Reconsidering the 'policy gap': policy implementation and outcomes in Spain

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Abstract

By analysing entry policies and regularisation procedures in Spain from the 1990s to 2007, this article examines how the mismatch between very restrictive immigration policies and increasing foreign labour demands translated into a model of illegal migration, which in turn gave rise to the need to carry out periodical regularisation drives. This double 'policy gap' between legality and reality, and between entry policies and regularisation procedures, is explained as a policy in itself and as a way to solve in practice the apparently unsolvable dilemma between the demands for closure and the insatiable demands for foreign workers.

Keywords

policy gap, immigration policies, policy implementation, regularisation, Spain

Author's biographical note

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Introduction

Theories of migration policies have paid particular attention to the question why migration policies fail. Although often mixed up, two different policy gaps have been identified. First, some scholars have identified a gap between policy goals and outputs. For instance, according to Cornelius and Tsuda (2004: 5), this gap would result from inadequate policy implementation or enforcement and its unintended effects. In more specific terms, this gap is explained by four main factors: 1) the reliance on policy instruments with inherent flaws; 2) the macro-structural processes, such as the structural demand for migrant workers or cross-national disparities and transnational economic and social ties; 3) the domestic and international constraints; and 4) the ambiguous policy intentions.

Second, other scholars have observed a gap between public and policymakers at the decision-making stage. Taking a neoclassical political economy approach, Freeman (1995) notes a discrepancy between the desires of a largely anti-immigration public and the expansive bias of policies, which would be formulated under direct pressure from employers and immigrant groups. From a neo-institutionalist stance, Hollifield (1992, 2005), Joppke (1998a, 1998b, 2005) and Guiraudon (1998, 2000, 2002) explain the gap between a restrictionist rhetoric and an expansionist reality by referring to the self-limited sovereignty of liberal democracies and, more specifically, to the constraints imposed by liberal constitutions and strong and independent judiciaries.

These authors refer to nationally defined rights and the role of courts in order to explain the extension of (social and residence) rights to post-war guestworkers and their families, and the admission of major refugee flows in Western Europe from the 1980s onwards. From a more theoretical perspective, this brings them to the conclusion that rights constraints do not result from declining sovereignty in an increasing globalised world – as argued by authors such as Bauböck (1994), Soysal (1994) and Jacobsen (1996) – but rather from the functioning of the legal system (or rule of law) in liberal states. As Joppke notes in an apparently tautological sentence (1998b: 290), ‘accepting unwanted immigration is inherent in the liberalness of liberal states’. Similarly, Hollifield (2000: 148) has referred to what he calls the ‘liberal state thesis’, or the
notion that ‘rights’ (beyond push-pull and social network factors) are one of the key explanatory factors for the persistence of international migration to liberal states.

Built upon the critique on these approaches, Boswell (2007) has proposed what she calls a ‘third way’ or alternative theory on migration policy. Her starting point is twofold. First, state's interests – its functional imperatives – are central to any political theory (Ibid. 88). Second, these interests and the tasks that the government must carry out are sometimes questioned (or tend to contradict to each other) in the field of migration policy. In particular, Boswell identifies four tasks to be fulfilled by the (liberal welfare) state: 1) provide international and internal security for its citizens (security); 2) contribute to economic growth and accumulation (accumulation); 3) promote a just pattern of distribution and protect the privileged rights of its nationals (fairness); and 4) conform to certain formal conditions considered vital for the preservation of democracy and liberty (institutional legitimacy).

Interestingly, Boswell’s approach brings out the inherent tension between the state imperative to promote economic growth (accumulation) and that of protecting citizens’ privileged rights (security and fairness). Moreover, unlike most contemporary scholars, she does not conceive of rights as constraining state’s capacity from without – either by international human rights regimes or legal institutions – but from within – because the state’s legitimacy depends on its respecting its own laws and rights. Finally, by identifying the tasks of the state and assuming the difficulty of carrying them out simultaneously, Boswell concludes that the fundamental question is no longer one of elucidating why states fail but rather how states manage to reconcile these conflicting demands (ibid. 92).

