
Immigration, Law, and Marginalization in a Global Economy: Notes from Spain

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This case study of immigration law in Spain examines the contradiction between the rhetoric of immigration politics stressing immigrant integration and the reality of immigrant exclusion and marginalization. Drawing from a variety of secondary sources, government documents, and interviews, I show how Spanish policies regularly “irregularize” Third World immigrants. Further, I argue that this legal construction of illegality consigns these immigrants to the margins of the economy where they provide what policymakers appreciatively call “flexibility” to the post-Fordist Spanish economy. Finally, I discuss the ways in which racial “otherness,” exclusion, and economic function are mutually constituted, and the role of law in that process.

Scholars of immigration and globalization often argue that a paradox exists between the contemporary forces of globalization and the dismantling of economic borders on one hand, and the increasingly restrictionist stance of Western capitalist democracies regarding immigration on the other (Aman 1994; Cesarani & Fulbrook 1996; de Lucas 1996; Hollifield 1992; Lusignan 1994; Scanlan 1994; Zolberg 1994). One example of this presumed paradox is the increasing ease with which capital and goods move in and out of Western Europe, while at the same time the “European Fortress” steps up control of its external borders (de Lucas 1996; Colectivo Virico 1994; Pugliese 1995; den Boer 1995:95). Perhaps even more conspicuous is the contrast between the North American Free Trade Agreement (NAFTA), which allows for the free movement of investments and goods between Mexico and the United States, and U.S. immigration policies that appear to be increasingly restrictionist.

Another theme that runs through much of the academic literature on immigration is the recurring gap between the declared intent of immigration laws and their outcomes. It is noted, for example, that despite concerted efforts to control immigra-

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tion from developing countries, in most advanced capitalist democracies these efforts have been glaringly unsuccessful in controlling either the size of the flow or its composition, and in some cases have had a series of apparently unintended and counter-productive consequences (see Cornelius, Martin, & Hollifield 1994).

The study of Spanish immigration law on which this article is based was undertaken as a way to explore such apparent contradictions. As a country that has undergone enormous political and economic transformation in the last two decades—almost overnight joining the roster of Western capitalist democracies—and that arguably experiences the contradictions of advanced capitalist development in an intensified fashion, Spain provides an interesting case study for such analysis. One of the preeminent scholars of Spanish immigration law has said, “The immigration of workers and their families from the ‘third world’ is . . . the social-demographic phenomenon that most clearly reveals the contradictions, internal and international, of Spanish society in the last years of the twentieth century” (Izquierdo 1996:133). As we will see, this recent immigration to Spain and the laws that purportedly attempt to control it can shed light not only on the contradictions of Spanish society, as Izquierdo notes, but also on the broader contradictions of immigration and immigration control in the new global economy.

As I began this study of immigration laws in Spain, I was soon struck by the marked contrast between the integrationist rhetoric accompanying these laws (for example, the Preamble to the first comprehensive law in 1985 proclaims that its purpose is to guarantee immigrants’ rights and assure their integration in the host society) and their actual content, which systematically marginalizes immigrants and circumscribes their rights. I argue here that as Spain’s economy took off in the 1980s and it joined the emerging European Community, the economic importance of Third World immigrants increased at the same moment that Spain was pressured by its European neighbors to control its borders, which had become the southern gate to the new Fortress Europe. The consequence was a series of contradictory policies that say one thing and do another. While the dual rationale of the 1985 law and its successors has been to control the borders while ensuring immigrants’ rights, they do neither. Indeed, rather than controlling the number of immigrants entering Spain, these laws focus primarily on defining levels of social and economic inclusion/exclusion. I further argue that these policies are crafted in such a way that the predictable consequence is to marginalize Third World immigrants and consign them to the extensive underground economy.

A central component of this marginalization concerns legal status. Not only do illegal immigrants “work scared and hard,” as

the former Secretary of Labor (Marshall 1978:169) once said of undocumented immigrants in the United States, but they are excluded from most of the benefits of Spain's welfare state such as universal health care and social security, thus compounding their vulnerability and the urgency of their dependence on whatever work they can find. I will show here that the significant number of illegal immigrants (or "irregulars," as they are called) in Spain—and thus the high degree of marginalization of much of the country's immigrant stock—is the direct consequence of Spanish immigration law.

