil servants that they are integrating, hard-working, law-abiding immigrants who, after an apprenticeship in "illegality" of three years, finally deserves to be put on a track toward integration. This inclusion stream offers few guarantees however: while it temporarily limits the threat of deportation, the first residence and work permit is only valid for one year and has to be renewed twice (each time for two years) before one can apply for permanent residency and eventually Spanish nationality. The apprenticeship in "illegality" of three years is thus extended by a period of five years of probationary status, based on temporary permits, renewable only on the condition that one continues to be a legally employed, law-abiding resident. Not surprisingly, the economic crisis has strongly impacted immigrants and other precarious workers, and preliminary statistics on the levels of success for regularization and permit renewal suggest they are diminishing (Sabater and Domingo 2012).

Regularization through *arraigo social* thus works as a kind of citizenship technology, opening a very precarious yet essential inclusion stream for those deemed responsible

¹²⁷ Interview, Barcelona, October 1st, 2012. As of September 2013, the criterion is indeed of 45 hours of Catalan language class (*Instrucció DGI/BFS/1/2013*).

and desirable based on an assessment of the way they conduct themselves during their apprenticeship in “illegality.” While it is clearly part of a project of inclusion, this program operates primarily as a filter that divides irregular immigrants between “a majority who can and do ensure their own well-being and security through their own active self-promotion and responsibility . . . and those who are outside this nexus of activity” (Rose 1999:257-258). To get into this inclusion stream and stay in it, immigrants know that they have to conduct themselves in such a way as to build a record that matches the administrative criteria of desirability and responsibility. And they do so by acting in a prudent fashion, maybe participating in a football club or a cultural organization, taking language lessons, or volunteering at a local charity, and making sure to document all of this. They govern themselves in an attempt to access this inclusion stream, but also to avoid the coeval exclusion one, since they are well aware that this internal border work takes other forms that are more exclusionary. Indeed, this technology of citizenship is coextensive with anti-citizenship technologies, those “technologies that deem the ethical reconstruction of marginal subjects unlikely and therefore work principally through practices of containment” (Inda 2006:52). These include intensive and continuous police control, prohibitive fines, internment, and deportation—all measures that “have [selective] incapacitation as their primary goal” (Brandariz García and Iglesias Skulj 2013:258).

Policing the Streets and Detaining “Undesirable Foreigners”

The distribution of police tasks among various police bodies intervening at various levels also affects the role of the police in migration management. While the *Guardia Civil* polices external borders, advises third-country security forces on migration control, and takes part in patrols at sea, and local police bodies are often seen policing immigrant street-vendors potentially contravening municipal bylaws, the National Police is officially the sole institution responsible for controlling the presence of foreigners in Spain. I will thus focus only on this last body here.

There is no distinct border and immigration agency as in many countries: National Police officers staff all specialized units policing foreigners.¹²⁸ This means that its officers are responsible for controlling the entry of foreigners at authorized points of entry, guarding immigration detention centres, and deporting irregular immigrants, but also for fulfilling all other police functions such as the everyday policing of the streets. Police officers working at the border and in immigration detention centres belong to specialized immigration units, while those policing the streets do not. However, they are all members of the same police institution, can easily transfer from one post to another, and cooperate closely. Because of this institutional unity, the transition from the policing of the actual border, to the streets, and to the detention centres is fluid.

¹²⁸ These units are the Central Border Unit, the Central Unit of Expulsion and Repatriation, as well as the Central Unit on Illegal Networks and Documental Fraud.

Police Identity Checks as Border Control

“Borders are everywhere in our city. Immigration identity controls happen everywhere, all the time: at subway station, in the plazas, in soup kitchens,” explained a volunteer for the Madrid-based Neighbourhood Brigades for the Observation of Human Rights, an association patrolling the streets and documenting what they call “discriminatory identity controls” and “racist raids.”¹²⁹ Police identity checks that appear to be based on racial profiling and informed by the desire to control immigration status are so common on the streets of Madrid that anyone living in an immigrant neighbourhood witnesses them (and/or is targeted by them) daily. Seeing an increase in these apparently illegal police practices, and being unable to obtain statistics from the Police Head Office or the Ministry of the Interior, various local NGOs now document these controls (Brigadas Vecinales de Observación de Derechos Humanos 2012 – BVODH).

In February 2009, written instructions distributed to police officers in the Madrid district of Villa de Vallecas and establishing a weekly quota of 35 detentions of foreigners, were leaked to the media. The internal document explicitly prioritized the arrest of Moroccans because they are easier to deport and mentioned that “if [the 35 detentions] are not there, you go find them outside our district” (Berdie 2009). Eventually, the minister of the interior admitted that similar quotas had been established “in four or five police stations,” but that these practices were going to stop (El País 2009: n.p.).

¹²⁹ Interview, Madrid, November 6, 2012.

Representatives of the *Sindicato Unificado de Policía*, in contrast, claimed that this was a common practice in many police stations because of the idea that effectiveness is to be measured by the number of detentions. They opposed this statistical measurement of productivity and denounced the fact that police officers who did not co-operate faced sanctions such as relocation or the loss of their annual productivity bonus (El País 2012). A spokesperson of the union explained the logic:

The justification is that every year the Ministry of the Interior presents its data of criminality in front of the parliament, in front of society. And they want more detention this year than last year. They want to be able to say “This year we’re better because we conducted more detention” and the police chiefs need to provide good statistics, and they pressure the low-rank police officers. And a detention is a detention, whether it’s for a car robbery or an administrative violation like irregular stay. So what do they do? They make use of irregular immigration to make their numbers look better. And when they ask us to do that, which is what we’ve been denouncing as a union, well we have to do it. And if you go to a soup kitchen one day, and you identify them and you take ten detainees, this was considered good. It was statistics pure and simple.¹³⁰

The use of arrests for bureaucratic purposes, not for what street-level police officers consider its legitimate public safety function, offended this spokesperson. He added:

But it’s absurd: chances are they won’t be deported. So you’re doing a work that isn’t real. We should target drug traffickers, those who smuggle illegal people in our country to make money, or for prostitution. This makes sense, but the poor man who’s going to work with his sandwich under the arm and wait for him at the subway gate to detain him because he’s irregular, this shouldn’t be our work . . . But those were the instructions, and they put our members at risk because in some cases we’re saying they might have approached illegality. Some of the instructions contained in Memorandum 1/2010 were illegal, and that’s why we opposed it.¹³¹

¹³⁰ Interview, Madrid, November 5, 2012.

