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## Unauthorized Migration and the Politics of Regularization, Legalization, and Amnesty

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### 1. Introduction

Unauthorized migration is a major component of labour migration and a function of the opportunities for regular migration.<sup>1</sup> Facing the choice between ignoring the underground economy or attempting to control it, states constantly adjust their policies regarding residence and employment rights. As industrialized states reduced legal avenues of labour migration in the 1970s, the international response generally focused on humanitarian concerns and the rights of workers, portraying unauthorized migrants as victims rather than law-breakers or criminals. Nevertheless, northern European states began sharpening their administrative controls. The introduction and expansion of the Schengen system in 1985, which removed border controls between various European states, resulted in enhanced cooperation regarding control of the common external border as well as changes in the administration of third country nationals, including unauthorized migrants. Driven by a combination of humanitarian concerns, labour market needs, and a relative lack of administrative capacity compared with northern European states (which had earlier pursued similar policies), southern European states such as Spain, Italy, Greece, and Portugal enacted a series of large-scale immigration amnesties and regularization campaigns. These programmes prompted arguments that legalization should not be regarded as a way of managing migration flows but should be confined to exceptional situations. This chapter explores the political response to unauthorized migration, focusing on the shifting legality of migration over time and paying particular attention to the case of Spain within the context of southern European states attempting to balance

the demands of European integration with domestic labour market needs, humanitarian concerns and a relative lack of state capacity for managing migration.

Regulating migration has emerged as a key government task, and states must weigh economic forces encouraging increased migration against security and political forces favouring greater closure (Hollifield, 2004). Maintaining this balance is particularly difficult in states experiencing sharp increases in immigration. But political opposition to immigration does not everywhere grow linearly with increasing immigration: public opinion in some states remains more tolerant while harsher attitudes prevail elsewhere.

Unauthorized migration continues to grow in political salience, yet the delineation between legal and illegal migration remains in constant flux. Despite widespread agreement that some kinds of migration are always illegal – migrant trafficking for exploitation, for example – other kinds of migration often switch from legal to illegal status or the reverse as governments continually adjust their nationality and migration laws and policies, changing the administrative application of those laws and policies even more frequently (Maas, 2008, 2009). Compounding the uncertainty, different states have significantly different migration policies. Despite the elimination of border checks for travel among their countries, and despite years of efforts to construct a common approach, European states continue to pursue strikingly different policies concerning both legal and illegal migration.

### 2. The Shifting Legality of Migration

The regulation of immigration to southern European states did not become a major concern until the Schengen treaty resulted in the elimination of border controls between member states. Other European states also had a long history of tolerating if not actively encouraging irregular migration, particularly the seasonal migration of workers in the agriculture or construction sectors. During the 1950s and 1960s, French governments regarded large-scale irregular migration to France as a benign or even positive phenomenon (cf. Samers and Menz in this book) – an attitude that changed in the late 1960s when violent political opposition to so-called *immigration sauvage* prompted restrictive measures (Tomasi, 1984, p. 406). By the 1970s, the number of people crossing borders without permission or engaging in activities other than that for which they had been admitted – such as staying beyond the length of time authorized, working without authorization, or working

in an unauthorized way – was increasing, most notably in France and the United States (US) (Houdaille and Sauvy, 1974). As labour migration grew in importance, the numbers of unauthorized or irregular migrants grew correspondingly. This was particularly true after European and other states reduced the legal means of labour migration in the 1970s.

The response of the international community to new restrictions on migration generally focused on the rights of workers. In late 1972, for example, the United Nations General Assembly expressed its deep concern at “the *de facto* discrimination of which foreign workers are the victims in certain countries of Europe and of other continents”, urging states to combat “illicit trafficking in foreign labour, which is a form of exploitation” and to strengthen the protections for migrant workers.<sup>2</sup> Similarly, in 1974 the General Assembly urged all states to “promote and facilitate by all means in their power the adoption of bilateral agreements which would help reduce the illicit traffic in alien workers”, and to “adopt the appropriate measures to ensure that the human rights of workers who enter their territory surreptitiously are fully respected.”<sup>3</sup>

In 1976, the European Commission proposed a Directive intended to benefit and protect workers’ rights (European Commission, 1976). The logic behind the proposed Directive was that, by raising the costs of irregular labour to the same level as the cost of legal workers, employers would lose any incentive to hire irregular workers. Once it had been discussed, however, the proposed Directive languished. In subsequent years, the European Council declined to pursue the proposed Directive, for reasons that “are not entirely clear” (Cholewinski, 2004: p. 166) – presumably a lack of political will in the member states, which the Community institutions lacked the legal competence to override.

