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# THE EUROPEAN UNION AS A VENUE TO MEET NATIONAL PREFERENCES AND INTERESTS: RATIONALES BEHIND SPAIN'S ADVOCACY FOR SUPRANATIONALIZATION OF IMMIGRATION LAWS

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*This paper addresses the development of the Spanish immigration regime with special reference to the coordination (or lack thereof) between Spanish and EU immigration policies regarding clandestine migration to Spain since 1985. It demonstrates how EU pressure on national law creation has transformed immigration policy from a top-down process in the mid-1980s to a bottom-up process, and in line with Europeanization processes in the 2000s. It presents rationales for Spain's state preferences and advocacy for supranationalization of immigration laws in the 2000s, including securitization of future commitments and cooperation, economic benefits from the EU, selective transposition of restrictive EU objectives to fulfill domestic interests, significant bottom-up influence by Spain on the EU framework and acceptance of the common policy as a way of strengthening national sovereignty over immigration. It concludes that a topic's salience impacts formation of national preferences and the degree of a national government's activity in influencing common policy at the EU level. Creation of the common policy ultimately leads to fulfillment of domestic interests. Also, when necessary, Spain introduces its own countermeasures to deal with undocumented immigrants in areas where the EU does not meet domestic preferences.*

## Introduction

This paper shows how Spain's political and socioeconomic issues of the 2000s

formalized national preferences and interests over clandestine immigration and external border control, which were rather weak, diffused and underdeveloped in the 1980s and the 1990s. The restrictive approach to irregular immigration has stemmed from rising concerns among the public; political parties have capitalized on people's negative attitudes toward immigrants for their own electoral gains. After defining its national preferences and interests in the 2000s, Spain has pushed for supranationalization of immigration policies in order to: securitize future commitments and cooperation; gain financial benefits; selectively transpose restrictive, very often non-binding, EU objectives to fulfill domestic interests; influence the EU framework in the bottom-up process; and, finally, use the common policy as a way to strengthen its national sovereignty over immigration.

Spain has a long history of migratory movements. This can be traced back to the Roman Empire period, which witnessed an early mass migration of Romans to Spanish shores. Following Roman rule, Visigoths settled and occupied the Iberian Peninsula until the arrival of the Moors in the eighth century AD. The latter immigrants brought linguistic, religious and cultural influences; their occupation ended in the late fifteenth century. A new wave of Spanish emigrants followed the discovery of America. The twentieth century experienced displacement of thousands of natives to parts of Europe and Latin America; such migratory movements were considerably fueled by anti-dictatorial sentiments and a search for employment opportunities.<sup>1</sup> In the 1960s and 1970s, Spain greeted a number of natives who, attracted by domestic socio-economic and political reforms, returned as former guest workers from abroad.

Spain transitioned from a net emigration to a net immigration country in the 1980s. After General Francisco Franco's death in 1975, an economic boom fostered unprecedented levels of expansion in the late 1980s and subsequently reduced high levels of unemployment.<sup>2</sup> The emergence of democracy in 1978 and accession to the European Union in 1986 significantly contributed to a steady increase of regular and irregular immigration to Spain from less prosperous regions of the world, mainly North Africa, the Americas and Asia.<sup>3</sup> Other factors that stimulated growth of the foreign population included the develop-

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1 Lydia Esteve Gonzalez and Richard Mac Bride, "Fortress Europe: Fear of Immigration? Present and Future of Immigration Law and Policy in Spain," *UC Davis Journal of International Law and Policy* 6, no. 2 (Spring 2000): 157.

2 Kitty Calavita, *Immigrants at the Margins: Law, Race and Exclusion in Southern Europe* (Cambridge: Cambridge University Press, 2005), 4.

3 Despite the fact that the European Union was referred as to the European Community until the Maastricht Treaty of 1993, in this paper I will use the term EU instead of EC.

ment of labor markets within informal sectors,<sup>4</sup> the cessation of guest worker programs,<sup>5</sup> geographical proximity with the Maghreb countries and lax immigration control mechanisms.<sup>6</sup>

Despite the country's long history of migratory flows, its first immigration law entered into force in 1985, coinciding with Spain's accession to the EU. This shortsighted legislation failed to address domestic needs concerning incoming foreigners, which were concentrated on employers' demand for cheap labor. Widely accepted interpretation of the timing and content of this ineffective document credits the top-down EU influence in designing this first Spanish law in order to align it with the restrictive objectives of the EU member states. However, as can be observed, the process of 'Europeanization' became less direct and more diffused in the 1990s and was followed by selective transposition of EU objectives by the Spanish government in the 2000s.<sup>7</sup> Interestingly, the Spanish immigration law came into being almost at the same time as the common immigration policy rhetoric. Traditionally, discourse on harmonization of the policy field has actively engaged two camps of policymakers and scholars: skeptics and enthusiasts. The Spanish government began to support the common immigration policy in the early 1990s, but its position vis-à-vis the framework had not been as pronounced back then. The 2000s officially unveiled activism in favor of creating a unified policy.

## Spanish Immigration Laws and Regularization Programs

### *The 1980s*

Since the 1980s, Europe has had its eye on Spain regarding immigration issues, especially after the country's accession to the EU. Once this southern European state joined the Union, it automatically became known as Europe's "gateway" or "back door" for non EU-nationals. As already mentioned, Spain had no explicit immigration policy prior to 1985, when there was no legislation regarding the treatment of non-national residents.<sup>8</sup> The Spanish Constitution of 1978

4 Gary P. Freeman, "Modes of Immigration Politics in Liberal Democratic States," *International Migration Review* 29, no. 4 (Winter 1995): 893.

5 Nieves Ortega Perez, "Spain: Forging an Immigration Policy," *Migration Information Source* (February 2003), accessed April 14, 2009, <http://www.migrationinformation.org/Profiles/display.cfm?ID=97>.

6 Freeman, "Modes of Immigration," 893.

7 Europeanization is a multi-faceted term. For the sake of this paper, it indicates a process of top-down EU influence where supranational policies substitute or considerably influence national policies.

