Markets, citizenship and rights: state regulation of labour migration in Malaysia and Spain

Garcés-Mascareñas, B.

Link to publication

Citation for published version (APA):
4. SPAIN

4.1. INTRODUCTION

One of the factors most frequently alluded to in order to explain migration flows is the economic differences between the countries of origin and destination. This is precisely what Felipe González, former Prime Minister of the Spanish Government, indicated to other European heads of state when he showed them a photograph of Morocco taken from Spanish shores: ‘This is our Rio Grande […]. It is not far. And living standards are four, five, ten times lower on the other side’ (quoted in Cornelius 2004: 391). Since then, Spain’s economic growth and the progressive impoverishment of Morocco and Africa in general have only aggravated the difference. According to the 2007/2008 UN Human Development Report, the border between Spain and Africa had come to represent the highest development gap in the world: while Spain occupies the 13th position in the UN Human Development Index23 (with an HDI of 0.949), Morocco occupies the 126th (0.646), Senegal the 156th (0.499) and Mali the 173rd (0.38). In terms of strict economic differential (measured in gross domestic product per capita and purchasing power parity), the wealth gap between Spain (with a GDP per capita of $US27,169) and Morocco ($US4,555), Senegal ($US1,792) or Mali ($US1,033) is much greater than that between the United States ($US41,890) and Mexico ($US10,751) (UN Human Development Report 2007/2008: 229-232).

Although the economic gap between Spain and Latin America or the countries of Eastern Europe is smaller, this difference is no less relevant when it comes to explaining migratory flows into Spain. In the case of Latin America, the inflow of immigrants seeking work began to take on significant proportions throughout the 1990s and continued to grow exponentially after 2000 as a result of the economic crises in countries like Ecuador, Argentina, Bolivia and Peru. Besides the generalised economic downturn, the crisis generated greater economic and social inequality or, in other words, the rapid impoverishment of members of the middle class who were precisely the ones who began to emigrate to Spain. As for the Eastern European countries, it is essential to bear in mind the impact of the fall of the Berlin Wall in 1989 and the economic restructuring that followed. In 2007/2008, the per capita GDP in Spain ($US27,169) was three times higher than in Romania ($US9,060) and four times more than in the Ukraine ($US6,848) (UN Human Development Report 2007/2008: 229-232). While these economic differences have endured, the frontier of the European Union (and, along with it, its common labour market) has been extending.

---

23 The HDI measures the average achievements in a country in three basic dimensions of human development: 1) a long and healthy life, as measured by life expectancy at birth; 2) knowledge and education, as measured by the adult literacy rate (with two-thirds weighting) and the combined primary, secondary, and tertiary gross enrolment ratio (with one-third weighting); and 3) a decent standard of living, as measured by the natural logarithm of gross domestic product per capita (GDP) and purchasing power parity (PPP) in US dollars.
eastwards to include most of the Eastern European countries.

To these economic differences, one must also add the large-scale economic growth that occurred in Spain after the 1990s and the need, as we shall see in the following section, to cover increasing labour shortages. This, along with an oversized informal economy, which was estimated as accounting for 22 per cent of GDP (Schneider 2004: 51), is what, for many scholars, has functioned as the motor or ‘pull effect’ of immigration flows. As Solanes points out regarding illegal migration, ‘[…] people often lose sight of the perception, which to my mind is indisputable, that the real pull effect on candidates for clandestine or illegal immigration is the certainty that they are soon going to find work in the black economy. […] Clandestine or illegal immigrants know that their salary will be less than that of foreigners in a regular situation and that of the country’s citizens, and also know that they are going to have to face harsh living and work conditions, but they do have the conviction that they are going to be employed and paid, and it is this certainty that spurs them on’ (my emphasis) (Solanes 2003: 13-14).

Geographic and cultural proximity has also determined the nature of migratory flows into Spain. On the one hand, Morocco is only fourteen kilometres away. Besides this geographic proximity, the northern part of Morocco was a Spanish colony from 1912 to 1956. The still-Spanish enclaves of Ceuta and Melilla testify to this. Besides this common history which, in fact, can be traced back over centuries, the Spanish influence in this area still makes itself felt through the media, tourism and commercial activities. On the other hand, South America, although it is further away in geographical terms, is frequently felt as being much nearer. This perceived closeness derives from centuries of Spanish colonialism, a history of Spanish mass emigration to South America at the beginning of the twentieth century and again after the Spanish Civil War (1936-1939) and, more generally, from their similarities regarding religion, culture and language. For all these reasons, Spain has become one of the main destination countries for Latin American migrants. For all these reasons too, the requirement of an entry visa for citizens of these countries was much more difficult to introduce.

Finally, social networks feed and define the geographies of migration. First of all, old migrants might bring new migrants by informing and assisting them regarding entry, work, housing and other necessities. Second, migrants are allowed to bring their families after one year of legal residence. While in 2000 only seven applications for family reunification were authorised, in 2004 and 2007 this number grew to 103,998 and 128,161 respectively (El País, 29 March 2005 ; El País, 8 December 2008). Given the fact that, in 2007, 81.2 per cent of the immigrants with family members in their countries of origin declared their intention to bring them to Spain (INE 2008: 6), this leads one to the conclusion that immigration for family reasons will continue to grow in the coming years. In more general terms, as in the cases of most Western European countries from the 1970s onwards, this means that migration flows to Spain may continue to take place regardless of labour demands.
While all these factors explain migration flows, the question once again is how the Spanish State regulated them and, more specifically, how it responded to market demands on migrant labour. In particular, to what extent were these demands answered? To what extent were migrant workers allowed to enter into the country and under what conditions? What were the main effects of this policy? And where did the border between authorised and unauthorised migrants lie? From a more theoretical perspective, the question is to what extent and how the trilemma between markets, citizenship and rights has been solved – or to what extent attempts have been made to solve it – both by law and in practice. These questions, which are the core of the present research, are considered in this chapter by giving, first, an overview of the demand for migrant workers and the consequent migration flows (Section 4.2). Second, the main developments in terms of migration policies are briefly described (Section 4.3). As in the Malaysian chapter, this is done from a historical perspective as the past becomes essential to understand the present. Third, the following four sections analyse the formulation, implementation and effects of entry policies (Section 4.4), stay policies (Section 4.5), regularisation programmes (Section 4.6) and deportation campaigns (Section 4.7). In the closing section of this chapter (Section 4.8), some preliminary answers are sketched.

4.2. FROM EMMIGRATION TO IMMIGRATION

4.2.1. Country of emigration: The nineteenth century has been characterised as a mobile age. In Western Europe rapid population increase, industrialisation and urban growth led to an expansion of migration systems. As the century advanced, many internal migrations tended to become permanent and more people migrated across international borders, if not across the Atlantic. In short, by the end of the nineteenth century, Europeans travelled further and were more likely to stay away (Page Moch 2003: 158). In Spain, despite a process of economic modernisation (Prados de la Escosura 2003), a high percentage of the population continued to be employed in agriculture and permanent internal migration rates remained low. To explain the slow growth rate in permanent internal migration, scholars have stressed low demographic dynamism and agricultural backwardness (Nadal 1975; Tortella 1987), cultural factors such as conservatism, resistance to mobility and the desire for land ownership (Sánchez-Albornoz 1977, Tortella 1994; Carmona & Simpson 2003), and also the low levels of industrialisation and urban development (Nadal 1975; Sánchez-Albornoz 1977; Tortella 1987). The counterpart was the persistence of short-distance temporary migration (Silvestre 2007).

Although pioneering migration to America with an estimated 250,000 emigrants in the sixteenth century (Sánchez Alberozo 1988: 14), Spain would come to lag behind other countries in nineteenth-century European mass migration to America. In this period, most European migrants to America came from England, Germany, northern Italy and later on Scandinavia. However, when Spanish mass migration to America finally took off at the beginning of the twentieth century, it grew
considerably more than in other Southern European countries. For instance, between 1900 and 1913, the growth rate of Spanish emigration was almost 12 per cent compared to 4.7 per cent for Italy and 9.9 per cent for Portugal (Sanchez Alonso 1995: 135). In 1912 the figure for Spain’s migration balance to America was 133,994 (see Table 6). In total, according to South American sources, from 1880 to 1930 about 3.5 million Spaniards migrated to South America (Sánchez-Albornoz 1988: 18).

**Table 6:** Spanish migration balance to America, 1882-1930

<table>
<thead>
<tr>
<th>Year</th>
<th>Migration balance</th>
<th>Year</th>
<th>Migration balance</th>
<th>Year</th>
<th>Migration balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1882</td>
<td>13,286</td>
<td>1899</td>
<td>-62,722</td>
<td>1916</td>
<td>3,806</td>
</tr>
<tr>
<td>1883</td>
<td>3,901</td>
<td>1900</td>
<td>5,638</td>
<td>1917</td>
<td>-5,164</td>
</tr>
<tr>
<td>1884</td>
<td>4,839</td>
<td>1901</td>
<td>3,843</td>
<td>1918</td>
<td>-14,877</td>
</tr>
<tr>
<td>1885</td>
<td>596</td>
<td>1902</td>
<td>-6,630</td>
<td>1919</td>
<td>19,933</td>
</tr>
<tr>
<td>1886</td>
<td>4,589</td>
<td>1903</td>
<td>2,572</td>
<td>1920</td>
<td>87,214</td>
</tr>
<tr>
<td>1887</td>
<td>14,152</td>
<td>1904</td>
<td>30,144</td>
<td>1921</td>
<td>-31,973</td>
</tr>
<tr>
<td>1888</td>
<td>23,554</td>
<td>1905</td>
<td>64,030</td>
<td>1922</td>
<td>7,316</td>
</tr>
<tr>
<td>1889</td>
<td>72,404</td>
<td>1906</td>
<td>52,863</td>
<td>1923</td>
<td>54,218</td>
</tr>
<tr>
<td>1890</td>
<td>11,064</td>
<td>1907</td>
<td>51,288</td>
<td>1924</td>
<td>44,821</td>
</tr>
<tr>
<td>1891</td>
<td>5,180</td>
<td>1908</td>
<td>71,362</td>
<td>1925</td>
<td>17,824</td>
</tr>
<tr>
<td>1892</td>
<td>8,258</td>
<td>1909</td>
<td>50,675</td>
<td>1926</td>
<td>922</td>
</tr>
<tr>
<td>1893</td>
<td>19,833</td>
<td>1910</td>
<td>91,922</td>
<td>1927</td>
<td>1,186</td>
</tr>
<tr>
<td>1894</td>
<td>14,691</td>
<td>1911</td>
<td>70,512</td>
<td>1928</td>
<td>11,908</td>
</tr>
<tr>
<td>1895</td>
<td>64,472</td>
<td>1912</td>
<td>133,994</td>
<td>1929</td>
<td>20,076</td>
</tr>
<tr>
<td>1896</td>
<td>98,864</td>
<td>1913</td>
<td>72,653</td>
<td>1930</td>
<td>2,154</td>
</tr>
<tr>
<td>1897</td>
<td>-9,156</td>
<td>1914</td>
<td>-62,481</td>
<td>1926</td>
<td>922</td>
</tr>
<tr>
<td>1898</td>
<td>-77,695</td>
<td>1915</td>
<td>-19,084</td>
<td></td>
<td>TOTAL 1,042,775</td>
</tr>
</tbody>
</table>

Source: Sanchez Albornoz 1988: 20

To explain the growth of Spanish emigration in the early 1900s, scholars distinguish between push and pull factors. One push factor that has often been mentioned is the fact that the arrival of agricultural products (in particular cereals) from the Americas and the Spanish currency appreciation triggered a crisis in the agricultural sector (Sánchez Alonso 1995). Although poverty has often been mentioned as a way of explaining Spanish emigration to South America, this should be nuanced as emigration was not an option for all would-be migrants but was mainly for those who were relatively skilled and who came from the least economically backward regions (Mascareñas 1986; Sánchez Alonso 1995; Moya 1998). This has led some scholars to point out that pull factors were even more important than push factors. In particular, economic activity and growth in destination countries (Sánchez Alonso 1995), along with wage differentials (Hatton & Williamson 1994), would seem to be critical in explaining Spanish emigration to South America and particularly to countries such as Argentina, Brazil, Cuba and Uruguay.

The First World War put an end to Spanish emigration to those countries that had thus far been the traditional destinations. Instead, many Spanish workers migrated
to France as a result of the labour demands produced by the war and post-war economies. This migration declined in the second half of the 1920s due to economic recession in France. Moreover, Spanish neutrality in the First World War placed the country in the role of international supplier of goods, which gave rise to an increase of internal labour demands. While 61 per cent of the total of Spanish migrants went abroad in the period of 1901-1910, the figure was only 6 per cent for the period of 1921-1930 (Bover & Velilla 1999: 6). However, the Spanish Civil War (from 1936 to 1939) brought about a new trend in outwards migration. Now, Spanish emigration arose from political rather than economic reasons. In March 1939, the ‘Valière report’, commissioned by the French government, estimated that there were about 440,000 Spanish refugees in France. In 1945, the number of permanent Spanish exiles was estimated at 220,000 people, mainly in France (125,000), Mexico (28,000), Algeria (17,000) and other Latin American countries (Vernant 1953: 59).

Table 7: Intercontinental and continental Spanish emigration, 1950-75

<table>
<thead>
<tr>
<th>Destination</th>
<th>1950-59</th>
<th>1960-69</th>
<th>1970-75</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL (thousand)</td>
<td>550.0</td>
<td>810</td>
<td>473</td>
</tr>
<tr>
<td>Intercontinental (%)</td>
<td>80-90</td>
<td>26</td>
<td>9</td>
</tr>
<tr>
<td>Continental (%)</td>
<td>20</td>
<td>74</td>
<td>91</td>
</tr>
</tbody>
</table>

Source: Venturini 2004: 16

After the Civil War, the Second World War and the post-war period, the growing importance of the manufacturing sector and increased agricultural mechanisation radically modified the structure of employment. Spain went from being a largely agricultural nation to a modern industrial one. During the 1950s alone, a million workers left agriculture (Bover and Velilla 1999: 7) and, between 1960 and 1985, the percentage of the Spanish population employed in agriculture fell from over 38 per cent to 18 per cent (Jimeno & Toharia 1994: 7). These changes once again led to an intensification of Spanish labour migration both abroad and inside Spain.

While in the 1950s most Spanish emigrants left for South America, in the 1960s the majority moved to Western Europe responding to the labour shortages that resulted from the post-war reconstruction efforts (see Table 7). Over the 1960s and early 1970s, it is estimated that more than 100,000 Spanish workers emigrated to Western Europe per year. While in 1960 around 61 per cent emigrated to France, 18 per cent to Germany and 1 per cent to Switzerland, in 1970 the figures were 25 per cent to France, 39 per cent to Germany and 25 per cent to Switzerland (see Table 8).

Table 8: Emigrations flows from Spain to the main destination countries, 1960-85

<table>
<thead>
<tr>
<th>Year</th>
<th>Total (absolute)</th>
<th>France (%)</th>
<th>Germany (%)</th>
<th>Switzerland (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>49,610</td>
<td>61</td>
<td>18</td>
<td>1</td>
</tr>
<tr>
<td>1965</td>
<td>80,916</td>
<td>45</td>
<td>25</td>
<td>10</td>
</tr>
<tr>
<td>1970</td>
<td>102,079</td>
<td>25</td>
<td>39</td>
<td>25</td>
</tr>
<tr>
<td>1975</td>
<td>22,656</td>
<td>17</td>
<td>1</td>
<td>72</td>
</tr>
<tr>
<td>1980</td>
<td>14,252</td>
<td>3</td>
<td>0</td>
<td>92</td>
</tr>
<tr>
<td>1985</td>
<td>17,382</td>
<td>4</td>
<td>0</td>
<td>75</td>
</tr>
</tbody>
</table>
In parallel with Spanish emigration to Western Europe, in the period 1960-1973 internal migration intensified from poor rural areas such as Andalusia, Castile-León, Castile-La Mancha and Extremadura to richer industrial towns in regions such as Catalonia, Madrid and the Basque Country. By 1970, for instance, 38 per cent of the population in Catalonia was born elsewhere and this figure increased up to 47 per cent in the metropolitan area of Barcelona (Woolard 1986: 56). At that time, people born ‘elsewhere’ in the country were seen as ‘immigrants’ or as ‘others’ and, as such, worked in those jobs rejected by locals. This massive influx of cheap labour into Spanish industrial centres was crucial for the country’s economic development. However, by the late 1970s and early 1980s, following economic decline, there was a considerable decrease in inter-regional migration in Spain. Bentolila and Blanchard (1990: 240) argue that this decrease cannot be explained in terms of reductions in differentials across regions but to the rise in overall unemployment.

4.2.2. Unexpected immigration: In the mid-1980s, Spain unexpectedly (Izquierdo 1996) went from being a country of emigration to having a positive balance in the migratory flow. The question that arises from this, as Cachón (2002b) suggests, is not only how this change occurred but also why it did not happen earlier. As Cachón indicates, historic ties with Morocco and Latin America, geographic and cultural proximity, or economic inequality between the countries (in terms of both economic growth and wages) could have triggered significant inwards migratory flows much earlier. The question, then, is why now and not before? Faced with this conundrum, many authors coincide in signalling that what made Spain a country of immigration in the mid-1980s were precisely the changes that had come about in Spain (rather than in the countries of origin) and, in particular, the changes in the labour market (King, Fielding & Black 1997:10; Cachón 2002a: 111; Oliver Alonso 2005: 8; Calavita 2005: 52).

With regard to Southern Europe as a whole, King et al. (1997:10) suggest the coexistence of sectors of high and low productivity as the prime explanatory factor (or precondition) for this ‘unexpected immigration’. These differences in productivity would not only correspond to the binomial of rural-agricultural versus urban-industrial but they would also coexist in a single economic sector with, for example, small family farms alongside big agricultural enterprises, or low-cost auxiliary services in urban areas with major concentrations of income. These sectors of lower productivity, characterised by high levels of informal economic activities, would require a cheap and flexible labour force. While in the 1960s and 1970s this demand was covered by internal rural-urban immigration, by the mid-1980s it was starting to be met by immigrants from outside the country.

This brings us to the second explanatory factor postulated by King et al. (1997:10): the transfer of native workers from low-productivity sectors to high-productivity sectors and the resultant need for migrant workers in the former.
Along the same lines, Cachón (2002b: 12) suggests that the main factor triggering the immigratory phenomenon was the growing imbalance between an autochthonous labour force that had slowly been raising its ‘job acceptability level’ and the demand for workers in sectors or branches of activity that local workers were less and less inclined to accept. This higher level of job acceptability among the autochthonous population would be related with the entry of Spain into the European Community, the economic growth of the period from 1986 to 1992, the development of the welfare state, the improved level of education of the economically active population, the maintenance of family networks and the rapid rise in social expectations (Cachón 2004: 2).

After the 1990s, this imbalance in the labour market was further aggravated as a result of two factors related with labour supply and demand. First, economic growth from 1995 to 2001 entailed an increased demand for labour involving almost 670,000 new jobs per year (Oliver Alonso 2007: 46). Second, with the entry into the job market by the cohorts of those born after 1976 (and, in particular, the non-entry of those who were not born after this date because of the sharp descent in the birth rate), the offer of new native workers declined after 1992 by approximately two million people, the equivalent of 160,000 fewer workers each year (Oliver Alonso 2007: 35). Although the high unemployment rates (22 per cent in 1996) and low levels of female participation (48.3 per cent of the female working-age population in 1996) made it possible to mobilise growing contingents of native workers (Oliver Alonso 2007: 50), 19.1 per cent of the total of new employment generated in Spain over the period of 1996 to 2000 was absorbed by immigrants. In the zones with the highest concentrations of immigration (the Mediterranean coast, Madrid, La Rioja and the Canary Islands), this figure rose to 23.2 per cent while, in areas with a smaller presence of immigrants, it was 13.6 per cent (Andalusia, Castile-La Mancha, Aragon and Navarra) and 10.9 per cent (North and Northeast) (Oliver Alonso 2007: 55).

As a result of these transformations, between 1985 and 2000 the number of foreign residents in Spain went from 250,000 (0.75 per cent of the total population) to almost 900,000 (2.18 per cent) (Ministerio de Interior 2000: 25). While, at the beginning of the 1980s, the immigrant population in Spain was principally European (65 per cent), by 2000 the majority (60 per cent) came from non-European countries (see Table 9). This change has been dubbed the ‘Third Worldization’ of immigration (Casey 1997: 12). In 2000, the majority collectives were Moroccans (22 per cent), followed by British (20.1 per cent), Germans (8.2 per cent), French (4.7 per cent), Portuguese (4.6 per cent), Ecuadorians (3.4 per cent), Italians (3.4 per cent) and Chinese (3.2 per cent) (Ministerio de Interior 2000: 213). Cachón points out that, in comparison with the immigration of the early 1980s, the kind of immigration coming to Spain in this period was ‘new’ (or different) in a number of senses: in the zones of origin and their level of development (Morocco, countries of Eastern Europe, and Asian countries), in culture and religion (non-Christian), in their phenotypical features (Arab, African, and Asian), in being individuals (53.2 per cent men and 45 per cent women) and, in
particular, in being economic immigrants who came to Spain to work (Cachón 2002a: 104).

Table 9: Foreign residents in Spain in absolute numbers, 1975-2000

<table>
<thead>
<tr>
<th>Years</th>
<th>EU</th>
<th>Rest of Europe</th>
<th>North America</th>
<th>Latin America</th>
<th>Africa</th>
<th>Asia</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975</td>
<td>92,917</td>
<td>9,785</td>
<td>12,361</td>
<td>35,781</td>
<td>3,232</td>
<td>9,393</td>
<td>165,289</td>
</tr>
<tr>
<td>1980</td>
<td>106,738</td>
<td>11,634</td>
<td>12,363</td>
<td>34,338</td>
<td>4,067</td>
<td>11,419</td>
<td>182,045</td>
</tr>
<tr>
<td>1985</td>
<td>142,346</td>
<td>15,780</td>
<td>15,406</td>
<td>38,671</td>
<td>8,529</td>
<td>19,451</td>
<td>241,971</td>
</tr>
<tr>
<td>1995</td>
<td>235,858</td>
<td>19,844</td>
<td>19,992</td>
<td>88,940</td>
<td>95,718</td>
<td>38,352</td>
<td>499,773</td>
</tr>
<tr>
<td>2001**</td>
<td>331,352</td>
<td>81,170</td>
<td>15,020</td>
<td>282,778</td>
<td>304,109</td>
<td>91,552</td>
<td>1,109,060</td>
</tr>
</tbody>
</table>

* Europeans were not included that year because of changes in the measuring system. ** From 2001 data on EU include countries from the European Economic Area (EEA). Source: Moreno Fuentes 2005: 9.

In general terms, non-European immigrant workers occupied jobs that were shunned by local workers. In 1995, 70.8 per cent of migrant workers with a work permit were concentrated in the sectors of domestic service (26.6 per cent), hotel and catering (13.4 per cent), retail trade (9.4 per cent) and construction (9.2 per cent) (Cachón 1997: 56-57). To this pattern of sectorial concentration, one must add specialisation according to the geographic origin of the immigrants: while Moroccans and people from other parts of Africa represented 95 per cent of the foreigners working in agriculture and 78 per cent of those working in construction (70 per cent of whom were from Morocco), women from the Philippines and the Dominican Republic were the most numerous in domestic service, while Moroccans, Latin Americans and Chinese worked in the hotel and catering sector (Cachón 1997: 57).