Unauthorized migration into Western European countries continued to grow during the 1970s and into the 1980s, despite the adoption of a Council of Europe resolution on combating clandestine immigration and the illegal employment of foreign workers.<sup>4</sup> Strikingly, however, the focus of international agreements did not shift to penalizing unauthorized migrants but remained on safeguarding the rights of migrant workers. In 1984, for example, the Parliamentary Assembly of the Council of Europe invited member governments to “contemplate, as a first step, regularisation of the situation of migrant workers who have already settled, but only as an exceptional and non-renewable arrangement.”<sup>5</sup> It also advocated “laying down severe administrative and penal sanctions for employers of clandestine workers, intermediaries and traffickers, so as to impose the same charges on all firms and to prevent illicit migration by providing equal treatment and working conditions for

migrant workers.”<sup>6</sup> The resolution targeted employers, intermediaries, and traffickers for sanctions, but spared the migrants themselves. This because, in the opinion of the parliamentarians, “clandestine migrant workers are the victims of a process created by many combined factors, *inter alia* the needs of certain employers in the host countries, the role played by those engaged in trafficking in labour, and the need for all migrant workers to escape from poverty in their country of origin and earn a living”.<sup>7</sup>

Portraying migrant workers as victims rather than purposeful agents served to legitimize their continued presence in countries of destination, while blaming traffickers and employers for creating or exacerbating the problem. Moreover, many international observers castigated states for creating a problem out of migration phenomena which had hitherto not been seen as problematic. Thus, the Council of Europe lamented the fact that, “under the pressure of xenophobic movements, the authorities in certain host countries have been induced to take administrative measures, the effect of which was that situations not previously irregular actually became irregular, and newcomers were subjected to procedures taking no account of fundamental human rights.”<sup>8</sup>

An example of this latter trend is the case of the United Kingdom (UK). At the time, immigration to the UK was regulated through a 1971 law. Yet observers found that, though the 1971 law remained unchanged, the UK government responded to perceived negative public opinion by tightening the administrative application of the law, broadening the definition of illegal immigration (Couper and Santamaria, 1984). The UK case illustrates well the reality that unauthorized migration is a function of authorized migration; they are two sides of the same coin.

Because irregular migration is a function of the opportunities for regular migration, the distinction between authorized and unauthorized immigration is murky and constantly being transformed as states change their immigration policies. Some states provide few opportunities for legal immigration, while others are more open. Some states provide easier access to residence rights than to employment rights, or the reverse. This allows many different typologies concerning whether a person is an illegal resident, an illegal worker, both, or neither. Because modern states have long-imposed restrictions on migration, irregular migration is a long-standing phenomenon. New is the scope and scale of irregular migrations, which appear to be constantly increasing (Jandl, 2004). This should not be surprising. In a world where goods, capital, services, and information move ever more freely, increased mobility of

people should be expected. Despite significant efforts on the part of states to secure their borders, all borders remain porous. This allows individual migrants – and, increasingly, migrant smugglers – to exploit weaknesses in borders. Amnesties may temporarily succeed at “wiping the slate clean”, but they rarely address the root causes of migration. Analysis of the world’s largest amnesty, the US’ 1986 Immigration Reform and Control Act, which granted amnesty to nearly 2.7 million irregular immigrants, suggests that the amnesty programme did not change long-term patterns of irregular immigration (Donato et al., 1992; Orrenius and Zavodny, 2003). Similarly, stricter border enforcement generally does not reduce the number of migrants, although migrants may find it more difficult to cross the border. Enforcement increases the cost of crossing the border illegally, thereby encouraging irregular immigrants to stay longer to recoup the cost of entry. The result is that irregular immigrants are *less* likely to return to their home countries, causing an increase in the resident stock of irregular immigrants (Massey, 2005). The budget devoted to US border control rose 20-fold over a period of two decades but the estimated number of unauthorized foreigners rose from 3 million to 9 million despite several regularization programmes (Martin, 2003, p. 7). Since states cannot control their borders, they all face the choice between ignoring the underground economy or attempting to control it. The next section examines this tension by focusing on the case of Spain.

### 3. The Case of Spain

Starting in the mid-1990s, Spain rapidly emerged as Europe’s key immigrant destination: the number of non-Spanish citizens resident in Spain mushroomed from just over 100,000 in 1990 to 500,000 in 1995 to over 3.5 million by 2005 and an estimated 5.5 million by 2010, representing a 50-fold increase over two decades. This development transformed Spanish immigration politics, as Latin America and Eastern Europe became more important sources of immigrants than Africa. Since Spain lacked the administrative or legal infrastructure to allow regular immigration, most migrants arrived without proper authorization to obtain residence or employment. Given large-scale irregular immigration, successive Spanish governments opted to register workers in an attempt to incorporate them into the formal economy rather than ignoring them by letting them remain in the underground economy. The economic demand for new workers, coupled with the irregularity of the migrants responding to that demand, resulted in labour market rationales for

amnesty similar to the rationales operating in other Southern European states such as Italy, Portugal, and Greece, which also held large-scale amnesties. Granting amnesty provided immediate economic benefits to state coffers, but did nothing to dissuade new migrants from entering Spain.