8 Calavita, *Immigrants at the Margins*, 27.

contained only one reference to migration movements embedded in Article 13, which specified the basic constitutional regulation on aliens. As Rosa Aparicio Gomez and Jose Maria Ruiz de Huidobro De Carlos acknowledged, “the precept formulates a principle of restricted equivalence between nationals and aliens vis-à-vis the entitlement to, and exercise of, fundamental rights and public liberties.”<sup>9</sup> The Spanish Constitution did not take immigration into account because at the time of its creation, immigration was a nonexistent concern in Spain.

What revolutionized the legal aspect of migration was Organic Law (LO) 7/1985, the first immigration law. Lawmakers ignored integration of migrants and focused mainly on the control of immigrants and the external border. The law managed rules of entry, admission, residence and work for non-EU foreigners.<sup>10</sup> It made a clear and formal distinction between regular and irregular aliens. Unsurprisingly, EU nationals gained all the rights to reside and work in Spain, whereas non-EU nationals faced extremely limited privileges.<sup>11</sup> For the first time in Spanish history, a legal framework introduced visa requirements for non-EU foreigners: those who intended to stay in Spain for longer than 90 days needed to obtain residence and work permits. It is worth mentioning that the law did not recognize permanent permits and thus introduced a highly demanding set of requirements for the renewal of temporary ones.<sup>12</sup> This law, the first of its kind, placed emphasis on deportation and introduced the possibility of expulsion of illegal immigrants who did not have work permits and/or legal residence.

Shortly afterwards, LO 7/1985 was followed by the first regularization program of 1986. Its primary objective was to solve the issue of a large number of undocumented immigrants residing in Spain. Out of 44,000 applicants, only 23,000 gained one-year work and residence permits. Strict conditions for renewal of the document left only 13,000 out of 23,000 with extended work permits. Furthermore, during the implementation of this program, there were

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9 Rosa Aparicio Gomez and Jose Maria Ruiz de Huidobro De Carlos, “Report from Spain” in *Modes of Migration, Regulation and Control in Europe*, eds. Jeroen Doomernik and Michael Jandl (Amsterdam: Amsterdam University Press, 2008), 147.

10 Margit Fauser, “Selective Europeanization: Europe’s Impact on Spanish Migration Control,” in *The Europeanization of National Policies and Politics of Immigration*, eds. Thomas Faist and Andreas Ette (Hampshire, UK: Palgrave Macmillan, 2007), 140.

11 Calavita, *Immigrants at the Margins*, 28.

12 Francisco Javier Moreno, “The Evolution of Immigration Policies in Spain: Between External Constraints and Domestic Demand for Unskilled Labour” (working paper 211, *Juan March Institute*, December 2004), accessed September 20, 2009, [http://www.march.es/ceacs/publicaciones/working/archivos/2004\\_211.pdf](http://www.march.es/ceacs/publicaciones/working/archivos/2004_211.pdf).

a large number of detentions, expelling irregular immigrants and leaving them without an opportunity to obtain the necessary permits.<sup>13</sup>

*Top-Down EU Influence on Spanish Immigration Regime Development*

Despite Spain's unprecedented shift from an emigration to an immigration country in the 1980s, the inflow of immigrants was portrayed as a temporary phenomenon that filled the bottom of the occupational scale with cheap labor from abroad. Therefore, the low salience of immigration in the Spanish political agenda significantly contributed to "thoughtless acceptance of European policy objectives within the legislation implemented at the national level."<sup>14</sup> Many scholars writing on the history of Spanish immigration law development have persuasively asserted that EU accession pushed the Spanish government to pass its first immigration law in order to comply with the EU's border control and an overall concern with a swelling number of immigrants in the Mediterranean region.

As Moreno argues, the EU outlined its demands for Spanish immigration law, which were not compatible with the realities of the migratory processes in Spain. Consequently, external, rather than internal, circumstances decisively impacted the content of the legal code. It is crucial to keep in mind that the Schengen Agreement, which obscured the interests of its signatory states, pursued external border control and the fight against clandestine immigration. Meanwhile, the EU signed a first treaty-amending document entitled the Single European Act (SEA) in 1986, which underlined similar restrictive measures. EU officials successfully maneuvered to transfer the Schengen Agreement and the SEA objectives to the LO 7/1985 framework. Little understanding of the topic and lack of experienced domestic staff specializing in migration encouraged Europeanization of the EU-defined restrictive policy direction. In other words, weak domestic interests opened a window of opportunity for the EU and Schengen Agreement to direct development of Spanish immigration laws in the 1980s, where bottom-up influence was hardly existent.

The first regularization program immediately succeeded LO 7/1985. As many have remarked, the legalization act came into effect due to shortcomings of the latter law. Government officials found a solution for how to address an annually growing number of undocumented foreigners. Laura Huntoon writes in that "a tightening of immigration to Spain could decrease the supply of un-

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13 Ibid.

14 Ibid.

skilled labor in Spain and put a damper on economic growth if higher wages are needed to move Spaniards into unskilled occupations.”<sup>15</sup> Such an undesirable impact on the job market was feared by employers, who benefited from cheap labor in labor-intensive sectors, including tourism, construction, agriculture and manufacturing. The regularization program was apparently an outcome of unfolding domestic interests. This unconventional measure granted rights of legal employment to irregular migrants. Those individuals who were unable to obtain legal status continued to support the informal economy as underpaid workers.

By way of summary, it is difficult to argue against the views that LO 7/1985 was almost entirely influenced by EU demands. In fact, the 1986 regularization program ran counter to the restrictive objectives of the EU policies, because according to empirical and statistical data, such programs have usually led to further irregular migration. Despite Spain's underdeveloped stance on immigration issues and passive transposition of EU objectives, its government managed to address concerns related to illegal immigration at the national level by introducing the regularization program and thus posing a challenge to the EU framework. Nonetheless, the 1980s did not witness decisive formation of national preferences. The size of the foreign-born population was not a concern, the economy was prospering and there were not many politicized issues that involved immigration. Thus, the 1980s represented a low visibility of immigration issues. While EU pressure on restricting the first Spanish law did not fill in loopholes in labor-intensive sectors, the regularization program met certain pronounced domestic demands. The bottom-up process of influence on EU objectives was either very weak or nonexistent.