¹³¹ Interview, Madrid, November 5, 2012.

The memorandum he refers to (*Circular 1/2010*) was published by the Police Directorate of the Ministry of the Interior in 2010.¹³² It contained instructions for police action based on the Directorate's erroneous interpretation of the new Alien Act (*LOE 2/2009*) and the Citizen Safety Protection Act (*LOPSC 1/1992*). This memorandum, which has been condemned by more than 400 NGOs in Spain and was criticized by Spain's ombudswoman, suggested that since foreigners are legally required to (1) identify themselves, and (2) have documentation proving that they are in Spain legally, and since the Citizen Safety Protection Act allows police to preventively detain individuals who do not provide identification documents in order to verify their identity, police could detain migrants who cannot prove that they are in Spain regularly (El País 2011). This was a misinterpretation of the legislation, which only permits preventive detention to verify someone's identity, not his or her immigration status (Martínez Escamilla and Sánchez Tomás 2011). It is hard to measure the quantitative impact of these instructions since the Ministry of the Interior releases only partial statistics, but we know that on four "random" days in February 2012 for which the SUP obtained numbers, the National Police detained 370 individuals for "illegal stay" in Madrid alone, a number representing just over 47% of all detentions made that weekend in the capital (Sindicato Unificado de Policía 2012:18).

Eventually, the detailed documentation of police immigration controls by the BVODH and other organizations, the revelation that a memorandum instructed police

¹³² *Circular 1/2010 Instrucciones sobre determinadas actuaciones policiales derivadas de la nueva Ley 2/2009, de 11 de diciembre, que modifica la L.O. 4/2000, de 11 de enero, de Extranjería y recordatorio de otras actuaciones.*

officers to illegally detain migrants preventively, claims by the SUP that quotas of detention are common, and the condemnation of these practices by Spain's ombudswoman (Defensor del Pueblo 2012) and the European Commission against Racism and Intolerance (2011) forced the publication of new instructions in May 2012. Implicitly acknowledging the existence of immigration raids, the new memorandum (*Circular Letter 2/2012*) clearly states that:

The implementation of [police plans related to irregular migration] has to avoid any type of practice that could lead to the undue privation of the rights and liberties of immigrants, being forbidden for this reason the establishment of quotas for the identification or detention of foreigners by any unit of the National Police [as well as] massive or indiscriminate practices based only on ethnic criteria.¹³³

This shift in policy seems to have reduced the number of raids and unlawful “preventive detentions” of irregular immigrants, but it did not significantly reduce the number of identity checks. During my stay in Madrid in 2012, I witnessed hundreds of identifications of foreigners in the streets and plazas of the immigrant neighbourhood of Lavapiés where I lived, and immigrants I talked to all agreed that while there was a decrease in the spectacular character of control through raids, “routine” identifications of immigrants continued. The BVODH (2012) arrived at similar conclusions, arguing that since the publication of the new memorandum, the most notable change on the streets has been “that identifications are performed in a more concealed way . . . the proportion of undercover officers has increased – and that they are justified by officers claiming that their work has no other objective than ‘preventing crimes’ or ‘finding delinquents’” (p.31).

¹³³ *Circular 2/2012 de la Dirección General de Policía sobre identificación de ciudadanos.*

Recent statistics provided by the government seem to confirm this interpretation. Responding to a request by opposition congressmen Ricardo Sixto Iglesias, the Spanish government provided numbers on police identity controls conducted during the five months prior to *Circular 2/2012* and the eight months following its publication, with indication of the nationality of the individuals controlled.¹³⁴ There is a discrepancy between the official numbers released to Sixto Iglesias and those published in the Ministry of the Interior's 2012 Statistical Yearbook, suggesting that the data that includes references to nationality is collected in a less systematic way.¹³⁵ Nonetheless, the numbers recently released to Sixto Iglesias are interesting since they are the only official ones to offer a breakdown per nationality (information that is not available in the Statistical Yearbooks). They suggest a significant decrease in the number of monthly identity controls after the adoption of *Circular 2/2012*, and a slight decrease in the control of non-European Union third country nationals (TCNs) from 41.6% to 38.3% of the total (see Table 12). The data does not specify the proportion of these foreigners who are immigrants living in Spain and those who are tourists. But if we consider that the number of non European Union TCNs regularly or irregularly residing in Spain in 2012 amounted to only 6.7% of the Spanish population (Instituto Nacional de Estadísticas 2013), the fact that

¹³⁴ Written response from the government (submitted to the Congress on March 14, 2013, ref. 51055) to the written question (X - 184/13841) presented by Ricardo Sixto Iglesias on January 10, 2013.

¹³⁵ Indeed, the numbers released to Sixto Iglesias suggest a total of 49,295 identity checks in the thirteen-month period (an average of 4,108/month) while according to the Ministry of the Interior, 7.95 million identity controls took place in 2012 (a monthly average of 663,211) (Ministerio del Interior 2013b:269). The numbers published in the Statistical Yearbooks account for "routine" identity checks performed by all police forces (National Police, *Guardia Civil*, regional and local police forces), while the numbers provided to Sixto Iglesias concern only the National Police, which represents just over a third of all officers. Even assuming that only one third of the 731,155 monthly identifications were conducted by the National Police, the discrepancy remains.

they are the object of 38.3% of all identity checks reveals a disproportionately high level of control.