It has often been noted that law, at some fundamental level, creates illegality, in that without the boundaries of law, there are no "outlaws." But my argument here goes beyond this labeling theory insight. For Spanish immigration law actively and regularly "irregularizes" people, by making it all but impossible to retain legal status over time. Indeed, it makes little sense to draw distinctions between legal and illegal immigrants, as if they were different populations, because the law ensures that legal status is temporary and subject to continuous disruptions. In other words, not only does the law actively create "outlaws," but the boundaries between legal and illegal populations are porous and in constant flux, as people routinely move in and out of legal status. With lapses into illegality built into the system, Spanish immigration policy not only continually reproduces an extensive illegal population but also ensures the precariousness of its (temporarily) legal immigrants as well.

Young (1996) and Simon (1993) have eloquently discussed the "outlaw as other." Young depicts the exclusion of these "others" as a counterproductive effort at community building. Simon argues that in the postindustrial society of the late 20th century, we have returned once again to the concept of the "dangerous classes" and the criminalization of the unemployed underclasses. In the case discussed here, the point instead will be that the immigrant "other" is constructed as an outlaw (not vice versa), and that it is precisely immigrants' particular status as *workers* (not economic castoffs) that prompts this marginalization.

I hope that this analysis can make contributions at a number of levels. First, this research may help make sense of the apparent paradoxes outlined above. Not only has Spain only recently established its first immigration laws, as it experiences in fast motion and with considerable force the "internal and international contradictions" of advanced capitalist development, but these laws also offer a striking example of the intent/outcome discrepancy. My analysis addresses that discrepancy and in so doing begins to unpack the presumed paradox of heightened immigration restrictionism just as the forces of globalization increase. Indeed, I argue not only that there is no real paradox here but

also that the current globalization and these particular forms of restrictionism go hand in hand.

Second, I hope to contribute to our understanding of the concepts of marginalization and social exclusion. Much of the discussion of immigrant marginalization and racism in European mass media and policy circles presumes that the dynamics of exclusion take place primarily at the level of culture (highlighting, for example, cultural differences between Muslim immigrants and the Western, Christian traditions of the host society, and calling for increased mutual respect and the undoing of stereotypes) (see, e.g., Consejo de Ministros 1995; Stolcke 1993, 1994; Cantero 1994; Touraine 1995; del Campo 1992; Santamaría 1993; Manco 1996). But my analysis demonstrates that marginalization and social and economic exclusion are not only—or even primarily—cultural issues but are systematically produced by law and the structural and economic imperatives it secures.

Finally, this case study of the legal construction of marginality may contribute to the ongoing discussion of the constitution of the marginalized “other” in late capitalist societies and the role of law in that process (Goldberg 1993; Simon 1993; Young 1996). Several bodies of literature in law and society, most notably critical race theory and feminist jurisprudence, have focused on the complicity of law in marginalizing people of color and women (Omi & Winant 1986; Tonkin, McDonald, & Chapman 1989; Danielsen & Engle 1995; Crenshaw 1990; Pateman 1988; Rhode 1989; Hoff 1991). Others have exposed the marginalizing impact of U.S. immigration law on undocumented immigrants and refugees (Cockcroft 1986; Calavita 1992; Coutin 1994). This case study of Spanish immigration law offers another striking example of such marginalizing effects of law and highlights the economic function of that marginalization.

The data for this piece were gathered during six months of study and fieldwork in Spain from January to July 1997. It was not always an easy task to locate reliable information on certain basic aspects of Spanish immigration policy. The social science literature is more oriented toward qualitative analysis and less number-driven than in the United States. While government reports often provide useful statistics on the number of legal residents and the distribution of work permits, other statistics on such basic issues as the number of annual deportations are remarkably hard to obtain.¹ A second difficulty compounded my efforts. While there are voluminous and numerous works documenting the letter of Spanish immigration law (often, for exam-

¹ Deportations are carried out by the police under the auspices of the Department of Justice, while most other functions relating to immigration (such as the issuing of work permits) are primarily the responsibility of the Department of Labor. In part because deportations are conceived of as a police and security function, these statistics are not made public.

ple, focusing on the conflicts between the law and the Spanish Constitution), little analytical work has been done—and little systematic information is available—on the actual workings of the law (the difficulty of locating data on deportations being one indication). As a result, the process of data collection often felt like a scavenger hunt, in which some seemingly straightforward and basic pieces of information remained stubbornly elusive until the very end.