### *The 1990s*

In the early 1990s, Spain recognized that immigration was not a temporary concern and that foreign visitors chose Spain as their permanent destination. Admitting that the aforementioned legal document fell short of what a comprehensive immigration law should have looked like, implementation of visa requirements, two regularization programs and transposition of a few EU objectives furthered development of the Spanish immigration regime. As immigration became an increasingly discussed topic, many policymakers anticipated a new law in order to face the changing reality.

The so-called update to LO 7/1985 took place in May 1991, when the

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15 Laura Huntoon, “Immigration to Spain: Implications for a Unified European Union Immigration Policy,” *International Migration Review* 32, no. 2 (Summer 1998): 431.

Spanish government imposed visa requirements for the first time on entrants from Morocco, Algeria, Libya, Tunisia, Mauritania, Peru and the Dominican Republic.<sup>16</sup> At that time, these countries were recognized as sources of a large number of irregular immigrants in Spain.<sup>17</sup> The visa policy coincided with the expiration of agreements with Morocco and Tunisia for mutual elimination of the required documents. Beforehand, Spanish authorities maintained a lax stand on the implementation of external border control, already targeted by LO 7/1985. Again, the European Union became an influential player in the formation of Spanish immigration laws. Because Spain looked forward to joining the Schengen Agreement in June 1991, one of its preconditions included the tightening of borders with Maghreb countries. The change in the visa policy led to reinforcement of frontiers around the Spanish enclaves of Ceuta and Melilla.

Shortly afterwards, Spain implemented its second relevant act in June 1991 by granting 110,000 three-year work and residence permits. This particular regularization targeted foreign workers who “were already in the country by May 15, 1991 and had ongoing work contracts, or were self-employed in legitimate enterprise, or had previously had a valid residence and work permit.”<sup>18</sup> Coincidentally, the majority of undocumented migrants who gained work and residence permits were Moroccans. This political leeway compensated introduction of the visa requirements for nationals of that particular Maghreb country.

Following the second regularization process, another meaningful act closely connected to the Regulations for Foreigners, Royal Decree 155/1996, was introduced in 1996. It legalized over 21,000 out of 25,000 applicants and aimed at granting permits to those immigrants who had lost them due to the restrictive character of the preceding acts.<sup>19</sup> The low-profile Royal Decree 155/1996 made one of the most significant steps in establishing the permanent status of immigrants.<sup>20</sup> A foreigner who showed that he had lived legally in Spain for six consecutive years by renewing his temporary permits could apply for permanent residence status. This document advocated extended rights for foreigners, moving the Spanish immigration policies toward a more liberal ap-

16 Maria Pabon Lopez, “Immigration Law Spanish-Style: A Study of the Regularization of Undocumented Workers in Spain,” *ExpressO* (2007), accessed June 3, 2010, [http://works.bepress.com/maria\\_lopez/1](http://works.bepress.com/maria_lopez/1).

17 Kitty Calavita, “Immigration, Law and Marginalization in a Global Economy: Notes from Spain,” *Law & Society Review* 32, no. 3 (1998): 545.

18 *Ibid.*

19 Amanda Levinson, “Why Countries Continue to Consider Regularization,” *Migration Information Source* (September 1, 2005), accessed June 1, 2010, <http://www.migrationinformation.org/Feature/display.cfm?ID=330>.

20 Calavita, *Immigrants at the Margins*, 29.



proach, focusing on integration and immigrant rights. Thanks to Royal Decree 155/1996, a parliamentary commission debated a new immigration law in 1998 that would substitute LO 7/1985 and represent the liberal spirit of the mid-1990s.

### *Unfolding Domestic Interests of the Spanish Immigration Regime*

The 1990s witnessed continuing EU pressure in its early years and unfolding domestic demands, which favored more integration-oriented policymaking. The visa requirements were triggered by two factors: direct pressure from the EU and the Europe-wide economic downturn in the early 1990s. In the interim, the Schengen Agreement relied on strictly intergovernmental cooperation; it emphasized the interests of the signatory countries that found fulfillment in Spain's external border control and visa policies. Namely, the EU had resolutely managed to promote the Schengen Agreement's objectives. However, regardless of EU pressure to introduce visa policies to Latin American and North African countries, Spain instituted yet another regularization process in order to offset losses in foreign policy with the sending states. Again, Spain, counter to EU objectives, granted permits to thousands of irregular immigrants. However, it has ever since continued to tighten its external borders in order to fulfill membership obligations in both "Fortress Europe" and the Schengen Agreement. The Spanish parliament and government articulated the need to become a member of the Schengen Agreement in order to participate in the communitarization of immigration policies.<sup>21</sup> As stated earlier, the country's officials had envisioned a common policy as early as two decades ago, but only recently in the 2000s actualized their active support for supranationalization, mainly due to the socio-economic circumstances of the recent decade.

Generally, the first years of the 1990s portrayed domination of EU objectives over the Spanish legal framework. Subsequent years demonstrated the socialist government's emphasis on immigrant integration. The tightening of Spain's external border control coincided with EU concerns with augmented migratory movements following the fall of communism. Spain's compliance with European policies was noticeable in the country's adoption of many EU rules throughout the 1990s. Nonetheless, two regularization programs and parliamentary talks about a more liberal approach slightly deviated from the EU vision of the overly restrictive common policy that would, first and foremost,

21 Fauser, "Selective Europeanization," 140.



fight against irregular immigration and favor social exclusion of clandestine immigrants. Urgent need to solve issues concerning undocumented immigrants appeared to have been a powerful incentive to introduce further reforms at the national level. Both regularization programs antagonized certain European leaders. However, according to national supporters of legalization acts, their introduction is necessary at times because such programs fulfill certain demands of the public and private sectors which cannot be met by the EU. In the 1990s, the Spanish government tilted towards a more expansive approach to immigration. The formation of national preferences has become pronounced in the 2000s due to the later described causes. The new decade has introduced challenges, which have been defining immigration policy framework in restrictive terms.