Table 12: Monthly Police Identity Controls by Country of Origin

Nationality	5 months prior to Circular Letter 2/2012		8 months after Circular Letter 2/2012		Total number of residents in Spain	
	Total ID checks	%	Total ID checks	%	Total pop.	%
All	22,188 4,438/month	100%	27,107 3,388/month	100%	47,265,321	100%
Spaniards	9,716 1,943/month	43.8%	12,680 1,585/month	46.8%	41,529,063	87.86%
All Non EU TCNs	9,241 1,848/month	41.6%	10,376 1,297/month	38.3%	3,292,641	6.67%
African Countries	4,343 1,943/month	19.8%	4,509 1,585/month	16.6%	936,203	1.98%
Ibero-American Countries	2,663 533/month	12%	2,686 336/month	9.9%	1,570,634	3.32%

Source: Government's written response on March 11, 2013 to the question X - 184/13841 presented in Congress by R. Sixto Iglesias on January 10, 2013 and National Institute of Statistics data of the number of non-Spanish nationals inscribed on any municipal registry (*padrón*) by January 1, 2012.

While these controls based on racial profiling cannot anymore lead to unlawful “preventive detention” as argued in *Circular 1/2010*, they can still lead to arrests, fines, transfers to a detention centre, and deportations, as we will see in the next section. Fighting irregular migration is one of the responsibilities of the National Police, and low-rank officers patrolling the streets contribute to this work alongside their colleagues assigned to controlling entries at international airports, or guarding migrants put on planes for deportation. Irregular immigrants thus move in Spanish cities, carefully selecting where, when, and how they circulate, all too conscious of the risks that contact

with police officers represents for many of them. Their variable degrees of deportability inform the way they act, the risks they take to work, and the level of fear they endure. They know that street-level police officers are the most common gateway into the exclusion stream, a stream “that follows a fragmented process in which diverse juridical, police, and administrative institutions act, a situation that allows for irregularities and arbitrariness as well as gaps in the application of the legislation” (Jarrín Morán, Rodríguez García, and de Lucas 2012:4).

An (In)effective Detention-Deportation *Dispositif*

Indeed, it is generally through an encounter with street-level police officers that irregular migrants are brought into the detention-deportation *dispositif*. *Circular 2/2012* clarified that officers cannot detain someone solely for irregular stay “as long as this person’s identity had been verified through an official document or other document that is considered valid and sufficient and indicates a home address that is susceptible to be verified.” In this case, the migrant is not detained on the spot (after all, irregular stay is a “serious administrative offense,” not a crime), but the officer will report this violation and the migrant will likely receive a notice of sanction by mail (fine or order to leave the country).

However, as the new memorandum makes clear, officers enjoy key discretionary power in deciding whether the proof of identity and address suffices. *Circular 1/2010*, which is only clarified and not over-ridden by the new memorandum, mentions that one

of the reasons to consider not detaining an irregular migrant is the proof of a 'stable home' and specifies that it is where "since one's entry to Spain, one has lived uninterruptedly and with persons united with family ties, such as partner, forbearers or descendants . . . In those cases, if there are no other negative circumstances, the procedure to follow is the normal one, since in principle there are no elements that evidence a risk of not appearing or avoiding deportation." In an encounter with the police, a migrant's capacity to present a certificate of municipal registration (*certificado de empadronamiento*) and/or documentation that regularization is underway is very helpful, tying the result of this encounter with police to previous decisions made by municipal and regional bureaucrats. Nevertheless, most immigrants' homes do not fit these strict criteria, and the risk of detention on this ground is still high even without other "aggravating circumstances."

If detained, irregular migrants are brought to the police station for up to 72 hours and informed by the investigative officer (*instructor de policía*) on duty that proceedings have been initiated against them. According to the Alien Act this can be done through the normal procedure (imposition of a fine, or order of expulsion) or the extraordinary procedure (forced expulsion). The Supreme Court has ruled on several occasions clarifying that the main sanction should be the fine, not the expulsion.¹³⁶ Nevertheless, when street-level police officers detain someone, it is because they believe there are "aggravating factors" (lack of permanent address, risk of avoiding expulsion, working without a permit,

¹³⁶ For the list of relevant jurisprudence, see Defensor del Pueblo 2012 (Section 5.7.2.3).

criminal activities, etc.) and regularly recommend a sanction of expulsion to the investigative officer. The lawyer representing the detained migrant then has 48 hours to argue for a fine instead by presenting documents demonstrating that their client is a law-abiding, integrated resident (for instance, that regularization through *arraigo* is likely, or that there are guarantees that the individual will be easily localized) and, if this is unsuccessful, can appeal the order of expulsion in front of an administrative judge (*juez de lo contencioso administrativo*), often obtaining that the sanction be changed to a fine (Defensor del Pueblo 2012:291; Jarrín Morrán, Rodríguez García, and de Lucas 2012).¹³⁷

In the meantime, however, if expulsion is the chosen sanction, the investigative officer in charge of the case decides whether to let the migrant go with an order to leave the country, or to ask a local lower court judge (*juez de instrucción*) to authorize its preventive detention in an immigration detention centre (*Centro de Internamiento de Extranjeros* – CIE), pending the resolution of the expulsion proceedings. This decision is informed by the report of street-level officers who arrested the migrant, but also on the level of occupancy in the local CIE. As a representative of a police union explained: “We usually call the CIE and ask: So do you have any room? And they usually say no, they are often too full, but if there’s room we may ask a judge to consider the internment.” In fact, although internment is legally framed as a measure of last resort to ensure that expulsion occurs when other preventive measures appear insufficient, street-level officers

¹³⁷ The legal basis of these sanctions is found in the Alien Act (Art. 50-66) and its implementing regulations in the *Real Decreto 557/2011* (Art. 216-258).

