

Immigration Policies in Spain: Between External Constraints and Domestic Demand for Unskilled Labour.

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Abstract:

From country of emigration, Spain became a net receiver of immigrants in the last two decades. In the absence of a nationally specific stand on immigration, the policy agenda on these issues was initially determined by goals and objectives defined at the European level. That early "Europeanisation" resulted in very restrictive policies that did not correspond to the situation of migratory processes in Spain. Over time, a growing conflict between the external policy directions, and the internal factors, resulted in the gradual development of a more sophisticated set of policies that, while trying to comply with EU requirements for strict border policing, increased the autonomy of Spanish authorities in this area of policies. The regularisation of undocumented immigrants, the extension of social rights, or the development of special agreements with Morocco for the import of temporary and seasonal workers represented the other side of the coin of Spanish immigration policies in recent years.

1. Introduction.

As in all countries of Southern Europe, immigration is a relatively recent phenomenon in Spain. From sending country of migratory flows, in the last two decades Spain became a net receiver of immigrants. This shift of position in the international migration system was determined by three somehow interconnected processes affecting Spanish society in the last quarter of the century: an important transformation of the economic structure since the mid 1960's, a model political transition from a right-wing dictatorship to a liberal parliamentary democracy; and the incorporation of Spain to the European Communities in 1986. In this context of large economic and political changes, characterised by an explicit effort to catch up with the most advanced societies of Western Europe, the direction of the migratory flows reversed, and together with considerable numbers of returned migrants, an initially small but increasingly growing number of foreign nationals settled in Spain.

During the late 80's and early 90's, the policy agenda on immigration issues in Spain was, to a large extent, determined by goals and objectives defined at the European level. In the absence of a nationally specific stand on immigration, the "Europeanisation" of this area of policies represented, not only the participation of Spanish officials in the committees created to co-ordinate and define a common European immigration policy, but also the somehow thoughtless acceptance of European policy objectives within the legislation implemented at the national level. The result was a very restrictive policy that did not correspond to the early stages of the migratory processes that were affecting Spain. Over time, a growing conflict between the external policy directions, and the needs perceived at the national level (large numbers of undocumented immigrants, demand for unskilled labour, foreign policy and economic interests in sending regions, etc.), resulted in the gradual development of a more sophisticated set of policies that, while trying to comply with EU requirements for strict border policing, increased the autonomy of Spanish authorities in this area of policies.

I will structure this paper in three main sections. In the first part I will frame the analysis of Spanish immigration policies within the European context, paying attention to the two different tendencies that can be identified in European immigration policies. On the one hand, the exclusive tendency derived from the creation of a common external border. On the other, more inclusive policies such as the equalisation of rights of third country national with those of European citizens, and the integration of foreign populations into European societies.

The tensions between those two tendencies reproduced themselves in a very country-specific manner, to the extent that any effort to characterise immigration policies in Western Europe under a single adjective appears as a pretty difficult task.

In the second part of this paper I will review the evolution of Spanish immigration policies dividing them in two aspects, policies of border control, and policies for the incorporation of immigrants into Spanish society.

I will start with the restrictive policies applied by the Spanish state since the mid 80's. The first Law regulating immigration issues was passed in 1985, a few months ahead of the official incorporation of Spain to the CEE. Strongly criticised by the left and by groups advocating the interests of migrants, this Law emphasised the police aspects of immigration policies, it defined a strict regulation on the requirements to obtain a residence or work permit, or an authorisation for family reunification. Increasing human and material resources were also allocated to police the external border, and legislation on asylum was considerably toughened. Up to this point, we could say that Spanish immigration policy had evolved from a clear underdevelopment, to a very restrictive stand not far from the metaphor that assigned to Spain the role of “watchdog” of the Southern wall of “fortress Europe”.

In the third section of this paper I will review other policies that counterbalanced the strong emphasis initially placed on border policies, solving some of its negative side effects, and proposing alternative approaches to the issue of migration flows towards Spain. The regularisation of undocumented immigrants, the extension of social rights, or the development of special agreements with Morocco for the import of temporary and seasonal workers under official supervision, represented the other side of the coin of Spanish immigration policies in recent years.

While reviewing those policies I will point out the importance attached by social actors and policy makers to the debates and policies discussed at the EU level (Commission, Parliament, Council, and expert groups). Third sector organisations, the bureaucracies, and the judiciary will also receive special attention as important actors in this area of policy.

2. Debates on EU immigration policies: ‘Fortress Europe’, and integration policies.

The development of a common immigration policy within the EU is a process in the making that, following a very incremental path, has expanded from the granting of free movement for workers within the member states of the European Communities, to the definition of common procedures in asylum, border control, or family reunification.

The most frequent explanations of the rationales lying behind the development of common policies in immigration at the EU level somehow followed neo-functional analysis, and explained this process by pointing at the creation of a European internal market, and at the abolishment of borders among the member states, as the “spill-over” mechanisms that created the necessity to co-ordinate this area of policies (Callovi, 1991: 33). Although those processes can

explain the need to develop a common approach to immigration issues at the EU level, they do not explain why the communitarisation of immigration policies was the institutional arrangement finally chosen to answer the problem of negative externalities arising from market integration. More recent approaches have tried to explain that communitarisation as a consequence of the failure of previous regulatory arrangements, based on intergovernmental co-operation (Stetter, 2000; Niessen, 1999).

The nature of this increasingly communitarised area of policy could be defined as an uneasy equilibrium between a restrictive trend, gravitating around the strict control of the EU external borders, and more inclusive tendencies promoting policies such as the equalisation of rights of third country nationals with those of European citizens, or the integration of foreign populations into European societies.

The primacy of the first of those tendencies during the late 1980's and early 90's, period in which the development of a common policy on immigration was moving in the direction of an increase in intergovernmental co-operation, generated a large body of literature criticising the construction of a "fortress Europe". In fact, with the implementation of the Schengen Convention by a group of European countries, those restrictive tendencies took the shape of a strong emphasis on issues of border control (common visa policies, co-ordination of police forces, exchange of computerised personal data), and of the conceptualisation of illegal immigration and international crime as illicit activities to be prevented through the use of police methods. The application of the Dublin Convention also resulted in a restrictive shift in asylum policies in most EU member countries.

The 1991 Maastricht Treaty represented a significant move in the process of increasing supranationalisation of immigration policies within the EU, although the new institutional framework created to deal with issues of justice and home affairs (the so called third pillar), remained firmly anchored within the realm of intergovernmentalism. The introduction of the concept of European citizenship for nationals of member states, another novelty introduced by the TEU, contributed to fuel the fears for an exclusive reading of the process of European integration that would exclude third country nationals living in the Union.

With the objective of counterbalancing the emphasis on border control measures, and harmonising immigration and asylum policies across the Union, the Commission elevated a series of reports and communications to the Council and to the European Parliament, on the social integration of immigrants in the member states. In one of the most influential, "*Improving Living and Working Conditions. Social Integration of immigrants from non-Community Countries*" (European Commission, 1994), the Commission stated the three main lines of policy that would characterise EU immigration policies in the years to come: co-operation with sending countries to

prevent migratory flows, control of migration flows towards the Union within manageable parameters, and strengthening of integration policies for legal immigrants. In the section on the promotion of integration, the Commission proposed a series of objectives to be achieved, like the improvement of the position of third country nationals who are legally residents in the Union, the improvement of the framework conditions for social integration, the development of communication systems and forum for dialogue, and the combat against racism and xenophobia.

In 1997, the Commission presented a draft paper, "*Proposal for a Council Act establishing the Convention of rules for the admission of third country nationals to the member states*" (European Commission, 1997). This proposal tried to set out common rules for the admission of third country nationals for the purpose of employment, studying or training, and family reunification. It also defined basic rights for long term residents, including the possibility of working in another member state, different to the one where they acquired their initial residence permits. This proposal failed to receive the necessary support from the Council of Ministers, for most member states representatives considered it too liberal (Niessen, 1999:10).

The relatively weak agenda-setting power of the Commission under the TEU resulted in a poor level of implementation of its proposals. The strong resistance by the governments of member states to increase the competences of the Commission and the European Parliaments in issues related to the integration of immigrant populations resulted in an underdevelopment of more inclusive policies at the EU level, and therefore a stronger salience of policies aimed at regulating and controlling migratory flows to the Union. As the Austrian Presidency recognised in its draft strategy paper elaborated for the Vienna summit of December 1998, with the exception of the policy to combat racism and xenophobia (which was the object of a EU action), the rest of the proposals presented by the Commission in his 1994 paper on the integration of third country nationals within the EU were still valid, and yet to be implemented (European Union Council, 1998: 15).