### *The 2000s*

The twenty-first century has shed new light on the highly contested topic of immigration in Spain. The economic boom attracted cheap labor from abroad, which rapidly increased the foreign population living in Spain. The first amendment to LO 7/1985 embodied a paradox. Despite recent securitization of immigration issues, LO 4/2000 introduced “the most liberal law on the rights of foreigners in Europe.”<sup>22</sup> It formalized the long-envisioned goal of effectively integrating immigrants. The law’s objectives stemmed from the Royal Decree 155/1996, which initiated reforms of LO 7/1985. As already mentioned, the document was an important landmark in the construction of liberal immigration legislation in Spain. It is crucial to note that both the Royal Decree and LO 4/2000 were advocated by the Partido Socialista Obrero Español (PSOE), left-wing political party. In the months leading up to the approval of the new immigration law, the Spanish parliament hosted impassioned debates between socialists and conservatives. The right-wing political party, the Partido Popular (PP) introduced 112 amendments for the bill of 77 articles.<sup>23</sup> The group affirmed that the proposals were too liberal and did not follow the restrictive EU objectives, mainly outlined in the spirit of the Tampere Summit of 1999. However, due to the lack of an absolute majority in the parliament, the PP failed to implement its revisions.

While harmonization of immigration law at the EU level was based on the laws of most restrictive countries, Spain carried out reforms to deliver more rights to foreigners, including undocumented ones. LO 4/2000 extended certain

22 Gonzalez and Macbride, “Fortress Europe,” 153-191.

23 Moreno, “The Evolution of Immigration.”

privileges to irregular immigrants that were once reserved for legal residents only. This innovation meant that all immigrants, regardless of their legal status, who registered in the municipal census gained the following rights: freedom to demonstrate, strike and participate in associations; the right to education; access to emergency and regular public health care; and the right to housing assistance and basic services.<sup>24</sup> Additionally, irregular residence and work did not constitute substantial reasons for expulsion from Spanish territory.<sup>25</sup> Stated differently, the new law excluded deportation of undocumented migrants.

In order to grant a fresh start to the implementation of the new law, legislators ultimately introduced yet another extraordinary regularization process in March 2000. It granted work and residence permits to 154,000 out of 247,000 applicants, a much higher number than the preceding programs.<sup>26</sup> Legalized immigrants received one-year temporary residence permits. One of the many conditions included proof of residency in Spain since June 1, 1999.<sup>27</sup> Again, despite the reticent attitude of EU officials towards national legalization acts, Spanish policymakers perceived regularization as a way to answer domestic demands, including the fight against marginalization, exploitation of undocumented immigrants and demand for unskilled labor.<sup>28</sup>

The premature death of LO 4/2000 occurred after the PP's electoral victory in March 2000. The conservative party, dissatisfied with the new law, revised it with LO 8/2000 before the end of the year. To many, this transforming event introduced a new period of restrictive stance on immigration in the twenty-first century. LO 8/2000 outlined considerable alterations to the previous legal framework. It continued to encourage measures that favored integration, but only concerning immigrants who were legalized. The PP denied to irregular immigrants the right to association, demonstration and strikes. Full access to education remained mostly unaltered, with one exception: non-obligatory education would only be guaranteed for resident aliens. Moreover, the right to public health care also stayed unchanged. Unlike the provisions of LO 4/2000, irregular residence and work constituted sufficient reasons for expulsion.<sup>29</sup> LO 8/2000 reintroduced deportation as an effective tool to deal with illegal immigrants. Kitty Calavita mentions that the law was designed to "bring Spain

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24 Cristina Gortazar, "Spain: Two Immigration Acts at the End of the Millennium," *European Journal of Migration and Law* 4 (2002): 8.

25 Ibid.

26 Levinson, "Why Countries Continue."

27 Moreno, "The Evolution of Immigration."

28 Ibid.

29 Gortazar, "Spain: Two Immigration Acts," 16.

into compliance with the EU agreement at Tampere in 1999 and the Schengen Agreements, which the PP claimed had been violated by the permissiveness of LO 4/2000.<sup>30</sup> Meantime, the conservative government also approved a plan for integrating foreign immigrants called the Global Program of Regulation and Coordination of Immigration in Spain (GRECO), which was active throughout 2000-2004. Although this plan emphasized the integration of immigrants as a fundamental element of a healthy immigration policy, it nonetheless aligned with the restrictive approach of LO 8/2000.<sup>31</sup> The plan clearly favored the rhetoric of expulsion of illegal immigrants and external border control.

Following LO 8/2000, the conservative government introduced an additional regularization program in 2001, mainly due to vigorous protests on the streets and in parliament.<sup>32</sup> Qualifying applicants had to prove their presence in Spain before January 23, 2001. The legalization process granted one-year temporary residence permits to approximately 221,000 illegal immigrants out of 350,000 applicants.<sup>33</sup> An interesting point to mention here is that the previous regularization programs were mainly drafted and/or directed by the left-wing government. After the 2001 regularization program, the right-wing government announced that it would not offer any further legalization acts in order to avoid the “call effect,” which was understood as a magnet for more irregular immigrants who expected the government to give more amnesties in the near future.<sup>34</sup>

Despite the 2001 amnesty, the PP continued to make illegal immigration a top priority. An increasing number of migrants, instances of human trafficking and smuggling networks had invigorated the party to initiate reform. To the bewilderment of many, the PSOE signed the new law. LO 14/2003 did not change the hostility exhibited by the conservative government toward illegal foreigners. Some of the law’s goals included efficient expulsion of irregular residents, entry controls at airports, limited rights for the families of immigrants and the inability to regularize status in case of continuous illegal permanence in the country.<sup>35</sup> Controversially, the document allowed police to access informa-

30 Calavita, *Immigrants at the Margins*, 33.

31 María Bruquetas-Callejo et al., “Immigration and Integration Policymaking in Spain” (working paper 21, IMISCOE, April 2008), accessed June 20, 2009, <http://www.imiscoe.org/publications/workingpapers/documents/WP21-MigrationpolicymakinginSpain.pdf>.