4.2.3. Consolidation as a country of immigration: Although immigration in Spain started to increase over the 1990s, it was only after 2000 that it began to acquire major dimensions. This unprecedented growth in immigration was once again related with conditions in Spain and, more particularly, with a worsening of the aforementioned imbalance between the labour supply and demand. On the one hand, between 2001 and 2005, the growth of the Spanish economy led to an increase of 690,000 new jobs per year (in comparison with 670,000 between 1995 and 2001). The annual average for 2006 gives a figure of 19.6 million jobs for total employment in Spain, which represents a gain of 6.4 million jobs (46 per cent more) since 1997. In comparative terms, this means that, while Spain represented 8 per cent of total employment for the European Union, between 2000 and 2005 it generated almost 40 per cent of new jobs (Oliver Alonso 2007: 46). On the other hand, the capacity for attending to this demand was reduced with regard to the previous period because of the drop in unemployment figures (7.1 per cent in 2005), an increase in the activity rate (with a female activity rate of 58.1 per cent in 2005) and the demographic shock resulting from the decline in birth rate after 1976 (Oliver Alonso 2005: 32).
This problem of imbalance between labour supply and demand was once again solved with the entry of immigrants who absorbed 53 per cent of the new jobs generated in Spain between 2001 and 2005 (Oliver Alonso 2007: 50-55). In the zones with more immigration (Mediterranean coast, Madrid, La Rioja and the Canary Islands) this figure was as high as 65.7 per cent while, in the areas with fewer immigrants, it was 33.9 per cent (Andalusia, Castile – La Mancha, Aragon and Navarra) and 37.4 per cent (North and Northeast). In absolute terms, immigration figures rose to almost 900,000 foreign residents (2.18 per cent of the total population) in 2000, 1.3 million (3.10 per cent) in 2002, 1.9 million (4.48 per cent) in 2004, 3 million (6.7 per cent) in 2006 and 3.9 million (almost 10 per cent) in 2007 (see Table 10).

Table 10: Foreign residents in Spain in absolute numbers and percentages, 2001-2008 (at 31st of December)

<table>
<thead>
<tr>
<th>Years</th>
<th>EU*</th>
<th>Rest of Europe</th>
<th>North America</th>
<th>Latin America</th>
<th>Africa</th>
<th>Asia</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>331,352 (29%)</td>
<td>81,170 (7%)</td>
<td>15,020 (1%)</td>
<td>282,778 (25%)</td>
<td>304,109 (27%)</td>
<td>91,552 (8%)</td>
<td>1,109,060</td>
</tr>
<tr>
<td>2002</td>
<td>362,858 (27%)</td>
<td>107,574 (8%)</td>
<td>15,774 (1,1%)</td>
<td>364,569 (27%)</td>
<td>366,518 (27%)</td>
<td>104,665 (7%)</td>
<td>1,324,001</td>
</tr>
<tr>
<td>2003</td>
<td>406,199 (24%)</td>
<td>154,001 (9%)</td>
<td>16,163 (0,9%)</td>
<td>514,484 (31%)</td>
<td>432,662 (26%)</td>
<td>121,455 (7%)</td>
<td>1,647,011</td>
</tr>
<tr>
<td>2004</td>
<td>498,875 (25%)</td>
<td>168,900 (8%)</td>
<td>16,964 (0,8%)</td>
<td>649,122 (32%)</td>
<td>498,507 (25%)</td>
<td>142,762 (7%)</td>
<td>1,977,291</td>
</tr>
<tr>
<td>2005</td>
<td>569,284 (20%)</td>
<td>337,177 (12%)</td>
<td>17,052 (0,6)</td>
<td>986,178 (36%)</td>
<td>649,251 (23%)</td>
<td>177,423 (6%)</td>
<td>2,738,932</td>
</tr>
<tr>
<td>2006</td>
<td>661,004 (21%)</td>
<td>367,674 (12%)</td>
<td>18,109 (0,6)</td>
<td>1,064,916 (35%)</td>
<td>709,174 (23%)</td>
<td>197,965 (6%)</td>
<td>3,021,808</td>
</tr>
<tr>
<td>2007</td>
<td>1,546,309 (38%)</td>
<td>114,936 (2%)</td>
<td>19,256 (0,4)</td>
<td>1,215,351 (30%)</td>
<td>841,211 (21%)</td>
<td>236,770 (6%)</td>
<td>3,979,014</td>
</tr>
</tbody>
</table>


If the figures are taken by continents (see Table 10), the increase of foreign residents from European countries between 2001 and 2007 is noteworthy. This is principally due to the greater numbers of immigrants coming in from the countries of Eastern Europe, which are gradually joining the Community.24 In these years, one also observes growth in the Latin-American community (over 300 per cent), which now represents one third of Spain’s immigrant population. Although immigration from Africa and Asia also increased in this period (176 per cent and 159 per cent more, respectively), it lost relative presence because of the advance of immigration from Europe and Latin America. If we observe the distribution by nationalities (see Figure in Annex 5), it is important to indicate how the countries of Europe of the Fifteen (and specifically Great Britain, Germany, France, Portugal

---

and Italy) are losing presence with respect to countries of Eastern Europe (Romania and Bulgaria) and Latin America (Ecuador, Colombia, Peru and Argentina). In this sense, we might conclude that immigration has become more deeply marked by ‘Third Worldization’.

In 2006, the majority of migrant workers from outside the European Union were concentrated in services (58.1 per cent), construction (24.6 per cent), industry (11.1 per cent) and agriculture (6.2 per cent) (Pajares 2007: 52). If we analyse these figures by gender, we find that 42.3 per cent of the total of male foreign workers had jobs in construction while 89.7 per cent of the total of female foreign workers were in the service sector, more than half of them in domestic employment and somewhat less than half in commerce (Pajares 2007: 52). In terms of concentration by origin, the rotation or displacement of certain collectives in specific sectors or provinces should be remarked upon. For example, in 2002, Moroccans were displaced by Ecuadorians in the countryside of Murcia and by women workers from Poland and Romania who came to pick strawberries in Huelva (Cachón 2003; 264). Increased immigration from Latin America has also meant there are more women domestic workers from Ecuador, Bolivia and Peru. Finally, the position of immigrants in the labour market also depends on the time of legal residence: while newcomers or recently regularised immigrants represent the majority in sectors like agriculture or domestic service, after an initial period of legal residence, migrant workers tend to move into sectors like construction and, in the case of women, into other services (Pajares 2007: 51).

4.3. FROM EMIGRATION CONTROL TO IMMIGRATION POLICIES

4.3.1. Controlling emigration: Until the 1970s, migration policy was concerned with defining, channelling, selecting and keeping count of emigrants. In this regard, throughout the nineteenth century and a good part of the twentieth, the borders of the nation-state functioned more in filtering the exit of people from within (nationals) than as an impediment to the entry of people from without (foreigners). To be precise, from 1853 until the 1930s, a series of laws were promulgated in order to restrict the exit of younger age groups. In the case of men, the measures were intended to ensure there would be enough able-bodied recruits of military age in case of war. As for women, the main argument was that of curbing trafficking in women and, more generally, prostitution of Spanish women.\footnote{Contemporary historical research has shown that the actual number of cases of ‘white slavery’ were very few (Doezema 2000). In her interesting article on the relationship between the rumour of trafficking and border controls, irregular migration, and nation-state sovereignty, Wong observes a strong parallelism between the discourse on white slavery scare that raged (particularly in Britain and the United States) at the turn of the last century and the discourse on ‘human trafficking’. According to her, “both discourses were centered around the issue of prostitution and female migration. Both shared the motif of innocent victimhood, as well as a similar absence of material basis to the enraged claims of the
in Latin America (Hernández García 1981). Moreover, after the end of the 1920s, as a result of the economic crisis and high levels of unemployment in the countries of destination, the Spanish authorities began to require the presentation of a work contract that would guarantee the availability of sufficient economic resources once the person had reached South America. The aim of the policy was to avoid the heavy costs that the numerous requests for forced repatriation incurred for the Spanish Government.

As a result of these increasingly restrictive emigration policies, illegal exit became a real alternative in Spanish emigration to South America. It is estimated that, in the decade of 1910, some 40,000 Spanish people emigrated to America illegally. As one observer remarked at the time, ‘[…] with such restrictive measures the only achievement is that of encouraging emigration (clandestine and contracted, which are the most dangerous forms) because the passenger, faced with the bother and the costs of achieving a passport, will seek other ways of leaving and, if it is difficult to do so here, the same is not true of Bordeaux where, if they ask for anything at all, it is the certificate of residence because anything else they may want isn’t worth the paper it’s written on’ (Vicenti 1908: 54). The figure of the smuggler (then called a ‘clandestine agent’), although it would seem to pertain to today’s globalised yet fortified world, also had an important role to play in the migratory processes of the beginning of the twentieth century (Bullón Fernández 1913). The difference is that, while then they were necessary for leaving Spain, they are now sometimes seen as the only way to enter.

After the economic crisis of the late 1920s, the Spanish Civil War, the post-war period and the autarchy of the Franco regime in the 1940s, which had the concomitant effect of bringing about a temporary halt to international labour-oriented emigration, the Spanish government attempted again, this time in the mid-1950s, to regulate emigration (now to Western Europe) by means of creating the Instituto de Emigración (Emigration Institute) in 1956. Once again, and still more due to the nature of the Franco dictatorship (1939–1975), the goal was to channel and select emigrants. In particular, the regime was concerned to encourage the exit of ‘wanted emigrants’, that is, poorly qualified or unskilled workers who were perceived as loyal to the Government. Besides this selective policy, the inefficiency of the Spanish bureaucracy and the resistance of some bureaucrats ended up restricting legal emigration towards Western Europe (Pereira 2007: 4). The result was, once again, an inducement to illegal emigration. It is calculated that 51 per cent of Spanish emigrants to Western Europe exited the country illegally26

26 This illegality among Spanish migrants should also be explained by the situation in the countries of destination. For instance, Pereira observes that, in the French case, employers saw illegal migrants as an advantage, not only because they represented cheaper labour but...
In contrast with emigration policy, immigration policy was notable until the mid 1980s for its vagueness and lack of relevance. The vagueness was a result of its being a set of rules without the status of law, which went hand-in-hand with the proliferation of different decrees, countless regulations and treaties of reciprocity all of which ensured that the legal procedure for entry and stay was a chaotic and confused affair. Relevance was lacking because, given the absence of major flows of immigration, these measures were not always aimed (either in content or practice) at actually controlling immigration. One example of this is the elimination after 1959 of the requirement of a visa for nationals coming from most countries of Western Europe, the continent of America and North Africa. Even when possession of a work permit was introduced in 1968 as the necessary condition for working legally in Spain, the resulting illegality did not constitute a problem. In other words, ‘[…] illegal immigrants could engage in a working and social life without undue scares or a feeling of illegality’ (Izquierdo 1996: 142).

In addition to this vagueness and lack of relevance, the first legal immigration measures were not invariably governed by the principle of always distinguishing between nationals and foreigners. Accordingly, the distinction between foreigners from the former Spanish colonies (except Morocco), Andorra and Portugal and the rest acquired paramount importance. Thus, for example, unlike ‘the rest’, foreigners from Latin America and the Philippines enjoyed the same working rights as Spanish citizens after 1969 and therefore did not require a work permit. The Citizenship Law (dating back to the 1889 Civil Code) is also a good example of this kind of distinction. Still in force today, the Law concedes citizenship after two years of legal residence to people from Latin America, the Philippines and Sephardic Jews, and ten years of legal residence for other foreigners.

This distinction between different types of foreigners was justified by an alleged need to cultivate relations with the former colonies (but, to repeat, not all of them) and to respond to the historic debt that Spain had incurred with those countries that had been receiving Spanish immigrants for decades (which was not the case with the Philippines, for example). As López Sala (2000: 375) indicates, this differential treatment or the construction of a set of ‘privileged foreigners’ could also be explained by the objective of promoting or facilitating immigration (or integration) of ‘people like us’ in cultural and/or linguistic terms. The outcome of this nationality policy is that a high proportion of foreigners who acquire Spanish nationality (81.5 per cent in 2006) come from the countries of Latin America (Ministerio de Interior 2006: 3.12). In terms of rights, this means an inequality of also because their illegality made it possible to circumvent what they perceived as inadequate immigration laws. In particular, as we shall also see in the Spanish case some decades later, employers saw the legal immigration process as being too slow and expensive. Moreover, they preferred to choose their workers ‘at the factory door’ rather than asking the government to recruit workers they did not know and whose skills they could not check directly (Pereira 2007: 13).
access to the civil, political and labour rights associated with citizenship. To sum up, this materialises in selective, exclusivist and discriminatory policy (see Zapata-Barrero 1997).

4.3.2. Towards an immigration policy: The end of the Franco dictatorship in 1975 meant radical political change for Spain. This had two far-reaching implications with regard to immigration policy. First, the fledgling democracy immediately ratified the main international human rights treaties, for example the International Covenant on Civil and Political Rights (1966), the Universal Declaration of Human Rights (1948), and the European Convention on Human Rights (1950). Second, the new Constitution (1978) introduced such basic matters for the future development of immigration policy as the principle of legal reservation (the obligation to regulate the matter in hand by means of the Ley de Cortes – the basic law regulating the functioning of Parliament) and the possibility of both parliamentary and judicial control over all administrative action (Aja 2006: 18). Nonetheless, given the almost imperceptible immigration trickling into Spain at the time, the Constitution did not take up the matter of defining the rights of foreigners beyond those recognised as pertaining to any human being, for example individual freedom and protection of the law.

In fact, it was not until Spain entered the European Economic Community (EEC) in 1986 that the need arose to unify and give the status of law to the different regulations, decrees and bilateral agreements (many of them pre-Constitutional) on immigration (Moya Malapeira 2006: 52-54). This need materialised with the urgent promulgation of the Ley Orgánica de Extranjería (LOE – Organic Law on Foreigners, which was also known as the Organic Law on Rights and Liberties of Foreigners in Spain). As López Sala (2000: 258) indicates, Spain’s entry to the EEC not only determined the timing of the Law but also its content. Since Spain was not then perceived as a country of immigration, the LOE appeared with the aim of trying to prevent Spain from becoming a transit or ‘immigrant sieve’ country for people heading for the countries of northern Europe (Aja 2006: 21). The result was a restrictive policy that regulated the entry, residence and expulsion of foreigners.

As for regulation of entry and residence, the LOE (and the follow-up post-1986 regulation) introduced the requirements of an entry visa as well as residence and work permits. This meant that the entry of foreigners was now subject to regulation (basically at border posts) while their access to the labour market was conditioned by the country’s economic conditions. Furthermore, the situation of foreigners in Spain was restricted by short-residence permits and non-recognition of the right of family reunification. These limitations, however, did not apply to all foreigners. The regulations that followed the LOE, now in the EEC context, introduced preferential treatment for Community citizens and their families who, unlike the non-EEC citizens, enjoyed freedom of circulation and the right to engage in economic activity regardless of the national employment situation. The result was the emergence of a new category of privileged foreigners (Community citizens) in
opposition to a newly defined ‘the rest’ (non-Community citizens).

Along with the distinction between Europeans and ‘the rest’, the LOE introduced another notch in the hierarchical scale of foreigners in Spain: the distinction between ‘legals’ and ‘illegals’. While the former had some of their rights restricted and others recognised, the latter (labelled as ‘international delinquency’ by José Barrionuevo, then Spanish Minister of the Interior – subsequently a delinquent himself when he was jailed in 1998 for his activities in Spain’s mid-1980s ‘dirty war’ scandal) were given the bottom-line treatment of detention and expulsion. As a lawyer interviewed by Suárez Navaz (1997: 7) observed at the time, ‘[…] those immigrants [illegal immigrants] do not have a single right in Spain. The law anticipates any circumstance. Basically, the message is that if you are “illegal”, the state has only one responsibility: to deport you.’ In this regard, the introduction of the first immigration law had a twofold effect on migrants’ illegality. First, when the conditions of legality (through work and residence permits) were tightened, illegality increased. For example, those who were working without the need of a work permit became illegal. Second, in comparing illegal migrants with delinquents and making them liable to detention and expulsion, a gradual process of exclusion and criminalisation of illegality took place. While being in an illegal situation was not a problem in the early 1980s, with the LOE and the regulations that came in its wake, illegality came to mean being stripped of one’s rights and the possibility of being deported at any time (see Jabardo 1995).

Nonetheless, the tightening up of the conditions of legality and illegality had its limits in Spain. These limits were imposed, initially, by rule of law and, more specifically, by the courts. The dubious constitutionality of the LOE gave rise to complaints being filed by the early immigrants’ associations, different NGOs and Lawyers’ Colleges. They asked the Ombudsman to intervene by lodging an appeal based on the unconstitutionality of the articles that affected the right of meeting and association, internment prior to deportation and the legal prohibition against judges suspending the expulsion orders. As Aja (2006: 23) points out, the ensuing Constitutional Court (1987) ruling meant not only the suppression of these clauses but also the start of a progressive recognition of rights that the Constitution appeared to reserve exclusively for Spaniards.

Apart from the limits set by the Constitution, reality also swiftly overtook the framework imposed by law. First, the imbalance between a restrictive approach to the entry and stay of foreigners in Spain and a growing demand for migrant workers resulted in the emergence of what can only be described as a model of illegal immigration throughout the 1990s (Izquierdo 1996). Denounced by immigrants’ associations, NGOs and opposition parties during the course of this decade, the manifest policy flaws made it necessary to open up new channels for legal immigration into Spain (by quota) and the periodical regularisation (by ordinary means or extraordinary regularisation processes as in 1991 and 1996) of illegal immigrants. Second, immigration was not as temporary as expected. Hence, and once again as a result of pressure exerted from civil society and opposition
parties, the law had to be modified on several occasions in order to regulate the
right of family reunification (1994 and 1996), extend the duration of permits,
improve renovation procedures and introduce, for the first time, the permanent
residence permit (1996). Moreover, throughout the 1990s, the first integration
initiatives (though not policy) were introduced (López Sala 2000: 299).

While immigration policy was becoming more sophisticated as a result of needs
perceived at national level, the role of Spain as custodian of the southern frontier of
Europe continued to have its effects in border control policy. To be specific,
Spain’s becoming a signatory to Convention Applying the Schengen Agreement in
1993 and the two subsequent European treaties (Amsterdam and Maastricht)
imposed the need for a common policy which, in the case of Spain, meant
expanding its border infrastructure and coming up with a more restrictive entry
policy. Accordingly, the visa requirement was extended to Morocco, Tunisia and
Algeria (1991), the Dominican Republic (1993) and, much later, Cuba and Peru
requirement did not come into force for most Latin American citizens until long
after the rest partially explains the process of Latin-Americanisation of
immigration during the 1990s and a good part of the 2000s (see Tables 5 and 6).
When the visa was finally imposed, it was ushered in under the pretext of the need
for a common European policy. In this regard, as Moreno Fuentes has pointed out
(2005: 116), Europe was crucial not only as a ‘[… ] pushing factor for the
introduction of that measure but also as a way of diluting blame by attributing
responsibility to Brussels for a measure that was strongly criticized both in Spain
and in the Americas’.  

4.3.3. Redefining immigration policies: The different decrees and regulations that
were introduced in response to immigration over the 1990s soon made reforming
the LOE essential. Hence, after different bills had been presented by the opposition
parliamentary groups, Law 4/2000 (Organic Law on the Rights and Liberties of
Foreigners in Spain and Their Social Integration) was promulgated early in 2000.
This law, deemed by some to be ‘the most liberal law on the rights of foreigners in
Europe’ (González & MacBride 2000: 171), aimed to redefine the limits of legality
and illegality for immigrants in Spain. On the one hand, Law 4/2000 introduced the
right of family reunification in terms that were coherent with the jurisprudence of
the European Court of Human Rights and held out equality of rights between legal
residents and Spanish nationals (freedom of circulation, meeting, association,
etcetera) but not the right to vote or appointment to public office. On the other

---

For example, Colombian intellectuals protested, pleading historic ties of solidarity with
Spain. Jesús Caldera, a member of the PSOE (Partido Socialista Obrero Español - Spanish
Socialist Workers’ Party), then in opposition, and future Minister of Labour and Social
Affairs, described the decisive abstention of the Government (then Partido Popular,
Popular Party in English) from the vote in the EU Council of Ministers, which made it
possible to impose the obligatory visa for Colombians, as a ‘shameful and inadmissible
attack on Spanish-speaking America’ (El País, 24 March 2001, quoted in Fernández Suárez,
2007: 6).
hand, the Law gave illegal immigrants access to health and education facilities in tying these rights to the municipal register (census registration, *el padrón*) rather than to legal residence. Moreover, it opened up the way for ordinary individual regularisation (known as *arraigo* – literally taking root) and closed the possibility of applying the measure of expulsion because of illegality in work or residence. In other words, according to this Law, expulsion would only be applicable to people caught entering Spain illegally, while those already in national territory would be penalised with a fine.

This law on foreigners was passed with the general consensus of all the parties in Parliament, unions, immigrants’ associations and NGOs (which led to its detractors calling it ‘the NGO Law’) but with notable reluctance from the Partido Popular, which then was in government but with a parliamentary minority. As was to be expected, after achieving an absolute majority in the March 2000 general elections, the Partido Popular set about a drastic modification of the legislation, or ‘counter-reformation’, that ended up with the passing of a new law (Law 8/2000) at the end of that same year. The arguments wielded in favour of modifying Law 4/2000, even before it was implemented, were essentially four (Cachón 2004: 32). First, it was alleged that Law 4/2000 encouraged the inflow of immigrants or, in other words, that it had a ‘pull effect’ on illegal immigration. Second, was an appeal to the need to struggle against the networks of human traffickers. Third, its advocates claimed that it was necessary to comply with Community norms and, in particular, with those agreed at the Tampere European Council meeting and the Shengen Agreement. Yet again, Community requirements (or misinterpretation of them) were being called upon to perform the function of justifying changes in Spanish immigration policy. Fourth and finally, allusion was also made to the need to channel immigration in a legal fashion.

The result was a much more restrictive law that cut back the bounds of legality and expanded illegality as defined by Law 4/2000. In the case of legal immigrants, limits were imposed on the questions of permanent residence, representation at municipal level and the right to family reunification. As for illegal immigrants, they retained some rights such as documentation (in the municipal register), education, and complete health care, but were denied others, for example political and union rights of meeting, demonstration, association, unionisation and striking. Moreover, and this doubtless represents the biggest change in the law, expulsion was reinstated for illegality of either residence or work. One of the issues that drew most criticism in this regard was the introduction of preferential procedures for expulsion within 48 hours which, in practice, obstructed effective judicial protection (Aja 2006: 31). Finally, in 2003, two follow-up laws limited still further the situation of illegal immigrants. On the one hand, LO 11/03 facilitated the expulsion of non-resident foreigners who commit crimes, while, on the other, LO 14/03 opened up the possibility (not yet applied) of the police having access to data pertaining to the municipal register, *el padrón*. Since registration with the municipal authorities is the requirement for acceding to social services, NGOs and immigrants’ organisations denounced the fact that this measure could have
deterrent effects with serious consequences for the rights of illegal immigrants.