The present article takes up Boswell’s question as its starting point and, in particular, the assumption that the state is obliged to respond simultaneously to different and contradictory demands in the field of migration control. However, in contrast to Boswell, these contradictory demands are not analysed with regard to 'the state's perception about whether it is realizing public expectations about state legitimacy' (ibid. 93) but rather taking into account the interplay between different policy measures, policy implementation and outcomes. On the basis of primary documents (legislation, policy documents, official reports and newspapers), interviews with a broad set of
stakeholders and secondary literature, this article shows how the double mismatch between legality and reality, and between immigration policies and regularisation programmes, should not be understood as a policy gap or as a policy failure but rather a policy in itself and as a way to solve in practice the apparently unsolvable dilemma between the demands for closure and the insatiable demands for foreign workers.

2. Immigration Policies

Since the 1990s, Spain, historically a country of emigration, became 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 particularly from 2000 to 2007, Spain had an 'insatiable hunger' for immigrant workers. 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. 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). Yet, the drop in unemployment figures (7.1 per cent in 2005), the increase in employment activity rate (among females measured at 58.1 per cent in 2005) and the demographic shock due to the decline in birth-rate after 1976 made it difficult to cover these increasing labour demands. The mismatch between labour supply and demand was solved by the entry of immigrants, who absorbed 53 per cent of the new jobs between 2001 and 2005 (OLIVER ALONSO, 2007: 50-55).

Despite these insatiable demands for migrant workers, immigration policies were rather restrictive. The reasons are multiple. First, the Law on Foreigners (from 1985) was promulgated with the initial aim of blocking entry to immigrants en route to Western Europe via Spain. In a moment when most European countries were closing their doors not much to migrants but rather to the so-called labour or economic migrants, it was difficult for Spain to justify a much more open admission policy. Second, labour immigration was also restricted due to high unemployment rates (above the 20 percent in the mid-1990s) in Spain. Third, renewal during the first five years of residence was made dependent on immigrants' formal integration into the labour market. This means that those being unable to have a formal employment run the risk of losing their residence status. Last but not least, immigration policies have been not only
restrictive on paper but also in practice. Complicated and time consuming administrative procedures turned legal entry and renewal into an uncertain and very time consuming process.

**Admission policies**

Despite 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 in Spain (with the exception of family reunification and asylum) has always been based on the notion that immigration had to fit the specific needs of the labour market. As Raimundo Aragón Bombín (1995: 108), then head of the Department of Migration, 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'. This means 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. Speaking of a job offer that is 'not covered' means as well that official approval is only given for job offers that are not filled by Spanish and EU citizens or authorised residents. The aim is to ensure that national (or otherwise authorised) workers are not displaced by foreigners.

This policy can de facto turn the matter of entering the country into something extraordinarily open or extraordinarily closed. What happened, in fact, was the latter. In the 1990s, when assessing the situation of the national labour market, the main consideration was not so much the candidates who presented in response to a specific offer, but the general pool of unemployed. In practice, 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 (2006: 149) noted, only those applications with a 'very precise and exotic profile' had any chance of being authorised. The rest of the jobs were filled by irregular immigrants (ARAGÓN BOMBÍN, 1993: 13).

With a view to channel irregular migration through legal channels, the government (still led by Partido Socialista Obrero Español) 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 second mechanism was that the job offers presented under the heading of the quota system did not have to be evaluated in light of the labour market. In other words, the needs of the labour market were determined prior to the offer of employment, the employer thus supposedly gaining in terms of certainty and speed in the procedure. Despite the government's sanguinity over the new measure, of the 20,600 places offered by the government in 1993, only 5,331 became effective with a job offer by employers. One of the difficulties 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.