32 Fauser, “Selective Europeanization,” 148.

33 Levinson, “Why Countries Continue.”

34 Carmen Gonzalez-Enriquez, “Active Civic Participation of Immigrants in Spain,” *Carl Von Ossietzky University*, Country Report (2005), accessed July 20, 2009, <http://www.uv.es/CEFD/12/Spain.pdf>.

35 Cristina Fernández Bessa and José María Ortuño Aix, “Spanish Immigration Policies and Legislative Evolution in that Field as a New Exceptional Framework” (working paper 9, *Liberty and Security*, May 2006), accessed February 20, 2009, [http://www.libertysecurity.org/IMG/pdf/WP9-The\\_reforms\\_of\\_the\\_Im-](http://www.libertysecurity.org/IMG/pdf/WP9-The_reforms_of_the_Im-)

tion on foreign residents who were registered in the municipal census. Such an extreme update discouraged many immigrants from participating in the census, jeopardizing their access to health care and social benefits.<sup>36</sup> LO 14/2003 continued to target illegal immigration and exercise the external border control; its objectives correlated with the European vision of “Fortress Europe.”

The 2004 general elections welcomed the PSOE as the victorious political party. Although the socialist party did not push for a reform of the recent immigration law, it introduced another regularization program in 2005. The party in power had decided to meet the needs of national employers.<sup>37</sup> This particular regularization act slightly differed from the preceding ones. In this case, employers had to submit an application on behalf of undocumented worker. Once approved, the worker would get a one-year residence and work authorization that could be renewed for up to two years.<sup>38</sup> Another major requirement required that the applicant had to have lived in Spain since August 2004. As previous programs had also demanded, immigrants needed to register in the municipal census. As many as 575,000 migrants gained permits, constituting the largest regularization process so far.

The regularization program did not escape domestic and international criticism. The PP placed emphasis on the “call effect.” International criticism came mainly from other member states and EU officials. Like the PP, France and Germany foresaw the regularization as a magnet for illegal immigrants not only to Spain but also to other states.<sup>39</sup> The fact that Spain did not consult with other EU countries shocked many observers and EU policymakers. Even though there has not been a unified position on implementing the regularization programs, attitudes towards such acts have varied from country to country, consisting mostly of opposition and skepticism.<sup>40</sup>

As Spain experienced a shift from an economic boom to an economic bust in 2007-2008, the persistent inflow of immigrants pressured the socialist government to consider immigration reform, which would align with the socio-economic challenges present in the country. Even though many have assumed that the restrictive immigration stance has been mainly attributed to right-wing

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36 Carlota Sole, “Immigration Policies in Southern Europe,” *Journal of Ethnic and Migration Studies* 30, no. 6 (November 2004): 1219.

37 It is noteworthy to mention that Spain at that time continued to experience an economic boom.

38 Pabon Lopez, “Immigration Law Spanish Style,” 19.

39 Ibid.

40 Council of Europe, “Regularisation Programmes for Irregular Migrants,” *Parliamentary Assembly*, July 6, 2007, accessed March 20, 2010, <http://assembly.coe.int/Mainf.asp?link=/Documents/Working-Docs/Doc07/EDOC11350.htm>.

politicians, the PSOE introduced a new law which aimed at toughening immigration rules. LO 2/2009 came into force in December 2009. The amended document increases the period for detaining irregular migrants from 40 to 60 days. Moreover, employers of undocumented workers or individuals encouraging irregular migration will be fined up to 10,000 euros; human trafficking will be fined up to 100,000 euros.<sup>41</sup> The PP has pointed out that the law is not restrictive enough to deal with the current situation in Spain and in the EU.

### Selective Transposition of EU Objectives and Well-defined Domestic Interests

Indisputably, socio-economic and political events influenced the development of more restrictive policies. The recent decade has finally formed well-defined domestic interests with respect to clandestine immigration and external border control. Of the aforementioned steps of immigration law development, the short-lived LO 4/2000 was the only anomaly. Integration of documented and undocumented migrants was a priority for the socialist government to meet the interests of lobbying groups (NGOs, employer organizations, trade unions, churches) who benefited from the incorporation of foreigners into mainstream society. All further law-amending documents have been more conservative due to pronounced socio-economic issues, which the following section will explore.

Despite Spain's visible selection among EU objectives, the supranational institutions continued to sporadically influence the Spanish government. Several Council directives in the area of immigration policies, such as recognition of decisions on expulsion among the member countries (D 2001/40) and a common definition on facilitating unauthorized entry, stay and residence (2002/90) have been approved in the EU and then transposed within the Spanish legal code, as observed in the text of LO 14/2003.<sup>42</sup> Recently, the Spanish government has supported the so-called Return Directive of 2008, standardizing the conditions for expelling irregular immigrants throughout Europe.<sup>43</sup> The Directive on Employers' Sanctions (D 2009/52) prohibits the employment of illegal third-country nationals in order to fight illegal immigration. Nonetheless,

41 "Spain's New Law on Foreigners Comes into Effect," Talk Radio Europe, December 13, 2009, accessed June 20, 2010, [http://www.talkradioeurope.com/news/publish/article\\_24315.shtml](http://www.talkradioeurope.com/news/publish/article_24315.shtml).

42 Directives are legal acts which require the member states to achieve the final result without dictating the means of achieving them. Fauser, "Selective Europeanization," 148.

43 Laura Tedesco, "Immigration and Foreign Policy: The Economic Crisis and Its Challenges," *FRIDE: A European Think Tank for Global Action* 4, no. 25 (January 2010), accessed July 20, 2010, [www.fride.org/download/PB\\_Spain\\_Immigration\\_ENG\\_jan10.pdf](http://www.fride.org/download/PB_Spain_Immigration_ENG_jan10.pdf).