In parallel with the redefinition of legality and illegality, the Spanish government insisted after 2000 on the need to move immigration through legal channels and thus to put an end to the model of illegal immigration that had taken shape over the 1990s. In particular, contracting foreign workers in the place of origin was presented thenceforth as the solution for legal channelling of migratory flows. To this end, the Government signed a series of agreements with Morocco, Colombia, Ecuador, Romania, the Dominican Republic, Poland and Bulgaria. However, as we shall see, access to entry continued to be very restricted. The upshot was more illegal immigration – and not only more, but more than ever because of the burgeoning demand for foreign workers – and new extraordinary regularisation procedures (2000 and 2001). In 2004, with the return of the PSOE to Government, contracting in the place of origin continued to be the mainstay of entry policy. With this in mind, but especially in order to guarantee the readmission of illegal immigrants as well, the Government signed new agreements with countries like Gambia, Guinea-Conakry, Cape Verde, Mali and Senegal. Although the results of these new agreements were once again very partial, the reopening of other channels of entry did finally ease the way for establishing legal channels for (part of) the inflow.

Furthermore, the new PSOE Government launched a further process of extraordinary regularisation in 2005, which this time covered almost 700,000 applications, and from 2004 on expanded the possibilities for ordinary individual regularisation or the so-called arraigo (‘taking root’). Meanwhile, other issues were appearing on the migration policy agenda. On the one hand, immigration was becoming more stable and permanent and this led to the need to introduce real integration policies (especially at the local and regional levels) with new measures and greater budgetary allocation (see Bruquetas, Garcés-Mascareñas, Morén-Alegret, Penninx & Ruiz-Viytez 2008). Another result was that the debate over immigrants’ right to vote in municipal elections progressively gathered steam. On the other, the economic crisis of 2007 and 2008 left part of the foreign population unemployed. As had happened decades earlier in Western Europe, this placed policies of returning immigrants to their homelands and possible restrictions on the rights of family reunification at the very heart of the political debate on immigration.

4.4. RESTRICTING ENTRY

4.4.1. Defining numbers: In spite of frequent changes in the law (in 1985, twice in 2000, in 2001 and 2003), and the regulations that came in their wake (in 1986, 1991, 1996, 2001 and 2004), entry policy (with the exception of family reunification and asylum) has always been based on the notion that immigration had to fit in with ‘the needs’ of the labour market. As Raimundo Aragón Bombín,
then Minister of Labour and Social Security, pointed out, ‘[…] what gets the procedure underway is not the wish of the immigrant but official confirmation that a job offer, formulated in legal terms, is not covered’ (Aragón Bombín 1995: 108). This means, first of all, that the entry of foreigners is bound to a specific employment offer. Employers therefore determine both the possibility of entry and the characteristics of the new immigrants. Second, speaking of ‘a job offer that is not covered’ also implies that official approval is only given for job offers that have not been filled by Spanish citizens, members of the European Community, or authorised residents. The aim is to ensure that national (or authorised) workers are not displaced by foreigners. While these two principles have remained constant, the order in which they have arisen and the nature of the job offers have been changing in the last two decades.

The passing of the Organic Law on Foreigners (Ley Orgánica de Extranjería, LOE) in 1985 laid the foundations for these two principles in linking concession of the work permit with the presentation of a job contract and the ‘non-existence of unemployed Spanish workers in the kind of work proposed’ (Article 17). This system, known as Régimen General (General Provisions), neither ordered nor promoted labour immigration but authorised the contracting of a specific foreign worker after assessing the situation of the national labour market. Depending on the results of this appraisal, this mechanism could de facto turn the matter of entering the country into something extraordinarily open or extraordinarily closed. What happened, in fact, was the latter since the main consideration was not so much the candidates who presented in response to a specific offer but the general list of unemployed. Bearing in mind the previously mentioned upping of the ‘job acceptability level’ among the Spanish population, the fact that there were unemployed workers did not always mean that there were candidates willing to work in certain jobs. The main result was the systematic denial of requests to contract foreign workers, even when a considerable proportion of these job offers remained unfilled. As Aparicio Wilhelmi and Roig Molés have noted (2006: 149), only those applications with a ‘very precise and exotic profile’ had any chance of being authorised. The rest of the jobs were filled by illegal immigrants (Aragón Bombín 1993: 13).

With a view to guiding low-skilled migration through legal channels and breaking with the stringency of the Régimen General, the government (still PSOE-led) established an annual labour immigration ceiling after 1993. This second mechanism or quota system enabled the contracting of a predetermined number of foreign workers in a specific economic sector and province. The advantage of this, in comparison with the Régimen General, was that the job offers presented under the heading of the quota system did not have to be evaluated in the light of the labour market. In other words, the needs of the labour market were determined prior to the offer of employment, and hence the employer supposedly gained in terms of certainty and speed. Despite the government’s sanguinity over the new measure, of the 20,600 places that were offered in 1993, only 5,331 became effective with a job offer. One of the difficulties, as we shall see in the following
section, was the complexity involved in contracting foreign workers in their places of origin. Given these limitations, after 1994 the government agreed to the quota system’s being used for contracting foreign workers who were already working in Spain, most of them illegally. As a consequence of this shift, after this date, the applications based on the quota greatly exceeded the numbers offered by the government. In total, between 1993 and 1999, almost 150,000 work permits were offered, over 300,000 applications were presented and about 135,000 employment authorisations were granted (see Table 11).

Table 11: Quota from 1993 to 1999

<table>
<thead>
<tr>
<th>Year</th>
<th>Initial</th>
<th>Extension</th>
<th>Applications</th>
<th>Approved</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993</td>
<td>20,600</td>
<td>-</td>
<td>-</td>
<td>5,220</td>
</tr>
<tr>
<td>1994</td>
<td>20,600</td>
<td>-</td>
<td>37,093</td>
<td>25,604</td>
</tr>
<tr>
<td>1995</td>
<td>8,000</td>
<td>17,000</td>
<td>37,206</td>
<td>19,953</td>
</tr>
<tr>
<td>1996*</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1997</td>
<td>15,000</td>
<td>9,690</td>
<td>67,522</td>
<td>24,615</td>
</tr>
<tr>
<td>1998</td>
<td>28,000</td>
<td>-</td>
<td>65,221</td>
<td>27,904</td>
</tr>
<tr>
<td>1999</td>
<td>30,000</td>
<td>-</td>
<td>96,577</td>
<td>19,368</td>
</tr>
</tbody>
</table>

* In 1996 there was no quota as this year there was a regularisation programme. Source: Izquierdo 2006: 83.

To sum up, although the politicians (from all parties) insisted on the need of channelling labour migration legally, the entry policies of the 1990s were not at all effective. On the one hand, the Régimen General turned out to be a very limited mechanism because of the impossibility of getting around the fact that each application had to be submitted to an evaluation of the situation of the national labour market. On the other hand, the quota system functioned more as an instrument for regularising those who were already working illegally in Spain. This resulted in policy that de facto favoured illegal immigration. In order to work legally in Spain, the most practicable way to achieve this was to enter or stay in the country illegally and then to find work and regularise one’s situation through the quota system or one or other of the frequently-applied extraordinary regularisation processes (1991, 1996, 2000 and 2001). While the annual quotas accounted for between 20,000 and 30,000 immigrant workers, it is estimated that a much greater number of immigrants came into Spain each year. For example, while a quota of 30,000 people was authorised for 1999, an Ecuadorian newspaper calculated that some 322,000 Ecuadorian citizens had left for Europe that same year, most of them heading for Spain (quoted by Carles Campuzano, of the Catalan nationalist party

---

28 As Manuel Pimentel, the former PP Minister for Labour and Social Affairs (January 1999 to February 2000), observed, ‘Well, yes, the quota was always much lower than the demand in our society and it was used on many occasions to legalise the ones that were already here. So it wasn’t much use in terms of its initial function, which was to regulate the entry of people. This insufficient quota, combined with the exasperating slowness of the Régimen General has had a distressing consequence: almost 85 per cent of the immigrants came in illegally and were subsequently regularised. We know we need immigrants but we never established any legal way of entry. Result: we de facto pushed them into illegal channels’ (El País, 9 March 2002).
Convergència i Unió, in the Spanish Parliament, 18 June 2001). The annual quota allowance also contrasts sharply with the 400,000 immigrants who were regularised between 2000 and 2001 (Spanish Parliament, 28 November, 2001).

Since the entry policies were so ineffective, changes made in 2000 to the Foreigners Law (with Laws 4/2000 and 8/2000) once again tackled the need to steer immigration through legal channels. With a view to this, at the start of the second Partido Popular mandate (2000-2004), the Government insisted that an evaluation of the job market always had to precede any job offer or, in other words, that a political assessment had to be made of the country’s annual needs for immigrant workers; and that contracting foreign workers had to be in their countries of origin so that any immigrant would ‘arrive with a contract tucked under his or her arm’. In practice, this meant closing down the Régimen General. At the same time, the quota system was presented as the ultimate mechanism for legal immigration into Spain. It was repeatedly stated in the Spanish parliament that the idea was that the new quota system would finally enable design, management and control of immigration.

First, unlike the Régimen General, the quota system was presented as a way of defining each year how many foreign workers could be contracted by sector and by province. Although the Government was responsible for approving the annual quota, Law 8/2000 recognised the participation of the autonomous communities, employers’ organisations and unions. In particular, the labour requirements identified at provincial level by employers’ and union organisations were assessed by the authorities of the autonomous communities and then sent to the Ministry of Labour, which drew up the final proposal to be rubber-stamped by the Government. Second, the quota was also presented as the mechanism that would, for the first time, make it possible to manage migratory flows from the countries of origin. Hence, Law 8/2000 specified that the quota was aimed at those foreigners ‘who are neither in Spain nor resident in the country’ (Article 39). Moreover, after 2002, the job offers presented under the quota system had to be generic in type or, in other words, designating the job but not determining the worker. This requirement was an attempt to avoid taking candidates who were already working illegally in Spain, as had occurred throughout the 1990s. The change from a system based on designated offers to one based on generic offers meant that, for the first time, the Spanish Government became responsible for managing the job offers and, in particular, for the process of selecting the candidates in their countries of origin.

29 When the quota for 2002 was announced (the first to be approved since the Laws 4/2000 and 8/2000), it was expressly stated that applications processed through the Régimen General would be inadmissible as long as the quota remained open. After numerous protests, several court rulings pronounced that this measure was illegal both in its formal dimensions (the decision being made by merely announcing the quota) and its content (the law did not stipulate abolishing the Régimen General). As a result, the Régimen General remained open in legal terms although, in practice, it was virtually inoperative because the situation of the national labour market continued to be interpreted in very stringent terms.
In contrast with the political rhetoric that, after 2000, presented the quota system as the core element in Spain’s immigration policy, the data reveal that its relevance was somewhat limited. In particular, from 2002 onwards, the quota system materialised as a forecast of less than 20,000 stable jobs per year. Several factors have been identified to explain the reduced numbers of these projections. First, reference has been made to the timorous attitude of the unions, which were always more in favour of regularising illegal migrants already in Spain than opening up further channels for new immigrants (Aparicio Wilhelmi & Roig Molés 2006: 158).

A second factor is the employers’ lack of foresight with regard to the needs of medium-term contracting (Consejo Económico y Social 2004: 132; Aparicio Wilhelmi & Roig Molés 2006: 158; Roig Molés 2007: 292). Third and finally, it is important to note, too, the poor representation of small and medium-sized firms in the big employers’ organisations and, therefore, in the process of determining the quota (Watts 1998: 668-9; Aparicio Wilhelmi & Roig Molés 2006: 158; Roig Molés 2007: 292). In general terms, a representative of Comisiones Obreras, one of the biggest unions in Spain, indicated that what made the quota forecasts so limited was the absence of any serious study of the needs of the labour market. To put it in his words, ‘[…] How is it going to work if the list is drawn up in a week! There’s no proper study. It depends on the political interest, on what the relations are like between the government of the autonomous community and the central government and whether they want to give the impression that it’s working. The employers’ organisations also improvise when it comes to specifying the demand. There’s no seriousness or responsibility’ (interview 11 February 2008, Barcelona).

If the annual assignation of quotas was limited, still more meagre were the figures for employment offered under the quota system aegis. For example, of the 10,884 and 10,575 stable jobs envisaged for 2002 and 2003, only 3,113 and 4,762 were covered respectively (Consejo Económico y Social 2004: 91-92). Although the number of offers for temporary employment was much higher (10,520 and 21,687 of the 21,195 and 24,247 jobs envisaged for 2002 and 2003), these figures are less representative since they refer to temporary jobs (basically in agriculture and the hotel and catering sector) that require the return of the immigrants within a limited period of time. To explain the very limited use of the quota for stable employment, many of my interviewees agreed in pointing out, on the one hand, the complexity and the time taken by the procedures involved and, on the other – as had already happened in 1993 –, the difficulties involved in contracting a worker in his or her country of origin. The Consejo Económico y Social (Social and Economic Council – CES), a consultative organ set up by the Government in which employers’ and union organisations are represented, explained the failure of the quota system in relation to the following factors: ‘[…] ignorance of the procedures, their rigidity and the time they took, the difficulty for companies in going to foreign countries, lack of trust in signing contracts without having previously been in direct contact with workers, the multiplicity of steps and authorities involved, lack of information given to companies and absence of direct contact with the selecting organisation, and decision-making that did not take employers’ desires into account’ (Consejo Económico y Social 2004: 132).
Between 2002 and 2004, the closing down of the *Régimen General* and the channelling of immigration exclusively by means of the quota system placed extreme limitations on legal entry to Spain and, as a result, once again favoured illegal immigration. As Iratxe García Perez, a PSOE (then in opposition) Member of Parliament critically noted at the time, ‘[… ] *This restrictive, complicated and badly-planned framework has meant that there is less legal immigration and more illegal immigration*’ (Congreso de los Diputados, 8 April, 2003). To give one example of the problem, in contrast with the 30,000 jobs assigned for the quotas of 2002 and 2003, more than 400,000 people were registered as residents by local councils in the same period (Izquierdo & Fernández 2006: 220). The frequent regularisation processes also offer unquestionable proof of the actual volume of the flows. Thus, between 2000 and 2004, the (Partido Popular) Government authorised the regularisation of more than 500,000 people and in 2005 (now with a PSOE-led Government) almost 700,000 applications for regularisation were registered. This means that more than a million people were regularised in a period of five years, while the entry policy mechanisms still stuck to their figures of between 20,000 and 30,000.

In 2004, with the newly re-elected PSOE government fully engaged in producing new regulations for the (thrice modified) Law on Foreigners, the need to steer immigration through legal channels was once again confronted. Although this had been the catchphrase of the different governments (both PSOE and PP) since the beginning of the 1990s, it was clear that the immigration policies had not yet achieved their goal. Following the line embarked upon by the PP, the PSOE government kept insisting that assessment of the labour market had to precede the job offer and that immigrants should be contracted in their countries of origin. However, heeding the recommendations of the CES report (2004: 129), instead of giving priority to the quota system in detriment of the *Régimen General*, the new government opted for combining both forms of entry. While the quota system made it easier to cover the generic types of work offer more quickly (without a previously assigned specific worker), the *Régimen General* made it possible for designated jobs to be offered as well, along with jobs offered in cases where a would-be employer had operated with insufficient foresight and had thus been unable to work through the quota system.

In order to adapt the ‘old’ *Régimen General* to the aims of the ‘new’ policy, the 2004 regulations limited contracting to those foreigners ‘*who reside outside Spain and who have obtained the appropriate visa*’ (Article 49). As with the quota system, this requirement was an attempt to prevent the *Régimen General* from becoming *de facto* a mechanism for regularising the situation of immigrants who were already in Spain. The 2004 regulations also proposed the quarterly production of a list of jobs that could not be covered, known as the catalogue of hard-to-fill jobs (*catálogo de puestos de trabajo de difícil cobertura*) and ordered by sector and province, in which case it would be possible to contract foreign workers without prior case-by-case assessment of the national labour market. This was not concerned with the number of work permits to be offered (as in the quota system).
but a description of jobs without a quota being given. The production of this catalogue made it possible, first, to give a political definition of the economic sectors that needed foreign workers. Once again, this decision was to a great extent the task of the autonomous communities, the employers’ organisations and the unions at the provincial level. Second, it was hoped that the production of the catalogue would also speed up the process of contracting. Instead of the uncertainty and slowness involved (as occurred in the 1990s) in depending on a case-by-case assessment of the labour market, now the contracting procedures could start in the knowledge that if a job was on the list, offering it to a migrant worker would be authorised.

The results of this recent change in entry policy have been varied. If we focus on the quota system, we must note a clear continuity with regard to what happened between 2002 and 2004. First, the forecasts for stable jobs continued to be quite limited while the actual offers of employment made under this heading were still more limited. Second, the quota system continued to consolidate as an instrument for temporary contracting in sectors such as agriculture and the hotel and catering trade. While the quota system continued to represent quite a limited form of entry, after 2004 the Régimen General became the de facto mechanism par excellence for entering the country. The difference is important: while between June 2004 and June 2007 14,229 offers of stable employment were authorised through the quota system, as many as 352,307 authorisations were processed by means of the Régimen General over the same period (Ministerio de Trabajo 2008). The consolidation of the Régimen General in comparison with the quota system should be explained, first of all, by the fact that it was not limited by an annual ceiling. Second, as will be shown in the next section, what would also account for the increased relevance of the Régimen General after 2004 is the existence of significant social networks among the immigrants that have already arrived and those that are yet to come.

4.4.2. Recruiting migrants: Rarely has the relationship between immigration and the labour market been questioned. According to different government and social agents, immigration was and had to be a phenomenon that was first and foremost about labour. As a result, as we have seen in the previous section, the entry of immigrants has always been linked with the existence of a job contract so that only those who already had a job could enter the country. Entry policies have thus placed having a job before arrival. Nevertheless, in Spain this has been more legal fiction than reality. While the politicians have asserted over and over again that it necessarily had to be thus, in practice most immigrants have entered the country first and only found work afterwards. This means that, instead of entering as legal immigrants (with the ‘contract tucked under his or her arm’), the majority has been illegal for some time and only later (with a contract ‘in hand’) has been able to regularise.

In the 1990s, this fact was not only tolerated but recognised. If the worker could not count on somebody in Spain or the employer had no contact in the country of
origin there was no mediation, which made contracting at origin practically impossible. The most usual situation was that the worker would already be in Spain, would work illegally for a period and, only when the working relationship was underway, would the immigration procedures begin. If the worker was granted a work permit, he or she would then return to the country of origin, collect the visa and re-enter the country, this time as a legal immigrant worker. Contracting at destination was thus more the rule than the exception. In these cases, as Arango and Suárez have observed, the social networks were the first and most important means of locating and recruiting immigrant workers. The relations of trust and, above all, the added value of recommendation (between workers or between employer and worker) were seen as maximising the chances that the worker would ‘work well’ (Arango & Suárez 2002: 542-543). Similarly, parish groups and NGOs played the role of job mediators. Unlike the companies offering temporary work, used in particular by recently-regularised workers, these entities guaranteed not only ‘good workers’ but also ‘good employers’ and the possibility of mediation in case of conflict (Arango & Suárez 2002: 551-553).

Since 2002, in order to prevent immigrant workers from being contracted at the destination point, job offers being made under the quota system changed to being basically generic in kind, which is to say, defining the job but not the worker. The employer then ceased to be responsible for the selection. Or, better said, the Spanish State (along with the States of origin) became the intermediary between employers at destination and workers at origin. Besides the Spanish Government’s political commitment to channelling an indeterminate number of its immigrant quota from the countries of origin to Spain, the agreements with Morocco (September 1999 and July 2001), Colombia and Ecuador (July 2001), Romania (January, 2002), the Dominican Republic (February 2002), Poland (May 2002) and Bulgaria (October 2003) established that the labour administration in the countries of origin was ultimately responsible for the selection of candidates.

In this regard, the function of the Spanish Government has been more that of manager than recruiter. In Spain, the Ministry of Labour and Social Affairs receives generic offers from the employers, confirms whether they fit with any category not yet filled under the quota system and sends on the offer to the Spanish Consular representation in the country of origin. Here, the Spanish Consular representation communicates the offer to the country’s authorities, after which the latter respond with information as to the availability or otherwise of workers meeting the requisite characteristics for the kind of work being offered. If the answer is affirmative, a process of pre-selection and interviews begins in which authorities from both countries are present, along with the employer or business organisation that represents the employer. Despite the constant presence of the Spanish State throughout the process, in practice its role is rather limited. As one civil servant from the Foreign Affairs Ministry observed, ‘Selection at origin is in the hands of the governments of the countries of origin. The negotiations are basically carried out between the governments of the countries of origin and the employer. The Spanish State only guarantees the smooth running of the process. We do what the
authorities at origin allow us to do. But generally this is very little because they are usually very keen to be in control’ (interview 13 May 2005, Madrid).

Although, since 2002, the quota system has been presented as the main form of legal entry, the reality has been very different. One basic matter when it comes to explaining why it has not worked is, once again, the intrinsic difficulty of contracting in the country of origin. For Arango and Sandell, this boils down to whether ‘there exists any company that really wants the State to be the one that decides the skills of its workers’ (Arango & Sandell 2004: 12). Similarly, one employer asked, ‘How can one employ a worker one has never seen?’ (interview 15 February 2008, Barcelona). This simple question partially explains why the quota system has worked in some sectors and not in others. While in agriculture and some production-line jobs the individual profiles of the workers tend to be less important, in sectors like domestic service, the small business or the hotel and catering trade, trust and prior relationships between worker and employer are of paramount importance. In order to respond to this shortcoming, the Organic Law 14/2003 and, later, the Regulations of 2004 introduced the possibility of authorising a three-month entry period for job-seeking. This was not opened up as a general possibility but only for specific sectors (like domestic work) or for children and grandchildren of Spanish-born people.  

Although the job-seeking visa seemed to be a solution to problems arising from the legal fiction of policies based on contracting in origin, the result so far has verged on negligible. For example, in 2007 (within the annual quota agreement) an offer was made of 455 job-seeking visas in the domestic service sector and 500 job-seeking visas for children and grandchildren of Spanish-born people in the country of origin. These figures clearly testify to the scant relevance of the job-seeking visa and hence of an entry policy that includes (not only in practice but also by law) contracting at destination. There are several reasons for this. First, there is the question of how to manage this in the country of origin. As the previously-cited civil servant in the Foreign Affairs Ministry noted, ‘We still haven’t found the formula. Who do you give the visa to? How do you select them? Who pays for the return ticket if they don’t find work? In the end, aren’t you encouraging them just to

30 In the context of the serious economic crisis in Argentina in this period, the job-seeking visa for children and grandchildren of Spanish-born people was an attempt to open up the possibility that second and third generations of Spaniards would re-emigrate to Spain. Nonetheless, the measure was more symbolic than anything else, first, because many second- and third-generation Spaniards still kept or applied for Spanish (or Italian, in other cases) citizenship and thus had all the rights of European citizens; second, even though 500 of these visas were offered in 2007, the Ministry of Labour and Social Affairs recognised that not a single visa of this type was issued. According to the Migration Department of the Confederación Intersindical Galega (Galician Union Federation – CIG), the Spanish consulates in Argentina were not processing these visas because of lack of information about the procedure (see the Extranjería (Foreigners and Alien Status) web page of the Zaragoza Lawyers’ College: http://www.intermigra.info/extranjeria/modules.php?name=News&file=article&sid=1304 [last accessed 15th April 2008].
come here more than anything else?‘ (interview 13 May 2009, Madrid). Second, is the matter of how to deal with the problem of managing it (if it has to be managed) at the point of destination. In this regard, a civil servant working in the Catalán Government’s employment agency observed that the job-seeking visa meant a lot of responsibility for different branches of the administration inasmuch as it lets in people ‘[…] who don’t yet have a job. How are you going to bring them in if you don’t know if they’re going to find work?’ (interview 12 December 2007, Barcelona). These doubts bring out a basic point: immigration is still tied to a job contract and is therefore dependent on employers. Consequently, at least for the moment, it seems difficult to imagine an immigrant coming in without the backing of an employer.