Although the politicians (from all parties) insisted on the need to channel labour migration legally, entry policies of the 1990s were not at all effective. On the one hand, the regular entry mechanism turned out to be very limited because of the impossibility of getting around each application's requisite submission for evaluation vis-à-vis the national labour market situation. 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 de facto favouring illegal immigration. The most practicable way to work legally in Spain was to enter or stay in the country illegally and then to find work and regularise one's situation through the quota system or a regularisation programme.

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 closed down the regular entry mechanism and left the quota system as the only system for legal entry. It was repeatedly stated in Spanish Parliament that the new quota system would finally enable design, management and control of immigration by defining each year how many foreign workers could be contracted by sector and province and by making possible to manage migratory flows from countries of origin. With this purpose, after 2002, the job offers had to be generic in type, that is, designating the job but not determining the worker. This requirement was an attempt to avoid taking candidates already working
illegally in Spain, as had occurred throughout the 1990s. This meant that, for the first time, the Spanish government was responsible for managing job offers and selecting candidates in their countries of origin.

Unlike the political rhetoric that, after 2000, presented the quota system as the core element in Spain's immigration policy, the data reveal a somewhat limited relevance. 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 these reduced numbers. 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 more channels for new immigrants (APARICIO WILHELMI & ROIG MOLÉS, 2006: 158). A second factor is 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, it is important to note the poor representation of small and medium-sized firms in the big employers' organisations and thus in the process of determining the quota. A representative from Comisiones Obreras (CCOO), one of the biggest unions in Spain, indicated that what made the quota forecasts so limited was the absence of any serious study of labour market needs. He exclaimed: 'How is it going to work if the list is drawn up in a week! (…) There is no seriousness or responsibility' (interview 2 February 2008, Barcelona).

If the annual quota assignment 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, respectively, were covered (CONSEJO ECONÓMICO Y SOCIAL, 2004: 91-92). To explain the very limited use of the quota (especially for stable jobs), many of my interviewees concordantly pointed out the procedures' time-consuming complexity and, again, the difficulties involved in contracting a worker in his or her country of origin. The Consejo Económico y Social (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 shutdown of the regular entry mechanism and the channelling of immigration exclusively by means of the quota system placed extreme limitations on legal entry to Spain. As a result, it once again favoured illegal immigration. As Iratxe García Pérez, an opposing PSOE Member of Parliament criticised at the time: 'This restrictive, complicated and badly planned framework has meant that there is less legal immigration and more illegal immigration' (Spanish Parliament, 8 April 2003). To give one example of the problem, compared 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 PP government authorised the regularisation of more than 500,000 people. 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) Foreigners Law, 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 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 to the detriment of the regular entry mechanism, the new government opted for combining both forms of entry. While the quota system was thought to make it easier to cover the generic types of work offer more quickly (without a previously assigned
specific worker), the re-start of the regular entry mechanism was meant to make it possible for designated jobs to be offered as well, along with those in cases where a would-be employer had operated with insufficient foresight and was thus unable to work through the quota system.

In order to adapt the old mechanism to the aims of the new policy, the 2004 regulations proposed the quarterly production of a list of jobs that could not be filled, ordered by sector and province, enabling the contracting of foreign workers without prior case-by-case assessment of the national labour market. This catalogue was meant to give a political definition of the economic sectors that were in demand of foreign workers and, by so doing, speed up the process of contracting. The 2004 regulations also 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 this mechanism from becoming de facto a mechanism for regularising the situation of immigrants already in Spain.

The results of this recent change in entry policy have been various. If we focus on the quota system, we must note clear continuity with the past. Though it worked as an instrument for temporary contracting in sectors such as agriculture and the hotel and catering trade, the forecasts for stable jobs continued to be quite limited, while actual employment offers made under this heading were still more limited. In contrast, the new regular entry mechanism became paramount: 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 the new regular entry mechanism over the same period (MINISTERIO DE TRABAJO, 2008). In contrast to the latter, the former was not limited by an annual ceiling. The success of this mechanism should also be explained by the fact that immigrants' social networks ended up fulfilling the function of mediation that the state had not been able to achieve. If during the 1990s the difficulties of contracting at origin arose from a lack of mediation mechanisms and in the early 2000s from the limitations of state intervention in selecting the workers for employers, the existence of immigrants' social networks finally permitted mediation between the worker in the country of origin and the employer in Spain.
Renewal procedures

Not only has the entry of foreigners depended on a specific job offer, but so has their remaining in the country. 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 amount of time worked within the validity period of the permit that the immigrant wishes to renew. 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). The link between permit 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 (2000: 13) has remarked: 'If there's money, there are documents.'