The entry into force of the Amsterdam Treaty, in May 1999, was an important step forward in the process of communitarisation of immigration policy within the EU. The creation of an area of freedom, security and justice shifted issues of asylum, admission and residence of third-country nationals, and immigration from the third (intergovernmental) pillar, to the first. The whole system of the Schengen Convention (up to then an intergovernmental agreement outside of the EU structure) was also incorporated into the framework of the EU. In addition to that, the Amsterdam Treaty attributed competences to European institutions to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The Plan of Action of the Council and the Commission on the implementation of the Amsterdam Treaty made a distinction between measures to be taken within two, and five years of the entry into force of the Treaty. In the first group were included: issues of readmission and return, combating illegal immigration, procedures and conditions for issuing visas and the list of countries whose nationals are subject to visa requirements, and carriers' liability. Among those policies to be developed within five years of the entry into force of the Treaty should be long-term visas and residence permits, family reunification, conditions of entry and residence, and movement of third country nationals across the EU. Between these two groups of policy objectives the division of immigration related issues in two main areas of policy (control and integration) was quite explicit, and the priority granted to the first over the second in terms of timing still quite apparent, but for the first time, issues related to the integration of immigrant populations within the EU were recognised as an area of policy that should be addressed at the European level, with the Commission, the European Parliament, and the European Court of Justice playing a role in the process of design, implementation and monitoring of those policies.

In the conclusions of the Tampere meeting, the Council explicitly recognised the convenience of treating asylum and immigration issues separately, stated its determination to create a common European asylum system, and asked the Commission to elaborate, within a year, a communication on the implementation of a common asylum procedure, and of a uniform status for those who are granted asylum in one state of the Union. Similarly, the Council expressed its will to separate issues of illegal immigration from issues of organised crime, while stating its determination to fight against criminal organisations specialised in trafficking with human beings. The conclusions also stressed the need for a more efficient management of migration flows, as well as the need to fight against poverty, war, and for the respect of human rights in the sending countries, all important push factors placed at the origin of migratory flows towards the EU. Finally, the Council recognised the EU obligation to pursue a more vigorous integration policy aimed at granting all third country nationals who reside legally in the Union a set of rights and obligations comparable to those of EU citizens, while endorsing the objective that long term legally resident third country nationals be offered the opportunity to obtain the nationality of the member state in which they are resident.

Despite the explicit recognition of the need to move in the direction of an harmonisation of integration policies in the EU, the specific mechanisms through which those objectives should be achieved remain uncertain. Like the *Forum des Migrants de l'UE* denounced shortly after the publication of the conclusions of that meeting¹, "...*Tampere moderate immigration demands*

¹ The European Parliament has also complained about the lack of transparency with which issues of the newly created area of Justice and Home Affairs are handled, as well as about the lack of contents of

come out with blurred, meaningless clichés (more dynamic policy, bringing the status closer, approximation of laws, and so on). It does not specify the measures to be taken, it does not set any dates or schedules, it does not suggest any initiative or financial means for a consistent and homogeneous integration policy” (Forum des Migrants,2000: 4).

The tensions between the two tendencies that we have identified within EU policy-making on immigration issues (border control vs. integration), reproduced themselves in a very country-specific manner in all the member states, rendering extremely difficult any effort to characterise immigration policies in the EU under a single label. Similarly, to consider the impact of the EU in policy-making procedures at the national level only as the result of the implementation of EU directives or regulations would underestimate the impact of the complex processes of policy emulation, and learning that take place in a political entity such as the European Union.

As Weil has pointed out, the convergence of national immigration policies in Western Europe, due to international constraints, and to the existence of similar conditions during the policy-making process, have resulted in very different policy outcomes in each country (Weil, 1998:22). For this author those differences could be explained by the divergent role played by several factors in the environment of immigration policy, as well as by the different policy tools chosen by each state for the implementation of those policies. Those factors were mediated at a geopolitical level by the different geographical situations, political cultures, historical interactions, and diplomatic interest; and at the policy-making level by the degree of politicisation of immigration issues, the mechanisms of agenda building, and the administrative and legal traditions of each specific country. This approach is consistent with the work of other authors that, while looking at the processes of extension of social rights to immigrant populations in liberal democratic states, emphasised the role played by internal actors such as immigrant communities or employers; the universalistic idiom of liberalism (Freeman, 1995); the internalisation of international human rights legislation within the domestic legal orders, particularly in constitutional law, and in the rulings of national courts (Joppke, 1999); and the role of civil servants and the bureaucracies (Guiraudon, 1999).

The common internal market, with the disappearance of internal borders within the member states, and the creation of an external border, clearly set strong pressures on national policy makers to harmonise their immigrants’ integration policies with those of other EU countries (Brochman, 1996; Layton-Henry, 1992). Despite those pressures, and up to very recently, the relative convergence of these policies could not be the result of direct EU regulation on the issue, strongly resisted by states and limited by the Treaties, but of more subtle processes

many of the policies on immigration loudly announced by the Council. See “La Vanguardia”, 14th of February, 2000.

of policy learning, and emulation (Hailbronner, 1995). The “Europeanisation” of national policy making on this area appears as a particular version of those processes of emulation through the adaptation of policies, ideas and values, not only from other countries, but also from discussions and debates among experts and policy makers at meetings organised by EU institutions, as well as from recommendations and proposals for policy emanating from those very same institutions (Radaelli, 1997).

3. Spain as guardian of the EU’s Southern border.

In the 1980’s the countries of Southern Europe, up to then net exporters of labour, started to become countries of immigration, due to the arrival of growing numbers of migrants from less developed regions of the world. Their growing economic development, political stability, and participation in the process of European integration, their historical links with some of the sending regions, together with their geographical position as the Southern border of the European Union, favoured the arrival of increasing numbers of immigrants.

In general terms Spain followed the same path than other Southern European countries. In 1973, the oil crisis represented the closure of Western European countries to further labour migration and with it, the end of the cycle of mass emigration of Spanish workers. Following that, Spain started to receive considerable flows of return migration, constituted by workers (and their dependants) which had migrated to other European countries in the 1950’s and 60’s². Despite those flows, partially explained by the incentives granted by some Western European countries to those immigrant workers willing to return to their home countries, large numbers of Spanish nationals continued to live abroad³.

In the early 1980’s, significant numbers of foreign nationals started to settle in Spain. During that decade, the Spanish economy faced a series of important reforms (tertiarisation, crisis of some labour-intensive activities, labour markets de-regulation) linked to its opening to international markets. Despite the very high unemployment rate derived from those transformations⁴, the Spanish economy generated jobs both at the top and at the very bottom of the occupational scale, opportunities for employment that were in part occupied by foreigners.

² Between 1974 and 77, more than 300 000 emigrants returned to Spain. The importance of the process of return migration at the time can be observed in article 42 of the Spanish Constitution, drafted in 1978, that defines the protection of the emigrants living abroad as a responsibility of the Spanish State, while calling upon it to facilitate their return to Spain. See Ródenas Calatayud, 1994.

³ In 1998 more than 2.2 million Spanish nationals were still living abroad. See M^o Asuntos Sociales, 1998a.

⁴ During most of the 1980’s, the average unemployment rate was over 20%.

The internationalisation of the Spanish economy, strongly related to the incorporation of Spain to the European Communities in 1986, represented its definitive opening to foreign capitals and investments, and the arrival of a considerable number of highly qualified professionals that occupied managerial positions. Pensioners in search of milder winters at an affordable price also contributed to the increase in the number of foreign residents coming from first world countries. The total numbers of this privileged group multiplied by three between 1980 and 1998, from around 100,000 to more than 300,000. In general, foreigners from first world countries (most of them nationals of other EU member states) presented a very low profile to the Spanish public, so they were rarely thought of when immigration issues were discussed.

At the other extreme of the occupational scale a niche of low skilled poorly paid jobs not accepted by Spanish nationals (mainly in the domestic service, agriculture, and construction sector), was occupied by immigrants from less developed countries. From less than 50,000 in 1975, they were up to nearly 400,000 in 1998, coming from the African continent (mainly from the Maghreb), Latin America, China, and Eastern Europe. To this numbers we have to add all those undocumented immigrants residing in Spain without a residence or work permit⁵.

In table 1 we can observe the evolution of the numbers of documented foreign residents in Spain in the last two decades. Those figures remain modest when compared to those of most Western European countries but, nonetheless, their considerable growth, and the novelty of the phenomenon of immigration in Spain, make these numbers particularly interesting.