In this sense, immigration policies are always headed for the same dilemma: while entry is tied to a job contract, contracting in the country of origin does not seem to work. In the 1990s, the difficulties of contracting at origin arose from a lack of mediation mechanisms. With the new post-2002 quota system, the problems sprang from the limitations of State intervention in both selecting the workers for employers and, in the case of the job-seeking visa, permitting the entry of immigrants without the prior existence of a job contract. The outcome, as noted above, has been more illegal immigration. It is illegal immigration, as we have seen in the previous section, brought about by the very low numbers of people permitted to enter the country, and it is illegal immigration, as we now see, caused by the difficulties occasioned by the stipulation of the job contract as a prior condition. In both cases, the result has been the same: in order to work as a legal immigrant in Spain, the most feasible way to go about it is to enter the country illegally or stay in it as an illegal immigrant, find a job and, only after that, achieve regularisation.

This twofold legal production of illegality seems to have been somewhat attenuated by the reintroduction of the Régimen General in 2004. On the one hand, as already noted, the ‘new’ Régimen General removes the rigidities of the ‘old’ one by introducing a catalogue of hard-to-cover jobs, which cuts down the complexity of the paperwork and the uncertainty of having to submit every single case to an evaluation of the labour market. This catalogue does not assign an annual quota of jobs but is simply a list of occupations in which it is possible to contract foreign workers. Accordingly, in contrast with the quota system, the number of people entering is not restricted a priori. On the other hand, increased immigration and the concomitant existence of significant social networks between the already-arrived immigrants and those who are yet to come seem to have finally provided a solution to the problem of mediation. Unlike the situation of the 1990s, many workers in the countries of origin now have somebody they know in Spain or employers (through their workers) have contacts in the country of origin. Relations of trust and the added value of a reference, therefore, are not only characteristics of contracting at the country of destination but can also happen in the country of origin. In this regard, one union representative observed: ‘The Régimen General, in fact, is not in itself a form of contracting at origin but it is managed by relatives and acquaintances in Spain. The families and acquaintances are incredibly effective
We might conclude therefore that the immigrants’ social networks have ended up fulfilling the function of mediation that the State has not been able to achieve. Thanks to these networks, contracting in the countries of origin does at last seem to be possible. Nevertheless this is not exempt of dilemmas either. Although the immigrants’ social networks finally permit mediation between the worker in the country of origin and the employer in the country of destination, their existence introduces the ‘doubt’ or ‘suspicion’ that not everyone who comes to Spain under the Régimen General does so for strictly employment reasons. As the words of a civil servant from the Central Government Delegation in Barcelona made clear, ‘Children and husbands come through family regrouping. The rest (siblings, friends and cousins) come by means of designation in the Régimen General’ (interview 21 April 2008, Barcelona). The long time taken up by procedures from the moment entry is authorised to receiving the visa to enter Spain seems to aggravate this ‘suspicion’. The same employee of the Central Government Delegation in Barcelona said, ‘If they take a year and the employer holds out, there might be other reasons for contracting a worker. If they get to the end, maybe it’s because the job offer isn’t real’ (interview 21 April 2008, Barcelona). However, this begs the question of whether, in being so time-consuming, this mechanism is adequate when the offer is ‘real’ or, rather, when the job offer does not go hand-in-hand with other incentives beyond employment considerations in the strict sense.

4.4.3. Selecting migrants’ origins: To return to the words of Aragón Bombín, what gets the process underway is not the will of the immigrant but the existence of a job offer. In other words, entry does not depend on the immigrant but on the employer. Accordingly, as noted above, the employers determine the entry and characteristics of the immigrants as well as their countries of origin. This is clearly the case with the Régimen General. Under this system, the employer selects a foreign worker, requests work and residence permits and, if the response is positive, the worker initiates the procedures in his or her country of origin to receive an entry visa. The origin of the worker in these cases is not previously determined. It is true that obtaining the visa takes longer in some countries than in others, depending on how much work the consulates have in the countries of origin. Nonetheless, by law, if there are no national (or authorised) workers available, the employer is free to contract a foreign worker wherever he or she wishes.

With the quota system, this decision is more conditional, however. In the 1990s the quota system only determined the sectors in which it was possible to contract a specified number of workers each year. The origin of the workers, in the case of the Régimen General, depended on the employer. Yet after 2002, contracting in the countries of origin via the quota system came to be only possible in those countries with which the Spanish Government had signed an agreement (Morocco, Colombia, Ecuador, Romania, the Dominican Republic, Poland and Bulgaria). At first, it is the Spanish Government that decides. However, once the decision is
taken, the criterion for determining the distribution of the quota remains in the hands of the employers. It is the employers who, on presenting a generic offer of work, ‘propose’ the country where contracting will take place. In practice, this dual decision turns out to be contradictory: the reasons of State for choosing some countries over others do not always coincide with the needs of the employers.

Thus, for example, agreements that are so significant (in terms of flow size) as that signed with Morocco have barely come to fruition. Apart from the matter of the efficiency or otherwise of the administration in Morocco, many interviewees agree that this is mainly due to the reluctance of employers to contract Moroccan workers. As a civil servant working in the Catalan Government’s employment agency observed, ‘The Moroccan Government has a huge interest in encouraging contracting at origin. We do too. When I went to visit the office in charge of this in Morocco, they did a good job selling it to me and I came back very enthusiastic. But the employers don’t want to contract workers over there. They’re very loath to do so. They say there’s corruption and use the excuse of language (when they actually speak many more languages than we do). In brief, there’s a political volition to channel the flows but there’s no response from employers’ side’ (interview 12 December 2007, Barcelona). The result is that, while contracting in the country of origin through the quota system had the primary goal of moving already-existing flows through legal channels, in the end everything depends on the employers. Thus, in cases where the employers are reluctant, the legal ways of entering remain barred and, accordingly, legal immigration does not represent a real alternative to illegal immigration.

This disparity between the State’s choice and that of the employers is also patent with the most recent bilateral agreements signed with countries like Gambia (2006), Guinea Conakry (2006), Cape Verde (2006), Mali (2006) and Senegal (2007). In exchange for the collaboration of these countries in the struggle against illegal immigration and above all with the condition that they agree to the repatriation of their citizens, Spain promised to ease legal immigration from these countries. The terms of the deal, according to a high-level official in the Foreign Affairs Ministry, were clear, ‘The most recent agreements have been made in order to guarantee readmission. Again, in order to give something in return, a system for channelling legal immigration has been opened. The governments of these countries see legal immigration as a bargaining chip. And we owe them that’ (interview 13 May 2008, Madrid). Nonetheless, once again, everything depends on the employers. While Spain needs employers to contract workers from these countries in order to fulfil its part of the agreement, the employers are not so keen to comply. The representative of an employers’ organisation in the hotel and catering sector said, ‘For the last two years they’ve been going on and on about contracting workers in countries like Gambia, Niger or Senegal. But what business have we got there? They’re illiterate in their own dialect. Why should we go to Senegal? For us, Latin America’s much easier. They speak the same language, are better trained, and have experience in the sector. Why take the longer and more difficult route when there’s one that’s short and easy?’ (interview 9 May 2008,
While some agreements have amounted to virtually nothing, others have been given a great deal of attention by employers. Such was the case of Poland. We might speculate as to why employers have opted to contract Polish workers and not Moroccans. In fact, both the mass media and academic literature have played up the perceived greater ‘docility’ and ‘propensity for integration’ of the Poles (European, Catholic and mainly women) in comparison with Moroccans. These ‘reasons’ apart, the fact is that, in some cases, the quota system ended up promoting one kind of immigration over another. This was especially obvious in the strawberry fields of Huelva where, after 2002, Moroccan workers (including those in a legal situation who had been working in this rural area for a long time) were progressively replaced by Polish women workers even though Poland had never traditionally been a country of immigration towards Spain. When NGOs, immigrant organisations, unions and some opposition parties condemned this situation, the Government continued to be adamant that it did not have the last word on the quota, but the employers did. As Mariano Rajoy, then Minister for the Interior, stated, ‘What is clear is that the employers contract whoever they want. It would be strange if the Government said, “No you contract people from such-and-such a country for us.” We fix the quota and then the employers decide’ (El País, 12 June 2002).

The tension and, in some cases, contradiction between the ‘reasons’ of State and the ‘reasons’ of the employer have finally ended up with a dual policy. First, contracting in the country of origin via the quota system was presented, and is still presented, as the best way to steer the migratory flows through legal channels, thereby putting an end to illegal immigration. Second, since it is the employer ‘who decides’, this might go no further than a mere pact based on good intentions or, in the case of the most recent agreements, a promise (not kept) on condition that the Governments of the countries of origin agree to the repatriation of their citizens. ‘The employers decide.’ And they decide not only not to contract in certain countries that were once traditional sources of immigrants but to do so in countries that have not traditionally played that role. This meant favouring some flows over others or, better said, opening up some while (at least legally) closing others. The case of El Ejido illustrates this perfectly. In February 2000 the murder of a young Spanish woman by a mentally disturbed Moroccan (who had shortly before been rejected by a health centre) led to a generalised three-day campaign of violence against Moroccan immigrants. Immediately afterwards, Moroccan workers demonstrated and were on strike for several days. This process ended up with the ‘El Ejido Agreement’, according to which the different administrative organs undertook to ensure better living conditions for the immigrant workers in the area. Despite the administration’s ‘good intentions’, in the subsequent seasons the Moroccan workers found that they were being replaced by women workers from Poland. While the State did not promote this replacement, it let employers take this new direction by adopting (at least apparently) a simple laissez-faire position.
4.5. BETWEEN GUESTWORKERS AND CITIZENS

4.5.1. Position in the labour market: Immigrants to Spain are only ‘welcome’ or ‘accepted’ in economic sectors with labour shortages. This restriction means, in the case of the Régimen General, that the application for contracting a foreign worker has to be subjected to a case-by-case evaluation of the situation of the labour market and, more recently, to the quarterly production of a list of sectors and provinces where contracting of foreign workers is authorised. In the case of the quota system, contracting of foreign workers has been circumscribed by way of setting an annual quota of foreign workers per sector and province. This means that the entry policies have slotted immigrant workers into certain jobs or, to put it another way, have fixed the ‘field of possibilities’ with regard to contracting them. This is what Cachón calls ‘the institutional framework of discrimination’, that is, when market ‘preferences’ turn into ‘requisites’ or ‘prescriptions’ in legal regulation (Cachón 1995: 111-112; 2003: 19; 2009: 162).

This ‘field of possibilities’ has restricted not only the entry of immigrant workers but also their initial stay in the country. As Aparicio Wilhelmi and Roig Molés point out (2006: 172), if the whole system is founded on particular characteristics of an offer that enables authorisation of entry, it would not then be very consistent if, after taking up the job, the foreigner could then leave it for another job of opposite characteristics. On the basis of this argument, the initial work permit (for the first year) tends to be limited to the economic sector and province for which entry was authorised. Nonetheless, administrative practice in imposing these restrictions and then controlling them is very deficient. Thus, for example, it is not uncommon for workers who begin in the agricultural sector of Murcia to end up a few months later working in the construction sector of Madrid or Barcelona (Aparicio Wilhelmi & Roig Molés 2006: 172). Technical problems and deficient means seem to explain this gap between the law and its practice. In particular, a Barcelona lawyer stated in an interview that the computer system used in the contracting of workers does not monitor how long they have held a residence permit and, as a result, allows changes of economic sector, even in the first year of residence (interview 17 March 2008, Barcelona).

While the initial permit is (at least according to the law) limited to a specified sector and province, its validity does not depend on the employer who ‘gets the process underway’. Hence, the worker is free to change employer as long as he or she remains in the same sector and province for which authorisation was given. There seems to be general consensus on this point. For example, when the Catalan employers’ organisation Cecot proposed introducing a contractual clause that would oblige workers who left the job before a stipulated initial period to pay for their training costs and transport from their country of origin, this was challenged and labelled ‘illegal’ not only by the unions but by the Catalan Government itself (El País, 25 February 2001). In this regard, we might conclude that, while the entry
of an immigrant cannot be conceived of without an employer behind it, the immigrant-employer tandem breaks down when it comes to staying in the country. Explanation must be sought in the impossibility of curbing the freedom of immigrants once they are in Spain. While the reasons underlying this are clear, the outcome is not so clear in practice.

First, employers are often fearful of ‘losing’ their workers after having contracted them in their countries of origin. As the president of Cecot observed, ‘It wouldn’t make sense if a company made an investment and advanced a certain amount of money to bring somebody here and then, after a week in that company, the worker was contracted by another company. The original employer would be wasting time and money on something that gave no returns, while the second employer wouldn’t be paying out anything’ (El País, 25 February, 2001). Second, the unions and the State, though condemning the measures proposed by Cecot, are also critical of employers who fail to keep their foreign workers. The unions, for their part, attribute the high degree of labour mobility of immigrant workers (and hence the permanent need for ‘new immigrants’) to the poor working conditions offered by these employers (interview with the aforementioned union official in Barcelona, 11 February, 2008). The State sees in these employers an ‘out-of-control’ gateway to the Spanish labour market. Accordingly, the Government delegations, like that in Barcelona, tend to reject applications for contracting immigrants in the cases of companies that have not managed to keep their immigrant workers for the first year (interview with a civil servant in the Subdelegación del Gobierno in Barcelona, 21 April 2008; interview with a representative of an employer organisation, 6 November 2007, Barcelona).

The only foreign workers whose work permits, once they have entered the country, do depend on the employer are seasonal workers (under the quota system). In this case, the employer is not only responsible for the entry of the foreign worker but must also offer adequate housing, guarantee work for the duration of the permit, organise the journey to Spain and cover at least the price of the ticket of entry into the country. The (this time) ‘invited’ worker must undertake to return to his or her country of origin once the working relationship has concluded. Complying with this requisite guarantees the possibility of filling other job offers (often with the same employer) that appear in future in the same kind of work. Although this could not be described as ‘sanctioned bondage’, the fact that not only entry into the country but also remaining (and returning) depends on the employer does give rise to problematic dynamics (see Zapata-Barrero, Faúndez García & Sánchez Montijano 2009: 20-22). Thus, for example, a group of Colombian seasonal workers and the unions CCOO and UGT jointly filed a formal complaint against the rural employers’ organisation Unió de Pagesos (Farmers’ Union) for obliging them ‘to accept harsh conditions in order to be able to return the following year’ (El País, 30 August 2001). These circumstances might be taken as confirmation that the dependence of the foreign worker on the employer can in practice restrict his or her labour rights.
Another result of this dependence is the matter of what in other countries came to be called cases of ‘running away’ or abscinding. In Spain, however, this happens at the point of having to return home and not so much in relation with having to work for only one employer. For example, in 2001, the union CCOO denounced the fact that more than half the workers contracted by the Unió de Pagesos did not return to their countries once the agricultural season was finished (GES 2002: 12). In 2004, the union UGT published a study on the province of Huelva where the same phenomenon was estimated at 25 per cent (El País, 27 May 2004). While the unions have been claiming for years that contracting seasonal workers has become just one more way of legal entry and illegal stay (interview with a CCOO representative, 11 February 2008, Barcelona), the employers respond with the argument that the return or non-return of workers to their countries of origin is not their responsibility. The words of a representative of CEOE, the biggest employers’ organisation in Spain, are clear in this regard: ‘Seasonal workers should return to their countries of origin. Of course a lot don’t. It’s another way of slipping through the net. But what are we supposed to do? The employer pays for the ticket. But we are not police and we don’t have any way of monitoring whether they get on the plane or not’ (interview 7 February, 2008 Madrid).

While the ‘field of possibilities’ associated with contracting immigrants is limited during the period of entry and initial stay, these constraints disappear with the first renewal of the work permit after one year. From then on, the immigrant is free to work wherever he or she wishes, independently of the situation of the national labour market. In this regard, the ‘field of possibilities’ comes to be the same in many respects as that of any national worker. In other words, the ‘preferences and dynamics of the market’ might still be present but they no longer translate into ‘requisites and prescriptions’ in terms of legal regulations. In practice, this has the effect of a gradual shift of immigrant workers into the economic sectors hitherto reserved for national (or authorised) workers. As already mentioned, it would seem that there is a clear trend: the longer the period of residence, the smaller the presence in sectors like agriculture and domestic service. However, this raises questions. Who fills their positions? Does the employer need new immigrants whose working activity is once again immobilised by sector and province for the first year? Are there some economic sectors that are therefore dependent not so much on immigrant labour per se as – above all – on newly-arrived immigrant labour?

4.5.2. Taxation: In Spain taxation on foreign workers has never been meant to control migrants’ presence in the country or reduce employers’ reliance on migrant labour. Legal migrants pay taxes and contribute to Social Security like any other worker. In this regard, taxation results from the inclusion of all workers in the general system of taxation and social services. However, due to the legal position of foreign workers, taxation does have some particular implications for them. To be specific, since 2004, the work permit (whether the immigrant has it on arrival or via regularisation) becomes effective only when the worker has registered with Social Security. Moreover, renewal of the permit depends on the months of paid
contributions during the period of validity of the authorisation that the immigrant hopes to renew.

This means that immigrants’ legal status largely depends not only on their working but particularly on their working formally. This is especially problematic if we take into account the magnitude of the informal economy in Spain. For example, in 2004 the union UGT estimated that in Madrid alone there were 123,000 immigrants with a work permit but without paying contributions (El Mundo, 24 August 2004). While, for national workers, participating in the informal economy might mean not having access to certain Social Security services (like the right to unemployment benefits or the old age pension), in the case of foreign workers this can also mean not being able to get the permit or becoming illegal (again) when it is due to be renewed. As Izquierdo and Léon note (2008: 17), ‘It is the jobs without a contract that make the stay illegal’. In order to avoid this situation, many immigrants have opted to pay their Social Security contributions themselves (interview with an NGO representative, 7 February 2008, Madrid; interview with a researcher, 16 April 2008, Barcelona). For example, as we shall see in the next section, immigrants frequently end up having to look for a ‘false’ or ‘doing-a-favour’ phantom job, and paying the Social Security contribution themselves while continuing working without a contract in the informal economy.

At the level of political rhetoric, the immigrants’ contribution to the Social Security system was one of the main arguments wielded to indicate the need for (and advantages of) the 2005 regularisation process. For example, in September 2005, Jesús Caldera, Minister for Labour and Social Affairs, declared that, thanks to the process of regularisation and the inclusion of regularised immigrants in the Social Security system, ‘the system is fully consolidated’ and has ‘exceeded payment forecasts by more than 3,000 million euros’ (El País, 8 September 2005). While in times of economic boom the immigrants’ contribution to the Social Services has been used as one of the main arguments in favour of regularisation, in times of crisis it has become the main mechanism for encouraging their return home. In particular, at the start of the second term of the Zapatero Government (2008), the new minister for Labour and Immigration, Celestino Corbacho, announced a scheme of ‘voluntary repatriation’, the mainstay of which was reimbursement of the totality of unemployment insurance (40 per cent in Spain and 60 per cent in the country of origin) in exchange for renouncing the residence permit and any return to Spain within a minimum period of three years. In this regard, paying for social services has been used indiscriminately (and very swiftly) as a motive for inclusion or as an incentive for return.

4.5.3. Temporality: Not only the entry of foreigners but also their remaining in the country has depended on a specific job offer. During the first five years of residence, renewal of the permit (after the first, third and fifth years) is bound to the existence of current employment, a job offer or receipt of unemployment benefits tied with a previous job. Since 2004, with the aim of preventing ‘false’ or ‘doing-a-favour’ job offers, renewal has also depended on the time worked within
the period of validity of the permit that the immigrant wishes to renew. As noted above, this essentially means that renewal has come to be linked with the time that Social Security payments have been made. Maintaining legal status, therefore, has depended on effective (and formalised) integration into the Spanish labour market (Cabellos Espiérrez & Roig Molés 2006: 118-119). This link between renewal and having work has meant that only those immigrants who can prove they have the necessary economic resources to survive can renew their permit. As Suárez Navaz has remarked (2000: 13), ‘If there’s money, there are documents’.

In contrast, those immigrants who have been unable to demonstrate their integration as workers during the first five years of residence lose their legal status and, in most cases, fall back into illegality. This loss of legality has been far from infrequent due to the extremely high numbers of temporary immigrant workers and the instability that is so characteristic of the Spanish job market. For example, of the eight million job contracts signed by foreign non-Community workers between 2004 and 2007, only one in ten was for an indefinite period (Ministerio de Trabajo y Asuntos Sociales 2007: 8). Loss of legal status has been even more common with the initial renewal after one year of residence. As Cabellos Espiérrez and Roig Molés remark (2006: 118), this is because of the difficulty in proceeding to effective and stable integration after only one year of residence. Furthermore, as we have already seen, the initial permit tends to immobilise immigrants in sectors that are rejected by national workers and notable for their greater degree of instability. In this regard, the ‘institutional framework of discrimination’ which, as previously noted, transforms ‘market preferences into requisites or prescriptions in legal regulation’ (Cachón 1995: 111-112) has only increased job instability for the new arrivals and, as a result of that, their legal instability. In other words, the law contributes to the precariousness of the immigrant’s work situation and this selfsame precariousness frequently contributes towards his or her ‘illegalisation’ at the end of the first year.

Another cause of loss of legal status is the long period of waiting for the paperwork of the renewal applications to be completed. This slowness, principally brought about by a general breakdown in management of foreign affairs, has not infrequently meant that the job offers on the basis of which the application for renewal is made drop by the wayside. Consequently, in the absence of a job, either the application is turned down or obstacles are placed in the way of subsequent renewal (depending once again on integration into the labour market) of the permit that was originally granted. This loss of legal status because of renovation paperwork is what Izquierdo defined in the mid-1990s as ‘institutional production of the undocumented’ (Izquierdo 1996: 150). In 2004, the Minister of Labour and Social Affairs, Jesús Caldera, indicated that when the government had come to power in March that year there were 400,000 immigrants’ files that had not been dealt with, and 100,000 of these were applications for renewal of residence and work permits. As the minister observed, ‘This inability to respond to renewals obliges us to deal with the paradox that, if we don’t act quickly, the Administration will thrust into illegality people who, to the present time, have been in a legal
situation and who will, as a result of this change of status, lose their jobs’ (Diario de Sesiones, 13 September, 2004).