“it lays down minimum common standards on sanctions and measures to be applied in the Member States against employers who infringe that prohibition.”<sup>44</sup>

The 2000s have revealed a symbiotic relationship between the European Union and Spain. Bottom-up influence began to gain momentum, where the Spanish government (the conservative one in particular) introduced areas that would need cooperation in the near future. The top-down influence has been noticeable mainly through regulations and directives. However, the former process, stemming from the national level, can be seen as being more influential due to Spain’s growing influence on the process of decision making by the EU. The Spanish presidency of the EU in 2002 outlined the country’s intention to place immigration issues as a top priority on the EU agenda.<sup>45</sup> The presidency was used as a platform to coordinate the member states on issues related to this Spanish dilemma.<sup>46</sup> Moreover, the Seville Summit in 2002 allowed the government to outline such objectives as illegal immigration, human trafficking, immigrant-related criminality and external border control. Since 2006, Spain’s multiple agreements with African sending countries have placed emphasis on the external dimension of the EU immigration policy. Coordination of policies has been widely credited to the PP as a major player in negotiating agreements. As Elisabeth Johansson-Nogués points out, “the very success of the PP’s strategy is well illustrated by the fact that immigration now occupies a fairly central place on the European agenda as a security concern.”<sup>47</sup>

The recent LO 2/2009 continued the restrictive pathway of the Spanish stance on immigration. It was implemented shortly after the Lisbon Treaty, which brought in promises of the long-envisioned common policy. Due to the current economic upheavals in the European Union and the rest of the world, the future unified policy will continue to focus on external border control and the fight against uncontrolled migration. Therefore, the recent Spanish immigration law would very closely align with EU policy. In other words, EU policy

44 “Directive 2009/52/EC of the European Parliament and the Council of 18 June 2009 providing for minimum standards on sanctions and measures against of illegally staying third country nationals,” *Official Journal* 168, June 30, 2009, accessed October 31, 2010, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:01:EN:HTML>.

45 Gemma Pinyol, “Europe’s Southern Border: Spain and the Management of Immigration,” in *Foreign Policy in Dialogue: National Perspectives on EU Immigration Policy* 8, no. 22 (May 2007), eds. Marco Overhaus, Hanns W. Maull and Sebastian Harnisch, accessed May 25, 2010, [www.deutsche-aussenpolitik.de/newsletter/issue22.pdf](http://www.deutsche-aussenpolitik.de/newsletter/issue22.pdf).

46 Elisabeth Johansson-Nogués, “A Spanish Model for the European ‘Near Abroad’? The Legacy of Aznar to EU’s Foreign Policy Toward Neighboring Non-candidate Countries,” *Institut Universitari D’Estudis Europeus: Observatory of European Foreign Policy* 8 (2004), accessed June 10, 2010, <http://www.iuee.eu/pdf-publicacion/119/i1QKXulfsYyIVtYSmCtn.PDF>.

47 Ibid.

might resemble the Spanish law in many of its aspects, considering the fact that the Spanish government has lately been playing a considerable role in outlining migration cooperation at the EU level.

### **Socio-economic Issues behind Formation of National Preferences in the 2000s**

According to prominent scholar of European integration Andrew Moravcsik, national preferences are developed by social and private groups who seek to promote different interests.<sup>48</sup> Groups and institutions including employers, trade unions, civil rights associations and the Catholic Church voice their demands, which then exert influence on politicians and are fulfilled by governments. As Moravcsik convincingly argues, governments in power want to be re-elected and thus are captured by the prevailing issues.<sup>49</sup> As governments' actions revolve around self-interest, their preferences still depend on the preferences of social actors.<sup>50</sup> Although Moravcsik has not attributed the voting public as an influential social actor, there is a need to see unorganized civil society as an important factor in national preference formation. Focus on Spanish immigration laws cannot neglect the voting public's concern with the topic, as it is turned into demands for a toughened immigration stance.

The first immigration law of the 1980s coincided with the low-profile of domestic issues and lack of staff specializing in migration. The issue of migratory movements to Spain was still rarely discussed on the political forum; mobilization among the social actors was minimal because immigrants were viewed as a temporary phenomenon. Such internal circumstances postponed the development of national preferences, which constitute a country's standpoint on immigration in the international arena. Spain entered the 1990s as a new immigration state. This period could be explained as intermediate between a low (1980s) and a high (2000s) degree of relevance of the topic among various actors. A predominant trend among politicians, non-governmental groups, public actors and businesses in the 1990s favored integration of immigrants

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48 Andrew Moravcsik, "Taking Preferences Seriously: A Liberal Theory of International Politics," *International Organization* 51, no. 4 (Autumn 1997): 516.

49 Andrew Moravcsik, "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach," *Journal of Common Market Studies* 31, no.4 (December 1993): 483-4.

50 Christiane Kraft-Kasack and Mariya Shisheva, "The Communitarization of Asylum and Immigration Policy at Amsterdam: A Liberal Intergovernmental Account" (working paper 31, *Hertie School of Governance*, April 2008): 4, accessed April 10, 2010, [www.hertie-school.org/binaries/addon/539\\_hzog\\_wp\\_no\\_31.pdf](http://www.hertie-school.org/binaries/addon/539_hzog_wp_no_31.pdf).



and asylum seekers and, despite the EU's resentment, amnesty in order to alleviate emerging cultural and economic differences in a heterogeneous society. Additionally, employers projected a significant degree of influence over the government's administrative actions; thus, regularization programs solved the problem of labor shortages.<sup>51</sup> Focus on the integration of regular and irregular immigrants grew among public and civil rights actors.

Arguably, it was not until the last decade that national preferences for the restrictive immigration stance began to be politicized in Spain. Spanish political parties, or the conservative PP and the socialist PSOE, have emphasized the highly-contested issue of immigration and used it to influence electoral votes. Whether the heightened relevance of immigration has indeed captured the political groups as a national concern rather than as a manipulative means to gain public support is a separate topic to be explored in another paper.