Table 1. Foreign residents in Spain

Years	Total	EU	Rest of Europe	North America	Latin America	Africa	Asia
1975	165,289	92,917	9,785	12,361	35,781	3,232	9,393
1980	182,045	106,738	11,634	12,363	34,338	4,067	11,419
1985	241,971	142,346	15,780	15,406	38,671	8,529	19,451
1990*	407,647	-	-	21,186	59,372	25,854	29,116
1995	499,773	235,858	19,844	19,992	88,940	95,718	38,352
1996	538,984	252,034	21,257	21,211	100,052	98,813	43,466
1997	609,800	260,600	28,500	21,000	106,000	142,800	49,100
1998	719,647	299,935	30,021	16,997	130,203	179,487	62,044

* Europeans were not included that year because of changes in the measuring system

Source: M^o Asuntos Sociales, 1998a, and OPI, 1999.

Up to 1985, Spanish legislation on immigration was characterised by two main features: the definition of issues related with immigration as matters of “public order”(and therefore

⁵ This floating population has been strongly affected by the evolution of the legislation, increasing with the more restrictive measures, and decreasing with the policies aimed at regularising the undocumented population. Current estimations about their numbers go from the most moderate 60 to 70,000, to the most alarmist 200,000. It is obviously very difficult to measure a phenomenon that, by its very nature, remains under the surface.

exclusive responsibility of the Ministry of Interior), and an extremely weak regulation of all other issues related to the settlement of foreign nationals in Spain (definition of rights and duties, regulation of their incorporation into the labour market, access to social services, etc). This situation determined, to some extent, the context in which the first legislation on immigration was to be defined and implemented. The rather poor social and institutional heritage of immigration policies in Spain also included the existence of a stock of undocumented foreigners living in Spain without a residence or work permit (a by-product of the previous laxity in the control of immigration), the attribution of a big role to the police forces in the managing of immigration issues, and the lack of a public agency with experienced staff specialised on immigration.

In July 1985, the government passed the first Law aimed at regulating immigration in Spain. Presented as an urgent bill, the proceedings were considerably shortened, facilitating in this manner its promulgation before the formal incorporation of Spain to the European Communities, the first of January of 1986. This urgency in the drafting and discussion of the bill, facilitated by the understanding by all political forces of the need to regulate immigration issues before entering into the CEE, and the extremely low profile of this area of policies in the Spanish political agenda, made for a very poor debate in Parliament, with basically no amendments to the bill presented by the government. The *Ley Orgánica 7/1985 sobre derechos y libertades de los extranjeros en España* (literally Law about the rights and freedoms of foreigners in Spain, commonly known as *Ley de Extranjería*), was passed in Parliament by virtual unanimity (only five MPs voted against it).

Despite this apparent consensus among all parliamentary groups about the virtues of the bill, human rights groups, trade unions, and parties on the left of the social-democratic party in office, showed their opposition to what they perceived as a restrictive and discriminatory law. These groups were able to mobilise important sectors of the Spanish public opinion against the new Law, and for the first time in Spain, there were public demonstrations on the streets asking for a comprehensive immigration policy, and opposing the *Ley de Extranjería*.

In fact, the new legislation had a very restrictive character, with a strong emphasis placed on issues of border control. Despite its title, evocative of the rights and freedoms that were to be enjoyed by foreigners in Spain, the police aspects of the legislation, and its inability to deal with the issues arising from the daily presence of immigrant populations, were soon quite apparent. During the debate of the Law, many references were made by MPs to the importance of preventing the action of international criminal organisations, terrorist groups, and drug smugglers, but hardly any to the need of integrating the newly arrived immigrants into Spanish society. In line with that emphasis in control, several articles of the Law explicitly limited the rights of meeting and association for foreigners living in Spain. The new Law also defined the

presence in Spanish soil without the necessary authorisation, as an offence punished with expulsion from the territory.

Some of the toughest aspects of the new Law were softened by the intervention of the judiciary and the courts. That was the case with the articles limiting the rights of meeting and associating for foreigners which had to be removed when, after being denounced by the Ombudsman, they were declared unconstitutional by the Constitutional Court. The courts also intervened in many occasions to prevent the expulsion of immigrants which had been arrested for not having a residence or work permit.

In many other respects, the Law fell short of what a comprehensive immigration law should be. One of its main limitations was the extreme restrictiveness of the system of work and residence permits that it established. While it did not recognise the existence of permanent permits, it introduced a very tough set of requirements for the renewal of the temporary ones already granted.

With the objective of solving the issue of the undocumented foreigners living in Spain, the Law also established the development of an exceptional regularisation process. Here again the restrictive spirit with which immigration issues were treated at the time became apparent. During the development of the process, initially designed to last for two months during the summer period, a large number of detentions were made among undocumented immigrants, creating distrust towards the authorities, and therefore limiting the efficacy of the regularisation process. In September, when the process was supposed to be closed, only 9,000 applications had been presented. Several extensions to the regularisation period were then granted, and the process was not officially closed until March 1986. Of the nearly 44,000 applications for a work or residence permit, only 23,000 were granted, the rest did not even receive an answer from the Spanish administration. One year later, only 13,000 of those who had received a residence or work permit during the regularisation process were able to retain it, due to the strict conditions requested for the renewal of those permits (M^o Asuntos Sociales, 1998b:33).

Together with the strict legislation, the lack of a specialised agency staffed by experienced personnel and supplied with the necessary resources contributed to generate and perpetuate the existence of a large group of undocumented immigrants.

Abounding in that lack of consideration for the need to integrate the immigrant populations, the 1985 Law did not recognise the immigrants' right to family reunification. Similarly, it did not expand on the issue of the immigrants' rights to access the social services (health care, personal services, housing), leaving this issue unregulated, and in the hands of the authorities of the Autonomous Communities (the level of authority that exercised most of the competences in the domain of welfare policies). The result of this state of affairs was a lack of co-ordination

between the different regional governments, and the appearance of severe inequalities in the access of immigrant populations to basic social services. In this context the intervention of third sector organisations (NGOs, charitable organisations, etc) became essential for the reduction of the most extreme cases of social exclusion, although these organisations were unable to prevent the creation of a group of marginalised immigrants living in miserable conditions in the outskirts of big cities and rural areas.

As a result of the conditions under which the 1985 Law was passed, the *Ley de Extranjería* clearly placed Spain in the role of gatekeeper of the EEC's southern border. The strong emphasis in border control issues responded explicitly to that responsibility, while it left unresolved the real needs arising from the presence of a, still small but, growing number of immigrants from less developed countries living and working in Spain.

The strict rules regulating labour migration to Spain since 1985 resulted in a considerable rise in the number of demands for asylum, for many immigrants tried to legalise their situation by applying for territorial asylum, or refugee status. That increase in the number of applications, which peaked in 1993, was immediately responded with a toughening in the requirements for granting that status, and therefore with a drastic decline in the rate of acceptance of those demands. In 1994, the government introduced significant changes in a ten years old legislation considered to be too generous. The main argument used to justify the restrictive shift in the legislation was the need to comply with compromises signed at the European Union level. With the objective of adapting Spanish legislation to the requirements of the Schengen and Dublin Conventions, the government eliminated the figure of territorial asylum, merging it within the status of refugee. The new legislation also established an abbreviated process of admissibility, previous to the formal acceptance of the application, deemed to act as a filter and to eliminate those demands considered clearly abusive. This system of pre-filtering was implemented in accordance to the resolutions adopted at the December 1992 London meeting of EU Ministers in charge of immigration issues.

Table 2. Evolution of Political Refuge in Spain 1984-98.

YEARS	DEMANDS PRESENTED	DEMANDS CONSIDERED	DEMANDS ACCEPTED	ACCEPTANCE RATE	NUMBER OF PEOPLE
1984	-	26	11	42.3	20

1985	-	264	177	67.0	294
1986	-	709	401	56.6	850
1987	2 500	843	262	31.1	513
1988	4 516	1 379	303	22.0	555
1989	4 077	1 515	134	8.8	264
1990	8 647	2 236	246	11.0	490
1991	8 138	3 808	156	4.1	313
1992	11 708	7 357	296	4.0	543
1993	12 615	14 954	592	4.0	1 287
1994	11 192	11 045	345	3.1	627
1995	5 678	4 941	276	5.6	464
1996	4 730	3 521	143	4.7	243
1997	4 975	3 822	105	2.7	156
1998	6 764	4 475	123	2.7	238

Source: M^o Asuntos Sociales, 1998b, and M^o Interior 1998.