Whether it is because of the impossibility of demonstrating effective and formalised integration into the Spanish labour market or the long time taken up by the paperwork involved in processing the renewal processes, this loss of legality is indubitably one of the factors that explain the enormous proportions of illegal immigration in Spain until 2005 (see next section on regularisations). Even taking into account the significance of illegal entry and stay, only thus is it possible to understand the persistence and dimensions of illegal immigration in spite of the frequent processes of regularisation, namely those of 1985, 1991, 1996, 2000, 2001 and 2005 (see Cabellos Espiérrez & Roig Molés 2006: 114). The figures for regularised immigrants who have lost this status after some years are very significant in this regard. For example, of the 23,887 immigrants regularised in 1985, only 58 per cent were still in a legal situation in 1990 and of the 110,000 regularised in 1991, less than 75 per cent of them still retained this status one year later (Ramos Gallarín & Bazaga Fernández 2002: 9).

In order to get around the effect that administrative delay has had on the loss of legality among foreign residents, Law 4/2000 included the provision of ‘positive administrative silence’ for renewal applications. This meant that, six months after the application for renewal, the administration’s silence was as good as a permit renewal. As a result of this measure, according to the Minister for Labour and Social Affairs, Jesús Caldera, 306,838 applications for renewal were granted by default between 2001 and 2004 (Diario de Sesiones, 13 September 2004). In recent years, in spite of the fact that administrative capacity has improved significantly, it appears that many renewals continue to be conceded by means of positive silence. Although this general presumption of renewability has made it possible to overcome in part the effects that the administrative delays had previously had on migrants’ legal status, the measure is by no means problem-free. In some cases the situation is a veritable Catch-22. For example, the red-tape delays in some provinces thwart the presentation of applications and hence of the immigrants being eligible for the benefits of the rule of positive silence (Cabellos Espiérrez & Roig Molés 2006: 121). Several of the lawyers I interviewed have also mentioned the fact that many employers and even the Social Security Department require a certificate of administrative silence which, given the bureaucratic collapse in the offices dealing with foreign affairs, tends to be very difficult to obtain (interview with a representative of CCOO, 11 February, Barcelona).

What seems paradoxical at a basic level is that this first or recurrent lapsing into illegality, which is so typical of the Spanish model and the cause of a considerable part of its illegality, should not have led to a reconsideration of renewal policies and, more specifically, a review of the temporality that threatens the legal status of foreign residents in their first five years. In other words, why has the period for renewal not been extended so as to secure migrants’ legal stability? Why continue with this guestworker approach when immigration is turning out to be increasingly
stable and permanent? The answer, as noted above, is that despite the stability and permanence of immigration in Spain, it is still difficult to visualise an immigrant who is not primarily an immigrant worker with a job. Leaving aside the applicants for political asylum and family reunification initiatives, the entry and stay (in the first five years) of immigrants continue to depend on their position in the labour market: they can only enter the country when they have a job contract tied to a specific sector and province and they can only renew their permits when they can demonstrate that they are integrated into the (formal) job market.

In spite of this temporality and contingency, immigrants still become established residents and not only obtain permanent residence but also Spanish citizenship. Immigrant workers manage to become permanent immigrants and later on citizens. Thus, their temporary status and situation as ‘guestworkers’ are not forever. After a number of years, which may depend more or less on their oscillations from legality to illegality, they eventually achieve definitive status and the boundary between insiders and outsiders (at least legally) becomes blurred. The figures in this regard are very indicative. While throughout the 1990s most foreigners had a one-year permit, this tendency has changed in recent years. Hence the number of permanent residence permits rose from 200,000 in 2002 to 851,000 in 2007 (Izquierdo & Léon 2008: 11). In relative terms, and despite the volume of immigratory flows in these years, the proportion of permanent residents came to represent 36 per cent of the total of non-Community legal migrants. As for naturalisations, more than 292,000 foreigners acquired Spanish citizenship between 2000 and 2006 (see Table 12).

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of foreigners granted citizenship</th>
<th>Year</th>
<th>Number of foreigners granted citizenship</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>6,756</td>
<td>2002</td>
<td>21,810</td>
</tr>
<tr>
<td>1996</td>
<td>8,433</td>
<td>2003</td>
<td>26,556</td>
</tr>
<tr>
<td>1997</td>
<td>10,311</td>
<td>2004</td>
<td>38,335</td>
</tr>
<tr>
<td>1998</td>
<td>13,177</td>
<td>2005</td>
<td>42,860</td>
</tr>
<tr>
<td>1999</td>
<td>16,384</td>
<td>2006</td>
<td>62,339</td>
</tr>
<tr>
<td>2000</td>
<td>11,999</td>
<td>2007</td>
<td>71,810</td>
</tr>
<tr>
<td>2001</td>
<td>16,743</td>
<td>TOTAL</td>
<td>347,518</td>
</tr>
</tbody>
</table>

*Source: Anuario Estadístico de Extranjería (Statistical Yearbook on Status of Foreigners, 1990-2008)*

4.6. REGULARISATION: AN ENTRY POLICY?

4.6.1. The first regularisation: The first *Ley Orgánica de Extranjería* (Organic Law on Foreigners) in 1985 was accompanied by an extraordinary regularisation process. The reasons for embarking on this course, according to Aragón Bombín,
then head of the Dirección General de Migraciones (Department of Migration), were two: ‘[…] an awareness that there was already a significant stock of immigrants in an illegal situation and the desire to move on and begin a new stage free of the burden of the past’ (Aragón Bombín 1996: 54). The process was not exclusively aimed at foreign workers but at foreigners in an illegal situation residing or working in Spain. These residents or workers included, first, foreigners ‘whose presence was already illegal in terms of previous legislation’ (Carrillo & Delgado 1998: 24). In other words, it was aimed at those illegal immigrants who had, until then, gone about their working and social lives without scares and without any awareness of illegality (Izquierdo 1996: 142). Second, the process also aimed to regularise foreigners whose status became illegal with the change in the law. To be more specific, it is likely that some of the immigrants from Latin America, the Philippines and Equatorial Guinea who took up this regularisation had formerly been legal immigrants who, until the promulgation of the new law, had not needed a job permit in order to work in Spain (Izquierdo 1989: 47).

This regularisation process, like the Law on Foreigners itself, was launched without much discussion. Spain, at the time, still saw itself as a country of emigration or as a place of transit for immigrants going to other European countries. Moreover, the regularisation was primarily perceived as a process of issuing documentation to immigrants who were already in the country, which is to say, as a means of ‘tidying up’ the administrative chaos that had prevailed until then. To sum up, it was presented more as way of ‘providing the requisite documents’ than of ‘regularising illegal immigrants’. The foreigner ‘without the proper documents’ was to go to the police station nearest to his or her residence, fill out a form and eventually present the documentation necessary for a residence permit (proof of economic means and family situation) or the job permit (job contract and registration for social security). To the extent that it was mainly understood as a process of providing the requisite documents for foreigners, administrative responsibility fell within the jurisdiction of the Ministry of the Interior through the Comisarías Generales de Documentación (Official Documentation Offices).

In the nine months the process lasted (from July 1985 to March 1986), including two successive extensions, 43,815 applications for regularisation were presented, of which 38,181 had positive results. As for the nature of the requests, 51 per cent were for a residence permit, which means that less than half the immigrants asked for work permits (Aragón Bombín & Chozas Pedrero 1993: 28). As for the characteristics of the regularised immigrants, they fell into two very different groups (Izquierdo 1989: 69). The most numerous group consisted of working-age immigrants from poor countries and with scant educational qualifications. Notable among this group were immigrants of African origins (mainly Morocco, Senegal, Gambia and Cape Verde), accounting for 40 per cent of the total of the applications presented. In clear contrast, the second group, which accounted for 26 per cent of the applications, consisted of immigrants from the European Community (mainly Portugal, United Kingdom, Germany and France). Most were retirement-age
European citizens, no longer working, married and with sufficient educational and economic resources.

Although this regularisation process made it possible to ‘normalise’ the situation of some illegal immigrants, the government considered that the results were limited. This official evaluation is difficult to understand unless one bears in mind that, at the time, according to the sociological research group, Colectivo IOÉ, the number of illegal immigrants was as high as 350,000, although another report put the figure at 260,000 (Arango & Suárez Navaz 2002: 111). If these figures are any guide, they indicate that the regularisation process had indeed failed to ‘normalise’ the great majority of the illegal immigrants. In its 1991 proposal for a new regularisation process, the Asociación para la Solidaridad con los Trabajadores Inmigrantes (ASTI – Association for Solidarity with Immigrant Workers), stressed four possible causes for the failure of the 1985 regularisation drive (ASTI 1991: 6-12).

One of the primary causes identified was scarcity of information. While the mass media repeatedly covered the promulgation of the new law, little was said about the regularisation process. Second, the association noted the wariness of everyone involved. For example, no attempt had been made to stress the fact that appearing at the police station to apply for regularisation would in no way harm the immigrants. Neither were there sufficient guarantees for employers to feel confident that the administration would not initiate actions against them. A third factor was the inability of the administration to deal with the process, which was highlighted by the media attention to the long queues of applicants waiting to be attended. Fourth, according to the ASTI report, the fact that information was given exclusively in Spanish was yet another obstacle in the process for people with only rudimentary knowledge of the language. Besides these factors of a more institutional nature, the Ministry of the Interior’s Official Documentation Office observed that the greatest impediment for the regularisation of those who needed a work permit was having to present a job contract. From this, Izquierdo (1989: 34) concludes that the employers did not help with their workers to obtain the documentation they needed.

Apart from the figures for regularised immigrants, it is also important to bear in mind the strikingly low proportion of people who managed to maintain their legal status over time. As noted in the previous section, one of the causes of illegality has been lapsing or relapsing into a situation of illegality at the time of renewal. The 1985 regularisation drive explicitly brought out this trend for the first time. In numerical terms, only 58 per cent of people who were regularised in 1985 were still in a legal situation in 1990 (Aragón Bombín & Chozas Pedrero 1993: 28). This trend was still more evident among the Moroccan immigrants: only one fifth of the Moroccans who applied for regularisation still had legal status two years after the process. Of those who became ‘illegal’ with the passing of time, 47 per cent disappeared after having tried to apply without being able to provide documents that might pave the way to obtaining any kind of permit, while 30 per cent...
achieved some kind of residence permit (between six months and a year) but never renewed it. The question that arises with regard to the Moroccan immigrants is how many never presented in the first place, or never renewed, because they had returned home or moved on to other European countries. In particular, as Izquierdo wondered at the time (1989: 61), did the Moroccans head for Spain as their final destination or was it just a stepping stone on the way to other countries of Europe?

4.6.2. The second regularisation: In 1990, the left-wing party Izquierda Unida - Iniciativa per Catalunya presented the Government with an urgent interpellation concerning the situation of immigration in Spain. In the subsequent parliamentary debate, the Government undertook the commitment of preparing a report on the situation of foreigners in the country. After the presentation of this document, which was produced with the collaboration of the Ministry of the Interior and the Ministry of Work and Social Security, the Spanish Parliament approved a Proposición no de Ley (Green Paper) in which the Government was urged to undertake political measures with regard to the following four points: the control and channelling of migratory flows, the struggle against illegal immigration, giving an international focus to the migratory issue, and reforming the administrative apparatus (López Sala 2000: 283). Besides, the Green Paper envisaged ‘adopting the necessary measures to complete the process of regularisation carried out in 1985, while also paving the way for groups of foreigners working in an illegal situation, who arrived in the country after that process and who can demonstrate their insertion in the labour force or arraigo [“rootedness”]31 to make their presence known and to be legalised’ (Article 4, Proposición no de Ley 1991).

In contrast with the previous procedure, which was defined, above all, as a process of providing documentation for foreigners, this regularisation project had a significant work component. One manifestation of this is the fact that the applications were not presented in the Ministry of Interior’s Official Documentation Offices but in the Provincial Departments of Work and Social Security or in some employment offices. A further novelty was the involvement of social organisations, unions and non-governmental organisations. According to Aragón Bombín and Chozas Pedrero (1993: 65), recognition of the social organisations and their role in the application and development of the process were decisive. As we shall see below, this alliance between government and social organisations has been a constant in subsequent regularisation procedures. Thenceforth, working to regularise the maximum possible number of immigrants became, for many organisations, the best way to struggle for the rights of immigrants in Spain. As Suárez Navaz (2000: 8) points out, although it cannot be said that the volunteers, activists and experts of the social organisations became simple accomplices in the government’s actions, this regularisation did manage to ‘give credibility to the State’s inclusive gesture’ and thereby to create a general

31 This rather loose term “arraigo” is used quite indiscriminately in official circles to refer to employment stability or social consolidation. Henceforth, I shall indicate, where possible, the sense in which it is used.
consensus over the need to ‘normalise’ the situation of immigrants.

In the six months the process lasted (from June to December 1991), 135,393 applications were presented. Of these, 109,135 were granted. With regard to the kinds of applications presented, 83.7 per cent of the permits were conceded under the assumption of permanent residence as of May 1991 and a firm offer of formal and stable work (85 per cent) or a viable self-employed project (15 per cent) (Aragón Bombín & Chozas Pedrero 1993: 101). This confirms that, while the 1985 regularisation process was primarily focused on regularising residents, that of 1991 was particularly concerned with regularising workers. The origins and profiles of the immigrants partly explain this difference. While, in 1985, a significant number of immigrants came from other European countries, in 1991, most immigrants came from non-European countries and represented the typical profile of the economic immigrant. The biggest group consisted of people from the Maghreb (in particular, 44 per cent of the applicants came from Morocco), followed by those from Latin America (mainly from Argentina, Peru, the Dominican Republic and Chile) and Asia (Philippines, China and, to a lesser extent, Pakistan and India).

As Izquierdo notes, the main point of a regularisation drive is not the final number of people regularised but the cover and continuity of a legal situation. How many, then, were still illegal after the process and how many had lapsed back into illegal status over time? If we look at the figures for initial rejection, we find that of the 135,393 applications, 18,933 (14.8 per cent of the total) were denied. The main reason for rejection was the lack of proof of residence in Spain prior to 15 May 1991 (Arango & Suárez Navaz 2002: 124-5). This reveals (as observed by many illegal immigrants who were in Spain at the time) the importance of any written proof or paper that would demonstrate this illegal stay. According to Suárez Navaz, after the 1991 regularisation, papers (any paper) took on huge importance because of the possibility they represented for future regularisation. This is what she defines as ‘the fetishism of papers’ in the dual acceptance of an inanimate object to which ‘magic’ qualities are attributed and in their semblance of having an intrinsic exchange value they do not actually have. She also remarks vis-à-vis the immigrants that, ‘It is not unusual for them to proudly show you these paper-shields they carry round in their pockets, while collecting all the rest, just in case, in a plastic bag full of frustrated statuses and identities’ (Suárez Navaz 2000: 10).

The figures pertaining to renewals once again demonstrate the facility with which legal immigrants fall back into illegality or, in other words, they reveal the fineness of the line between the two conditions. Numerically speaking, it is significant that there were 22,000 cases of non-renewal (20 per cent of which had initially been regularised) and 6,000 rejections of renewal (5.5 per cent). Again, one needs to ask, what about the ones who did not apply? How many of them had left Spain and why did those who remained here decide not to try for renewal? To what extent were those who did not present excluded by the fact of not being able to maintain or prove their employment situation? Apart from those who did not renew their permits because they did not present (and the reasons for this will never be known),
another 6,000 people lost their legal status when their application for renewal was
denied. Taking into account the almost 19,000 who did not manage to achieve
legality because their initial request was turned down, it would seem that the
regularisation procedure itself produced almost 25,000 illegal immigrants. In other
words, 17 per cent of the immigrants who applied for regularisation were excluded
along the way. If one adds those who disappeared or who excluded themselves
from the process, the figure would peak at 25 per cent. The next question to arise is
that one that Izquierdo asks: what is the point of a process of regularisation that
either keeps a significant proportion of the immigrant collective in a situation of
illegality or returns them to this status? (Izquierdo 1996: 149).

4.6.3. The third regularisation: As described above, the reality of immigration
soon swamped the legal framework set out by the 1985 Law. In 1991, the Spanish
Parliament approved a Proposición no de Ley (Green Paper) pressing the
Government to take a series of specific measures with regard to immigration. Five
years later, the first immigrants’ associations, different NGOs and even institutions
like the Ombudsman and lawyers’ colleges pushed for another reform that would
culminate in 1996 with a modification in the regulations for applying the Law on
Foreigners (LOE). The new regulations introduced, for the first time, the
permanent residence permit and also regulated the right to family regrouping.
Furthermore, a series of norms were decreed in order to speed up the procedures
for obtaining residence and work permits, while improvements were introduced
with respect to renewal and duration of the permits. Once again, the changes in
immigration policy were accompanied by a process of regularisation. This time, the
aim was to regularise those foreigners who, because of the requirements of the
previous regulations, had not been able to renew their permits. In this sense, it was
more a process of re-documentation than regularisation in the strict sense of the
word.

In fact, the 1996 formalities were restricted to those foreigners who had arrived in
Spain before 1 January 1996 and who had held work and residence permits, or just
a residence permit issued after the 1985 Law came into force. As with the previous
process, this regularisation drive also included relatives of residents with legal
status. Another significant element is the fact that regularisation was not dependent
on the job market. While in the previous process a firm job offer was the condition
for obtaining work and residence permits, this time the applicant only had to make
a simple declaration of intent as to the job or jobs he or she wished to perform. The
reason for this disconnection, which was basically pushed by the unions, was to
avoid the problem of workers being dependent on their employers. The idea behind
this was that the link between regularisation, job offer and employer placed the
immigrant in a vulnerable position that could encourage the selling of job offers,
extortion and exploitation of immigrants under the threat of not making the offer of
employment.

This process lasted four months (from April to August 1996) and was placed in the
hands of the relevant organisms of the Ministry of the Interior (for residence
permits) and the Ministry of Work and Social Affairs (for work and residence permits). The total of successful attempts out of 24,691 applications was 75 per cent for work and residence permits and 28.4 per cent for residence permits only. The profile of the immigrants who applied for regularisation was similar to that of those who were regularised in 1991: they were essentially economic immigrants coming from African countries (almost a quarter from Morocco), Latin America (13 per cent) and Asia (with Chinese immigrants accounting for 4.6 per cent) (Arango & Suárez Navaz 2002: 133). It should be recalled that these figures are not a gauge of illegal immigration but rather of the numbers and nature of the immigrants who had returned to a status of illegality.

4.6.4. Regularisation through the quota system: Besides the regularisation process of 1996, which was limited both with regard to the characteristics of those deemed ‘regularisable’ and the final numbers, the entry policies from 1994 until 1999 (with the exception of 1996) and, in particular, the quota system, functioned as the main form of regularisation. As noted in the previous chapter, the quota was used in practice to contract foreigners who were already working (illegally) in Spain. Once the job offer was authorised, the foreigner had to apply for a visa in his or her country of origin or, as was the case in practice, in the Spanish consulates of neighbouring countries. On other occasions they were granted a visa extension. With the visa, or visa extension, the foreigner legally re-entered Spain or finally received (without having to leave) a work and residence permit. According to the Ministry of Labour and Social Affairs, only ten per cent of those who obtained a work and residence permit through the quota system ‘really came from outside the country’ (Congreso de los Diputados, 19 February 1997). If between 1993 and 1999 almost 150,000 work permits were conceded through the quota system, this would suggest that some 130,000 people were regularised, which is to say a number not far from that of the sum of foreigners regularised in the processes of 1991 and 1996.

In comparison with the extraordinary regularisation processes, the quota system introduced some important new details. First, regularisation via the quota system did not require a prior period of residence in Spain. As a result, it was now possible to acquire legal status without having to accumulate ‘papers’ or ‘documents in proof’ of residence. Second, as discussed in the previous chapter, the quota system required a specific offer of employment. Hence, it ended up functioning as a means of regularising immigrant workers with employment. In this regard, unlike the 1996 process, the tie between immigrant, job offer and employer was total. Third, it was not just a matter of finding employment. The job offer had to come under one of the headings of the economic sectors annually defined by the State. In effect, this meant that it was only possible to achieve regularisation in jobs that were rejected by national or authorised workers. Finally, and once again in contrast with the extraordinary regularisation drives, the quota system did not permit the regularisation of all illegal immigrants with certain previously specified characteristics. The number of jobs was limited. As a result, those who got in first were regularised (hence the long queues) and once there were no more offers
(under the quota system), there was no chance of being regularised until the following year.

4.6.5. The fourth regularisation: The changes in the Law on Foreigners with the promulgation of Law 4/2000 in February 2000 were accompanied by another extraordinary regularisation drive. As Arango y Suárez Navaz (2002: 141) indicate, this once again confirmed the institutional tendency or guideline that turned ‘extraordinary processes into a dependent variable of legislative change’. Another constant that was yet again substantiated was the influence of immigrants’ associations, other social organisations and the minority political parties. As happened in 1991 as well, the pressure for legislative change was introduced into the Parliament by the minority parties (this time, the left-wing party Izquierda Unida, the Catalan nationalist party Convergencia y Unió, and the Grupo Mixto, a set of parties without their own independent representation in Parliament). While the main opposition party (PSOE) ended up leaving its mark on the process of defining the new policy, the PP – in government but with a parliamentary minority – was, if anything, against the different Bills presented and the launching of a new extraordinary regularisation process. This climate of confrontation, exacerbated by the coming general elections (March 2000) and the subsequent legislative counterreform (which ended up with the promulgation of Law 8/2000) influenced not only the debate around the regularisation process but also the conditions of its being carried out.

As on other occasions, the main objective of the regularisation process of 2000 was to cut the numbers of illegal immigrants right back to zero so that the new law could go into effect without hindrance. Once again, as in 1985, an attempt was made to wipe the slate clean by means of resolving the unforeseeable effects caused by the application and management of the previous law. In effect, the aim was to (re)incorporate the immigrants whose illegal status had been brought about by the LOE of 1985. This time, it involved not only regularising the immigrants who had been made illegal again at the time of renewal (as with the process of 1996) but also those whose application for the initial permit had been turned down. As a representative of the Comisaría General de Extranjería (police headquarters for foreign nationals) stated, the aim was ‘to correct the circumstances that had obstructed the renewal or approval of permits’ (quoted in Arango & Suárez Navaz 2002: 184). Since this was the objective, the regularisation process was aimed at foreigners ‘[…] who were in Spanish territory before 1 June 1999’ and who ‘[…] can demonstrate that they have previously applied for a residence or work permit, or who have had such a permit in the last three years’ (Real Decreto (Royal Decree) 239/2000).

These requirements reveal the extent to which the regularisation process was designed on the basis of the assumption, which was shared by the majority of the stakeholders (from political parties, to immigrants’ associations and social organisations), that illegality was mainly the result of having lost papers. The reality, however, turned out to be very different when it quickly became evident
that many illegal immigrants had not yet had the chance to apply for a permit. Accordingly, if the aim was to take illegality figures back to zero, the requisites for regularisation needed to be modified. This is precisely what led the government to extend the stipulated period for proving that, at some point, a work permit had been applied for. By this means, the application for a permit, which would make it possible to apply for regularisation, ended up as something that could be presented until ten days after the start of the process. This is to say that it was now possible to apply for a permit and then, on the basis of that request, ask for regularisation. While this requirement ceased to limit the fact of access, bringing it into effect had as its main results the long queues of people waiting their turn and the general sensation of having to deal with a confusing and arbitrary bureaucratic labyrinth.