systematically demand internment and their superior generally followed suite until recently. In an interview, the *Juez de Instrucción* N° 6 of Madrid explained the evolution in detention practices, suggesting that the demands for internment were so important for a while, that there must have been an unofficial policy of trying to get irregular migrants off the streets:

Normally, just for being [here] irregularly, the sanction is a fine, not expulsion. But when the economic crisis started, instructions became more about expelling as many as possible. This is when the judges started to play a role of control [and refused to allow the internment of migrants when they through it was legally unjustified]. The police know that, so why would they ask for internment? There must have been instructions, because there is jurisprudence that makes it clear that you impose a fine, but they requested expulsion systematically.¹³⁸

He then specified that this situation lasted for a period that starts roughly with the return of a Socialist government in 2004, the reintroduction of the *régimen general* allowing employers to recruit migrant workers abroad, and the last large collective process of regularization:

So there's a first period, from 2004, 2005 to 2010 more or less . . . when there's a very hard line policy on expulsion. In fact there were even the raids for identity control based on ethnicity . . . and this led to a lot of expulsion proceedings for mere irregulars, without any type of criminal record. But now, from what I see in my court and in the city of Madrid, demands for internment for mere irregular stay have almost stopped, and the police seem to dedicate more efforts to those who have committed crimes . . . In this case, internment may be justified, but there are many other factors that we need to consider before authorizing it . . . I'm not saying it's the same everywhere: There are judges who systematically impose detention, and after, what happens? The majority of immigrants detain spend 30, 40 days in CIEs and are released because they can't be deported.¹³⁹

¹³⁸ Interview, Madrid, November 27, 2012. Along with his colleagues in the courts N°19 and 20, this judge also holds the special function of "Judge of Control" of the Madrid CIE, a new figure responsible for ensuring that the law is respected therein. In this excerpt, however, the "function of control" he alludes to refers to the broader work of all judges presented with a demand for internment by police.

¹³⁹ Interview, November 27, 2012.

The situation varies from place to place depending on individual judges' interpretations of the law, but also on police officers decision to only request internment in cases that seem legally justified. For instance, in Madrid and Barcelona, where most requests for internment occur, judges authorized the internment in only 38.33% and 44.63% of the cases respectively in 2011, ruling that the grounds for internment were generally insufficient. In comparison, the province of Huelva is sometimes cited as an example of good practice, since the National Police there avoids presenting requests of internment when they know that these requests are contrary to the standards set by the attorney of alien affairs (*Fiscal de Extranjería*) and the general decisions of local judges (*Fiscal del Estado* 2012:854-856). Questioned on this difference in practice between big cities and the countryside, a spokesperson for the *Sindicato Unificado de Policía* explained that he thinks this might be due to the fact that in cities, police officers consider the significant presence of irregular immigrants in some neighbourhoods as a public order problem, and use the administrative detention of migrants not only to enforce the Alien Act, but according to a broader logic of policing.¹⁴⁰ This situation suggests that police officers use laws as flexible tactics that can be mobilized to intervene in a field of practices.

While the discrepancy may be partly attributed to the capacity of police officers to anticipate the decision, it is sometimes due to the individual interpretation of judges.

¹⁴⁰ For instance, in a recent study, Margarita Martínez Escamilla et al. (2013) found that women involved in sex work were over-represented in the Aluche immigration detention centre in Madrid. Since many of these women are Paraguayan and do not stand out as visible minorities in Spain, they appear to be targetted mostly based on gender, class, and activity, and detained administratively in an attempt to combat the selling of sex.

Indeed, as Judge N° 6 suggests, some judges simply rubberstamp the police demands for internment. In contrast, other judges take seriously the fact that internment is legally justified only as a measure to ensure that expulsion takes place, and consider that police officers need to demonstrate that an expulsion is likely to proceed before authorizing the transfer to a CIE. This, according to Judge N° 6 of Madrid, helps reduce the number of cases where irregular migrants are detained but not deported, a situation that effectively turns internment in a sanction. Currently, although internment is legally justified only as a means to ensure that expulsion takes place, most irregular migrants sent to Spain's CIEs are not ultimately deported, either because a judge overrules the sanction of expulsion or suspends it for exceptional reasons, or because the police is unable to effect the deportation within the maximum internment period of 60 days. There are many causes for this failure: the inability to identify the migrant or to secure a travel document from the embassy or consulate of the country of origin, the prohibitive cost of some deportations, but also sometimes the discretionary power of pilots (the highest authority on their airplane) to refuse to transport someone who does not want to be deported.

The result is that almost half of the 13,241 individuals detained in CIEs in 2011 could not be deported (Fiscal General del Estado 2012:859) and were released in what Adrian Jarrín Morrán, Dan Rodríguez García, and Javier de Lucas (2012:7) call a "juridical limbo." Indeed, the order of expulsion cancels all ongoing processes of regularization, and leads to a prohibition on re-entering Spain for three to five years (ten in exceptional cases). This means that a migrant released from immigration detention needs to let this prohibition

expire (even if this person never left), before applying for regularization through *arraigo social*, extending the apprenticeship in “illegality.” In the meantime, if the expulsion order is solved after the release from detention, or if the person was not sent to the CIE, this information is kept in the ADEXTRA police database, and any other encounter with police will lead to immediate detention and swift deportation.¹⁴¹ This is the result of the “chutes and ladders model” (Goldring and Landolt 2012:8) on which the Spanish immigration system is organized, a model in which discretionary decisions by a variety of actors can move migrants forward on the path to regularization, but more often bring them back to square one without succeeding in deporting them, thus prolonging their probationary period of legal liminality.