In contrast, immigrants unable to demonstrate their integration as workers during the first five years of residence run the risk of losing 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 characterises the Spanish job market. For example, of the eight million job contracts signed for 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 note (2006: 118), this is because of the difficulty in proceeding to effective and stable integration after only one year of residence. Furthermore, 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 transforms 'market preferences into requisites or prescriptions in legal regulation' (CACHÓN, 1995: 111-112), only increased job instability for the new arrivals and, as a result, their legal instability.

Another cause for loss of legal status was the long waiting period involved in completing application renewal paperwork. This slowness, principally brought about by
a general breakdown in the management of foreigners' affairs, has not infrequently resulted in a dropping of the job offer on which the application renewal is based. Consequently, in the absence of a job, either the application was turned down or obstacles were placed in the way of subsequent renewal (depending once again on integration into the labour market) of the permit that was originally granted. Loss of legal status due to renewal paperwork is what Izquierdo (1996: 150) defined in the mid-1990s as 'institutional production of the undocumented'. In 2004, 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 were applications for the 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’ (Spanish Parliament, 13 September 2004).

Whether caused by the impossibility of demonstrating effective and formalised integration into the Spanish labour market or the time-consuming paperwork involved in the renewal processes, this loss of legality is indubitably a major factor contributing to the enormous proportions of illegal immigration in Spain up until 2005. Only taking into account this relapse into illegality, is it thus possible to understand the persistence and dimensions of illegal immigration in spite of frequent regularisations, namely those of 1985-1986, 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. 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 still retained this status one year later (RAMOS GALLARÍN & BAZAGA FERNÁNDEZ, 2002: 9).

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 Caldera, 306,838 applications for renewal were granted by default between 2001 and 2004 (Spanish Parliament, 13 September 2004). Although a
generally presumed renewability made it possible, in part, to overcome the effects that administrative delays previously had on migrants’ legal status, the measure was by no means problem-free. Sometimes the situation was a veritable Catch-22. For example, red tape-ridden delays in some provinces thwarted applications from being filed and, hence, from immigrants being eligible for the rule of positive silence (CABELLOS ESPIÉRREZ & ROIG MOLÉS, 2006: 121). Several of the lawyers I interviewed also mentioned the fact that many employers and even the Social Security Department required a certificate of administrative silence which, given the bureaucratic collapse in offices dealing with foreigners affairs, tended to be very difficult to obtain (interview with a CCOO representative, 11 February 2008, Barcelona).

What seems paradoxical is that a 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 was the period provided for renewal not extended so as to secure migrants’ legal stability? Why did they continue with this guestworker approach when immigration was 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 was still difficult to visualise an immigrant who was not primarily an immigrant worker with a job. Leaving aside the applicants for political asylum and family reunification initiatives, immigrants’ entry and stay (in the first five years) continued to depend on their position in the labour market: they could only enter the country when they had a job contract and they could only renew their permit if they could demonstrate being integrated into the formal job market.

3. Regularisation policies

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 large numbers of people entering the country – made it possible to comply simultaneously with two sets of claims. There were commands for closure by the EU as well as the trade unions, which did not look kindly on the entry of new workers into a job market characterised by high
unemployment figures, and there were the insatiable demands of employers for foreign workers. This mismatch, together with overwhelmed administrative machinery, brought about a veritable model of illegal immigration. In the long term, however, this model was not sustainable.