As we can see in table 2, those changes in the legislation resulted in a very sharp decline in the number of applications for political refuge in the second semester of 1994, after the effective application of the changes in the Law. Despite that decrease in the number of applications, and the existence of a previous filtering that considerably reduced the number of demands finally considered, the acceptance rate continued its falling trend initiated in the mid 1980's. This decline in the acceptance rate reached its lowest level in 1997 and 98, when only 2.7% of those applying for the status of political refugee were granted that status.

Table 3. Political Refuge statistics 1989-98 (total).

Country	Applications	Demands accepted	Acceptance rate %
Germany	2,024,960	163,178	8.0
France	324,150	82,180	25.3
Belgium	153,060	11,386	7.4
Spain	77,620	4,371	5.6
Italy	44,460	4,610	10.3

Source: UNHCR web page.

The extremely restrictive application of the legislation on political refuge can be perceived in table 3, where we can compare the data for Spain, with that of other EU countries. The figures show how during the last decade Spain was one of the European countries that received the smallest number of applications for political refuge, and simultaneously, had one of the lowest acceptance rates for those applying for that status.

The development of a restrictive legislation with a strong emphasis on issues of border control was supposed to be matched with an increase in the resources allocated to police the borders. If we analyse the whole period between the promulgation of the 1985 Law until today,

we could consider that to be to some extent the case, although the evidence would appear less conclusive than in the case of the legislative measures we just reviewed.

Up to the early 1990's, Spanish authorities maintained a relatively flexible stand on the implementation of effective policies of border closure while, simultaneously, they were developing a very restrictive legal framework in accordance with the requirements of its partners in the European Union (Pérez, 1999:15). With Pérez we could argue that the complex political and economic interests of Spain in relation to Morocco, took Spanish authorities to adopt a more relaxed attitude towards the flows of Moroccan immigrants arriving to Spain. Although the intention of most of those immigrants was to continue their trip towards other EU countries, growing numbers of them stayed in Spain. In that context, several niches of the Spanish labour market, characterised by their low salaries and harsh working conditions (very often in the informal economy), became increasingly occupied by Moroccan immigrants.

The attitude of the Spanish authorities with respect to the policing of the borders changed substantially in the early 90's. The 15th of May of 1991, coinciding with the expiration of the 1964 agreement with Morocco, and the 1966 agreement with Tunisia for the mutual suppression of visas, the Spanish government reintroduced the requirement of visas for nationals of countries from the Maghreb. This change in the policy of visas was again clearly related to the EU, for the closure of the external borders appeared as a precondition for the incorporation of Spain into the Schengen agreement. In fact, the formal incorporation of Spain to that agreement was signed the 25th of June, just a few weeks after the reintroduction of the visa to countries of the Maghreb.

That change in the visa policy resulted in the need to reinforce the control of the external borders, specially in the cases of Ceuta and Melilla, two Spanish enclaves in the North African coast, and the only land borders between the EU and Morocco. In the following years, and up to the present, Spanish authorities invested considerable amounts of money and resources in trying to build an effective system of border control around those two cities⁶. That system included the building of a road around the perimeter of the enclaves, together with the installation of a double barbed-wired fence 3.2 meters high, ditches, turrets, thermal sensors, and infra-red cameras supporting the patrolling of the *Guardia Civil* (Civil Guard). Since the end of 1998, the army was also called in to patrol the border in co-operation with the *Guardia Civil*.

For the Spanish authorities, the responsibility of exercising a strict control over those borders derived from the compromise acquired by Spain with its European partners to implement a strict policing of the external border of the Union. This idea of fulfilling a European mission was clearly reflected in the requests by Spanish authorities for the EU to co-finance that policing

effort, demand that was responded positively, with the allocation of EU funds to the strengthening of the borders in Ceuta and Melilla⁷.

Despite the increasing human and material resources dedicated to police those borders, both cities have been systematically filled with immigrants from Sub-Saharan countries and the Maghreb, expecting to cross to the European continent from those Spanish enclaves. Some of them get into those cities mixed with the thousands of people that cross the frontier with Morocco on a daily basis. That is the case because both cities have a very strong commercial character, and their economies are strongly dependent on their exchanges with the Moroccan region surrounding them, and that implies a big influx of people crossing their borders. Potential immigrants get also organised in big groups of several hundreds and try to jump over the fence in a co-ordinated manner, trying to escape in this manner to the control of the Spanish army and the *Guardia Civil*⁸. In general, the stocks of undocumented immigrants in those cities have been sent to the Spanish mainland in a regular basis, when their presence became a politically sensible issue within the complex political scene of those enclaves, that is to say when their numbers became too large, and their presence in Ceuta and Melilla (both small cities) too obvious for the local population. In those occasions they have been left in the hands of third sector organisations, and were soon diluted amongst the groups of undocumented immigrants already present in Spain.

In summer 1996, just a few weeks after the conservative *Partido Popular* (Popular Party) took office, the issue of the undocumented immigrants in Ceuta and Melilla made it to the front line of the political debate in Spain when the new government decided to send a clear message of toughness in issues of immigration control, and expelled, in a very expeditious manner, a group of more than 100 undocumented immigrants who were living in those cities. The ways in which those immigrants were expelled (put in military planes, sent to a small group of African countries willing to accept them regardless of their national origins, under the effect of drugs provided to them in the water, and in the cases of some 30 of them without consideration of their applications for the status of political refugee already presented in Spain), gained a strong media attention, was the object of a reproving statement by the Ombudsman, and of an investigation by the judiciary. An unfortunate statement by the brand new President of the

⁶ A recent article in the newspaper “El País”, estimated the amount invested by the Spanish government since 1991 to close the perimeter of the city of Ceuta in some 8,000 million pesetas, that is to say some 50 million Euros. See “El País”, 1th of December 1999.

⁷ Public statements by Spanish official in this direction have been quite common in recent years. See “El País”, 4th of September 1996, 16th of January 1998, 9th of August 1998, and 14th of November 1999.

⁸ The Spanish press reflects those “attacks” on the border as a very dramatic representation of the “myth” of the invasion by the “barbarians”, depicting the policing of the border as a daily battle against the unstoppable tide of immigrants going up North towards Europe. See “El País”, 22th of February 2000.

Government Jose María Aznar in relation with this affair⁹, was later justified by the Minister of Interior in his report to the Parliamentary Commission of Justice and Home Affairs, when he recognised that it had not been a model expulsion, but that the expeditious manners were justified by the strict monitoring conducted by the EU, and the other European governments, on the policing of the external border implemented by the Spanish authorities (Celaya, 1997: 51).

Table 4. Border control statistics.

Year	Expelled	Rejected	Devolved	Total
1987	2,262	20,622	241	23,125
1988	-	-	-	-
1989	4,739	35,162	883	40,784
1990	4,733	73,959	959	79,651
1991	3,787	53,722	1888	59,397
1992	3,444	15,030	2357	20,831
1993	4,476	13,981	803	19,260
1994*	4,902	271,909	18,170	294,981
1995	4,875	173,988	19,353	198,216
1996	4,837	144,090	27,104	176,031
1997	3,502	-	23,218	-
1998	5,525	-	19,753	-
1999	-	-	18,823	-

*Land border with Morocco (Ceuta and Melilla) begins to be counted.

Source: Anuarios de la Dirección General de la Policía.

Table 4, although incomplete, gives us a glimpse at the huge increase in the number of foreigners that were expelled, rejected at the border, or devolved to the country from which they were trying to get into Spain, in the last decade. The huge majority of those were Moroccans rejected at the land border with Ceuta or Melilla because of their lack of a visa or proper identification. Nevertheless, we should appreciate that all the other categories increased substantially as well, due to the increase in the control of all the other external borders (mainly ports and airports).

Another sign of the toughening of border policies in the last years has been the unilateral denunciation of some of the agreements that Spain had with Latin American countries with respect to visas. This change in the visa policy with respect to countries of Latin America was particularly difficult to justify and implement, due to the historical connections that link Spain to those countries, to the perception of the existence of an historical debt towards those countries for the role they played as receivers of Spanish emigrants up to the 1950's, and because of the increasing economic interests of Spanish firms in the markets of that area. Despite all those

⁹ Trying to explain how the expulsion of those immigrants was decided the President stated that, “*teníamos un problema y lo hemos resuelto*” (we had a problem and we solved it). See “El País”, 21th of

difficulties, a slow but constant process of establishment of visas with those countries has been taking place in recent years.