Considering this low level of success, the detention-deportation *dispositif* seems to fail. But, to paraphrase Michel Foucault’s question about prisons, one has to ask: if CIEs fail to do what they are supposed to do, what other functions do they serve, how are they productive? I suggest that, similar to Foucault’s prisons, CIEs contribute to the governing of irregular migrants during their apprenticeship in “illegality” not by attempting to “eliminate offences, but rather to distinguish them, to distribute them, to use them.” They “appear to be a way of handling illegalities, of laying down the limits of tolerance . . . of neutralizing certain individuals and of profiting from others” (Foucault [1975] 1995:272). The notoriously harsh conditions in Spanish CIEs, the possibility of deportation, and the

¹⁴¹ Interview, Madrid, November 5, 2012.

legal consequences of an expulsion order (delay in the ability to access regularization) contribute to the governing of all irregular migrants through the fear they instil.

While the detention-deportation *dispositif* is part of a broader regime for governing migration that is mainly regulatory in nature, the threat of deportation is also clearly disciplinary (De Genova 2013). In this sense, it is the possibility of internment and deportation that is the most productive feature of this apparatus with regards to the self-governing of irregular migrants. Or, as Nathalie Peutz and Nicholas De Genova (2010) explain, “It is *deportability*, then, or the protracted possibility of being deported—along with the multiple vulnerabilities that this susceptibility for deportation engenders—that is the real effect of these policies and practices” (p.14). Furthermore, since internment is now being justified by the Ministry of the Interior as a means for deporting only the “foreign delinquents,” the detention-deportation apparatus also works discursively to mark a distinction between the “desirable” and “undesirable” foreigners. This distinction between criminals to be deported, and good non-citizens whose deportation is not a priority, and the non-enforcement of many expulsion orders contribute to a regime that uses deportation as a tool that “allows for both the expulsion and regulation of immigrants” (Chan 2005:154). Therefore, while the policing of migrants in the street, their internment, and possible deportation can certainly be considered anti-citizenship technologies aiming at the incapacitation of individuals deemed undesirable, they are more effective as a means of governing all irregular migrants through the threat of

deportation who struggle through their probationary period, trying to avoid the chutes and suspecting that the dice may be loaded.

Chapter 8

Conclusion: Governing Immigration through Probation

The expression “governing through probation” is an obvious reference to Jonathan Simon’s (1997, 2007) famous phrase “governing through crime.” While, according to Simon himself, the claim that elites in the United States are governing through crime might be a bit overstated, he argues that “we govern through crime to the extent to which crime and punishment become the occasions and the institutional contexts in which we undertake to guide the conduct of others (or even ourselves)” (Simon 1997:174). His insights have proven successful in shedding light on how practices and logics traditionally associated with the criminal justice system have come to colonize other institutions, places, and issues. Many immigration scholars have mobilized Simon’s concept effectively, and works on the criminalization of immigration abound. While not all of this literature draws directly from Simon, his influence on this literature is obvious. It is not a coincidence that Julie A. Dowling and Jonathan X. Inda (2013) have recently collected

some of the key works on immigration governance published in the last decade in an anthology titled “Governing Immigration through Crime.” This scholarship has tended to highlight how actuarial practices of risk management work alongside penal populism and the threat of incapacitation, and insisted on the punitive dimension of immigration regulation (Guia, van der Woude, and van der Leun 2013; Inda 2006; Pickering and Weber 2006). Studying the intersections between immigration law and criminal law in the United States, Juliet Stumpf (2006) has even coined the now popular term “cimmigration law” and claimed that “Immigration law today is clothed with so many attributes of criminal law that the line between them has grown indistinct” (p.376).

I agree with many of the claims put forth in this literature, and I illustrated in Chapters 6 and 7 how the criminalization of immigration is a dimension central to the way it is governed in Spain. The criminalization of immigration, whether understood as the inscription of activities performed by migrants into criminal codes, the application of criminal codes for the purpose of immigration regulation, the over-policing of migrants, or the discursive framing of irregular migrants and asylum seekers as criminals and swindlers (Aliverti 2012, 2013; Lacey 2009), should continue to be a focus of research. However, I think that we need to choose our metaphors carefully and remain attentive to what they conceal as much as to what they reveal. Studying the intersections of criminal law and administrative immigration law is of utter importance, but when we insist on documenting a merger that leads to indistinction and the emergence of a “cimmigration law,” we risk losing sight of the multiplicity of actors and logics, of discretionary practices, of

contestation and negotiation, and of the jurisdictional games at play in immigration governance. We lose sight of what Boaventura de Sousa Santos (1987) calls interlegality—that is, the non-synchronic, unequal, and unstable play between various laws, techniques, and normative regimes.¹⁴²

Similarly, the focus on criminalization and incapacitation too often prevents us from seeing that, as Sébastien Chauvin and Blanca Garcés-Mascreñas (2012) suggest, in the “moral administrative economy of illegality, irregular migrants have been framed not only as civic culprits to be punished, but also as civic minors to be redeemed” (p.253). As I have demonstrated here, irregular migrants in Spain are kept in a space of legal liminality and governed not simply through criminalization, but also through the simultaneous promise of inclusion and the threat of exclusion. Far from drawing solely on criminalizing and securitizing logics and practices, this regime also relies heavily on labouralizing and culturalizing ones.

I devised the notion of governing immigration through probation to capture, on the one hand, the interlegality and the multi-dimensionality of immigration governance in Spain and, on the other hand, the reliance on both the promise of inclusion and the threat of exclusion. Surprisingly, while the criminalization of immigration is the object of a broad scholarship, the importance of what I refer to as “probation” in immigration governance has been overlooked in scholarly research. Probationary periods exist in immigration and

¹⁴² For similar claims on how looking at the differentiation between immigration law and criminal law is more productive than studying their merging as crimmigration law, see Aas 2014; Pratt 2013.

citizenship legislation in various countries and the expression is commonly used, if not in the laws themselves, at least in the media coverage of these laws. And yet, the literature on the topic is limited and hardly engages in any theorizing of this dimension of immigration management.¹⁴³