As Spain rapidly became Europe’s most important immigrant destination, there was relatively little political pressure to reduce immigration, despite the explosive growth in migration, mostly unauthorized. The repeated granting of immigrant amnesties is doubly puzzling given the rise of xenophobic or anti-immigrant parties in other European states, coupled with an increased emphasis on security throughout the region. Rather than moving to restrict migration, successive Spanish governments responded to the growing influx of irregular migrants by granting one amnesty after another. In 2005, Spain carried out the largest amnesty program to date. Over 1 million people – almost 700,000 workers from Ecuador, Romania, Morocco, and elsewhere, along with 400,000 of their family members – applied in the 3 months between February and May 2005 to regularize their immigration status in Spain. To qualify, they needed proof of residency in Spain since at least August 2004, a work contract of at least 6 months’ duration, and no criminal record. The new socialist administration of Prime Minister Zapatero justified the amnesty in terms of managing migration and bringing above ground the underground economy, which in turn would ensure that workers would pay taxes and benefit from legal protections. The government pursued the amnesty despite heightened security concerns following the terrorist bombings in Madrid (Chari, 2004). The amnesty also demonstrated how membership in the European Union (EU) continues to have only marginal effects on national immigration policies. Since the abolition of border controls within Europe, scholars had long anticipated that EU member states would move to harmonize their immigration policies (Philip, 1994). But the new Spanish government ignored appeals from other EU member states in its decision to grant amnesty. This raised the ire of other EU member states, which claimed that Spain was harming efforts to develop a more robust common European policy concerning irregular immigration. Similarly, the European Commission grumbled that Spain’s move contravened the common EU return policy for irregular residents.

Amnesties by their nature reward individuals who have engaged in an illegal action or activity. They thus represent an admission of defeat for governments, whose other attempts to control the activity failed. It may be easier for a new government to propose an amnesty – blaming the

failure to manage the situation on the previous government's blunders. Amnesty can then be justified as a means of "wiping the slate clean" so that, henceforth, immigration and the underground economy will be better managed and controlled. The Spanish example demonstrates the systematic failure of such hopes. States may expect migrants who are regularized to continue to work in the formal rather than underground economy, and to leave when their permission to work or stay expires. In reality, however, many migrants sink back into irregularity upon the expiration of their permits. The Spanish case also provides an example of a state choosing amnesty because it does not possess the administrative infrastructure and bureaucratic capacity to maintain a more active or stringent immigration policy – helping to explain why there are so many irregular migrants in Spain in the first place (Cornelius, 2004). Spain's struggles with irregular migration are also evidence of success: although it now faces difficulties adapting to large-scale immigration, this immigration arose as a result of stunning economic growth and a reversal of long-term historical trends of emigration rather than immigration.

#### 4. Spain's Emergence as Immigration Destination

Spain was traditionally a country of emigration rather than one of immigration. Between 1846 and 1932 some 5 million Spaniards emigrated, primarily to Latin America (Arango and Martin, 2005). In the aftermath of the civil war, hundreds of thousands of Spaniards fled the Franco dictatorship. Many left to work in the more vibrant economies of Northwestern Europe. When Spain – together with Portugal – joined the European Community in 1986, the existing member states restricted the free movement of Spanish workers with provisions similar to the transition arrangements instituted with the 2004 enlargement for workers from central and Eastern European countries. The phase-in was sparked by fears in the existing member states that free movement of workers would cause massive emigration from Spain as Spanish workers sought employment elsewhere in Europe. In fact, Spain's accession marked a demographic turning point: immigration started to outpace emigration. At first, workers returning to Spain from Northwestern Europe accounted for much of the immigration. But Spain's entry into the Community also solidified its place as a popular retirement destination for Northern Europeans. Between 1990 and 2005, the number of citizens of other EU15 states officially resident in Spain increased over eight-fold, from 60,000 to almost half a million, or 1.1 per cent of the total Spanish population.<sup>9</sup> Even more striking, however, is the jump in the

number of Spanish residents who are not citizens of EU15 states: from just over 50,000 in 1990 to almost 3 million in 2005 and an estimated 5 million by 2010. Non-EU15 foreigners comprised almost 7 per cent of the total Spanish population in 2005, meaning that approximately one out of every 12 Spanish residents in 2005 was a non-Spanish citizen, compared with only one out of every 350 residents 15 years earlier. These numbers include neither dual citizens or others who naturalized to become Spanish citizens nor irregular migrants or others who failed to officially register their residence. Northern Africa was supplanted as the chief source of immigrants: most of the recent newcomers were Spanish-speaking immigrants from Latin America. Ecuador displaced Morocco in 2003 as the single most important country of origin. Other immigrants arrived from Eastern Europe: by 2004, Romania was the fourth most important country of origin after Ecuador, Morocco, and Colombia. Argentina, Bulgaria, Peru, and Ukraine were other important sources.