The first reason is that illegal immigration could not continue in an unlimited, indefinite fashion without calling into question the legitimacy of the state in its role of controlling migration flows. Moreover, illegal workers were frequently perceived as a threat to the wages and working conditions of legally employed workers. Hence, the very same reasons compelling the unions to limit entry simultaneously led them to demand legal recognition for those immigrants already working. Finally, not only did the legal process, but also its surrounding politics, bring about recognition of the illegal immigrants to such a progressive extent that the state could no longer go on ignoring their presence. For all these reasons, as it will be described in this section, this model of illegal immigration gave rise to the need to carry out periodical regularisation drives.

Regularisation drives

Whether it was because legal entry was so difficult or because the few immigrants who entered legally (or were subsequently regularised) lost their legal status with the years, or because many illegal immigrants were excluded from the regularisation processes, the government was obliged to introduce frequent regularisation programmes in 1985-1986, 1991, 1996, 2000, 2001 and 2005. Except for the 2005 programme – hotly discussed in Spain and at the EU level –, each time there was general consensus that regularisation of irregular immigrants was needed. Employers' organisations asked for regularisation so as to legalise their workers; trade unions saw in regularisations a way to reduce the so-called informal economy and protect the national labour market; NGOs, migrant associations, and institutions like the Ombudsman and lawyers' colleges pushed for regularisations as a way to extend rights or, in their own words, 'papers for all; for the government, regularisation programmes were seen a necessary instrument to correct a posteriori non-working migration policies and to reduce irregular migration before launching new immigration laws and policies.

The first regularisation programme (1985-1986) was launched without much discussion. After passing the first Foreigners Law, the process was aimed at irregular
immigrants who had, up until then, gone about their working and social lives without scares and without any awareness of illegality but also at those foreigners whose status became illegal with the change to the law. In fact, the programme was presented more as a way of providing requisite documents than regularising irregular immigrants. Of the 43,815 applications filed (ARAGÓN BOMBÍN & CHOZAS PEDRERO, 1993: 28), more than 70 per cent came from economic immigrants from poor countries with scant educational qualifications, while the rest consisted of immigrants from the European Community (mainly Portugal, the UK, Germany and France), most of them retired and with sufficient educational and economic resources (IZQUIERDO, 1989: 69).

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. This led to pass a Green Paper, which envisaged a new regularisation process. Unlike the previous procedure, this time the programme had a significant work component and led to the regularisation of 109,135 people, most of them economic immigrants from non-European countries. Another novelty was the involvement of social organisations, unions and NGOs. 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. Although it cannot be said that the volunteers, activists and social organisation experts 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 consensus over the need to ‘normalise’ the situation of immigrants (SUÁREZ NAVAZ, 2000: 8).

In 1996 the first immigrants’ associations, different NGOs and institutions like the ombudsman and lawyers’ colleges pushed for another reform that would culminate in a modification to regulations for applying the Foreigners Law. Once more, the changes in immigration policy were accompanied by a process of regularisation. However, this time, the aim was to regularise those foreigners who, due to requirements of the previous regulations, had not been able to renew their permits. It was thus more a process of re-documentation than a regularisation in the strict sense of the word. Besides this regularisation, with 24,691 applications (ARANGO & SUÁREZ NAVAZ, 2002: 133), from 1994 to 1999 the main form of regularisation comprised entry policies and, in particular, the quota system. As said above, the quota was used to contract
foreigners already working (illegally) in Spain. Once a job offer was authorised, the foreigner had to apply for a visa in his or her country of origin or, as was the practice, at a Spanish consulate in a neighbouring country. On other occasions a visa exemption was granted. With the visa (or exemption thereof), the foreigner legally re-entered Spain or ultimately received – without having to leave – a work and residence permit. It has been estimated that, between 1993 and 1999, some 130,000 foreigners were regularised in this way (GARCÉS-MASCAREÑAS, 2012: 149).