Rescaling of Borderwork, Conditionality, and Discretion

This probationary regime results from the complementary, and at times contradictory, deployment of cultural, labour, and security logics and practices, as well as the rescaling of borderwork, which allows for a multi-scalar and multi-actor assessment of desirability. As I explained in this dissertation, the conditionality of migrants' presence and status, and the discretion of civil servants, police officers, judges, and elected officials in choosing and implementing criteria of desirability is a key dimension of this regime. What brings the spatially and temporally dispersed borderwork together with legal liminality is the series of decisions regarding migrants' fulfilment of conditions. A key element in the actualization of the governing of immigration through probation is this multi-scalar, and thus multi-actor, assessment of migrants' desirability. Indeed, at each of the locations where borderwork occurs, at each of these moments, various actors, each enjoying a certain level of discretion, make decisions about whether action should be taken to orient

¹⁴³ One key exception is Goldring and Landolt 2012. In this working paper, the authors' conceptualization of a chutes and ladders model of immigration management is linked to probationary status and precariousness. More recently, however, Goldring and Landolt (2013) prefer to theorize the related concepts of conditionality and temporariness. Literature in citizenship and immigration studies that mentions probationary citizenship without conceptualizing it includes Bauböck 2010, Bauböck and Joppke 2010; Chan 2005; Kanstroom 2000, Kostakopoulou 2010, Park and Park 2005, and Vaughan 2009.

a particular individual toward the inclusionary stream, put this individual in the exclusionary stream, or whether it is better not to intervene at all.

In addition to the spatial and temporal rescaling of borderwork, this detailed discussion of the varied and dispersed practices involved in the governing of migrants placed in a probationary situation exposed the centrality of formal conditions. More significantly, it showed the importance of the relative flexibility that various levels of government have in defining and interpreting these conditions, as well as the discretion used in assessing them. Decisions whether to register immigrants on the municipal registry or not, power struggles and negotiation over criteria that can be used to assess integration, individual assessments of these criteria, decisions to check someone's identity papers or not, to preventively detain a migrant or not, judges' interpretations of the legal criteria for internment, police decisions to release a migrant from the detention centre, even decisions made by pilots whether or not to fly a plane that is deporting someone—dispersed discretionary decisions are a central component of the governing of immigrants through probation. And, as Josiah Heyman (2009) has shown in the context of immigration policing in the southern United States, discretionary non-actions are as important as discretionary actions. For instance, Spanish national police officers often overlook migrants' lack of authorization to be in the country or may choose not to ask, thus limiting the possibility that someone be sent to a detention centre. The myriad of discretionary decisions that contribute to a migrant's fate thus include discretionary acts, as well as non-acts, which should be analyzed as a form of dispersed borderwork.

While not all discretionary decisions are performed in the context of assessing various conditions, discretion and conditionality are generally tied in this probationary regime. Along with the deployment of legal liminality, the reliance on culturalizing, labouralizing, and securitizing logics and practices, and the rescaling of borderwork, conditionality completes the picture in making the metaphor of probation so compelling. Since the literature on immigration probation is limited, I argue we can look productively at the use of probation in other contexts to identify how these various elements are interconnected. Obvious parallels can be drawn with probation as a governing device in the criminal justice system and in workplaces.

As the *Free Online Law Dictionary* (2014) puts it, probation in the criminal justice system is generally understood as:

The period during which a person, “the probationer,” is subject to critical examination and evaluation. The word *probation* is derived from *probatum*, Latin for “the act of proving.” Probation is a trial period that must be completed before a person receives greater benefits or freedom. In the criminal justice system . . . Probationers are placed under the supervision of a probation officer and must fulfill certain conditions. If the probationer violates a condition of probation, the court may place additional restrictions on the probationer or order the probationer to serve a term of imprisonment.

Of course the comparison with the use of probation in the criminal justice system is only metaphorical; the history and logics informing the use of parole, juvenile supervision, or probation in criminal law are much more nuanced (Simon 1993). Nonetheless, the comparison is useful in pointing to the importance of conditionality, supervision, and the need to prove that one deserves greater freedom. In both cases, probationers are seen as

being granted a favour (in the case of offenders, being released early on parole or receiving a suspended sentence; in the case of irregular migrants, not being automatically deported), having to fulfil various conditions to prove that they deserve to be considered full, autonomous members of society, and finally, being subject to periodic examination and evaluation. Failure to fulfill conditions might lead irregular migrants to be deported or lose precarious status, while the ability to successfully comply with formal and informal conditions might provide them with a slightly more secure situation. Probationers have to demonstrate that they do not represent a risk to public safety and are learning to be law-abiding residents, but also prove that they are responsible economic and cultural subjects. In this sense, probation is a technology of subject formation that operates on many levels.

Probation is also utilized in similar ways in workplaces, used by employers to measure and assess performance, determine if an employee is a good fit, and monitor the rate at which a new worker learns the necessary culture and skills. The probationary or trial period is also framed as a tool for enhancing flexibility by allowing for the easy, low-cost termination of an employment contract if the employee does not satisfy the requirements. Human resource experts argue that probation provides the employer with a longer period for screening potential long-term employees, thus allowing for more flexibility and better performance. They also insist on the importance of making criteria and expectations clear, developing tools for assessing and evaluating performance, and stipulating who will conduct this assessment, while acknowledging as a common practice the use of vague criteria or informal evaluation tools by employers (see Caruth, Caruth,

and Pane 2009). While the comparison with probation in the criminal justice system highlights the “not quite excluded” dimension of liminality, the example of workplace trial periods neatly captures its “not yet included” aspect.

Similarly, the governing of immigration through probation in Spain relies heavily on liminality, conditionality, and the periodic evaluation of performance. In this context, a precarious migrant’s sense of deportability is not only a function of the internal rescaling of borderwork and the deployment of legal liminality, but is also tied to conditionality and the ability to prove that one fulfils the conditions set by government officials. Some of these conditions are formal and do not allow for much discretion (such as the period of time that a migrant has to live in Spain before being allowed to apply for regularization, or the duration of the employment contract submitted in the regularization application), while other criteria are more open to interpretation and contestation, and thus to discretion (knowledge of a language, integration, definition of what qualifies as residence, aggravating circumstances that can lead to an expulsion order, etc.).