Another aspect that has received increasing attention has been the policing of the hundreds of kilometres of coast of the Iberian Peninsula. The growing number of *pateras* (small and fragile boats) arriving to the Spanish coast of Andalucía and the Canary Islands, forced Spanish authorities to increase the human and material resources dedicated to control the coasts. One tragic indicator of that flow are the figures of immigrants drowned when trying to cross the *Estrecho* (straits) of Gibraltar¹⁰, or the distance that separates the Canary Islands from the African continent. The number of people devolved to the countries from which they tried to get into Spain could also be used as an indicator of both, the migratory pressure on the Spanish borders, and the emphasis placed by the Spanish authorities in preventing those flows.

In this section I tried to point out the important effect that EU policy directions, regulations, and pressures for the adoption of a strict policy of border control, had over a country like Spain (with no previous experience in the area of immigration policy). The relatively small size of the immigrant communities, the initially weak legislative framework in immigration related issues, the unaware politicians, the inexperienced police forces and bureaucracies, and a relatively uninformed public opinion, characterised a policy environment where the external influence in the policy-making process could have a much stronger impact. In that sense I reviewed several policies related to immigration, and border control policies, and tried to show the connection between their very restrictive character, and the influence of EU policy objectives on the Spanish policy-making process.

4. Beyond border policing: demand for unskilled labour and the need to incorporate immigrant populations.

The definition of a common policy for the control of the external borders of the European Union was a relatively feasible task, despite the persistence of many particularities in the implementation of that policy by the different member states. The development of a common set of policies to promote the integration of immigrants in the EU has not been achieved at the same speed, due to the strong resistance exercised by governments of the member states. The existence of nationally specific philosophies of integration (Favell, 1998), and the perception that

July 1996.

¹⁰ According to the Ombudsman of Andalucía, more than 1,000 immigrants were reported dead while trying to cross the *Estrecho* between 1993 and 98. For ATIME, an association of Moroccan immigrants in Spain, that was the figure for 1998 alone, for most shipwrecks took place near the Moroccan coast or

integration policies are intimately connected to the notion of state sovereignty (they define the *Demos*, that is to say, those who belong to the *Polity* and are entitled to participate), explains the reluctance on the part of nation state authorities to further EU intervention in this policy area (Hailbronner, 1995: 185; Callovi, 1991: 25; Joppke, 1999: 36). While calls by the European Parliament and the Commission for a higher degree of co-ordination resulted quite unsuccessful until very recently (the application of the Amsterdam Treaty will change this situation considerably), the existence of some degree of convergence in this area of policies has been explained as the result of, more or less subtle, processes of policy emulation, and policy learning between the different countries (Weil, 1998; Hansen, 1998).

As we have seen in the previous section, EU objectives in border control policies were implemented in a pretty straightforward manner in Spain. That was the case because policies of strict border control, required by the EU in order to eliminate internal borders within the Union, did not challenge clearly defined previously existing policies, seriously damaged articulated interests, or openly questioned other areas of policies applied by the Spanish state. This was a clear example of direct Europeanisation, that is to say, domestic policy changes in response to a series of explicit requirements defined at the EU level (Radaelli, 1997: 555).

With regard to policies for the incorporation of immigrant populations, the lack of a well defined guideline emanating from the supranational level, and of an external pressure to design and implement policies in any specific direction, implied that Spanish authorities had more room for manoeuvre while defining those policies. Despite that, and although the timing for the implementation of those policies was determined by domestic considerations, the proposals of the European Commission for the co-ordination of integration policies were used by Spanish authorities as a basic framework of reference for the development of those policies at the national level. This became an example of indirect Europeanisation, for national policy makers conceived a domestic issue within a European frame of reference, and adapted their policies to that framework, even though no specific compulsion to do so existed.

Since the 1985 *Ley de Extranjería* was implemented, the existing tensions between the border control policies included in that Law and the respect for the basic rights of the individual were the object of many interventions by several instances of the judiciary, ranging from the Constitutional Court (declaring unconstitutional several articles of the Law), to rulings by different courts criticising several aspects of the Law and their application by the police and the bureaucracies (in particular issues such as expulsions, denial of the *habeas corpus*, or the detention of undocumented immigrants in special centres beyond the time limit established by the

were taken away by the streams, and therefore went unnoticed for the Spanish authorities. See “El País”, 9th of February of 1998, and 8th of August 1998.

laws). In his annual reports, the Ombudsman also expressed his concern with the situation of increasing marginalisation suffered by immigrants from less developed countries in general, and by those without a work or residence permit in particular.

During the 1990's, the need for policies to counterbalance the strong emphasis initially placed on border policies, reduced some of the negative side effects they produced, and proposed alternative approaches to the issue of migration flows, forced Spanish authorities to elaborate a more sophisticated set of policies to be applied within a much more complex policy environment. By that time it became clear that immigrants were not only using Spain as a platform to move towards other European countries, that the settling of immigrant populations was not a temporary phenomenon, and that the demand for unskilled labour that had brought those immigrants to Spain in the first place was not going to disappear, but well on the contrary, it was quite likely to increase in the coming years. Despite the restrictive measures applied in relation to issues of family reunification, those immigrants which had been living in Spain for some time had managed to bring their families in, and their children already represented a big portion of the students in certain schools. The creation of immigrant communities resulted in a significantly different profile with respect to their needs in terms of public services in general, and social services in particular.

Although in absolute terms immigrants represented less than 1% of the total Spanish population in 1999, the novelty of their presence, their high concentrations in certain regions of the country (Catalonia, Madrid, and some areas of Andalucía and the Mediterranean coast), the attention immigration issues received in the media because of the role played by Spain as Southern border of the European Union, together with the activities of some uncoordinated but locally powerful xenophobic entrepreneurs, contributed to the salience of the issue of immigration in the Spanish public opinion. Several racist incidents in different cities and villages during the last months (mainly El Ejido, Terrassa, and Figueres) highlighted the need for a higher degree of involvement by public authorities to facilitate the incorporation of immigrant populations into Spanish society, and to prevent the development of xenophobic and racist attitudes among the Spanish population.

Policies such as the regularisation of undocumented immigrants, the extension of basic social rights to all immigrants present in the territory regardless of their legal status, or the development of special agreements with the sending countries in order to regulate the import of temporary and seasonal workers, responded to a series of needs perceived within Spanish society. Their implementation represented the more positive aspect of Spanish immigration policies in recent years. I will review here those three basic lines of policy developed with the objective of reconciling the maintenance of a strict policy of border control, with the satisfaction of some of

the demands that the Spanish society expressed in relation with immigration issues. Many social actors (political parties, trade unions, NGOs, the judiciary and the courts, immigrant's associations, etc) played a role in the design and implementation of those policies, so I will briefly refer to their intervention in each of those sets of policies.

1. Regularisation processes.

Since the first law regulating immigration issues in 1985, three regularisation processes have been developed with the explicit objective of legalising all immigrants living in Spain without a residence or work permit (1986, 1991, and 2000). These processes, common in many other European countries such as Italy, France or Belgium, have been strongly criticised at the level of the EU Council, for they are supposed to provide strong incentives for further illegal immigration (Hailbronner, 1995: 201)¹¹. Despite those critiques from European institutions, Spanish authorities have used these procedures to bring to the surface the stocks of undocumented foreigners that, due to their lack of a recognised legal status, were pushed towards the black economy, did not enjoy the most basic rights, and were exploited and increasingly marginalised.

The first of those processes was conducted in 1986, right after the first immigration Law was implemented, with the objective of legalising the stock of undocumented foreigners generated by the previous vacuum of Spanish legislation on immigration. As I already mentioned, this process was implemented in a very restrictive and uncoordinated manner, and its effects did not last for very long, for many of those who obtained a permit lost it shortly after, due to the strict rules regulating the renewal of those permits.

Between 1986 and 1991, when the second regularisation process took place, the stock of undocumented immigrants grew considerably. Trade unions periodically denounced the situation of exploitation and marginalisation suffered by many of those undocumented immigrants, and third sector organisations tried to provide relief for some of their more elementary needs, while advocating for the change of a legislation that condemned those immigrants to social exclusion. Despite those domestic pressures, the main rationale for the design and implementation of the second regularisation process came from the domain of foreign policy, in the form of an agreement with Morocco in which Spain accepted to conduct a regularisation process to legalise the situation of the Moroccans living in Spain without a residence or work permit. In exchange, Morocco accepted the introduction of the visa requirement for their nationals willing to enter in Spain (López, 1993: 66). In this manner, the Spanish government fulfilled one of the

requirements for the incorporation of Spain to the Schengen Convention. More than 133,000 demands were presented to this process, and some 116,000 new residence and work permits were granted, nearly 50,000 of them to Moroccan nationals (Hernando de Larramendi, 1994: 132).