The changes in the Foreigners Law with the promulgation of Law 4/2000, again introduced into the Parliament by the minority parties with the support of immigrants’ and social organisations, were once more accompanied by a new extraordinary regularisation drive. As Arango and Suárez Navaz (2002: 141) indicate, this reconfirmed the institutional tendency that turned ‘extraordinary processes into a dependent variable of legislative change’. As on other occasions, the main objective was to cut the numbers of irregular immigrants’ right back to zero so that the new law could go into effect without hindrance. The idea was to regularise or re-regularise those immigrants whose illegal status had been brought about by the previous law, either in the moment of renewal or when being rejected for the initial permit. The reality, however, turned out to be very different when it quickly became evident that many irregular immigrants had not yet had the chance to apply for a permit. This led the government to change the requirements for regularisation. This time a total of 246,086 applications were filed, of which 60 percent received a favourable response (RIUS SANT, 2007: 1999). Although this process regularised more irregular immigrants than ever before, the number of those excluded was also much higher than ever before.

As a consequence, with the aim of completing a regularisation process that was perceived as being unfinished, the reform of the new Foreigners Law (Law 8/2000) included a regulation that contemplated an official review of the rejected applications. In 2001 61,365 files out of the almost 100,000 that had been rejected in 2000 were favourably reviewed. Moreover, the mobilisations by Ecuadorian immigrants – following a traffic accident in Lorca where thirteen Ecuadorian irregular immigrants were killed – led to the regularisation of more than 20,000 Ecuadorian citizens. Other mobilisations (church lock-ins, hunger strikes and demonstrations) in Barcelona, Lepe, Murcia, Cádiz, Sevilla, Granada and Madrid, with the support of the ombudsman, trade
unions and social and immigrants’ organisations, ended up with new regularisations drives in 2001, representing a total of 351,269 applications of which 63 per cent were accepted (GARRIDO MEDINA, 2003: 12).

Despite these frequent regularisation programmes, few years later the number of irregular immigrants in Spain was calculated to be as high as one million. The administration-caused illegality of those who lost legal status was now more than ever aggravated by the illegality caused by the difficulty (if not impossibility) of legal entry. In this context, the new PSOE-led government approved a new regulation of the law, which again was accompanied by a new regularisation drive in 2005. In contrast to previous programmes, the 2005 regularisation was above all a regularisation of workers to combat irregular employment. The involvement of trade unions and employers' confederations in policy-making explain this shift, while criticism from the opposition party Partido Popular and several EU member states arguably contributed to the government's zeal in reminding the public that the 2005 programme was only a “normalisation of workers”. By the end of the process, which was announced as the very last regularisation drive, 691,655 applications were filed, of which 83.6 per cent were granted.

After the 2005 regularisation, the message given out by the government was that, from then on, immigration had to 'be legal', and that anyone who entered the country or who was staying on illegally would be 'returned' (i.e. deported) to his or her country of origin. Although the political discourse emphasised border control and deportations, nobody counted on these measures as being sufficient to reduce illegal immigration. Therefore a regularisation mechanism on a case-by-case basis was put in place in 2004. The idea was 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 a so-called “pull-effect” ' (CONSEJO ECONÓMICO Y SOCIAL, 2004: 139). As an NGO representative noted, the aim was to continue regularising immigrants 'without bringing it to people's attention or giving rise to suspicion in civil society' (interview 12 December 2007, Barcelona).

With this objective, two regularisation mechanisms were introduced. The first one (called arraigo social) was a means of regularisation for those people who could
present a proof of having resided in Spain for three years, a crime-free record in Spain and their country of origin, a one-year minimum contract, proof of family ties or a report from the municipal town council of usual residence attesting to the individual’s social integration. The second one (called *arraigo laboral*) was aimed at regularising people who had lived in Spain for two years, had no criminal record and could prove a one-year minimum employment relationship by means of a verdict to the effect, or certificate from the Department of Labour Inspection. Interestingly, as for the 2005 regularisation programme, both mechanisms are directly linked to the foreigner's employment situation, that is, only foreigners with a job are able to regularise after a few years of presence in Spain. This means that since 2004, entry, renewal and regularisation depend on formal employment. While this system functions in an open and gradually inclusive way during periods of economic growth, it becomes automatically an exclusive mechanism in times of economic downturn (CHAUVIN and GARCÉS-MASCAREÑAS, 2012).