Furthermore, the multi-scalar and non-linear character of the probationary period is also a function of the various types of conditions, and how one’s success in fulfilling them can open or foreclose other avenues. For instance, some conditions must be met to access the inclusion path: language proficiency, employment offer, proof of integration, etc. The officials who assess these conditions thus act as gatekeepers, limiting access to the few ladders that exist on the metaphorical chutes and ladders game board, and granting them

only to those whom they deem desirable. Other conditions need to be met to avoid being put on the exclusion path: lack of criminal record, possession of a state-issued identity document, etc. The officials who evaluate these conditions decide whether one's presence should continue to be tolerated or whether one should be forced to go down one of the many chutes (refusal of a work permit, detention, deportation). Of course, many conditions (such as having a valid proof of address) play an important role in both accessing the ladders and avoiding the chutes. Just like political technologies are not inherently "good" or "bad" (Valverde 2010), the assessment of the same conditions in different contexts and in different hands can lead to different results. Migrants on probation have to successfully pass through dispersed and "recurrent switch points," so as to "access the benefits of liberty" (Rose 2000:326).

Finally, the links between rescaling borderwork and assessing conditions are also related to various types of jurisdictional games (Valverde 2015). In the balance of power between the central, regional, and municipal levels of government in Spain, individual and organizational discretion is a key element to ensuring enough flexibility in the application of laws and regulations to satisfy various levels of government who want to intervene in the spatial management of immigrants. For instance, municipalities can, to a certain extent, establish their own processes for assessing integration, while autonomous communities are allowed to add specific cultural and linguistic criteria for regularization.

Despite their relevance for the institutional dimension of multi-level governance, jurisdictional games are not limited to the overlapping territorial jurisdictions of municipalities, autonomous communities, the central government, and the European Union. Indeed, by using jurisdictions as flexible legal technologies, actors can mobilize administrative law to intervene on crime, or criminal law to intervene on immigration (Martínez Escamilla 2008; Moffette and Orgaz Alonso 2015; Pratt 2011). Similarly, individual actors can deploy municipal law to intervene on the presence of immigrants in the city; that is, within a municipal territorial jurisdiction, but on a space imagined as national. The displacement of borderwork and immigration selection across space and time, by multiplying the number of individual actors involved in the process, thus provides for greater flexibility in the assessment of desirability.

Probation and Neoliberal Flexibility

In his study of parole in the United States between 1890 and 1990, Simon (1993) locates it “at the border between prisons and the community” (p.11). Immigration probation in Spain is similarly located, legally, spatially, and temporally, at the border between deportation and formal membership in the political community. It is a liminal space and time where migrants can be governed simultaneously through the threat of deportation and the promise of regularization and inclusion.

In mainstream criminology literature, probation is often framed as a strategy that mobilizes both the promise of liberation and the threat of punishment. Consider, for instance, this description of probation:

A strategy of control simultaneously constructive and suspensive. Its controlling characteristics are embedded in this dualism: probation is an act of kindness offered as an opportunity for reformation, but containing in its fabric the possibility of overt punishment in the event of infraction . . . Hence, while probation offers support and encouragement to those willing to take advantage of opportunity, when faced with infraction or failure, officers are influential in determining when undesirable behaviour becomes unacceptable. At that point it becomes their duty to initiate coercion. Intrinsic to probation, therefore, are interwoven strands of liberation and constraint (Harris 1995:8).

Again, this conventional view that probation offers a type of supervision that is a fine balance of benevolent care and strict coercion cannot be generalized, since the logics informing the use of probation vary greatly, both historically and geographically (Simon 1993). Nonetheless, probation in workplaces, criminal justice systems, and immigration all employ, to varying degrees, forms of training, apprenticeship, rehabilitation, and integration—all of which are promises of inclusion and liberation inseparable from the looming recourse to incapacitation if the rehabilitation is deemed inadequate (Kemshall 2002; Moore and Hannah-Moffat 2005; Pratt 2001). Probation operates both through individualized discipline and actuarial logics of risk management (Feeley and Simon 1992, 1994; O'Malley 1999)

The form of immigration probation that I have described represents a regime of moral regulation that is based on culturalizing, labouralizing, and securitizing logics, mobilizes both the promise of inclusion and the threat of exclusion, makes use of

technologies of citizenship and anti-citizenship, and of individualized discipline and actuarial logics, and is made possible through the extension of spatial, temporal, and legal liminality. Borders act as filters, selecting who can circulate and how, based on risk indicators and individual discretionary decisions. The governing of immigration prolongs this *dispositif* far beyond the border, allowing for a more flexible management of circulation and uncertainty according to actuarial logics and specific criteria of desirability, informed by cultural, labour, and security concerns.

Indeed, legal liminality, the spatial and temporal rescaling of borderwork, and the ongoing assessment of performance all contribute to creating this period during which—and space where—the ultimate decision to include or exclude is suspended, and yet made and unmade continuously through the ongoing borderwork of a multiplicity of actors dispersed in space and time. It is the suspensive characteristic of probation that is captured by both the rescaling of borderwork and the deployment of legal liminality, and it is the ongoing screening and assessment of desirability by many actors that allows for probation to work as a regime for governing migrants. The flexibility of the neoliberal governing of immigration through probation, in Spain and elsewhere, is thus secured by the extension of the legal space-time of probation.

This form of governing is not unique to Spain. In fact, the multiplication of probationary statuses (in immigration, workplaces, criminal justice systems) in Spain and elsewhere is a key dimension of neoliberal flexibility (Bauböck and Joppke 2010; Chauvin

and Garcés-Mascreñas 2012; Goldring, Berinstein, and Bernhard 2009; Mountz et al. 2002; Perlin 2012; Ryan 2009; Whitehead 2010). Therefore, pursuing further research on how immigrants are governed through probation in different contexts, at various levels, and through diverse means, promises to help us make sense of the connections between precariousness, conditionality, the intrusive and continuous assessment of desirability, and disposability in neoliberal societies.