Apart from the much larger scale of this process in comparison with the previous one conducted five years before, other changes resulted in a more effective running of the process (like the co-operation with third sector organisations and associations of immigrants for distributing information and co-ordinating the process). It also had a more lasting effect on the stock of undocumented immigrants, due to a more flexible approach to the renewal of the permits issued during the process.

After this process, and in order to organise the inflows of immigrants, the government established a system of quotas, according to which a certain number of work permits would be issued every year to fill those jobs that had not been accepted by Spanish nationals. Those permits were supposed to be distributed, through the Spanish consulates and embassies, among those potential immigrants that would like to move to Spain to take those vacant jobs. In practice though, this quota system ended up functioning as a mechanism for the regularisation of those undocumented immigrants already present in Spain. Since 1993, and nearly in a yearly basis, a quota of 20 to 40,000 work permits were issued every time, mostly to undocumented immigrants already present in the territory. This system did not accomplish its original objective of regulating and controlling the inflows of immigrants, but it provided the unskilled labour demanded by certain sectors of the Spanish economy, while it simultaneously helped to bring to the surface the stocks of undocumented immigrants that otherwise would have been condemned to work in the informal sector without any rights (and therefore paying only indirect taxes). Through those mechanisms of gradual regularisation, and through the slow process of family reunification, the numbers of legal residents from third world countries went up from about 70,000 in 1985, to 400,000 in 1998 (see table 1).

Since March 1998, and for nearly two years, a Parliamentary Commission debated a new immigration bill with the objective of substituting the old 1985 Law, and to regulate immigration related issues in a more comprehensive way, taking into account the complexity of the issue, and the structural character of immigration to Spain. That bill was negotiated in a consensual manner by all parties up to its very last stages, when the government of the conservative *Partido Popular* started to oppose some aspects of the bill drafted with the participation of their own MPs.

The PP tried to introduce a series of changes in the bill during its discussion in the Senate (112 amendments were presented for a bill of 77 articles), but its relatively weak situation in

¹¹ The European Parliament showed a more positive stand towards this kind of processes, and in April 1997, it advised all member states to regularise the legal status of undocumented immigrants with some

Parliament, without an absolute majority, and depending on the support of the Catalan and Basque nationalist parties, resulted in a defeat of its proposals, and the acceptance of the bill as it had been initially drafted by the Parliamentary Commission. Part of the opposition of the PP to the new Law was related to the mechanisms for the regularisation of undocumented immigrants recognised in that text.

On the one hand, the new Law established the development of another regularisation process that would grant a fresh start to the implementation of the Law. This third regularisation process started to be implemented on the 21th of March of this year, it will last until the 1st of July, and it is expected to legalise some 100,000 undocumented immigrants if they are able to prove that they have been in Spain before the 1st of June of 1999. The handling of the process is being done with the active co-operation of third sector organisations, trade unions, and immigrant's associations, and because of its relatively generous conditions, it is expected to legalise the situation of most of the undocumented immigrants living in Spain.

On the other hand, the new Law introduced a mechanism for the automatic regularisation of all those undocumented immigrants that are able to prove more than two years of residence in Spain. This point was strongly opposed by the government of the PP, which argued that it was against the spirit of the conclusions of the European summit of Tampere, celebrated just a few weeks before the passing of the new immigration Law. In fact, during the campaign for the last general election of March 12th 2000, the PP clearly stated its intention of reforming the new immigration Law. The conservative party won, this time with an absolute majority, so a modification of the Law appears quite likely in the coming months. Among the modifications to the Law that the PP wants to introduce, the mechanism for the automatic regularisation by residence may be severely curtailed, or disappear altogether.

Beyond the growing politicisation of immigration issues in the Spanish political arena, and the reticent attitude of the EU towards the implementation of legalisation programs as a way of handling the issue of illegal immigration, Spanish policy makers implemented mechanisms for the regularisation of undocumented immigrants (exceptional regularisation processes, yearly quotas, automatic regularisation by residence) as a way of answering some of the demands perceived within Spanish society (demand for unskilled labour, fight against marginalisation and exploitation of undocumented immigrants).

2. Policies of integration: the expansion of rights.

After the recognition of the limitations of the 1985 Law as a regulatory framework for the incorporation of immigrant populations into the Spanish society (due to its strong emphasis

period of residence in the host country (M^o Asuntos Sociales, 1998: 27).

on the control of the borders), and of the structural and permanent character of the phenomenon of immigration in Spain, policy makers started to consider the convenience of developing a set of policies aimed at facilitating the integration of those immigrants into their host society.

Before the mobilisation of the parties of the left, and the demands of third sector organisations working with immigrants, the social democratic party in government approved a Plan for the social integration of immigrant populations in December 1994. This Plan defined three main lines of action in relation to immigration issues:

- a) To prevent the creation of migratory flows by co-operating to promote the social and economic development of the countries where those flows originate.
- b) To increase knowledge of those flows, as well as of the demand for unskilled labour in the Spanish economy, with the objective of regulating immigration effectively.
- c) To facilitate the social integration of immigrant populations into the Spanish society.

Those three sets of objectives replicated the goals defined by the European Commission in its failed attempt to co-ordinate integration policies within the EU (Hailbronner, 1995: 203). Because of the lack of a nationally specific tradition of policies for the incorporation of immigrant populations, and in a process of policy emulation, Spanish policy makers adopted the main guidelines for policy defined by the European Commission.

Despite those declarations of good intentions, the development of policies aimed at effectively incorporating immigrant populations into Spanish society was not that easily accomplished. The decentralised institutional arrangements that characterise the Spanish state, together with the multidimensional nature of the issues at stake, resulted in a considerable lack of co-ordination among the different authorities involved, considerable gaps in the coverage of the most basic needs of immigrant groups, and a growing marginalisation, specially among the undocumented migrants.

One area in which the failures in the granting of the most basic rights was more evident was health care for immigrants. The process of expansion of health care coverage for all immigrants followed a tortuous and gradual path, similar to the one developed during the universalisation of health care coverage for all Spanish citizens during the 1980's, when the public health care system evolved from a social insurance system, linked to work related contributions, to a universalist system with entitlements based on citizenship.

Foreigners with a work permit and that had contributed to the Social Security (at present or in the recent past), as well as their dependent relatives, were entitled to access the *Sistema Nacional de Salud* (Spanish National Health Service), just like Spanish citizens. In addition to that, every person was entitled to emergency care and to treatment for infectious diseases. The problems came mainly with undocumented immigrants, long term unemployed immigrants, and

those that only had a residence permit. Third sector organisation covered the gaps that public administrations did not want, or did not know how to attend, including primary care for immigrants excluded from the public health care system. For specialised care (treatments requiring hospitalisation, chronic illnesses, etc), informal networks of doctors and public hospitals provided the services in an unofficial basis. This complex scheme, set up to cover the gaps left open by a partial and restrictive regulation, resulted in an unequal coverage for immigrants, depending in the last instance in the good will of the medical professions. This issue was the object of public discussion in several occasions when the media, the ombudsman, or the judiciary pointed out the violation of the rights of immigrants, as persons, that this situation represented.

The first among undocumented immigrants to get full access to the public health care system were those under 18, followed by pregnant women shortly after. These two groups were granted free access to health care when the 1989 UN Convention on the Rights of the Child (which states that every person under 18, as well as pregnant women, should receive free health care services), was incorporated into a new Law for the protection of minors in 1993. Many different institutions (at the national, regional and local level) were involved in the process of implementation of that policy so, despite the formal expansion of the right to access the services *de jure*, several cases of denial of treatment because of lack of accreditation (lack of a Social Security card) were denounced by third sector organisations, and appeared in the press.

In January 1999, the intervention of the Public Attorney of Madrid denouncing the INSALUD (Spanish NHS) for the denial of treatment to several children suffering chronic illnesses, brought to the front line of the public debate the question of the *de facto* access to health care by children, offspring of the undocumented migrants. Before the mounting pressures coming from parties on the left, NGOs, trade unions, and associations of immigrants, the Minister for Health announced that his Ministry was considering the possibility of extending the right to access the public health care system to every person living in Spain, regardless of their legal status. The parties on the left presented a bill in Parliament a few weeks later, with the objective of granting universal access to free health for every person present in the Spanish territory. Despite being voted unanimously in Congress, the implementation of this legal measure was voluntarily delayed in attendance of the new immigration law which was in the process of been drafted at that time, and which was supposed to include the granting of the right to free health care for all.