Abundant employment opportunities fuelled both the demand for and the supply of immigrants. Between 1995 and 2005, the Spanish workforce grew to 21 million people from just over 16 million – a staggering 30 per cent increase. Spain's total population grew less than 12 per cent during this time, and over two-thirds of the increase (3.23 million out of 4.51 million) was attributable to foreigners (primarily non-EU15 citizens) moving to Spain (Table 10.1).

Labour market participation increased for Spanish citizens, EU15 citizens, and especially the new non-EU15 citizens. Between 1995 and 2005, the proportion of Spanish citizens in the workforce increased from 41.7 per cent to 46.7 per cent. In other words, while in 1995 fully 58.3 per cent of Spanish citizens were neither employed nor seeking employment, a decade later that proportion had shrunk five points to 53.3 per cent. But the labour market participation of non-Spanish citizens was even more striking. By 2005, over seven out of every ten non-EU15

Table 10.1 Spain: Population (000s) by citizenship and work status, 1995

	Spanish		Other EU15		Non-EU15		Total	
Employed	12,391	32.2%	39	37.9%	64	42.4%	12,495	32.3%
Unemployed	3,632	9.4%	10	9.7%	22	14.6%	3,664	9.5%
Inactive	22,445	58.3%	55	53.4%	65	43.0%	22,564	58.3%
Total	38,468	100%	103	100%	151	100%	38,723	100%

Source: Compiled from Eurostat Labour Force Survey, second quarter 1995. Due to rounding, not all percentages add to 100.

Table 10.2 Spain: Population (000s) by citizenship and work status, 2000

	Spanish		Other EU15		Non-EU15		Total	
Employed	15,200	38.9%	135	44.6%	347	56.3%	15,682	39.2%
Unemployed	2,377	6.1%	15	5.0%	76	12.3%	2,468	6.2%
Inactive	21,495	55.0%	153	50.5%	193	31.3%	21,842	54.6%
Total	39,072	100%	303	100%	616	100%	39,992	100%

Source: Compiled from Eurostat Labour Force Survey, third quarter 2000. Due to rounding, not all percentages add to 100.

residents were employed or seeking employment, as were just over half of EU15 residents (Table 10.2).

Even as the number of economically active individuals rose significantly, unemployment fell dramatically: in 1995, almost 2.5 million residents, fully 9.5 per cent of all Spanish residents (and 22.7 per cent of the economically active) were unemployed. By 2005, the proportion had dropped to 4.1 per cent of Spanish residents (and only 8.4 per cent of the economically active), with Spanish citizens continuing to do better than either EU15 residents or non-EU15 foreigners (Table 10.3).

Some immigrants came legally, but most did not. The strait of Gibraltar became one of the deadliest crossings in the world, as each year hundreds of would-be migrants drowned attempting to reach the Spanish shore from Morocco. Similarly, the Canary Islands became a destination for would-be migrants departing from Morocco or, since Morocco increased surveillance, Mauritania. In 2005, after the end of the largest amnesty programme to date (discussed below), hundreds of would-be immigrants from sub-Saharan Africa attempted to storm the fences separating Morocco and the Spanish enclaves of Ceuta and Melilla. After similar mass attempts to storm the border, Spain built a second razor

Table 10.3 Spain: Population (000s) by citizenship and work status, 2005

	Spanish		Other EU15		Non-EU15		Total	
Employed	17,046	42.9%	230	46.6%	1915	64.0%	19,191	44.4%
Unemployed	1,523	3.8%	21	4.3%	221	7.4%	1,765	4.1%
Inactive	21,172	53.3%	243	49.2%	858	28.7%	22,273	51.5%
Total	39,741	100%	494	100%	2994	100%	43,229	100%

Source: Compiled from Eurostat Labour Force Survey, third quarter 2005. Due to rounding, not all percentages add to 100.

