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

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Citation for published version (APA):
SUMMARY

The State regulation of labour migration seems to be confronted with a double dilemma. First, while markets require a policy of open borders to provide as many migrant workers as demanded, citizenship seems to require some degree of closure to the outside. Second, while the exclusive character of citizenship demands closed membership, civil and human rights seem to undermine the State capacity to exclude foreigners once in the country. This thesis analyses this double dilemma (or trilemma) between markets, citizenship and rights by considering how Malaysia and Spain have responded to the demand for foreign labour. While being similar in terms of markets, these two countries seem to be different both in terms of citizenship and rights. The question then is: to what extent do different features in terms of citizenship and rights lead to different State responses to the demand for foreign labour?

On the basis of archival research, interviews with the main stakeholders and secondary literature, this question is answered by considering four policy measures from the 1980s onwards: policies regulating entry; policies regulating stay; regularisation programmes; and deportation campaigns. These measures are analysed not only regarding their formulation and implementation but also considering their effects. This allows, first, to go beyond policy goals and discourses and therefore elaborate a more complex and nuanced picture on migration policy models; and, second, to understand how policy effects constitute part of the context for further decision-making.

A quick review of entry policies over the last twenty years in both countries leads one to the conclusion that, in effect, Malaysia and Spain represent two different and even opposite models. Following Arango's typology (2003: 3), Malaysia is an example of a non-democratic or autocratic State with few problems letting large numbers of people in but only on condition that they are temporary labourers with limited rights. Thus, in Martin and Ruhs' terms (2006), Malaysia presents a policy of high numbers and low rights. In contrast, Spain would fit in the category of a liberal democracy with a policy recognising moral and political obligations vis-à-vis the immigrants while attempting to keep the numbers being admitted as low as possible. Spain thus would be a perfect example of a policy of low numbers and high rights. While Malaysia tried to reconcile the demand for migrant workers with the demand for closure by opening up entry but closing access to membership, Spain seemed to be guided by the restrictionist national interest, thus giving priority to the demands for closure and rights constraints rather than the demands for migrant workers.

However, to take this conclusion would mean to remain on the surface of things, or settling for an analysis of written policy and its implementation without inquiring into its effects. In Malaysia, the immigration policies produced what they claimed, that is, many immigrants with very few rights. In Spain, despite the restrictiveness of its immigration policies, immigrants kept coming in all the same. The mismatch
between significant demands for foreign labour and highly restrictive entry policies led to an out-and-out model of illegal migration. This means that in Spain too the demand for foreign labour led to a situation of high numbers and low rights: high numbers in the sense that all demands for migrant workers were covered; low rights in the sense that, in their capacity as 'illegal', immigrant workers entered the country and worked without having a legal existence, which means without minimal social and labour rights, and without the fact of their presence affording access to permanent residence or citizenship.

Both in Malaysia and Spain entry has thus been determined by the respective markets. Basically, in each case, as many immigrants as required by employers have come into the country. In the face of this situation, characterised (explicitly or implicitly, directly or indirectly) by what might be described as 'open borders to foreign labour', both states have attempted to block access to membership. The main difference lies in the time factor. While in Malaysia exclusion of migrant workers has been total and indefinite, in Spain it has only been possible in a partial and temporary form. In contrast to Malaysia, migrants got conditional residence in the mid-run (through regularisation programmes) and they could finally obtain the permanent residence or citizenship, thus being finally recognised as full members of the community in the long-run. This means that, at the end, the situation in Spain could be characterised as one of high numbers and high rights. Contrary to what could be said on the basis of written policies, the restrictionist national interest succumbed thus to market demands and rights constraints.

In contrast to Spain, in Malaysia neither legal nor political processes have been able to restrain the power of the state to control and limit the presence of immigrants in the country. In this sense, Hollifield would be correct in stating that the non-democratic states are less encumbered. Nonetheless, to think that in the absence of legal or political limits there are not limits at all, is to think exclusively within the parameters of 'la pensée d'État'. In Malaysia, too, the words of Max Frisch apply: the government 'asked for workers, but human beings came'. In this case, the humanity of migrant workers has not been upheld by the courts or by social and political actors but rather by the immigrants themselves when they challenged the law precisely by means of opting for illegality. As noted several times throughout this study, the resort to illegality has made possible for migrants in Malaysia to 'escape' the restraints imposed by the state-regulated migrant labour system. Unlike legal migrants, illegal migrants can change jobs, can to some extent negotiate their salary and working conditions, do not have to pay extra to enter or remain in the country and can prolong their stay beyond the temporality stipulated by the Malaysian government.

Finally, the comparison between Malaysia and Spain allows us to re-consider current conceptualisations on illegal migration. First, in both cases we see how illegal migration does not happen despite migration policies but because of them. While in the case of Malaysia illegality results from a bureaucratised and commercialised border and from the resistance of both employers and migrants to
the rigidities of the labour migrant system, in Spain illegal migration is a direct outcome of the mismatch between the economics and the politics of migration. Second, this comparison reveals as well different meanings of illegality. In Malaysia illegality does not always mean confinement to a subordinate identity. It may be as well a form of resistance. In Spain illegal migrants, contrary to what is commonly observed, are excluded and included at the same time, thus turning illegality into a differentiated form of inclusion rather than as absolute shutting-out.