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Legislation and Treaties

United Nations

Convention Relating to the Status of Refugees, July 28, 1951.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, November 15, 2000.

Universal Declaration of Human Rights, December 10, 1948.

European Union

Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders signed at Schengen on 19 June 1990, to which the Italian Republic acceded by the Agreement signed at Paris on 27 November 1990.

Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Schengen Agreement, June 14, 1985.

Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the Gradual Abolition of Checks at their Common Borders, June 19, 1990.

Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities ("Dublin Convention"), June 15, 1990.

Prüm Treaty: cross-border cooperation in combating terrorism and cross-border crime. European Parliament legislative resolution of 7 June 2007 on the initiative by the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Slovenia, the Slovak Republic, the Italian Republic, the Republic of Finland, the Portuguese Republic, Romania and the Kingdom of Sweden on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

Spanish Legislation

PRE-1978 CONSTITUTION

Ley de 15 de Julio de 1954 por la que se reforma el Título Primero del Libro Primero del Código Civil, denominado "De los españoles y extranjeros". Published in Boletín Oficial del Estado, N° 197, July 16, 1954.

Decreto disponiendo se ajuste en lo sucesivo a las reglas y condiciones que se establecen la justificación y declaración de haber ganado vecindad los extranjeros en España. Published in Gaceta de Madrid N° 120, April 30, 1931.

Decreto 522/74, de 14 de febrero, que regula el régimen de entrada, permanencia y salida de extranjeros en España. [Decreto 522/74]

CONSTITUTION

Constitución española, 1978

LAWS

Ley 51/1982, de 13 de julio, de modificación de los artículos 17 al 26 del Código Civil. [Ley 51/1982]

Ley 7/1985, de 2 de abril, Reguladora de las Bases del Régimen Local. [LRBRL 7/1985]

Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial [LOE 6/1985]

Ley Orgánica 7/1985, de 1 de julio, sobre derechos y libertades de los extranjeros en España. [LOE 7/1985]

Ley 18/1987, de 7 de octubre que establece el Día de la Fiesta Nacional en España en el 12 de octubre. [Ley 18/1987]

Ley Orgánica 1/1992, de 21 de febrero, sobre Protección de la Seguridad Ciudadana. [LOPSC 1/1992]

Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal [LOE 10/1995]

Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social. [LOE 4/2000]

Ley Orgánica 8/2000, de 22 de diciembre, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración. [LOE 8/2000]

Ley Orgánica 11/2003, de 29 de septiembre, de medidas concretas en materia de seguridad ciudadana, violencia doméstica e integración social de los extranjeros. [LO 11/2003]

Ley Orgánica 14/2003, de 20 de noviembre, de Reforma de la Ley orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, modificada por la Ley Orgánica 8/2000, de 22 de diciembre; de la Ley 7/1985, de 2 de abril, Reguladora de las Bases del Régimen Local; de la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del procedimiento Administrativo Común, y de la Ley 3/1991, de 10 de enero, de Competencia Desleal. [LOE 14/2003]

Ley Orgánica 13/2007, de 19 de noviembre, para la persecución extraterritorial del tráfico ilegal o la inmigración clandestina de personas. [LOE 13/2007]

Ley Orgánica 2/2009, de 11 de diciembre, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social. [LOE 2/2009]

Ley Orgánica 1/2014, de 13 de marzo, de modificación de Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, relativa a la justicia universal. [LOE 6/1985]

Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal. [LO 1/2015]

Ley Orgánica 4/2015, de 30 de marzo, de protección de seguridad ciudadana. [LOPSC 4/2015]

ROYAL DECREES

Real Decreto 845/2006, de 7 de julio, por el que se regula la concesión de una subvención extraordinaria al Reino de Marruecos para la mejora del control de sus frontera y lucha contra la emigración ilegal. [RD 845/2006]

Real Decreto 187/2007, de 9 de febrero, por el que se regula la concesión de una subvención extraordinaria a la República Islámica de Mauritania para la mejora del control de sus frontera y lucha contra la emigración ilegal. [RD 187/2007]

Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre Derechos y Libertades de los Extranjeros en España y su Integración Social, tras su reforma por la Ley Orgánica 2/2009. [RD 557/2011]

Real Decreto-Ley 16/2012, de 20 de abril, de medidas urgentes para garantizar la sostenibilidad del Sistema Nacional de Salud y mejorar la calidad y seguridad de sus prestaciones. [RD-L 16/2012]

Legislation by Lower Levels of Government

Ley 15/2008, de 5 de diciembre, de la Generalitat, de integración de las personas inmigrantes en la Comunitat Valenciana. [Ley 15/2008]

Instructions by Police and Immigration Head Offices

Circular de 15-2-82, de la Dirección general de la policía, sobre creación de grupos operativos de control de extranjeros.

Circular 1/2010 Instrucciones sobre determinadas actuaciones policiales derivadas de la nueva Ley 2/2009, de 11 de diciembre, que modifica la L.O. 4/2000, de 11 de enero, de Extranjería y recordatorio de otras actuaciones.

Circular 2/2012 de la Dirección General de Policía sobre identificación de ciudadanos.

Instrucció 1/2012 de la Direcció General per a la Immigració del Departament de Benestar Social i Família per la qual s'estableixen els criteris generals per a l'elaboració dels informes d'estrangeria competència de la Generalitat de Catalunya.

Instrucció DGI/BSF/1/2013 per la qual s'estableixen els criteris generals per a l'elaboració dels informes d'estrangeria competència de la Generalitat de Catalunya.

Escrito Circular de la Comisaría general de documentación de 27-9-82. Sobre problemática de las expulsions.