wire fence around Ceuta in 2001, reducing the number of migrants getting through from around 10,000 per year to about 1500.<sup>10</sup> For those who arrived safely on the mainland, it was usually not difficult to find work. Indeed, Spain experienced significant economic growth in a number of sectors in which migrants can readily work, such as construction. The housing boom, particularly along the coast, was of course itself fuelled by immigration. Given plentiful work, it is perhaps not surprising that Spain became the top destination for immigration into Europe. But the Spanish government's immigration policy was slow to adapt to the rapid changes in migration. One measure of this is that immigration and emigration continued to be handled within the Ministry of Labour. In a way perhaps analogous to Germany's longstanding fiction of guestworkers – that immigrants would arrive, work for awhile, and then leave – Spain's immigration policy also remained geared to the fiction that migrants are workers who will return home. Furthermore, given the limited legal means of immigrating to Spain, migrants often choose to enter or stay in violation of the law. Because of its periodic amnesties for irregular migrants, Spain became, in the words of the Secretary of the Spanish Police union, “a paradise for illegal migrants”.<sup>11</sup>

## 5. Managing Irregular Migration

Spain – like Italy, Portugal, and Greece – stepped up its migration control efforts largely as a result of the desire to meet European norms and fulfil requirements for joining the Schengen system, which removed border controls on travel between Schengen states.<sup>12</sup> In the words of the European Council, free movement within the territory of the Schengen members is “a freedom which as a counterpart requires not only the strengthening of the common external borders and the administration of third country nationals, but also enhanced co-operation between law enforcement authorities of Schengen states” (European Council, 2003: p. 32). Spain was characterized by poor administration of its third-country nationals, and thus needed to change its administration of immigrants – as well as the legislative framework for immigration – in order to meet the requirements. Other Southern European states also held amnesties: Italy had five between 1987 and 2002; Portugal held three major amnesties, in 1992–1993, 1996, and 2001–2003; and Greece held two major amnesties, in 1998 and 2000–2001. This spate of large-scale regularization campaigns prompted the European Commission to argue that “regularisations should not be regarded as a way of managing migration flows. ... [They should] be avoided or confined

to very exceptional situations" (European Commission 2004). In Spain, however, regularizations became the norm rather than the exception. Immigrant amnesties also arose in the context of partisan differences, which explains why amnesties often occur following a change in government.

Spain's first regularization programme dates from the Foreigners' Law of 1985, which provided amnesty for foreigners without proper authorization if they or their employers requested regularization and provided necessary documents.<sup>13</sup> Applicants were required to have an employment contract and to have been present in Spain before 24 July 1985, when the regularization period started. Although the regularization period lasted until 31 March 1986 (it was initially scheduled to run only 3 months, but was extended due to poor response), only 43,815 foreigners applied – less than half and perhaps as few as one quarter of all irregular migrants in Spain at the time – of whom 38,191 were regularized. Most numerous were citizens of Morocco (18.1 per cent of all applications), Portugal (8.8 per cent), Senegal (8.2 per cent), Argentina (6.6 per cent), the UK (5.7 per cent), and the Philippines (4 per cent) (Gortázar, 2000). The regularization was slow and badly managed, and the Spanish authorities lacked the infrastructure to properly handle the applications they did receive. Furthermore, it was difficult for those who regularized to renew their visas, so that many of those who had been regularized reverted to unauthorized status when their permits expired (Gortázar, 2000).

In 1991, the government held another regularization, for workers who had resided in Spain since before 15 May 1991 and asylum-seekers whose applications had been rejected or were under review. It ran from 10 June to 10 December. Out of the 135,393 requests for regularization, only 128,068 cases were considered – partially as a result of applicants' incomplete documentation and partially as a result of bureaucratic bungling – and 109,135 were accepted (Gortázar, 2000; Levinson 2005, p. 48). Although the 1991 regularization improved somewhat on the mismanagement of the 1985–1986 programme, it did not succeed in registering all irregular migrants in Spain. Indeed, more and more workers kept arriving to take jobs in a range of temporary sectors. Starting in 1993, the government introduced annual labour quotas to attempt to manage this migration. In the first year of the quota system, only 5220 workers were approved to fill the 20,600 available positions, but this was due to the limited application time and poor publicity. In 1994, when the government again made available 20,600 slots, it ended by approving 25,604 applications – more than the allotment but far less than the

number of applications. In 1995, the government provided 25,000 slots, including 17,000 reserved for the overflow from 1994. In that year, the authorities approved 19,953 out of 37,206 applicants (Gortázar, 2000). Many of the rejected applications nevertheless moved to or remained in Spain. At the same time, just as during the 1985–1986 regularization programme, many of those who had been regularized in the 1991 programme reverted to unauthorized status when their visas expired.