On the other hand, with this de facto elimination of the condition of having applied for a permit, the onus was now on proof of residence in the country as the main requirement for obtaining regularisation. Although this condition was maintained until the end, the difficulty of meeting the requirements had its effect in modifying administrative practice. In their exhaustive study of the regularisation process of 2000, Arango and Suárez Navaz point out that most of the documents stipulated as proof of residence before 1 June 1999 (among them a work and/or residence permit, licences, tax declarations, registration with Social Security or registered work contracts) were very difficult to present unless the immigrant had had some period of legal status. As one representative of Valencia Acoge, an organisation that assists newly-arrived immigrants, noted ‘[…] there are people who have notched up the time (having lived in Spain for some time), many years in fact, but they don’t have enough documentation … because they’ve never been sick; they don’t have proof of medical treatment; they’re afraid to go to any organism or service and there’s no way they can get this proof’ (quoted by Arango & Suárez Navaz 2002: 388).

Lacking official documents, many immigrants opted to make up their dossiers with back-up (not definitive) proof consisting of any kind of document bearing their name and the date of issuance in print. This once again revived the fetishism of papers described by Suárez Navaz in the context of the 1991 regularisation. Furthermore, this ‘almost desperate’ need for ‘papers’ gave rise to all sorts of falsifications carried out for reasons of friendship or solidarity, and also for money. As a member of one Canary Islands NGO remarked, ‘Any kind of bill was presented, especially mobile phone bills. Yes, yes, any document with a date on it. So what happens? A lot of them had friends with businesses, or friends with a shop and they made them out back-dated invoices’ (quoted by Arango & Suárez Navaz 2002: 395). While this was very common practice, success was patchy. Hence, in some provinces letters from home in the name of the immigrant were accepted, along with medical certificates or proof of cohabitation, or traffic fines but, in others, such proof was deemed to be totally insufficient.

This disparity in the criteria applied, or the discretionary judgement of the different government offices and departments at provincial level is not very different from
that noted in the previous section with regard to the concession of initial permits. Nonetheless, since this was an extraordinary process, the inconsistency was still more evident. For example, the journalist Tomás Bárbulo denounced in *El País* the fact that while the Barcelona branch of Alien Affairs and Immigration only admitted 29.1 per cent of the applicants, in the nearby city of Girona 82.2 per cent were approved (*El País*, 23 December 2000). In the same article, members of different NGOs were quoted as saying that, given this inconsistency of criteria, it was the normal procedure to send rejected files to provincial branches in order to obtain their final approval. Along with this discretionary practice by the sub-branches of the Administration, also noteworthy is lack of consistency in the approaches of local government, regional government, NGOs and unions when it came to giving information and receiving applications. If their participation once again (and perhaps more than ever) facilitated the extension, effectiveness and efficiency of the process, it also introduced major distortions. In particular, it is important to note that while the NGOs and unions played a fundamental role in providing information and especially selecting files, their rigour also ended up working against those applicants who were excluded.\(^\text{32}\)

As for specific results, in the four months that the process lasted (from 21 March to 31 July 2000), a total of 246,086 applications was presented, most of them in Madrid (22.6 per cent), Barcelona (20.9 per cent), Almeria (8.5 per cent) and Murcia (7.5 per cent). As with the previous processes, the great majority (90 per cent) requested a work and residence permit. In other words, this is a clearly work-oriented type of immigration. Again, in clear contrast with the estimates made by most of the stakeholders, 94 per cent of the applications were presented by immigrants who had not had a permit beforehand. This means that the majority were not in an administration-caused irregular situation as a result of previous policies. As for the origins of the applicants, the trends observed on previous occasions continued. The majority group was from Morocco (26.6 per cent of the applications presented), followed by people from Latin America, the biggest groups being from Ecuador (9.3 per cent) and Colombia (6.12 per cent) and, finally, from Asia, mostly from China (4.8 per cent) and Pakistan (4.6 per cent) (Dirección General de Ordenación de las Migraciones 2001).

As for the figures for initial rejection, of the 246,086 who presented applications, only 146,781 received a favourable response. This is to say that almost 100,000 applications were turned down, or 40 per cent of the total of applications initially presented. Most of the rejections were because immigrants were not able to demonstrate their presence in Spain before 1 June 1999. As just noted, not all the back-up documents (mobile phone bills, letters from home, fines, et cetera) were

\(^{32}\) Referring to one NGO, a Congolese immigrant in Madrid stated, ‘*No, they didn’t let me because, even though I’ve been here a long time and they know it because they’d seen me and because I’d gone there before, I didn’t have good documents so I couldn’t present. And now I’m sorry because I see that a lot of people got it, even without papers because I know about plenty of people who are getting it and they haven’t got papers*’ (quoted by Arango & Suárez Navaz 2002: 500).
accepted as proof of residence. More precisely, not all these documents were accepted in all the sub-branches of the administration in the provinces. Hence, for example, while in Madrid only 17 per cent of the applications were turned down, in Barcelona, the figure was as high as 71 per cent (Rius Sant 2007: 199). There were also significant differences in the figures of rejection by country of origin. While the figure for Moroccans was 26 per cent, it was 21.6 per cent for Chinese, 22.9 per cent for Pakistanis, 12.9 per cent for Colombians and 9 per cent for Ecuadorians (Dirección General de Ordenación de las Migraciones 2001). While the spokesperson for the Asociación de Trabajadores Inmigrantes Marroquíes (ATIME – Association of Moroccan Immigrant Workers) attributed the differences to ‘discrimination based on religion or geographic origins’ (El País, 23 December 2000), it is possible that uneven distribution by territory (for example with a relatively greater presence of Moroccans in Catalonia than in Madrid), along with a different use of social networks, were also decisive factors in explaining the variation in the results.

Unfortunately no data are available for renewal figures. Nevertheless, it is important to highlight two basic factors which, although present in earlier regularisation drives, now took on unprecedented clarity. First, it is much easier to obtain a work permit by way of a regularisation process than via normal entry procedures. While the ordinary procedures require a specific offer of employment, the regularisation processes have tended to be dissociated from the job situation of the immigrant. In the process of 2000, this lack of connection was still more evident when proof of residence in the country became the main requisite for obtaining a permit. Thus, while the mechanisms for entering the country make job stability their main requirement, the regularisation processes ended up making (illegal) residence its virtually single condition. Second, as a result of this factor, although the renewal processes impose less burdensome conditions than the procedures for entering the country, these conditions are more difficult to meet than those the immigrant had to satisfy in order to be regularised. In other words, while written proof of residence is enough to be regularised, after one year it is necessary to demonstrate stable employment (in accordance with the usual procedures for entering the country) in order to maintain legal status.

As a result, it is the first renewal rather than obtaining the initial permit that ends up being the main obstacle. Even if the immigrant manages to achieve legal status, this is of no use if, after a year, he or she has not spent the stipulated amount of time working or does not have a firm job offer. As we have seen in the above section, the condition of being legal does not only depend on the fact of working but also working in a legal and stable way. This largely explains the situation of administration-caused illegality and the relapsing into illegal status which have been so characteristic of the Spanish model. The main outcome, as Cabellos Espiérrez and Roig Molés remark, is that ‘the situation that is thus accepted actually strips the system of any sense, inasmuch as it delays the real test that gives access to stability of residence to a time when, in fact, it has become very difficult to expel the foreigner or return him or her to the country of origin. This means that
denying renewal of the permit only annuls any chance of regular work for the foreign resident, who will stay on in Spain in any case’ (Cabellos Espiérrez & Roig Molés 2006: 116).

4.6.6. Aftermath of the fourth regularisations: Although the process of 2000 ended up regularising more illegal immigrants than ever before, it is also true that the numbers of those excluded were much higher than those for rejections in earlier processes. Accordingly, with the aim of completing a regularisation process that was perceived as being unfinished, the reform of the new law on foreigners (Law 8/2000) included a regulation that contemplated an official review of the rejected applications. A few months later, in February 2001, the Government passed a decree, which was in force for three months, by virtue of which the applications of foreigners who, meeting all the requirements, had had their applications turned down because of being unable to demonstrate they had been in Spain since before 1 June 1999, would be reviewed, without those affected ‘having to do anything’. This decision meant that 61,365 files out of the almost 100,000 that had been rejected were favourably reviewed. At the same time, the measure caused considerable bad feeling among people who, knowing they did not fulfil the requirements and advised by NGOs and unions, had decided not to present their applications for regularisation.

Along with the second-chance review of applications from the process of 2000, a series of events and pressures exerted by the immigrants and civil society in general led to further regularisations. First, in January 2001, there was a traffic accident in Lorca (Murcia) in which 13 Ecuadorian immigrants of illegal status were killed. The accident brought to light not only the fact that Law 4/2000 and the subsequent regularisation had left out many people, but also the bad living conditions and the situations of exploitation that many illegal immigrants were having to bear. Moreover, the immediate intensification of inspections of working conditions in the fields of Murcia meant that many illegal immigrants (mostly Ecuadorians) lost their jobs a few days later. As a result of all this, the same week as the accident in Lorca, some 300 immigrants marched to Murcia to denounce the precariousness of their situation and to demand regularisation (El País, 11 January, 2001). Although, at the time, the government representative in Murcia, José Joaquín Peñarrubia, alleged that it ‘was impossible to attend to’ these petitions (El País, 11 January, 2001), the Government ended up launching a programme of voluntary return to their homeland for Ecuadorian illegal migrants. The government’s pledge consisted of a return ticket to Ecuador from whence the immigrants could undertake the paperwork to achieve a pre-entry contract and then return to Spain with regularised status. However, once again, the response exceeded the expectations of the Government. The lack of resources and possibilities for attending to the almost 25,000 Ecuadorians who accepted the Government’s offer meant that, in the end, more than 20,000 were regularised without having to return to Ecuador.

The Ecuadorians’ march to Lorca was immediately followed by other mobilisations.
(church lock-ins, hunger strikes and demonstrations) in Barcelona, Lepe, Murcia, Cádiz, Sevilla, Granada and, later, Madrid as well. Once again, the right to papers – with the slogan ‘papeles para todos’ (papers for everyone) – was the main claim. Be this as it may, the forms of protest and arguments wielded by the different actors were different. First, the Ombudsman, the union Comisiones Obreras and the Moroccan Workers’ Association (ATIME) labelled the second-chance assessment or re-evaluation of those applications that were dismissed in the 2002 process as discriminatory. In particular, they decried the fact that some people who presented the application despite not being able to demonstrate that they had arrived in Spain before 1 June 1999 were rewarded, while others who, in an identical situation, had opted, or had been advised not to apply, were prevented from achieving regularisation. Second, the Ecuadorian collective, as Laubenthal observes in her comparative study on the movements of the sans-papier in the different European countries, employed post-colonial arguments in claiming regularisation by presenting themselves as belonging to the Spanish madre patria (motherland). Third, those groups – such as Pakistanis, Bangladeshis or Indians – who could not justify their demands with historical ties or cultural similarity, appealed to the extent to which illegality meant ‘deportation and maybe death’. When participating in hunger strikes, their central message was that their willingness to die for legal status, or their likely deaths as a result of deportation, made their legal residence status a matter of existential necessity (Laubenthal 2007: 118).

After considerable reluctance on the part of the Government, the different sub-branches of the Administration at provincial level finally negotiated with, and agreed to regularise the immigrants who were participating in lock-ins and other protests. This gave rise to yet another conflict of equity. Why regularise only those immigrants who had taken part in lock-ins and other protests? What about those, who meeting the same requisites, were not amongst those negotiating with the different sub-branches? Given this inconsistency in criteria, the Government eventually decided to extend the agreements that had been reached in some autonomous communities to the country as a whole. Thus, in June 2001, the Government declared that there would thenceforth be maximum flexibility in the concept of stability of social and employment conditions (arraigo) and humanitarian considerations would be taken into account in legalising immigrants. This specifically meant opening up the regularisation process to all illegal immigrants who could demonstrate their residence in the country before 23 January 2001 and prove their stability of circumstances (arraigo), whether by real or potential incorporation into the job market, or by having previously enjoyed a

33 As Dora Aguirre, spokeswoman of the Ecuadorian organisation Rumiñahui, pointed out, ‘[…] the only thing the Ecuadorian does is to orientate himself towards the madre patria in order to escape from the poverty in our country. And he comes for reasons of kinship, language and history’ (La Opinión, 14 January 2001; quoted in Laubenthal, 2007: 117). Another example is the highly publicised action consisting of a collective blood donation that aimed to show to ‘[…] the Spanish society our will to integrate ourselves and to collaborate in everything’ (La Verdad, 22 January 2001). As one immigrant argued in El País, ‘I give you my blood, what more do you ask for?’ (El País, 8 February, 2001).
situation of legal residence, or having family ties with Spanish citizens or with foreigners with legal residence.

In the months the process lasted (until July 2001), 351,269 applications were presented, the majority in Madrid (118,268), Barcelona (41,583) and Murcia (27,697). Of the total number of applications, 223,428 or 63 per cent were accepted (Garrido Medina 2003: 12). This meant that, as had happened in 2000, more than 100,000 illegal immigrants were excluded. Once again, the rejection figures were unevenly distributed. While the overall figure was 37 per cent, it rose to 65 per cent for Barcelona, mainly affecting immigrants coming from Pakistan and Bangladesh.

With regard to the origins of immigrants who requested regularisation, it should be noted that, for the first time, the Ecuadorians (and not Moroccans) were the most numerous. After them, the biggest groups were Moroccans, Colombians and Romanians.

4.6.7. The fifth regularisation: After 2000, the closing of the Régimen General and the channelling of work-oriented immigration exclusively through the quota system greatly limited the possibilities for entering Spain legally. Hence, the administration-caused illegality of those who lost their legal status was now more than ever aggravated by the illegality caused by the difficulty (close to impossibility) of legal entry. The effect was immediate: just three years after the regularisations of 2000 and 2001, it was calculated that the number of illegal immigrants in Spain was now as high as a million. In this situation, and after the victory of the PSOE in the general elections of March 2004, the new government was faced with the need for legislative change. With the alternative of modifying the law for the fourth time or approving the Regulatory Decree pertaining to the most recent legal reform, the Government took the second option. Hence, with broad agreement from the employers’ associations and unions, a new bill, the Reglamento de la Ley de Extranjería (Law on Foreigners Regulations), was approved in December 2004.

In general terms, the Law now included wider-ranging legal directives for ordinary regularisation on the basis of stability of circumstances (arraigo) and, as remarked in the previous chapter, it recovered the Régimen General as the main instrument for legal immigration to Spain. Moreover – and this was the key short-term aspect of the new norms – a different process of regularisation was prescribed, this time called ‘normalisation’. While the previous processes of regularisation were justified by the need to resolve the unforeseen effects arising from application of the earlier law and, more specifically, by the need to reduce the numbers of administration-caused illegal immigrants, this time the stated goal was that of reducing the black economy. In the words of the then State Secretary for Emigration and Immigration, Consuelo Rumí, the ‘[…] main objective of this process is to bring to light jobs in the black economy’ and thereby ‘[…] to put an end to the social costs of illegal employment, since immigrants in an irregular situation do not pay taxes or contribute to Social Security’ (ABC, 21 January 2005). It should be noted, as the NGO SOS Racismo did at the time, how the
discussion about illegality shifted thenceforth (largely because of the central role played by the unions) to the terrain of the struggle against the black economy and the need to boost the welfare state by means of incorporating (mainly as contributors) the illegal immigrants.  

While the PSOE, the unions and the employers’ associations spoke of ‘normalising’ things and bringing to light the black economy (to the point of speaking of ‘regularisation of employers’ rather than workers), the PP, just as it had done in 2000, continued to harp on the ‘pull effect’ of any extraordinary process of regularisation. For example, Ignacio González, who was then Vice-president of the Autonomous Community of Madrid, opined that the announcement of the regularisation was a ‘[...] message that gives the impression that it is possible to enter this country illegally and to find an easy way of regularisation and legalisation, and what this is bringing about is a “pull effect”, whatever way you care to look at it’ (La Razón, 27 August 2004). Ángel Acebes, also of the PP and a former Minister of the Interior, besides beating the drum of the ‘pull effect’, was of the view that this regularisation increased the ‘pressure on Social Security, education and employment’ and that it was against European Union policy (El País, 9 February 2005). Once again, the European Union was being used to justify changes in, or criticism of Spanish immigration policy. While Jesús Caldera, Minister for Labour and Social Affairs, presented the regularisation process as being in conformity with a study carried out by the European Commission,35 Acebes denounced the Government for going against European policy that had been agreed at the Seville Summit (El País, 9 February 2005).

If the European Union had hitherto been wielded as an excuse or argument to defend some or other policy while rarely interfering directly, the 2005 regularisation did indeed give rise to misgivings and comment by several member States. For example, Otto Schilly, then the German Minister for the Interior, stated his concern that immigrants who were then being regularised in Spain might freely move on to France or Germany within a few years. In a similar tone, the Dutch Minister for Immigration, Rita Verdonk, observed that ‘[...] what we must see is how such initiatives affect the rest of Europe’ (El País, 12 February 2005). Faced with these fears and with the aim of avoiding disagreements, the Luxembourg

34 In particular, SOS Racismo criticised the Government as follows: ‘The Government has not heeded the background ideas expressed by the associative movement. It has limited itself to just one, which is that of adopting an extraordinary measure. This, in turn, has shifted things into the domain where illegality has one main cause and that is the black economy and the illegal job offer in the Spanish economy [...]. Without underestimating this issue, which is the subject of many different discussions, although also a theme much loved by the unions, we feel that this is a one-sided standpoint when it comes to analysing the causes of illegality’ (SOS Racismo 2004: 3).

35 The Minister for Labour and Social Affairs, Jesús Caldera was referring to the document ‘Communication 412’ (June 2004) on the links between legal and illegal migration. In fact, as Ferrero and Pinyol (2007: 9) have remarked, in assessing both positive and negative aspects of the regularisation programmes, this document dodged making a definitive statement on the matter.
Presidency of the Council of the European Union and the European Commissioner for Justice, Freedom and Security, Franco Frattini, suggested the establishment of a mechanism for mutual information, not only with regard to regularisations but to any measure that would affect immigration and asylum legislation, especially when there was a chance of it affecting other member States.

It is probable that such reservations also explain the Government’s zeal in reminding the public that this was ‘only’ a normalisation of workers with the prime objective of stamping down on the black economy and consolidating the welfare state. Furthermore, the different government representatives added that this regularisation had nothing in common with the massive regularisation of foreigners that the PP had carried out in 2000 and 2001, when the main requirement was written proof of residence, with the acceptance in many cases of a mere fine, letter or invoice. The requirements for achieving regularisation in 2005 were certainly different from those of the previous ones. As on other occasions, the task was to prove stable employment (arraigo laboral) and presence in Spain before a certain specified date, but there were also two significant new features: first, the regularisation initiative did not depend on the foreigner but on the employer and, second, the period of residence in Spain had to be demonstrated by way of registration in the padrón, or municipal census.

In the matter of proof of stable employment (arraigo laboral), it was in fact the employers who had to go to the special offices (either of Alien Affairs or Social Security) to request the legalisation of their workers. The contract had to be for 40 hours per week and for a minimum period of six months (three in the agricultural sector). In the case of domestic service, if the person worked part-time (a minimum of 30 hours per week) and for more than one employer at a time, it was possible for this person to request the permit on his or her own behalf. In all cases, final authorisation was conditional on registration with, and/or contributions being paid to Social Security. This condition aimed to ensure that the employment bond was real and effective, rather than a simple job offer or just a potential working relationship. The resulting permits were valid for one year and tied to a particular sector and province.

In the case of proof of residence, the worker had to appear on a Spanish municipal register (padrón) before 7 August 2004 and was to be in Spain at the time of presenting the application. This requisite was one of the more controversial. It should be recalled that LO 14/03 had opened up the possibility (although it was not utilised) of the police having access to the census inscription or padrón data. The measure had been a disincentive to registration with the result that many foreigners had not been able to gain access to the regularisation process. Accordingly, and under pressure from the employers’ association CEOE, the Ombudsman, the Consejo General de Abogacía (General Council of Spanish Lawyers) and several autonomous governments and town and city councils, the Government agreed to accept what was called ‘empadronamiento por omisión’ (census registration by omission). By virtue of this device, the worker who could demonstrate residence in
Spain before the stipulated date could request census registration with retroactive effects. Although this measure made it possible to extend regularisation to all those residents in Spain who had not registered in the municipal census, it also reintroduced a significant discretionary element in making access to regularisation depend on the administrative practices of each town or city council.

At the end of the three months of the duration of the process (from 7 February to 7 May 2005) a total of 691,655 applications were presented. Of these, 83.6 per cent were granted. The fact that rejected applications numbered less than 45,000 contrasts with the more than 100,000 rejected in the regularisations of 2000 and 2001. With regard to geographic distribution, most of the applications were presented in Madrid (171,321), Catalonia (139,480) and Valencia (108,496). By origin, the biggest group was from Ecuador (140,020), followed by Romania (118,546) and Morocco (86,806). Of all the applications presented, 58.9 per cent were men and 41.1 per cent were women. As for economic sector, most applications came from the sectors of domestic employment (31.6 per cent of whom 83.4 per cent were women), construction (20.7 per cent of whom 94.9 per cent were men), agriculture, livestock and fishing (14.6 per cent), hotel and catering (10.3 per cent) and commerce (4.7 per cent) (Observatorio Permanente de la Inmigración 2005: 801-802).

There are no official data concerning renewal figures to date. Through my interviews I was, however, able to see that there was general agreement that the majority of people regularised in 2005 still maintained this status after a year had elapsed (Ministerio de Trabajo y Asuntos Sociales 2005: 801-802). This is not so surprising when one bears in mind that, in contrast with what occurred in 2000, employment stability (arraigo laboral) was demonstrated (and more than ever before) at the time of regularisation. In other words, the conditions of renewal (this time, yes) were less taxing than those of regularisation. Nevertheless, according to the Consejo General de Abogacía (General Council of Spanish Lawyers), 15 per cent of those who were regularised in 2005 had their applications for renewal turned down at the end of the year (SOS Racismo 2007: 65). In explaining this figure, two lawyers interviewed in Barcelona observed that renewal was especially difficult for those who had achieved legal status thanks to a ‘false’ or ‘doing-a-favour’ job. In these cases, since the initial permit was limited to a sector and province, the difficulties in finding real employment and notching up the necessary six months of Social Security payments could certainly mean becoming illegal again at the time of renewal36 (interviews in Barcelona on 31 October 2007 and 17 March 2008).

---

36 This situation seems to have particularly been the case with men who were regularised for the domestic service sector with the aim of achieving their regularisation directly (and not through the employer) and without the requirement of a formal contract. If these people did not subsequently find work in the same sector and province or keep up Social Security payments while working in the black economy, renewal implied falling back into illegality after a year.
One matter that should be noted is the pattern established for the kinds of jobs that regularised foreigners engaged in. There seems to have been a clear tendency in this regard. One year after regularisation, there were more foreigners working in the construction, commerce and hotel and catering sectors and less working in agriculture and, in particular, domestic service. For example, while in 2006, women domestic workers represented 31.7 per cent of the total of foreign women registered as working, in 2007 the figure dropped to 22.1 per cent, or 60,000 fewer workers (Pajares 2007: 221). This coincides with what I have remarked in the previous chapter: the gradual shift of immigrant workers into economic sectors initially reserved for national (or authorised) workers. At the same time, this change raises the question of the point to which the employers (especially in agriculture and domestic service) were interested in renouncing the advantages they derived from the immobility of their workers because of their illegal status. In other words, how many employers agreed to regularise their workers knowing that after holding the permit for one year they could move off into other sectors? In this regard, one employer had remarked some years earlier, ‘Why would I give them papers? The minute I give them papers, they give up and leave me!’ (quoted in Arango & Suárez Navaz 2002: 485).