The new immigration Law, passed in December 1999, and to which I referred in the previous section, introduced significant changes in the area of rights for immigrants living in Spain. While it equalised the civil and social rights of legal foreign residents with those of

Spanish nationals, and it established the possibility of voting rights at the local level (in the grounds of the existence of reciprocity agreements with the sending countries), it also extended the right to free access to the public health care services for undocumented immigrants.

According to the new Law, undocumented immigrants were also entitled to free compulsory education (from 3 to 16), access to grants for education, as well as to the (limited) public housing policies available, in equality of conditions with Spanish nationals. These entitlements to social rights were based on the criteria of residence (inscription of the Census), moving somehow in the direction of de-coupling of nationality and citizenship rights.

During the debate of the new immigration Law in Parliament, the tensions between the two different approaches to immigration issues (closure vs. integration), appeared not only between the different political parties, but also within the Parliamentary group of the party in government, and among the different Ministers of the Cabinet. On the one hand, the MPs of the Popular Party that participated in the drafting of the bill, together with the Minister for Labour and Social Affairs, praised the consensual manner in which the bill had been drafted, and the positive steps towards the integration of immigrant populations within the Spanish society that the new Law represented. On the other, a series of Ministers (Economy and Finance, Interior, Foreign Affairs), backed by the President of the Government, showed their concern for the unexpected consequences that could derive from the implementation of the new immigration bill. For the Minister of Economy, the cost of the extension of social rights to undocumented immigrants would be an extremely high burden to the finances of the Spanish welfare state. In particular, the cost of granting access to health care for undocumented immigrants could represent some 45 million Euros a year, only for an estimated population of 80,000 undocumented immigrants¹². For the Ministers of Interior and Foreign Affairs, the new Law would be by far the most progressive in the EU, and that was difficult to handle for a country like Spain so exposed to the inflows of illegal immigrants, and with a responsibility for guarding the Southern border of the EU.

In that context, the argument of the immigration policies promoted by the EU played an important role in the debates, although every side took the aspects that better suited their interests. For those defending the need to expand immigrant's rights, EU documents and drafts for common policies emphasised the need for integration of immigrant populations. To this argument, those defending more restrictive positions argued that all measures promoted by the

¹² The government worked with a report conducted by the consulting firm Pricewaterhouse & Coopers, that estimated a figure of 80,000 undocumented immigrants, by considering those denied applications for the annual quotas, as well as those applicants for the status of refugee who had been denied that status, but were allowed to stay in the country on humanitarian grounds (OPI, 2000).

EU to integrate immigrants were referred to legal residents, and explicitly exclude undocumented immigrants¹³.

Although the Law was passed with the opposition of the conservative party in government, this party promised to change the Law to comply with the agreements reached at the Tampere summit, that is to say, excluding undocumented immigrants of all social services programs. After winning the elections, the PP has call for a reconstruction of the consensus among the political forces to reform the 1999 immigration Law, this time with a more restrictive spirit. The issue of health care coverage for undocumented immigrants, although used to justify the high cost of the expansion of social rights to this group, did not appear in the initial proposals for reform, probably due to the unpopularity of such a move after having explicitly granted that access to all, regardless of their legal status.

3. Bilateral agreements for the import of labour.

The signing of bilateral agreements with sending countries for the channelling of migratory flows towards Spain will be the third area of policies I will review here. Those agreements, which started to be negotiated and drafted in recent months, responded to a combination of demographic, economic and political interests.

The publication of a report by the population division of the UN, pointing out the ageing and decline of the Spanish (and European) population was the starting point for a debate that tried to reflect on the consequences of having the lowest fertility rate in the planet¹⁴. According to the projections generated by that report, in the year 2050 Spain would have the oldest population in the world, and it would need some 12 million immigrants to keep the actual ratio of 4 workers for every retired person. In the same report, the UN report estimated that by the year 2025, some 159 million immigrants would be necessary to maintain the current levels of social protection that characterise European welfare states. Although UN experts recognised that the levels of migration predicted by the report would be socially and politically unthinkable in Europe, they also stated that the demographic trends are there, and that substitution migration will be a reality in Western Europe in the forthcoming years (“El País”, 7th of January, 2000).

The complex set of reasons that brought Spain to the last position in the ranking of countries according to their fertility rates (unemployment and job precariousness, raising expectations,

¹³ The granting of those rights to all immigrants may be in fact against the current treatment of the issue at the EU level, as the strategy paper on immigration elaborated by the Austrian Presidency clearly stated: “*No European country today would consider going it alone in opening up the right of asylum, making access easier for immigrant workers or increasing social security benefits for immigrants. Such topics do not therefore need to be discussed even at regular intervals*”, (European Council, 1998:5).

underdevelopment of personal social services, etc), are very unlikely to change drastically in the foreseeable future, so the already existent demand for unskilled labour in certain sectors of activity of the Spanish economy will continue to grow in the future. The highly segmented demand for labour, quite strong in sectors such as the domestic service, construction, and labour intensive agriculture, has been one of the most powerful pulling factors in the development of, very often illegal, migratory flows towards Spain in the recent past. For many years, employers in those sectors found in the undocumented immigrants a cheap and flexible supply of labour with no additional costs (Social Security contributions, redundancy payments, or paid holidays). They took advantage of this situation and hired large numbers of undocumented immigrants that were too often exploited at work, and socially marginalised in the cities and villages where they lived.

Meanwhile the Spanish government did not show much interest in controlling and imposing sanctions on employers who hired undocumented immigrants. The argument was that there were not enough resources at the Ministry of Labour to control those areas of activity where the hiring of irregular immigrants was more common. The lack of political will to pursue a more strict policy of labour market control may be related to the will to show a lax attitude towards the black economy (extremely important in certain regions, and specific areas of activity), very often businesses struggling to survive in an increasingly internationally competitive environment (textiles, shoe factories, etc). In the case of the intensive agriculture, particularly in the South East, the possibility of keeping production costs down through the use of lowly paid undocumented immigrants allowed many farms to remain competitive in the European markets, in comparison with imports from other countries such as Morocco, where the same products are grown at much lower costs.

But that model, based on the exploitation and marginalisation of the undocumented immigrants, cannot last permanently. Social actors have started to become aware of the negative consequences deriving from the maintenance of such a system, in the form of shanty towns, increasing marginalisation, and crime, together with xenophobic feelings and racism against the immigrant population. The serious racist incidents in El Ejido in January 2000, where the killing of a Spanish woman by a Moroccan immigrant under psychological treatment was followed by three days of attacks against the immigrant community (houses, shops and cafes burned, together with the site that was used as a mosque by the Moroccan immigrants), were the final explosion of a malaise that had been mounting in the last years, in parallel to the uncontrolled arrival of undocumented immigrants, and the activities of some xenophobic entrepreneurs that tried to capitalise on the tensions generated by that situation.

¹⁴ In 1998 Spain had the lowest fertility rate in the world with only 1.07 children per woman. Since the beginning of the 1990's, Spain has been at the bottom of the ranking of countries in relation to their

Even though employers had taken great advantage of those undocumented workers, by using them as a plentiful supply of cheap labour, and by rejecting any responsibility for the provision of proper working and living conditions for those immigrants, in more recent times they started to accept the convenience of regulating migratory inflows, and establishing mechanisms to improve the extremely precarious conditions in which those undocumented immigrants lived. Last year, both employers and trade unions publicly declared their interest in changing the *pateras* for boat tickets, and the shanty towns for decent housing arrangements, and negotiated with the Spanish government the development of a framework to determine the responsibilities of each actor in that process, as well as their economic contributions, to set up a new system for the regulation of unskilled labour migration.

In that context, the Spanish government announced in October 1999, the signing of an agreement with Morocco for the development of a scheme of regulated temporary migration to Spain. According to that agreement (broadly defined, although initially thought for the agriculture sector), those jobs not covered by Spanish, Communitarian, or regularised foreign workers already present in Spain, would be offered to potential immigrants from Morocco. The Spanish authorities would grant a temporary work permit (for a maximum of 9 months a year), would offer health care insurance, and would subsidise transportation costs and the provision of decent housing, that would be the final responsibility of the employers.