In the legislative elections of 3 March 1996, the conservative Partido Popular narrowly defeated the Socialists, who had governed for the previous 14 years: the Partido Popular won 38.8 per cent of the votes and 156 seats in the 350-seat parliament, compared to 37.6 per cent of the votes and 141 seats for the Socialists. Faced with the growing number of irregular migrants, the new government introduced yet another amnesty between 23 April and 23 August 1996, targeted at immigrants who had fallen into irregular status by not renewing their documents from the previous regularization. To be eligible, applicants needed to prove that they had been employed (without a permit) since 1 January 1996, have a working or residence permit issued after May 1986 (regardless of current employment status), or be a family member of an applicant. The amnesty regularized 21,300 foreigners (13,800 workers or former workers and 7500 family members) out of approximately 25,000 applicants (Levinson, 2005, 48).

In 2000, there was yet another amnesty. The new Foreigners' Law provided for the regularization of foreigners who had been in Spain before 1 June 1999 and who applied for a residence or work permit, as well as anyone who actually received such a permit.<sup>14</sup> The new law was passed in January, against the wishes of the Partido Popular government of President José María Aznar, which did not have a parliamentary majority. Aznar was particularly concerned with Article 29.3, which allowed permanent regularization to anyone able to prove 2 years' uninterrupted residence in Spain. On 30 January 2000, some 10,000 Spaniards in the agricultural city of El Ejido, in Andalucía, demonstrated against Moroccan workers following the killing of a 26-year-old local woman by a mentally disturbed Moroccan. Anti-immigrant violence injured 80 people in El Ejido between 5–8 February 2000 and led to the arrests of 55 Spaniards (Zapata-Barrero, 2004).

The Partido Popular again emerged victorious in the parliamentary elections of 12 March 2000, winning 44.5 per cent of the votes and 183 out of the 350 seats in the Cortes. The Socialists won 34.1 per cent of the votes and 125 seats, while the pro-immigrant United Left halved its share of the vote (to 5.5 per cent, from 10.5 per cent in 1996)



and dropped to eight seats, compared to the 21 it had won in 1996. The strengthened Partido Popular administration adopted a somewhat harsher policy, and only 153,463 out of 247,598 applications for the 2000 regularization were approved, mostly citizens of Morocco, Ecuador, Colombia, and China (Levinson, 2005, p. 48). In December, the government changed the Foreigners' Law, against the wishes of all the other parties.<sup>15</sup> It removed the article that would have allowed automatic regularization after 2 years' residence and generally "toughened up" the immigration system (Silveira, 2002).

Despite these legal reforms, explicitly aimed at discouraging immigration, immigrants kept arriving in record numbers. The new laws not only failed to prevent the entry of immigrants but were also "one of the main factors in the generation of 'undocumented' labour supply", since immigrants needed an employment contract to enter Spain legally for work (Zapata-Barrero, 2003, p. 30). To attempt to register those who had entered the country without a work contract and were hence working illegally, the government held another amnesty during June and July 2001, targeting those who had been in Spain since 23 January 2001 and were employed or were family members of a foreign worker or Spanish citizen. Approximately 350,000 applications were filed, and 221,083 permits issued to citizens from Ecuador, Colombia, Morocco, Romania, and elsewhere. There was also a special amnesty in 2001 for citizens of Ecuador (Geronimi, 2004; Geronimi et al., 2004). Immigration continued to vex the rest of the Partido Popular's term, as the number of irregular migrants rose unabated.

The Seville European Council of June 2002, which marked the end of Spain's six-month presidency of the EU, focused largely on controlling terrorism and irregular migration. European governments congratulated themselves with developing a "comprehensive plan to combat illegal immigration [that represents] an effective means of bringing about proper management of migration flows and combating illegal immigration" (Presidency conclusions, point 30). Observers characterized the Spanish proposals for combating irregular immigration as "poorly prepared" (Barbé, 2002). This lack of preparation reflected the fact that, while Spain had long looked to the EU for multilateral support for its objectives, it found that bilateral relationships remained fundamental on major issues such as northward migration (Gillespie, 2002).

## 6. The 2005 Amnesty

Spain's parliamentary elections of 14 March 2004 – a mere 3 days after the bombing of several train stations in Madrid, which killed 191

and wounded 1500 others – resulted in a somewhat unexpected return to power for the Socialists (Chari, 2004). Under the leadership of José Luis Rodríguez Zapatero, the Socialists won 164 seats to the Partido Popular's 148. Although the elections occurred in the shadow of the bombing, the result reflected not a swing from the Partido Popular to the Socialists but rather strategic voting by Left-wing and other minority party supporters who voted Socialist in order to remove the Partido Popular from power (Torcal and Rico, 2004). The new Socialist government quickly moved to defuse tensions between indigenous Spaniards and immigrants from Northern Africa and elsewhere. A major part of this effort was the largest amnesty programme in Spanish history. The amnesty was criticized by many other EU states, but Spain emphasized that border control was also a problem for other states, with Minister of Labour Jesús Caldera affirming that Spain was spending considerable resources on monitoring its southern borders. Highlighting the many Romanian immigrants living without authorization in Spain, who had entered the Schengen zone by way of Germany, Austria, and Italy, Caldera criticized these states for improperly guarding their borders.<sup>16</sup>