4. Concluding remarks

In Spain the mismatch between the economics and politics of immigration led to nothing less than an outright model of illegal immigration. This discrepancy is related to restrictionist national interest, but also with a bureaucracy that was unable to cope with burgeoning, 'unforeseen' requests for entry. Though this model of illegal immigration allowed the state to comply simultaneously with demands for closure and the employers' insatiable demands for foreign workers, this model was not sustainable in the long run. This led 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.

However, as said in the introduction, the question should be no longer why policies fail but rather how states manage to reconcile conflicting demands in the field of migration. According to Boswell (2007: 93-95), 'a state unable to simultaneously meet all functional requirements may have an interest in the persistence of contradictions and inefficiencies in policy'. Following Boswell, this malintegration usually takes the form of a gap between proclaimed, restrictive migration policy and the
de facto toleration or covert implementation of more liberal measures. In fact, this seems to be the case of most European countries. While in Northern European countries asylum seekers and family immigrants represent an important exception to the 1973 recruitment stop, in Southern European countries irregular immigration and subsequent and repetitive regularisations are combined with a much more restrictionist policy and rhetoric.

Seen from this perspective, as regularisation drives appear as a measure to reconcile contradictory demands, the policy gap turns to be understood as a policy in itself rather than as a policy failure. A policy that- while implementing rather restrictive measure- results in rather open outcomes. The final consequence is deferred 'entry' – since the condition for every regularisation is a period of illegal status – of as many immigrant workers were required by the employers. In specific terms, it makes feasible the aforementioned situation whereby immigrants enter the country, look for work and, once they have a job, stay. As González-Enríquez (2009) has noted, this is nothing more than a cheap recruitment model in the place of destination. It is cheap in two ways. First, the costs and risks of the migratory process are shouldered by the immigrant. Second, in political terms it is possible to have a rather open policy without putting it in writing and thus without needing to justify it.

If we look at policy outcomes rather than at policies as written on the books, which is the black box of most policy theories, then the next question is what accounts for policies in practice. As we have seen throughout this article, despite contradictory policies and mal integrated results, the demands for foreign workers are the ones that were systematically given response at the end. First, irregular immigration meant that immigrants kept coming in and that labour demands could be covered despite the restrictive immigration policies. Second, if the desire was to re-establish state control over migratory flows, the presence of these immigrants had to be recognised (by means of regularisation drives), while the further entry of immigrants had to be legally channelled by means of more open entry policies. As a result, the imperative of 'accumulation', as defined by Boswell (2007), or what we could also call the factor of markets in terms of employers' demands, is what ended up accounting for policy outcomes. Put straight forward, as many immigrants as desired by employers came in.
However, the predominance of the markets does not mean that the demands for closure 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, 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, renewal of work and residence permits (at the end of the first, third and fifth years) depended on effective and formal integration into the labour market. Legal immigrants can thus lose their status (and hence their rights) in the first five years. Relapse into illegality of those 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, though have restricted access to membership of legal and illegal immigrants in the early years after arrival.

Finally, rights have also imposed some limitations on policy. Though rather limited in the 1980s, immigrants’ rights expanded as the burgeoning presence of immigrants in the country made it necessary to make their rights equal to those of Spanish nationals. Civil society and the opposition parties have played a highly significant role in the legal inclusion of immigrants. 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 long-term immigrants 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. In this regard, we can conclude that rights did shape policy outcomes but only in the mid- and long run. While the demands for closure account for restrictions in membership during the first years of presence in the country, rights’ constraints tone down these limitations after few years of legal residence.
Bibliography