4.6.8. Permanent regularisation: The 2005 regularisation, much more than the earlier ones, was controversial and subject to criticism both inside and outside of Spain. Faced with all the dissenting voices, the PSOE government continued to emphasise the inevitability of the process and the need to clamp down on the informal economy. It also kept reiterating, just as it had done in preceding regularisation processes, that this was the last time. The message given out by the government was that, thenceforth, immigration had to ‘be legal’ and that anyone who entered the country or who was staying on illegally would be ‘returned’ (deported) to his or her country of origin.

However, the fact of there being no more extraordinary regularisation processes did not mean that there would be no more regularisations. Although the political discourse started thenceforth to emphasise border control and deportations, nobody counted on these measures as being sufficient to reduce illegal immigration. As the Consejo Económico y Social (Economic and Social Council) had already suggested in its 2004 Report, the idea was ‘to introduce elements of greater flexibility that would make it possible to respond to specific individual situations where there exists a real and effective link with the job market, while at the same time adopting adequate measures to avoid the so-called “pull effect”’ (Consejo Económico y Social 2004: 139). As one NGO representative noted in an interview, the aim was to regularise immigrants ‘without bringing it to people’s attention or giving rise to suspicion in civil society’ (interview 12 December 2007, Barcelona).

With this objective, the Regulation of 2004 once again took up the notion of stability of circumstances (arraigo) introduced by LO 4/2000 and subsequently restricted by LO 8/2000. Social stability (arraigo social) was a means of regularisation for those people who could prove residence in Spain for three years,
who had no criminal record in Spain or their country of origin, who could present a contract for a minimum of one year, and who had family ties or a report from the Town Council of the municipality of usual residence attesting to his or her social integration.\textsuperscript{37} By means of the notion of employment stability (\textit{arraigo laboral}), people who had lived in Spain for two years, who had no criminal record, and who could prove a relationship of employment of at least one year by means of a verdict to the effect, or certificate from the Department of Labour Inspection, could also attain legal status.\textsuperscript{38} In both cases, authorisation for work and residence has a duration of one year. While, with social stability (\textit{arraigo social}), the authorisation is limited to the sector of economic activity and province corresponding to the job offer available, these restrictions do not apply for authorisation obtained through employment stability (\textit{arraigo laboral}) because this procedure does not require the existence of a future contract (but proof of a previous employment relationship).

It is important to highlight here the progressive convergence between regularisation policies (including here the 2005 process as well) and entry policies. First, in both cases, the chances of obtaining work and residence permits depends on an offer of employment and thus on an employer. In other words, since 2005, employers have determined not only the possibilities of entering the country but also of regularisation. Second, the domain of what is possible in terms of economic sector and province is restricted not only for new arrivals but also for the newly regularised immigrants (via \textit{arraigo social}). In other words, both the former and the latter receive an initial one-year permit that immobilises them within a particular sector and province. Nonetheless, the job offer that gives rise to regularisation does not need to be an ‘unsatisfied’ offer. To put it slightly differently, unlike the mechanisms that control entry, regularisation does not require evaluation (either before or afterwards) of the needs of the job market. This means that illegal immigrants who apply for regularisation can do so in any economic sector, independently of whether or not there are national (or authorised) workers available.\textsuperscript{39} The counterpart of this is that, in the case of regularisation

\textsuperscript{37} The fact that the chances for regularisation via social stability (\textit{arraigo social}) depended, at least in part, on a report on an immigrant’s social integration (specifying the time of residence, means of support, degree of knowledge of the official language or languages, degree of participation in social networks and training programmes, and so on) issued by the Town Council in question introduces once again a high degree of discretionary judgement and variation over the territory.

\textsuperscript{38} This relationship has to be proven by way of a judicial or administrative decision by the Department of Labour Inspection and Social Security. In order to achieve this, the foreign worker has to denounce the employer for the fact of his or her working, or having been working illegally, or to sue the employer in the courts for dismissal or non-payment of salary. As Aguilera Izquierdo (2006: 191) notes, the main problem, given the absence of documents (written contract, pay slips, registration for Social Security) is to prove the duration of the employment relationship. Hence, often the only chance is by means of declaration with witnesses, which is deemed to be inherently weak, both in the Social Order Courts and in the Employment Administration.

\textsuperscript{39} Curiously, however, although the permit obtained through regularisation does not depend on the general situation of the job market, the initial stay is limited to the characteristics of the job that makes regularisation possible.
Analysing the results of regularisation on the basis of social consolidation or job stability (arraigo) is difficult. It is possible to state that there are very few cases of regularisation being granted on the grounds of employment stability (arraigo laboral). For example, in 2006 only 223 authorisations were conceded (Ministerio de Trabajo y Asuntos Sociales, 13 February 2007). As for social consolidation (arraigo social), which is doubtless the more widely-practised form of regularisation, it is impossible to draw any specific conclusions because of the absence of official data at the moment of writing this book. In 2006, the figure for authorisation via the mechanism of arraigo social was 6,616 (Ministerio de Trabajo y Asuntos Sociales, 13 February 2007). However, this number is not very significant because the people who were excluded from the 2005 process did not satisfy the condition of a minimum of three years’ residence in Spain until 2007 or 2008.\(^{40}\) Hence it is necessary to analyse the data from these two last years in order to evaluate the magnitude of the phenomenon of regularisation through arraigo social. At the end of 2006, the Asociación Profesional de Abogados de Extranjería (Immigration Law Practitioners Association) of Madrid calculated that in 2007 the figure for applications for regularisation based on arraigo social could have been as high as somewhere between 400,000 and 600,000 (El País, 9 December 2006). Although the figure is debatable, it is certainly possible that it is as high as, or greater than, that for those who achieved legality through the entry mechanisms.

If this is the case, the regularisation methods would continue to represent, as they have done since the 1990s, the main way of acceding to legal status. Nevertheless, there has been a major change. Until 2004, regularisation processes tended to be taken as separate from the foreigner’s employment situation by making (illegal) residence the main requisite for obtaining a permit. In contrast, from 2004 onwards, access to legality has depended on the formal and effective integration of the foreign worker in the job market. In other words, only foreign workers with a job are eligible for regularisation. This means, on the one hand, that unlike what was observed until 2004, regularisation and not the first renewal is raised as the first barrier to entry. From this, one might deduce that the number of foreigners who lapse back into illegality at the time of renewal has diminished. However, granting legal status only to those foreign workers with a job entails, as we have seen with regard to entry policies, that the person who gets the process underway (and hence governs both the chances of regularisation and the characteristics of the immigrants) is, once again, the employer. The question that remains to be answered in the coming years is: if everything depends on labour demands (entry, regularisation and renewal), what are (and will be) the consequences of the economic crisis that started in 2007 for the legal status of immigrants in Spain?

\(^{40}\) In order to obtain regularised status in de 2005 it was necessary to be registered in the municipal census prior to 8 August 2004. Those who registered too late could obtain regularisation through arraigo social three years later, which is to say after 8 August 2007.
4.7. DEPORTATION FROM WITHIN AND FROM WITHOUT

4.7.1. Constructing migrant deportability: The first Law on Foreigners (Ley Orgánica de Extranjería, LOE), which was passed few months after Spain entered the European Economic Community in 1985, aimed to prevent Spain from becoming a transit or ‘immigrant sieve’ country for people heading for Northern Europe (see Section 4.3). The idea was that Spain should fulfil the role of a dependable member of the EEC and carry out the function of scrupulous guardian of Europe’s southern frontier, which it had implicitly been assigned. The then Minister of the Interior, José Barrionuevo, justified the new law in terms of the need to ‘[…] endow the Judiciary and the Executive with the necessary legal means whereby to defend Spanish society more effectively from the mafia and other international delinquents’ (Congreso de los Diputados, 19 February 1985). In keeping with these aims, the LOE introduced the possibility of detaining illegal immigrants (for 40 days) in installations known as Centros de Internamiento de Extranjeros (Alien Internment Centres), besides enshrining expulsion as the only response to illegality. As pointed out by the previously cited lawyer who was interviewed by Suárez Navaz (1997: 7), ‘Basically the message is that if you are “illegal”, the state has only one responsibility: to deport you, without your having any chance of appealing such action in court’.

In response to the LOE, different immigrants’ associations, NGOs and lawyers’ colleges asked the Ombudsman to intervene by lodging an appeal with the Constitutional Court. The resulting constitutional ruling (STC 115/1987), besides quashing the restrictions that had been imposed on the right of freedom of assembly and association, rescinded the prohibition against judges suspending the putting into effect of deportation orders. It also reinterpreted preventive internment prior to expulsion, accepting the period of 40 days but establishing such minimum guarantees as the individual’s appearing before a judge in a previous hearing, the right to defence and a ruling stating grounds of detention. Finally, a number of different constitutional decisions eventually restricted the occasions for detaining and deporting illegal immigrants. Thus, for example, the constitutional rulings STC 94/1993, STC 116/1993 and STC 242/1994 rescinded several expulsion orders on the grounds that they violated the basic rights of foreigners in Spain. As Aja (2006: 25) points out, although these rulings were based on specific cases, they did have the general effect of ushering in jurisprudence that responded critically to

---

41 Cause for expulsion in the LOE was: 1) being in Spain illegally; 2) working without a work permit, even if holding a resident’s permit; 3) being engaged in activities counter to public order or domestic or foreign security; 4) previous conviction for certain crimes; 5) concealing, in certain cases, information pertaining to changes in personal situation; and 6) lacking lawful means of support, engaging in mendacity or other illegal activities. With the new Regulation of 1996, infractions and sanctions were graded under headings of slight, serious or very serious, by which means it was possible to avoid indiscriminate expulsion for any type of infraction.
administrative excess.

Apart from the limitations imposed by rule of law, reality also set limits to the binomial of illegality/deportability. If it is true that the number of foreigners detained rose substantially throughout the 1990s (from 15,416 detentions in 1995 to 40,710 in 1998), it is also the case that the number of expulsions actually carried out remained relatively constant at about 4,800 per year (El País, 19 April 1999). In other words, greater immigrant control did not necessarily mean more deportations. The cause of this difference lies precisely in the difficulty entailed in every process of expulsion. First among them is the matter of the high cost entailed. Another difficulty was prior identification of the place of origin of illegal immigrants. Finally, there remained the further problem of whether or not it was possible to count on the agreement and cooperation of the authorities in the countries of origin. All these impediments explain, first, why such highly repressive legislation, in which the only response to illegality is expulsion, has not always meant greater deportability in practice and, second, why it is precisely in this domain that the State has more readily overstepped the limits of legality.

One example is sufficient to illustrate this last point. In 1996, José María Aznar, then the Partido Popular president of the Spanish Government, declared in response to numerous criticisms that, ‘There was a problem, and the solution has been found’ (El País, 21 July 1996). The ‘problem’ was a group of 103 immigrants from sub-Saharan Africa who repeatedly staged demonstrations in front of the Spanish Government offices in Melilla (one of the two Spanish enclaves in Morocco) to protest the wretched conditions (lack of water and food) in the authorised reception centres. The ‘solution’ was first to transport them to an alien internment centre in Malaga and then to deport them on board five planes taking them to Cameroon, Mali, Senegal and Guinea Bissau. Many of the deportees were sedated for the journey. Moreover, not all were sent back to their countries of origin. Although the operation was conducted in the utmost secrecy – according to the Ministry of the Interior, to ‘prevent knowledge of the operation from getting in the way of agreements with the receptor countries’ – it came to light only a few days afterwards.

Immediate protests were voiced by the Ombudsman, the Sindicato Unificado de Policía (Unified Police Union), the Comisión Española de Ayuda al Refugiado (Spanish Commission for Refugee Aid), Jueces para la Democracia (Judges for Democracy), unions, NGOs and some political parties. These organisations condemned the fact that the 103 cases were not treated individually (as established by law) but by means of collective court orders; that the right of the deportees to legal assistance was not respected; that the regulations pertaining to asylum, according to which the request for asylum automatically freezes any deportation procedures, were not observed; that sedatives were administered en masse without

---

42 In 2004 deportation costs were 6,750 euros for Chinese citizens, 3,834 for Ecuadorians, and 2,000 for Senegalese (El País, 27 May 2004).
medical prescription or court order; and that many of the immigrants were deported to third countries because, as the Ministry of the Interior admitted some days later, ‘the identity and country of origin of the deportee was unknown in many cases’ (El País, 28 June 1996).

In the face of these protests, the Minister of the Interior, Jaime Mayor Oreja, was obliged to appear before the Commission for Justice and the Interior of the Spanish Parliament. In his speech before the Commission, which was subsequently analysed by Martín Rojo and Van Dijk (1998), the Minister asserted that the expulsion had been carried out ‘in strict observance of the stipulations of the LOE’ (Diario de Sesiones del Congreso de Diputados, 1996, 44: 848), although he did concede that it had not been ‘precisely a model operation’ (Diario de Sesiones del Congreso de Diputados, 1996, 44: 852). On another occasion, the Minister described the operation as ‘discrete, diplomatic, disagreeable and anti-aesthetic’. In excusing the fact that it had been ‘anti-aesthetic’ and not exactly a ‘model’ operation, he alleged concerns for security. Hence, on the one hand, the Minister stressed that the procedure was not only legal but ‘obligatory’. In his own words, ‘We must not forget that, in keeping with the stipulations of articles 149 and 104 of the Constitution and article 1 of the Ley Orgánica de Protección de la Seguridad Ciudadana [Law on the Protection of Citizen Security], the Government is obliged, through its different agencies and State Security Forces and Corps, to protect and guarantee citizen security and to remove any factors that jeopardise it’ (Diario de Sesiones del Congreso de Diputados, 1996, 44: 848). On the other hand, he trotted out the old bogeyman of the dangerousness and violence of immigrants. While asserting that ‘the human rights of the deportees were not violated’, he was at pains to stress that many of them ‘had criminal records’ (El País, 22 July 1996). Along similar lines, one member of the police union declared, ‘It is more humanitarian to give the detainee a tranquiliser than to fight with him in order to make him undertake the journey’ (ABC, 25 July 1996).

In the end, all these arguments lead back once more to the famous utterance of President Aznar, ‘There was a problem and the solution has been found’. According to the Annual Report of the NGO SOS Racismo (1996: 156), these words can be translated as meaning that ‘[…] irregular immigration is a problem of public order’ and that ‘in order to maintain this order, the State has the right to apply any means’. In other words, as an illegal person, the immigrant is deportable whatever the circumstances. The argument runs as follows: when illegal immigration is presented as a threat, national security takes precedence over any obligation of legality. It is precisely then that the illegal immigrant ceases to have rights and is no longer protected by the law. However, as we shall see below, this a-legalisation or putting the immigrant beyond the reach of the law is even clearer when he or she is now outside (having been deported) or still outside (having not yet arrived) national territory. This is a zone where rule of law cannot be taken for granted.

4.7.2. Non-deportable deportees: The Law 4/2000, passed with the general
consensus of all the parties in the Spanish Parliament, unions, immigrants’ associations and NGOs, made illegal residence subject to a fine but not expulsion. This represented a major change of political direction: regularisation and not expulsion was to be the basic mechanism for combating illegality. Yet, as we have seen above (Section 4.3), the change of policy lasted only a few months. With the absolute majority in Parliament of the Partido Popular (after the elections of March 2000) and the passing of the new Law 8/2000, the penalty of expulsion was reinstated for illegality of either residence and/or work. The reasons adduced essentially boiled down to two: to control illegal migration and to comply with European standards. To cite Mayor Oreja, then Minister of the Interior, speaking in the Spanish Parliament, ‘With this measure, ladies and gentlemen, the aim is to boost a certain capacity for State action with regard to controlling illegal immigration. The countries of the European Union have constitutional means for expelling foreigners in this situation. The Tampere European Council reached its conclusions according to similar criteria and there is no reason why Spain should not have the same legal instrument as the other countries of the European Union’ (Congreso de los Diputados, 5 October, 2000).

As I have noted above, in order to carry out an order of expulsion, the country of origin of the illegal immigrant must be known and the consent of its government must be obtained. The Spanish Government has 40 days to meet these two conditions, during which period the illegal immigrant can be held in an internment centre. If they are not met within the 40 days, the Government cannot prolong the detention and hence the immigrant is freed after having received an expulsion order. This is what happens in the majority of cases. Thus, for example, of the 117,768 expulsion orders issued between January 2002 and July 2004, only 32,749 (27.8 per cent) were carried out (SOS Racismo 2005: 116). It is estimated that between 2001 and 2005 some 122,000 immigrants remained in Spain despite their having received an expulsion order (Silveira Gorski 2006: 5). More recently, of the 48,857 and 45,714 expulsion orders issued in 2006 and 2007, only 11,373 (23 per cent) and 9,536 (20.8 per cent) were carried out respectively (Diario Vasco, 9 May 2008). This means that, in recent years, only one in every five illegal

---

43 This Law stipulates that the penalty for illegal residence can be a fine or expulsion order, depending on the personal circumstances of the foreigner. In spite of the fact that several court rulings have confirmed that illegal presence in the country should be subject to a fine rather than expulsion, in practice it is systematically penalised with an expulsion order (interviews with lawyers in Barcelona, 18 December 2007 and 8 April 2008).
44 In 2008 the maximum custody periods in Member States were 32 days (France, Cyprus), 40 days (Italy, Spain), 8 weeks (Ireland), 60 days (Portugal), 3 months (Luxembourg, Greece), 6 months (Slovenia, Slovakia, Czech Republic, Hungary, Romania), 8 months (Belgium), 10 months (Austria), 12 months (Poland), 18 months (Malta, Germany), 20 months (Latvia) and unlimited duration (Denmark, Estonia, Finland, Lithuania, Netherlands, United Kingdom, Sweden) (data obtained from the website of the European Parliament. Last accessed: 16 December 2009. At: http://www.europarl.europa.eu/sides/getDoc.do?type=IMPRESS&reference=20080609BKG31068&language=EN)
45 In 2007 fewer expulsion orders were carried out than in 2006, partly because Romanians and Bulgarians became European citizens in 2007 and were thus no longer deportable.
immigrants who have received an expulsion order was actually deported. This leads directly to the question of what happened to those immigrants who received a deportation order but who were not deported or, more to the point, not deportable.

In the majority of cases, the expulsion order meant that regularisation was no longer possible, which is to say that the immigrant with a deportation order but not deportable was, moreover, not regularisable. Hence we have a legal figure (of the undeportable, unregularisable deportee) characterised by administrative liminality. Illegal immigrants are both recognised and kept partially and indefinitely beyond the pale. As expressed by one NGO lawyer interviewed in Barcelona (18 December 2007), ‘It’s outrageous! It’s illogical! They bring in an order of expulsion that obstructs regularisation. Regularisation by way of stipulated period of residence requires three years of illegal residence, and yet illegal residence can be penalised by an expulsion order. This is a contradiction!’ Confronted with this situation, the Ombudsman, accepting a proposal from the Comisión Española de Ayuda al Refugiado (CEAR – Spanish Commission for Refugee Aid), proposed furnishing the illegal immigrant with a document that would constitute a form of identity check and that would enable him or her to engage in some kind of employment for as long as it were not possible to carry out the deportation order. The Department of Immigration was swift to reject the proposal, arguing that this practice ‘could end up being a stimulus to the activities of illegal networks of human trafficking’ and that it would bring about a situation of ‘legal uncertainty’ by turning illegal immigrants into resident workers pending deportation (quoted in El País, 24 September 2007).

In fact, among the non-deportable deportee immigrants, the only ones who managed to become regularised were those whose expulsion order had previously been revoked by a lawyer. This was possible in those cases in which the immigrant had direct family members (parents, children or spouse) legally residing in Spain and a formal job offer. After the beginning of 2008, however, some government sub-branches, for example in Madrid and Barcelona, officially began to revoke the expulsion orders of those people who were initiating a process of regularisation on the basis of arraigo (see Section 4.6.8.). The logic of this, according to a representative of one sub-branch in Barcelona, was that ‘Very few deportation orders are carried out. Since we can’t do all of them, priority must be established. It’s necessary to start with people who’ve broken the law or who are in a situation of extreme marginalisation. Before letting in more people from outside, the ones that are already here have to be regularised. But this can’t be talked about too much because otherwise you get the pull effect’ (interview 21 April 2008, Barcelona).

This new possibility of rescinding the expulsion order in the case of regularisation means that immigrants who have received an expulsion order are still deportees in legal terms (although non-deportable in practice) until they meet the conditions required for regularisation. In particular, this means that the immigrant’s status as ‘non-deportable deportee’ lasts until he or she can demonstrate three years of
illegal residence and a certain degree of integration in the social and working spheres (with a job contract for a minimum of one year). This has two major implications with regard to the legal definition of illegality. First, while the immigrant remains illegal, being legally ‘expelled’ heightens the sensation of imminent deportability and thus the fear associated with this. As a representative of the Moroccan Workers’ Association in Catalonia (ATIMCA) noted, ‘Illegal immigrants circulate normally, like everyone else. They know they won’t be directly repatriated. But, yes, with an expulsion order they are scared’ (interview 6 February 2008, Barcelona). Second, the possibility of regularisation after administrative expulsion brings to light the different, contradictory dimensions constituting illegality. From the figure of the non-deportable deportee immigrant who is not regularisable the shift is now to the non-deportable deportee immigrant who is regularisable after three years of illegal residence and proven integration in the social and working domains.

To these two figures must be added, as Sagarra (2002) points out, that of the illegal immigrant who appears in the Census and is thereby a documented resident (at the local level) with access to minimal social services (health and education), and that of the illegal immigrant worker. Taken together, these two figures exemplify yet again the contradictions inherent in the legal definition of illegality in Spain. On the one hand, when they appear in the Census, illegal immigrants are recognised as ‘documented’ residents with some protection of their civil rights. On the other hand, as illegal workers in the informal economy (with much lower salaries and without social security cover in case of illness or unemployment), their presence is not recognised as workers. In brief, while some of their social rights are honoured, they are denied workers’ rights in practice. The dimension of work, along with deportability, ends up being what most clearly marks their illegal status in the sense of being outsiders or ‘others’. It is true, that in general, the figure of the legally-expelled illegal immigrant who is not expellable in practice, who is registered in the Census and working, does not last forever. This is essentially because immigrants are now (since early 2008) regularisable after the stipulated period of time has elapsed. Nevertheless, as long as this category continues, it includes and excludes or, more precisely, constructs ‘quasi-members’ of the community while simultaneously reducing them to being deportable (although mostly not deported) labour.

4.7.3. Rejected at the border: While deportation from inside the country’s territory is convoluted to the point, as we have just seen, of producing the figure of the legally deported immigrant who is non-deportable in practice, rejection at the border is much easier since it does not require the willingness of another government to return the person to the country of departure. Accordingly, if within the territory only one in every five immigrants with an expulsion order is in fact deported, at the border the ratio of people being turned back soars up to nine out of ten. For example, in 2007, of the 50,318 people detained at the border, 46,471 (92 per cent) were repatriated (El País, 9 January 2008). Of these, 24,355 were turned back (on grounds of non-admission) at official border posts (mainly airports and
shipping ports), while 22,116 were rejected (turned back) after being detained when they tried to cross the border illegally (see Table 13).