At the end of the amnesty period in May 2005, Minister Caldera announced that the programme would legalize over four-fifths of the estimated 800,000 irregular migrants.<sup>17</sup> The opposition Partido Popular claimed that only about 20,000 of these 800,000 people were actually employed and called on the government to construct "a real immigration policy like all European countries have".<sup>18</sup> The Minister responsible for immigration in the previous Partido Popular government described the amnesty as a "massive" and "chaotic" display of the new government's "open door policy".<sup>19</sup> Emphasizing that it had been agreed in consultation with businesses, labour unions, immigrants' associations, and all political parties except the Partido Popular, Minister Caldera heralded the amnesty as "one of the greatest processes of exposing the hidden economy in Europe in the last forty or fifty years."<sup>20</sup> He boasted that no other OECD (Organisation for Economic Co-operation and Development) country had ever exposed so many workers in the underground economy in such a short period: "they said it would be impossible to get more than 400,000."<sup>21</sup> United Left unsuccessfully petitioned the government to extend the amnesty for a further 90 days.<sup>22</sup> Minister Caldera explained that those who had chosen not to legalize themselves would be repatriated, and claimed that the government had already repatriated 120,000 illegal migrants during the Socialists' first year in office.<sup>23</sup>

After the amnesty, Minister Caldera congratulated Spanish businesses for being honest and registering their employees. At the same time, the Secretary of State for Immigration warned businesses to no longer

employ unauthorized immigrants because the government would conduct 500,000 workplace inspections before the end of 2005 to ensure that no one employed irregular migrants.<sup>24</sup> The president of the Labour Inspectors' Union promptly claimed that this was "materially impossible", since there were not nearly enough inspectors to carry out so many inspections.<sup>25</sup> The government reacted by promising to hire new inspectors, so that 1700 would be available to check for irregular migrants.<sup>26</sup> Inspectors complained that, even with the new hires, they would have to double their workload to meet the new productivity targets.<sup>27</sup> In response, the government increased the inspectors' salaries by 8.7 million euros, spent 18 million euros on a new computer system, and doubled the budget devoted to inspections to 3.3 million euros.<sup>28</sup>

According to Minister Caldera, the amnesty provided "an 'x-ray' of the economic map of Spain. Knowing the number of regularization requests and the numbers of employed foreign citizens in each province, we know in which provinces and in which economics sectors businesses [comply]. And that will provide an excellent guide to fighting fraud."<sup>29</sup> This "x-ray" works because irregular migrants have a strong incentive to register with local authorities: if they are registered, they benefit from free medical care. Caldera estimated that bringing the migrants into social security would add 1.5 billion euros in social security contributions in the first year.<sup>30</sup> In contrast to the earlier regularizations conducted under the Partido Popular government, he claimed that his government's programme would oblige migrants to enter the social security system as part of their regularization. This would "save" the system by guaranteeing there would be enough money for pensions.<sup>31</sup> The conservative daily *El Mundo* responded that while the amnesty may have solved one problem (increasing social security contributions and aiding economic growth), it created a much larger one: "new migratory avalanches that could bring problems of integration and delinquency."<sup>32</sup> Despite one regularization after another, immigration to Spain ceaselessly increased, making Spain the paradigmatic example of the perverse effects of amnesty (Recaño and Domingo, 2005, p. 21).

At the end of December 2005, the government announced that 572,961 out of the 691,655 applications for regularization had been approved, while a further 115,178 had been rejected and 3516 were still under consideration. Of those approved, 548,720 workers had already been registered with Social Security. Employers were given 1 month from the date their employees received the approval notice to register them with Social Security, explaining part of the 24,241 difference. The majority (almost 56 per cent) of those approved and registered

were men, and most were young: 18 per cent were between 16 and 24 years old, 61 per cent were between 25 and 39 years old, and the remaining 21 per cent were between 40 and 65 years old. Ecuador, Romania, Morocco, Colombia, and Bolivia accounted for the bulk of those approved and registered (Spanish Ministry of Employment and Social Affairs, 2005). One estimate placed the Social Security contributions of the newly registered workers at approximately 120 million euros per month, validating the government's earlier estimate of 1.5 billion euros annually in new contributions.<sup>33</sup> The 2005 amnesty illustrates well the political calculations underlying decisions concerning regularizing unauthorized migration.