Decisively, recent circumstances and events have directed the formation of public opinion and the government's stance on illegal immigration. Shortly after the introduction of LO 4/2000, violent riots broke out in the town of El Ejido, where a Moroccan immigrant murdered a young Spanish woman. This unfortunate event not only ignited anti-immigrant revolts, but also placed immigration on the socio-political agenda. As the general election approached, the PP politicized the event for its electoral profit. The conservative government capitalized on the public's discontent with immigration and linked it to the upcoming elections and legislation. This highly publicized tragedy benefited the right-wing, which found solid ground to further restrict the immigration law. El Ejido became a scene of conflict with political and social consequences. This event can be seen as a factor that shapes national preferences, overwhelmingly based on the voting public. It is important to mention that media coverage and political games fueled people's negative opinion on illegal immigration. Immigrants became defined not only as foreigners, but also as criminals. The public, who was infuriated by the criminal act in El Ejido, became the target of media-fed anti-immigration propaganda. Right-wing politicians shaped their approach to the event based on the dominant attitudes and views of the public. Juan Enciso, mayor of El Ejido and a member of the PP, supported violent acts of Spaniards against immigrants. Enciso emphasized that the PP stood for the Spanish people (the voters); consensus would thus mean heightened support for the PP.

El Ejido became a politicized playing field through which the opposi-

tion party not only aimed to fulfill national preferences for restrictive immigration, but also to secure its self-interest in being elected. The PP won the March 2000 elections with an increase of six percent on results from 1996-2000.<sup>52</sup> Citizens expressed their support for the ideology advocated by the PP, who identified increasing insecurity and delinquency.<sup>53</sup> In other words, the public's fear of increasing crime among immigrants was projected on decisions undertaken by the government. One may argue that El Ejido sped up the Spanish government's push for the forthcoming restrictive immigration law in Spain. Its objectives to tighten up the external border control and fight undocumented immigrants already correlated with the EU demands.

Other external and internal factors that stimulated negative attitudes of the population were the 9/11 terrorist attacks, the Madrid bombings in 2004 and the Ceuta and Melilla events in 2005. Playing on fears generated by 9/11, Jose Maria Aznar, former Prime Minister of Spain, declared: "Immigration and terrorism not properly dealt with have generated radicalism."<sup>54</sup> Similarly to 9/11, the terrorist attack on March 11, 2004 near Atocha railway station in Madrid turned the world's eyes on the Spanish capital.<sup>55</sup> Even though not all suspects were illegal immigrants, this terrible event which left 191 casualties became highly politicized by the Spanish government in order to legitimize further securitization of immigration politics. Moreover, the media focus on Ceuta and Melilla amplified in September and October 2005, when several hundred sub-Saharan African migrants attacked the border of the enclaves. This act led to the death of more than a dozen migrants who desperately searched venues for a more prosperous life.<sup>56</sup> It further cultivated the widening gap between "us" and "others" within Spanish society.

Moreover, the recent economic crisis has also contributed to national preference formation due to the rise of unemployment among both Spaniards and immigrants. The official 20 percent unemployment figure has frightened concerned politicians and civil society. During a recession, employers generally curtail their search for cheap labor, and civil rights groups are not strong enough to lobby for more expansive immigration policies. Theoretically, the

52 Ricard Zapata-Barrero, "Spanish Challenges and European Dilemma: Socialising the Debate on the Integration of Immigrants," *Perspectives on European Politics and Society* 4, no. 2 (2003): 252.

53 Ibid.

54 Fabrizio Finzi, "Immigrazione: Aznar-Berlusconi, Insieme per Norme Severe," *Notizie ANSA*, June 5, 2002, quoted in Calavita, *Immigrants at the Margins*, 137.

55 María Soledad Saux, "Immigration and Terrorism: A Constructed Connection: The Spanish Case," *European Journal on Criminal Policy and Research* 13 (2007): 62.

56 Jorgen Carling, "Unauthorized Migration from Africa to Spain," *International Migration* 45, no. 4 (2007): 23-24.

costs of immigration become more pronounced and include a drain on the social security system.<sup>57</sup> Immigrants are seen as scapegoats, targeted by the public, media and politicians. Despite José Luis Rodríguez Zapatero's long-proclaimed support for equal social rights for immigrants, the recent LO 2/2009 is in fact the latest attempt by the socialist government to assuage growing discontent in a society hurt by the economic crisis.<sup>58</sup>

Again, preference formation has occurred in the bottom-up manner, where the public and certain social actors have voiced support for a more restrictive stance on illegal immigrants. The PSOE, although a left-wing, pro-integration party, has attempted to fulfill the domestic interests of the voting public. According to the agenda-setting theory of Frank Baumgartner and Bryan Jones, in times of heightened public attention, the public becomes more important. As decisions are undertaken when a particular issue is salient, restrictive public views become of concern to government preferences.<sup>59</sup>

### **Rationales behind Spain's Advocacy for Supranationalization of Immigration Laws in the 2000s**

Why would a member state promote a common policy by favoring pooling and delegation of sovereignty over a certain policy area?<sup>60</sup> Numerous scholars of European integration have intended to find empirical and theoretical answers to this question. According to Moravcsik's conclusions, states pool and delegate sovereignty to get more credible commitments. Spain is part of a group of European states that has viewed this institutional choice for the immigration regime as a guarantee to future decisions, cooperation and improved implementation of agreements.<sup>61</sup> Collaboration of national governments creates a cartel, which confronts the issue of migration in a more effective and efficient way. This highly contested topic has become a regional problem, which can only be

57 Soeren Kern, "Spain's Immigration System Runs Amok - Spain's Decline," *The Brussels Journal*, September 17, 2008, accessed March 19, 2009, <http://www.brusselsjournal.com/node/3527/print>.

58 Jelena Kopanja, "Spain Considers Immigration Reform That Would Make Things Harder for the Undocumented," *Feet in 2 Worlds*, July 7, 2009, accessed April 3, 2010, <http://news.feetintwoworlds.org/2009/07/07/spain-considers-immigration-reform-that-would-make-things-harder-for-the-undocumented/>.

59 Frank R. Baumgartner and Bryan D. Jones, *Agendas and Instability in American Politics* (Chicago: University of Chicago Press, 1993), quoted in Kraft-Kasack and Shisheva, "The Communitarization of Asylum," 5.

60 Pooling refers to the application of majority decisions in the Council (QMV); delegation concerns the powers given to the Commission and the European Court of Justice.