Deportation by non-admission (denegación) is applied in the cases of those migrants who are about to enter through legitimate channels but are deemed inadmissible by immigration officers. The majority are rejected because they are suspected of intending to overstay their visa. Others are rejected because they arrive without valid documents, with forged documents or because they are unable to demonstrate sufficient financial means. The non-admission file is opened after two interviews (the second usually in the presence of a lawyer) where the traveller is interrogated about the reasons for the journey, documents, means of support and contacts in Spain. The conditions for non-admission are regulated by law. Hence, for example, to enter Spain as a tourist in 2008 it was necessary to have sufficient money (60 euros per day and an overall minimum of 540 euros), a hotel reservation (pre-paid, if possible) or a letter of invitation, a firm booking for the return flight and the person was expected to know what he or she wished to see as a tourist and how to get from the airport to the hotel. Apart from these indicators, a lawyer from the Barcelona College of Lawyers pointed out other matters that also play an essential role when it comes to being granted entry or not. In her words, ‘If you see that their hands are covered in calluses, you know they’re not coming in as tourists!’ (interview 8 April 2008, Barcelona). In short, physical appearance (with evident race and class connotations) would seem to be decisive in distinguishing alleged ‘tourists’ from alleged ‘economic immigrants’.

### Table 13: Repatriation of illegal migrants 2000-2007

<table>
<thead>
<tr>
<th>Year</th>
<th>Expulsion orders (carried out)</th>
<th>Non-admission (denegaciones)</th>
<th>Turned back (devoluciones)</th>
<th>Readmissions</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>6,579</td>
<td>6,181</td>
<td>22,716</td>
<td>---</td>
<td>35,476</td>
</tr>
<tr>
<td>2001</td>
<td>12,976</td>
<td>8,881</td>
<td>22,984</td>
<td>---</td>
<td>44,841</td>
</tr>
<tr>
<td>2003</td>
<td>14,104</td>
<td>14,750</td>
<td>13,684*</td>
<td>50,407</td>
<td>92,945</td>
</tr>
<tr>
<td>2004</td>
<td>13,296</td>
<td>11,280</td>
<td>13,136</td>
<td>83,431</td>
<td>121,143</td>
</tr>
<tr>
<td>2005</td>
<td>11,002</td>
<td>15,258</td>
<td>14,466</td>
<td>52,017</td>
<td>92,743</td>
</tr>
<tr>
<td>2006</td>
<td>48,857 (7,214)</td>
<td>19,332</td>
<td>26,652</td>
<td>46,247</td>
<td>99,445</td>
</tr>
<tr>
<td>2007</td>
<td>45,714 (9,467)</td>
<td>24,355</td>
<td>15,868</td>
<td>6,248**</td>
<td>55,938</td>
</tr>
<tr>
<td>2008</td>
<td>(10,616)</td>
<td>17,317</td>
<td>12,315</td>
<td>6,178</td>
<td>46,426</td>
</tr>
</tbody>
</table>

* The reduction in comparison with the previous year is explained because some of the people sent back appear under readmission after 2003. ** The reduction in comparison with the previous year is explained because, after 1 January 2007, Romanian and Bulgarian citizens became European citizens. Source: Anuarios Estadísticos (Statistical Yearbooks) 2000-2008, Ministry of Interior.

For immigrants coming from afar, which is to say those whose entry is only possible via an official border post (mainly airports), non-admission means not
only immediate return of the immigrant to the country of origin (for which the airline or other transport company is responsible), but his or her passport is also marked with a crossed-out entry stamp so that return will be difficult. As the above-cited lawyer notes, non-admission is, for many would-be immigrants, the end of the line: ‘The most dramatic thing is non-admission. Their hopes, which are personal and family-related, are frustrated. You know that an expulsion file isn’t going to affect the person’s life. It can be revoked with regularisation on the basis of duration of residence in the country. But non-admission puts an end to the migratory project. This is devastating’ (interview 8 April 2008, Barcelona). Despite the fact that the extension of visa requirements to such countries as Peru (2001), Colombia (2002), Ecuador (2003) and Bolivia (2007) has displaced migratory control to the countries of origin, the numbers of people rejected on grounds of non-admission have swelled considerably in recent years (for example, 26 per cent between 2006 and 2007, as shown in Table 13). This suggests the increasing significance of a double filter: before departure (for those citizens for whom a visa is required) and at point of entry (especially those citizens for whom a prior visa is not required).

Besides those people who are rejected at the point of entry, deportation is also applied in the cases of those who are detained on trying to enter the country illegally. On the one hand, as in the case of non-admission, this is a police measure of immediate response. It is therefore a procedure in which civil rights are respected much less than they are in the process initiated when expulsion orders are issued for immigrants who are already in the country. On the other hand, unlike non-admission, and like the expulsion order, being turned back involves deportation but also prohibition of entry for a period of three years. As shown in Table 13, the numbers of people turned back (including readmissions or, in other words, those sent back under a readmission agreement) were particularly high between 2003 and 2006. In the latter year, for example, the numbers of people turned back at the border represented 73.3 per cent of the total of repatriations (including expulsion and non-admission).

While illegal entry is almost invariably associated with the southern frontier, the fact is that most people have been turned back at the border with France. This is noteworthy for a number of different reasons. First, it is a very different matter from what is presented in the picture concocted by the mass media. It is in the Pyrenees and not in the Strait of Gibraltar or in the waters between Africa and the Canary Islands where most detentions and deportations have been carried out. Second, this is an internal frontier of the European Union, which is to say a border that is open to EU citizens and selectively restrictive for those who are not. Third, the fact that the deportations have been carried out at this border rather than the southern frontier also explains the drop in numbers of people turned back after 2007. The reason is simple: after 2007 most people deported in earlier years (Romanians and Bulgarians) were now EU citizens. Finally, it is also interesting

---

46 According to the Immigration Office in Girona, 6,750 travellers were turned back each
because it is here that a bilateral treaty of readmission was applied for the first time.

The readmission treaty between Spain and France was signed in 2002. Article 5 of the treaty establishes that ‘[…] each contracting party will readmit into its territory, at the request of the other contracting party, without any kind of formal procedure, the national of a third state who does not comply with, or who has ceased to comply with the conditions of entry’. The process of turning back the immigrant is greatly expedited because it can now occur ‘without any kind of formal procedure’, or put into effect immediately without any need to abide by procedural formalities. Hence people have been turned back without any form of legal assistance. Despite the protests of the different colleges of lawyers and a court decision stipulating that the right of the ‘returnee’ to effective legal assistance was to be respected, the Spanish government has always responded in the same way: since would-be immigrants are returned under the heading of ‘readmission’ and not ‘turned back’, the bilateral agreement applies. At the border, then, the bilateral agreement takes precedence over the Law on Foreigners, which requires observance of the right to legal assistance in all cases. That is, even at a border inside the European Union, immigrants (or, better said, would-be immigrants) find themselves in a no-man’s land as non-people.

The readmission agreement that the Spanish government had signed with Morocco in 1992 was reactivated in 2004 along the lines of the experience with France. According to what was stipulated therein, Morocco undertook to readmit into its territory all those immigrants who had entered Spain illegally from Morocco, independently of their nationality. While the repatriation of Moroccan citizens began with the signing of the 1992 agreement, the return of citizens of third countries was systematically rejected by the Moroccan authorities on the grounds that there was not sufficient evidence that they had come through Morocco. Hence, for example, from 1999 to 2004, the Moroccan Government rejected all of the 6,420 requests from the Spanish Government for readmission of citizens from third countries (Ministerio de Interior 2006). After 2004, with the change of government (from PP to PSOE), the improved bilateral relations between the two countries led to a cautious renewal of the readmission of citizens from third countries. The number of repatriations to Morocco has been rising since 2006, when readmission of illegal immigrants (Moroccans and people from third countries) was linked to other bilateral arrangements (in spheres such as agriculture, industry and services) and development aid.

In practice, the deportations to Morocco have caused concern and unremitting protest. First of all, in 2006 the leading Spanish newspapers denounced the month at the la Jonquera border in 2004. The figure dropped to 3,700 in 2006 while, in 2007, it was only 200. In 2004, 80 per cent of the people turned back were Romanians and 15 per cent were Bulgarians. At present, the average figure of 200 people turned back each month at this border crossing accounts for some 50 nationalities. (El País, 5 January 2008).
immediate, forcible turning back of illegal immigrants from the Spanish enclaves of Ceuta and Melilla, in violation of all the procedures established by the Law on Foreigners. One member of the Civil Guard declared to the newspaper *ABC*, ‘*We follow orders from the top, even though we all know they are against the law*’ (*ABC*, 5 October 2006). The newspaper *El País* reproduced a recording of another Civil Guard member ordering, ‘*If the fence can be opened and they can be rejected, then get them out!*’ (*El País*, 6 October 2006). Second, protests have been voiced about the practices of detention and repatriation carried out in Moroccan territory. The protests have had a twofold aim: criticising the Moroccan government for violating the human rights of the immigrants and also censuring the Spanish government and the European Union for their policies of externalisation of immigration control.

### 4.7.4. Beyond national borders:

Since 2006, the new mainstays of Spanish policy for controlling migratory flows have been, first, fostering migration controls in the countries of origin and transit and, second, facilitating the repatriation of illegal immigrants. Border control in the countries of origin and transit, as the Minister for the Interior Alfredo Pérez Rubalcaba has indicated, was urged to ensure ‘[…] that the boats do not get far from their points of departure, or that they are intercepted as soon as possible because, otherwise, not only will the danger of loss of human life be higher but also those people who survive will enter our territory and it then will be necessary to initiate the complicated, difficult and expensive procedures of repatriation’ (Pérez Rubalcaba 2008: 76). The repatriation policy has attempted to ease the way for the swiftest possible return of those who, in spite of all the dangers and obstacles, manage to reach Spain. In particular, it aims to ensure that this occurs before the maximum period of detention (40 days) in the internment centres has expired. In both cases, these are policies that require the cooperation of third countries. Hence the so-called Plan África (*Africa Plan, 2006 – 2008*).

The Africa Plan was justified as a reorientation of the priorities of Spanish foreign policy with the aim of establishing a deeper and more encompassing framework for relations with sub-Saharan Africa. The plan had seven goals: 1) Spanish participation in the bolstering of democracy, peace and security in Africa; 2) Spanish contribution to the struggle against poverty and the development agenda in sub-Saharan Africa; 3) promoting cooperation with African countries in regulating migratory flows; 4) active participation in the European Union strategy for Africa; 5) promotion of trade and investment exchanges, with particular attention to fishing grounds and energy security; 6) reinforcement of cultural and scientific cooperation; and 7) strengthening the Spanish political and institutional presence in Africa. Whatever the general presentation of the plan suggests, the most specific measures involved are aimed at shoring up the two new lines in Spanish policy for the control of migratory flows, which is to say, migratory control in the countries of origin or transit and repatriation of illegal immigrants.

This emphasis on migration control and its being tied to development assistance was immediately criticised. Hence, for example, the NGO Intermon Oxfam
protested, ‘On analysing the Africa Plan, one wonders if this is a Spanish plan for Africa or a Spanish plan in Africa’. It concluded, ‘The use of development assistance as payment in return for the African countries putting up fences, tightening up migrant controls or accepting the repatriation of emigrants is a perversion of development assistance and, as such, unacceptable’ (quoted in Asociación Pro Derechos Humanos de Andalucía [Association for Human Rights of Andalusia] 2007: 14-15). In fact, the Spanish Government never denied that this was essentially a tit-for-tat arrangement: greater migratory control (by the African countries) in exchange for greater development assistance (from Spain). The Secretary of State for Foreign Affairs, for example, said it loud and clear: ‘The new-generation agreement on immigration will make development assistance conditional on the struggle against flows of illegal immigrants and agreement to the repatriation of undocumented persons’ (quoted in Asociación Pro Derechos Humanos de Andalucía 2006: 15). The countries of origin were no less aware of the conditions of the deal: Spain would let in more legal immigrants (see Section 4.4.3), offer wells (or other forms of development assistance) and cancel debts in exchange for their cooperation in border monitoring and agreeing to the return of illegal immigrants.

This new direction in Spanish foreign policy has led to the signing, since 2006, of a series of bilateral agreements with such countries as Senegal, Mali, Ghana, Cameroon, Ivory Coast, Cape Verde, Guinea-Conakry and Gambia. These agreements have made it possible, on the one hand, to displace migratory control beyond the Spanish border by shifting the focus of this control more to blocking exit than preventing entry. On the other hand, they have offered the possibility of repatriating illegal immigrants trying to enter from sub-Saharan Africa. Nevertheless, the repatriation measures do not seem to have resulted in a numerically significant response to illegal immigration (see Table 13). Among many other factors, the economic cost of repatriation has been a major impediment. The political costs for the governments of countries of readmission have also meant restrictions on its being put into practice.\(^{47}\) Accordingly, although it is perhaps premature to jump to such conclusions, it would seem that these agreements have ended up working more as agreements on border monitoring and control than readmission agreements (see López Sala, forthcoming). Confirmation of this trend would mean that the agreements have mainly resulted in externalisation and subcontracting of control, detention, internment and repatriation of the would-be immigrants.

If deportation measures have often been carried out on the border with the barest minimum of legal guarantees and observance of civil rights, on the far side of the border there is no such protection worthy of the name. Accordingly, it is here where detention and deportation are carried out with greater impunity. Morocco is a good

\(^{47}\) For example, in May 2006, the return of 99 Senegalese and the resulting protests in the main organs of the mass media led to the suspension of the return of immigrants by the Senegalese government, which was then in the middle of its electoral campaign.
example of this. In 2006, social organisations and human rights campaigners protested the deportation of sub-Saharan migrants to the Algerian border. In particular, they denounced that between 1,000 and 1,200 immigrants had been dumped in the desert without food or water. In 2008, Amnesty International denounced the living conditions and violation of human rights in a detention camp in Mauritania (known as Guantanamito or Little Guantánamo). Rebuilt by the Spanish authorities, this camp fulfilled the function of receiving and retaining until repatriation those emigrants who had attempted to leave from Mauritania for Spain. These two examples make it clear how detention, retention and repatriation tend to be less ‘complicated’ and less ‘difficult’ when they occur beyond Spanish borders. The reason is simple: in this geographical and legal ‘beyond’, the State finally escapes legal, judicial and often, though not always, civil society checks. It is in this space where the status of illegality is most melded with the situation of a-legality.

The new migration policy that emerged from the Africa Plan and the resulting bilateral treaties was presented by the government as a great achievement, justifying the claim by the effect the policy has had on the migratory influx. While it is difficult to establish a cause-effect relationship – and, since 2008, we have to bear in mind the effects of the economic crisis – it would appear that greater control at the point of exit has had the effect of reducing the number of arrivals. Second, the Spanish Government has presented as a great success the fact of its having been the driving force behind new immigration policy at the European level. This has particularly relevant connotations if we recall that, until this date, Spain had tried more to comply with EU demands than define their content. In other words, if the EU had previously influenced Spanish policy, Spain seemed now to influence the definition of EU policy (see, for instance, the words of the Minister for the Interior, Pérez Rubalcaba 2008: 74; see as well Zapata-Barrero & De Witte 2007: 89).

4.8. FINAL REMARKS

Since the 1990s Spain, historically a country of emigration, has become a country of immigration. Apart from the push factors that led many of the immigrants to leave their countries, there is one very clear reason for this influx: throughout the 1990s and, in particular, from 2000 to 2007, Spain had an ‘insatiable hunger’ for immigrant workers. The first question to consider is how the Spanish State responded to these heavy demands for foreign labour and, more specifically, how it regulated the entry and stay of these ‘demanded’ foreign workers. A review of immigration policy would seem to offer a clear answer to this question. Until 2005, the Spanish State responded with an entry policy that was highly restrictive. First, this was how it appeared on paper, which was the result of the fact that, in keeping with EEC-imposed guidelines, the first Law on Foreigners (LOE, 1985) was promulgated with the aim of blocking entry to immigrants en route to the Western
European countries via Spain. Second, the policy was also restrictive in practice. As we have seen, there are several reasons for this. For a long period, entry was subject to very strict evaluation of the job market; entry has always been conditional on a prior job offer which, in many cases, was difficult to achieve without already being in Spain; and, finally, the fact that the administrative machinery was unable to handle the situation made legal entry an excessively long and complicated process.

This restrictive entry policy did not mean, however, that low numbers of immigrants were entering Spain. Due to the big demand for foreign workers, the immigrants were coming into the country and staying. The difference was that since they could not enter legally, they did so illegally. Until 2005, the most usual tactic was to come in on a tourist visa, remain, look for a job and then, with the very-necessary job offer now in hand, become regularised, either through the frequent regularisation drives or through the official channels for gaining entry to the country, now used as if the immigrant worker were still in his or her country of origin. In fact, this is not so different from what occurred in most countries of Western Europe in the 1960s. Although, at the time, many of these countries had opened up legal channels for entry (via the well-tryed guestworker programmes), many immigrants, including a large number of people from Spain, arrived independently of the scheme, found work and subsequently legalised their situation (Groenendijk & Hampsink 1995: 1). While they were then perceived as ‘spontaneous immigrants’, people doing the same thing in recent years in Spain have come to be deemed ‘illegal immigrants’. While the immigrants of those times had legal channels available to them, in Spain the ‘spontaneous’ or ‘illegal’ option was the only one until 2005.

In short, in contrast with Western Europe, legal entry into Spain (as an immigrant worker) was for a long time more a juridical fiction than a reality. This mismatch between legality and reality, between a particularly restrictive policy and a reality notable for the large numbers of people entering the country, made it possible to comply simultaneously with demands for closure (from the European Union but also from the trade unions who did not look kindly on the entry of new workers into a job market characterised by high unemployment figures) and insatiable demands for foreign workers (from employers). In practice, the mismatch brought about a veritable model of illegal immigration. In the long term, however, this model has not been sustainable. First, illegal immigration could not continue in an unlimited and indefinite fashion without calling into question the legitimacy of the State in its role of controlling migration flows. Second, illegal workers have frequently been perceived as a threat to the wage and working conditions of legally employed workers. Hence, the very same reasons that had the unions wanting to limit entry simultaneously led them to demanding legal recognition for those immigrants who were already working. Third and finally, not only the legal but also the political process brought about progressive recognition of the illegal immigrants to such an extent that the State could no longer go on ignoring their presence.
For all these reasons, this model of illegal immigration gave rise to the need to carry out periodical regularisation drives and attempts to direct immigration through legal channels. The former response has frequently been interpreted (especially by politicians) as the best illustration of the ‘failure’ of immigration policies and, more generally, the State’s loss of control. Nevertheless, as this chapter shows, the regularisation policy in the Spanish case should be understood primarily as a de facto entry policy. Seen from this perspective, the regularisation drives then appear as a measure that reconciled contradictory demands. The end result has been the deferred ‘entry’ – since the condition for every regularisation is a period of illegal status – of however many immigrant workers were required by the employers. In specific terms, it makes possible the situation mentioned above whereby immigrants enter the country, look for work and, once they have a job, they stay. As González-Enríquez (2009) has recently noted, this is nothing more than a cheap model of recruitment in the place of destination. It is cheap in two ways, first because the costs and risks of the migratory process are shouldered by the immigrant and, second, it is cheap in political terms because it is possible to have a high numbers policy without putting it in writing and thus without needing to justify it.

With regard to the need for legal channelling of immigration, entry policies after 2005 do, in fact, seem to have opened up this possibility. There appeared to be no other alternatives at the time. If control over migration flows was the aim, entry had to be opened up. However, for all the political volition and rhetoric, the administrative procedures for legal entry have continued to be slow (frequently taking over a year), while job recruitment in the country of origin has been more myth than reality. This, as we have seen, has raised the doubt as to what extent the authorised forms of entry have functioned exclusively to channel demands for immigrant workers or whether, in addition, they responded as well to demands that are more concerned with friends and relatives of those immigrants who are already in Spain. While a more sociological perspective would suggest that migratory processes always arise from different sets of factors, this combination of demands has aroused suspicion among politicians and civil servants. The bottom line of the misgivings is always the same: ‘What if they’re coming more because they know people in Spain than because there’s a specific demand for labour?’ Such reservations highlight the great fallacy on which immigration policies in Spain have been based: the notion that immigration is and must be an exclusively work-related phenomenon.

Once the development of immigration policies in Spain has been outlined, the next question is to consider the relationship between markets, citizenship and rights. Although both questions will be analysed in greater depth (and in comparative terms) in the coming chapters, I should like to advance a couple of points here. Taken as a whole, the case of Spain shows how, despite what the laws and policies establish on paper, in practice the market is what has determined the numbers of people coming in. In brief, as many immigrant numbers as ‘demanded’ by employers have entered the country. This means that, while migration policy (in
both formulation and implementation) seemed to be responding to demands for closure, if we take the effects of the policy and the combination of different related measures (such as regularisation programmes) into account, it would seem that, in the end, the market has ruled the day.

This does not mean that the demands for closure (which I have called the exclusive dimension of citizenship) have not played an important role as well. In effect, they brought about restriction of legal entry, thereby making illegal entry the only alternative. In practice, the incoming immigrants arrived with very few rights. This situation of illegality, product of a restrictive entry policy, has had significant effects on the early years of immigrants in Spain. Furthermore, the demands for closure have also meant that legal residence in Spain is a conditional status during the first five years. As we have seen, renovation of work and residence permits (at the end of the first, third and fifth years) has depended on effective and formal integration into the labour market. This means that markets (contractors) have not only determined who comes in but also who can stay. Again, legal immigrants can lose their status (and hence their rights) in these first five years. The relapse into illegality of those people who are unable to renew their documents is, in fact, a decisive feature that explains much about the Spanish model of illegal immigration. All of these matters lead one to conclude that the demands for closure have not limited entry but they have restricted access to membership of (legal and illegal) immigrants in the early years after arrival.

What role have rights played? To what point has their role been as decisive as that observed by many Western scholars in other liberal democracies? In general terms, rights (through the legal system as well as the political process) have imposed two major limitations on policy. First, they have introduced a time limit: even while the rights of immigrants were curtailed in the early years (because of their illegality and, subsequently, conditional legality), they could not remain so in the long term. Over the years, the majority of immigrants have managed to obtain permanent resident status and, in the end, Spanish citizenship. In other words, they stayed on and were finally recognised as fully-fledged citizens with all the rights that status entails. Second, rights constraints have introduced a geographic factor that also reins in policy: the impossibility of completely excluding the illegal immigrant once he or she has entered the country. As we have seen, the illegal immigrant is documented at the local level and has access to basic social services (health and education) along with regularisation after three years. Moreover, deportation from within is particularly difficult. In contrast with those who are physically inside the country, it is much easier to detain, intern and deport those people who are on the geographic frontier or beyond. The reason is simple: from this geographic beyond a legal ‘beyond’ (or space of a-legality) has been constructed where everything (or almost everything) seems possible. If Europe appears to have exerted an influence on Spanish immigration policy in its beginnings, with this policy based on the ‘beyond’, Spain seems now to be leading the way in recent European thinking in this regard.