## 7. Conclusion

Unauthorized migration is a major component of labour migration and a function of the opportunities for regular migration. Facing the choice between ignoring the underground economy or attempting to control it, states constantly adjust their policies regarding residence and employment rights. The introduction and expansion of the Schengen system, which removed border controls between European states, resulted in enhanced cooperation regarding control of the common external border as well as changes in the administration of third country nationals (Maas, 2005a). Free movement had always been a prime aim of European integration, and the development of European Union citizenship – giving citizens of the member states rights in all the other member states, including the right to live and work without a residence or work permit – significantly increased the salience of individual member state immigration policies (Maas, 2005b, 2007). Driven by a combination of humanitarian concerns, labour market needs, and a relative lack of administrative capacity compared with Northern European states (which had earlier pursued similar policies), Southern European states such as Italy, Greece, Portugal, and Spain enacted a series of large-scale immigration amnesties and regularization campaigns. These programmes prompted arguments that legalization should not be regarded as a way of managing migration flows but should be confined to exceptional situations. The Spanish case demonstrates the difficulty of balancing the demands of European integration with domestic labour market needs and humanitarian concerns, as well as the tension between efforts to control migration and insufficient state capacity, a tension that exists wherever there are unauthorized migrants.



## Notes

1. Earlier versions of this chapter were presented at meetings of the International Studies Association and Western Political Science Association and I thank conference participants as well as the editors of this book, Georg Menz and Alexander Caviedes, for their helpful comments. All shortcomings are mine.
2. G.A. Resolution 2920 (XXVII) of 15 November 1972.
3. G.A. Resolution 3224 (XXIX) of 6 November 1974. Compare COM (1974) 2250 of 18 December 1974. Action Programme in Favour of Migrant Workers and Their Families.
4. Committee of Ministers Resolution 78 (44) of 26 October 1978 on clandestine immigration and the illegal employment of foreign workers.
5. Council of Europe. Recommendation 990 (1984) on clandestine migration in Europe.
6. *Ibid.*
7. *Ibid.*
8. *Ibid.*
9. "EU15" refers to the 15 EU member states before the 2004 enlargement: besides Spain, these are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Sweden, and the UK. Two out of every five EU15 citizens officially resident in Spain are British citizens, another one in four are German, with Italians and French citizens representing the next largest contingents.
10. *BBC News*, 29 September 2005.
11. *El Mundo*, 7 May 2005, p. 16.
12. Because of its efforts, Spain became one of the states in which Schengen was first fully implemented in 1995, alongside Belgium, France, Germany, Luxembourg, the Netherlands, and Portugal. It took longer for Italy and Austria (implementation in 1998) and Greece (implementation in 2001) to convince the other member states that they met the border control requirements.
13. Ley Orgánica 7/1985, de 1 de julio, sobre derechos y libertades de los extranjeros en España (Law on the rights and freedoms of foreigners in Spain), commonly known as the Ley de Extranjería.
14. Ley Orgánica 4/2000, de 11 de enero sobre derechos y deberes de los extranjeros en España y su integración social.
15. Ley Orgánica 8/2000, de 22 de diciembre, de reforma de la Ley Orgánica 4/2000. United Left's condemnation of these changes is available at [www.extranjeria.info/publico/area\\_recursos/loex/opinion/izquierda\\_unida.PDF](http://www.extranjeria.info/publico/area_recursos/loex/opinion/izquierda_unida.PDF).
16. *Financial Times*, 4 February 2005, p. 18; *El Mundo*, 9 May 2005, p. 20.
17. *Cinco días*, 10 May 2005, p. 47.
18. *El País*, 7 May 2005, p. 21.
19. *El Mundo*, 10 May 2005, p. 17.
20. *Agence France Presse*, 7 May 2005.
21. *El Mundo*, 10 May 2005, p. 17.
22. *El País*, 7 May 2005, p. 21.
23. *El País*, 7 May 2005, p. 21.
24. *Agence France Presse*, 7 May 2005; *El Mundo*, 8 May 2005, p. 1.
25. *El Mundo*, 8 May 2005, p. 1.
26. *El Mundo*, 9 May 2005, p. 20.
27. *El Mundo*, 10 May 2005, p. 17.
28. *El País*, 13 May 2005, p. 28.
29. *El País*, 11 May 2005, p. 260.
30. *El Mundo*, 9 May 2005, p. 20.
31. *El Mundo*, 10 May 2005, p. 17.
32. *El Mundo*, 8 May 2005, p. 5.
33. *El País*, 26 December 2005, p. 21.

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