Although similar agreements were announced for a near future with other countries such as Ecuador, Colombia, Mali, Rumania, and Poland, the bilateral agreement with Morocco was by far the most important for many reasons (geographical proximity, large flows of illegal immigration, largest immigrant community in Spain, etc), not the smallest of which are foreign policy concerns in relation to that country. In fact, immigration issues have become one of the hottest topics in the bilateral relations between these two neighbouring countries, already quite loaded with issues such as the status of the Western Sahara¹⁵, the sovereignty over Ceuta and Melilla¹⁶, the smuggling of illicit drugs, or the access of Spanish boats to Moroccan fisheries. Since the incorporation of Spain to the CEE (perceived by the Moroccan authorities with

fertility rates, together with Italy and Hong Kong. See "El País", 22th of December 1999.

¹⁵ The Western Sahara was a Spanish colony until 1975 when, taking advantage of the delicate political situation in Spain derived from the imminent death of the dictator Francisco Franco, the Moroccan authorities increase their pressure to annex that territory to Morocco. Spain retrieved from the W. Sahara leaving the issue of the status of that territory as an unresolved question. The war between the pro-independence Polisarian Front supported by Algeria, and Morocco, floated for many years as an uncomfortable situation for the Spanish diplomacy. For a good account of that situation see Hernando de Larramendi, 1994.

¹⁶ Although those two enclaves have been under Spanish control for more than five centuries, the Moroccan authorities do not recognise the Spanish sovereignty over those cities. The issue has been used by the Moroccan state as a mechanism to press Spanish governments at critical junctures of the relations between both countries.

suspicion) new issues appeared in the bilateral agenda (increasing competition for European markets in agricultural products, growing capital investments and relocalisation of certain areas of production by Spanish firms in Morocco), including different issues related to migratory flows of Moroccan nationals to the EU (visas, transit through Spain of Moroccan immigrants settled in the EU, remittances of Moroccan immigrants living in Spain, Social Security transfers for retired workers).

In this context of complex bilateral relations, Spanish authorities tried to implicate Moroccan authorities in the control of the migratory flows concerning not only Moroccan nationals, but also other Africans who try to get into Europe, either by crossing the land border between Morocco and the Spanish enclaves of Ceuta and Melilla, or by boarding a *patera* in the Moroccan coast with the intention of disembarking in a Spanish beach. With that objective, the authorities of both countries signed an agreement in 1992 for the readmission of illegal immigrants that crossed to Spain from Morocco. The implementation of that agreement though, has depended on the mood of the Moroccan authorities that used this issue as a leverage to negotiate other issues of the bilateral agenda. Within that broad process of negotiation between the two countries, the bilateral agreement for the import of temporary workers to Spain could be understood as a way of regulating the inflows of migrants (an objective for Spanish authorities), while improving the working and living conditions of Moroccan immigrants in Spain (in the interest of Morocco).

One interesting thing regarding the bilateral agreement regulating temporary migration to Spain is that the emulation processes with policies implemented in other European countries or at the EU level, that may explain other aspects of immigration policies in Spain in the last years, do not seem to operate here. Although the second round of guestworker recruitment initiated in Germany in the early 1990's seem to have worked quite successfully in its objective of avoiding permanent settlement, that was not the case of previous experiences with guestworker schemes, which failed in their objectives, and facilitated the permanent settlement of immigrants in the receiving countries (Joppke, 1999a: 22). The replication of the most recent German experience would not be an easy task for Spain, for the differences in the experiences in managing migratory processes, as well as the institutional capacities necessary to handle such a complex scheme, make the two cases much too different.

In the last summit of Tampere, the High Level Group on Asylum and Migration, set up by the Council in January 1999, presented its report of progress, as well as the different draft action plans for a series of countries considered to be of special interest. The report on the action plan for Morocco, co-ordinated by Spain, made a big emphasis on the idea of this country as a "buffer" zone to reduce migratory pressures on the Southern external border of the EU. To

accomplish that objective, several proposals were made, sharing the main guidelines of the Spanish policy towards that country: co-operation to facilitate the socio-economic development of the country, the signing of agreements to implement mechanisms of readmission of illegal immigrants trying to get into the EU through Moroccan territory, and the development of temporary migrations schemes. Maybe by designing and monitoring those programs at the EU level, and by linking them to broader issues of financial aid and access of Moroccan products to European markets (in the line of the recent negotiations between the EU and the ACP countries), the implementation of those programs would proof more successful.

In this section I have tried to review three policies implemented in recent years with the objective of solving some of the contradictions generated by the application of a strict policy of border control at a very early stage of the process of definition of immigration processes in Spain. Through the regularisation of the stocks of undocumented immigrants, by developing a more positive framework for incorporating into Spanish society those immigrant populations already present in the territory, and by trying to open the border to the migratory flows that seem necessary for the economy, Spanish policy makers have developed a greater degree of autonomy with respect to a narrow perception of what immigration policy within the EU should be. Although this more sophisticated set of policies will no doubt facilitate the incorporation of immigrant populations, the necessary emphasis on border policing may hide the importance of these policies.

5. Conclusion.

As Weil has pointed out, the convergence of national immigration policies in Western Europe resulted in very different policy outcomes in each country. In the case of Spain, the initial implementation of strict policies of border control to satisfy demands in that sense from its European partners, were soon tinged with the intervention of a series of factors pushing in different directions. While the geographical situation of Spain as the Southern border of the EU, neighbouring one of the areas with the highest migratory pressure towards the Union, emphasised the need to control the borders, its tradition of historical interaction with North Africa and Latin

America, and the economic and diplomatic interest in both areas intervened to some extent to soften the implementation of a strict control of migratory flows.

At the policy-making level, different actors also played a significant role in defining Spanish immigration policies. Although the level of politicisation of immigration issues in Spain has remained relatively low, with no extreme right party capitalising on the issue of immigration, the appearance of some local xenophobic entrepreneurs in areas with a higher concentration of immigrants (Ceuta, Melilla, El Ejido), and the outburst of some racist incidents, have helped to raise the profile of this area of policy. In the recent general elections of March 2000, political parties were forced for the first time to express their opinion on immigration issues in their political manifestos. The conservative party won the election by an absolute majority. Among the objectives of their program was the promise to change the new immigration Law in a more restrictive sense.

Among the new policies implemented in recent times, the development of a program for the import of temporary labour from Morocco seem to fulfil the need for unskilled labour perceived in certain sectors of the Spanish economy. Although some authors suggested that the Spanish state was turning a blind eye on the issue of the hiring of undocumented immigrants, a recent consensus among employers, trade unions, and the state pushed towards a regulation of the flows under official monitoring, subordinating migratory flows to the perceived needs of the Spanish economy. In this respect the negative experiences with guestworker schemes in other European countries did not seem to act as a discouraging factor for the design of the bilateral agreement with Morocco.

Although the administrative skills of the Spanish state in relation to immigration issues were nil fifteen years ago, the handling of programs such as the regularisation, and the yearly quotas have considerably increased its capacities. Integration policies have remained to a large extent in paper, but a network of agencies, research bodies and forums have started to develop the capabilities to implement a more sophisticated set of policies to facilitate the incorporation of immigrant populations into the Spanish society. Third sector organisations played a significant role in that direction, by fulfilling the tasks that the state was not willing or prepared to accomplish, while retaining their role as advocacy groups in the interest of immigrant populations.

Arguments pointing at the liberal -democratic character of Western European countries to understand their policies of control of migratory flows, and at the universalistic idiom of liberalism to explain the extension of civil and social rights to immigrant populations (Joppke, 1998), may contribute to explain the low profile of those issues in the Spanish political agenda. The weak nature of liberalism in a relatively young democracy like Spain (Malefakis, 1992),

would account for the lack of mobilisation before explicit violations of immigrant's rights, or more subtle forms of discrimination and marginalisation. Despite those weaknesses, the judiciary and the courts have played a substantial role in the granting of basic rights for immigrants, very often against state authorities.

With all its particularities, the variable of the "Europeanisation" of policy-making on immigration issues appears as one of the key elements to understand immigration policies in Spain in the last two decades. Either through direct pressures (requirements to join the Schengen area), or indirect influences (policy learning, and emulation), the participation of Spain in the process of building a common market without internal borders has strongly conditioned the shape of its policies with regard to immigration issues.

In issues related to border control policies Spanish authorities were particularly sensitive to the opinion of other European governments, for that area of policy was based on reciprocal trust among the member states. That resulted in a very restrictive stand in relation to the control of migratory flows. Greater autonomy has been gained more recently by Spanish authorities in relation to policies to promote the integration of immigrant populations. These policies tried to answer a series of needs perceived within Spanish society.

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