61 Andrew Moravcsik, *The Choice of Europe* (Ithaca, NY: Cornell University Press, 1998), 73.

resolved with a unified, legal resolution through EU institutions. Nonetheless, such common courses of action have been overly shaped and influenced by national governments, as seen in the case of Spain. As already stated, the Spanish government has demonstrated its support to put immigration issues on the European agenda.<sup>62</sup>

The socio-economic issues of the 2000s have not only mobilized the formation of national preferences, but also led to the realization that national and bilateral control over external border and clandestine immigration is unfeasible. Both the PP (early 2000s) and the PSOE (2004 onward) pursued the communitarization of the common policy not only to get more credible commitments, but also for economic interests at the national level. The Spanish government has advertised irregular immigration as not just a Spanish problem, but also a European one. While the 1980s and the 1990s were characterized by EU pressure on Spain to control its external border, recently it is Spain who has pushed the EU to acknowledge external border control as a European issue.<sup>63</sup> Spain's inability to deal with undocumented immigrants leaves nothing else but a turn to Europe for financial and material resources. Additionally, the Spanish government has emphasized immigration as an EU problem in order to distribute the burden of the Mediterranean states to other countries of the European Union. It has also called for joint EU operations in the Mediterranean Sea and the Atlantic coast of Africa.<sup>64</sup>

Moreover, yet another reason behind active support for supranationalization of the immigration regime lies in "an opportunity to establish a model for limiting migration flows, more restrictive measures and a reduction in some of the existing advantages for Latin American immigrants."<sup>65</sup> In a sense, the Spanish government has taken advantage of restrictive EU directives and non-binding objectives in order to blame Brussels for toughening its national immigration laws. Therefore, it is not a surprise that the recent amendments to immigration law have considerably aligned with the EU immigration stance. Spain adopted many EU rules in the 1990s and transferred directives to the domestic level.<sup>66</sup> Political actors turned to the EU in order to fulfill their domestic interests shaped by restrictiveness toward clandestine immigration.

In addition, fervent prioritizing of the common policy has its roots in

62 Pinyol, "Europe's Southern Border," 53.

63 Ricard Zapata-Barrero and Nynke De Witte, "The Spanish Governance of EU Borders: Normative Questions," *Mediterranean Politics* 12, no. 1 (March 2007): 89.

64 Pinyol, "Europe's Southern Border," 57.

65 Tedesco, "Immigration and Foreign Policy."

66 Fauser, "Selective Europeanization," 145.

the country's developing bottom-up influence, which has been exercised on recent development of European immigration objectives. In a sense, achievement of common policy would not introduce many changes to Spanish law because of its partial alignment with recent European Commission proposals and the overall EU restrictive stance on clandestine immigration, third country cooperation and external border control. Differences between the European and Spanish policies have shrunk. Once the common immigration policy becomes implemented at the national level, Spain will bypass numerous updates. In other words, EU objectives are decisively shaped by Spanish interests. A high degree of influence is caused by Spain's strategic geographical location as a gateway to Europe. Hypothetically, if EU objectives were more liberal, it is plausible that Spain would not pursue such active advocacy for the common policy.

Another interpretation that justifies the member states' support for harmonization of policies asserts that a country like Spain has supported only restrictive communitarization of highly relevant issues in order to enhance national control over them.<sup>67</sup> As seen, the Spanish government has advocated for supranationalization for such reasons as mutual commitments, financial benefits, fulfillment of domestic demands by application of EU restrictive objectives and gradual projection of its domestic policies onto the EU level. In a sense, the reasons behind advocacy have aimed at enhancing national control and sovereignty over immigration. Once the long-envisioned common policy becomes implemented and introduced by each member state, Spain will not only introduce minor changes to its legal framework, but it will attain its goal of a restrictive stance on illegal immigration and external border control. Pooling and delegation of sovereignty would represent more reinforcement and redefinition of the state's control over immigration issues. Therefore, national sovereignty would not be eroded. To the contrary, Spain would strengthen its domestic control by circumventing institutional constraints. Legislators in support of more restrictive policies will be able to turn to the EU as justification for domestic law updates.

## Conclusion

With the formation of national preferences in the 2000s, the Spanish government has pursued the creation of a common immigration policy by aligning its laws and policies with EU objectives and by transposing thus introduced direc-

tives onto the legal framework. At the same time, it has succeeded in fulfilling many of its multilayered domestic demands, which include the interests of businesses, private groups, the voting public and political parties. Spain's advocacy for a common policy can be observed in two processes: bottom-up and top-down. As the Spanish government has pushed its approach to immigration up to the EU level, it has simultaneously pulled EU directives and corresponding objectives into the national arena. The combination of these two processes has become more profound in the 2000s. As mentioned, the 1980s predominantly represented the top-down EU pressures, whereas the 1990s witnessed the top-down process without any significant bottom-up influence.

All of the aforementioned rationales behind such active support for the common immigration policy reveal that the EU has served as a venue to selectively fulfill national interests by strengthening domestic control over immigration. Also, where the EU has not lent its hand to solve national problems with respect to the uncontrolled inflow of immigrants, the country has followed with its own initiatives and has introduced regularization programs despite resentment from many EU leaders. Legalization acts have shown successful fulfillment of preferences not guaranteed by the EU; they have also emphasized the importance of the national government's responsibility to comply with the demands of the public and private sectors.

With a swelling number of immigrants and the recent economic crisis, the 2000s has changed the Spanish government's approach to immigration and European integration. As the relevance of the immigration issue has grown, various interest groups, along with the voting public, have pushed the political party in power to introduce more severe measures against immigration. Socio-economic issues have shifted the focus from the previous decade's politics of integration to politics of expulsion. Spain has begun to exert influence in a bottom-up fashion in order to safeguard its newly-emerging restrictive approach to clandestine immigration and external border control. By selectively aligning with EU policies, the Spanish government has used the entity as a venue to justify restriction of domestic policies. Following the economic crisis, LO 2/2009 has unveiled Spain's inability to seal its external border from an uncontrolled inflow of immigrants. The common immigration policy has served as a practical tool to successfully confront the national immigration dilemma. **PEAR**