This search eventually produced an eclectic body of data from a wide variety of sources. It includes information culled from an exhaustive survey of secondary sources—academic and journalistic—government reports, parliamentary discussions, official statistics, public opinion surveys, and interviews with academics and union officials. I have also made use of several excellent qualitative studies of the immigrant experience in Spain—including substantial, unedited interviews with a variety of legal and illegal immigrant workers and their families. There are inevitably gaps in the data—particularly pertaining to the actual practice of immigration policy in a highly decentralized state made up of relatively autonomous regions and municipalities. Nonetheless, the diversity of these data sources and their internal consistency contribute to my confidence in the findings reported here.

The next section presents a brief descriptive overview of post-Franco Spain, with a focus on its economic development, the emergence of its welfare state, and the concomitant improvement in the standard of living for most Spaniards, as well as an introduction to the concepts of “globalization” and “post-Fordism” as they establish the context for our understanding of Spanish immigration law. Following that, I provide a general picture of the volume and distribution of immigrants in Spain and their role in the economy. Then, I sketch in broad strokes the foundations of Spanish immigration law, beginning with the Organic Law on the Rights and Liberties of Foreigners in Spain of 1985 and tracing its subsequent elaborations and interpretations. Finally, the more analytical sections focus on the ways law constructs the social reality of illegality and marginalization and the relationship between that marginalization and the role of immigrants in Spain’s economy.

Economic Growth, the Welfare State, and Labor “Rigidity”

The industrialization of modern Spain began in the 1950s and escalated in the 1960s, but this industrialization process took place within the confines of a dictatorial regime and relatively

scant public investment in infrastructure.² Since Franco's death in 1975, the economy has grown by spurts, undergoing unprecedented levels of expansion between 1986 and 1990. This growth is perhaps best reflected in the GNP, which in 1960 stood at about 56% of the European average but which had increased to 76% by 1996 (Economist 1996:4). During the high-growth period of 1986-90, over two million new jobs were created in Spain, more than in any other European country (Maxwell & Spiegel 1994:89).

While Spain's GNP per capita was still lower than the European average by the 1990s, the structure of employment had changed dramatically—even more than that of its European neighbors—and wages and the standard of living had improved markedly. Between 1960 and 1985, the percentage of the population employed in agriculture fell more than 20 points, from 38.7% to 18% (Jimeno & Toharia 1994:7). During the same period, average real wages more than doubled and the official minimum wage skyrocketed more than 25-fold (Maté García 1994:18, 27).

Massive internal migrations helped fuel this growth, with poorer, more rural populations from the southern regions of Andalusia and Extremadura, and Galicia in the west, pouring into Madrid and Barcelona and other more prosperous areas during the 1950s and 1960s. By 1970, 38% of the population of Catalonia (the region of which Barcelona is the capital) was born elsewhere—with 16% coming from Andalusia—and in Barcelona itself the figure was 47% (Woolard 1986:57). Much as south-north migration was central to Italy's industrialization in this period, the massive influx of cheap labor from other regions of Spain into its industrial centers was pivotal to its economic development in the 1950s and 1960s.³

Large regional differences still characterize the Spanish economy. The Spanish Constitution of 1978 divides the country into 17 regions, each with its own president, local parliament, and courts and with a high degree of autonomy. This political decentralization is paralleled by pronounced cultural and economic distinctions. For example, the poorer regions of Andalusia and Extremadura have per capita incomes that are about 70% of the national average, while the richest regions of Navarre, the Balearic Islands, and Madrid boast per capita incomes that are more than 121% of the average, with GNP numbers showing comparable gaps (Maxwell & Spiegel 1994:78–79).

² Investment in the public sector in Spain in 1972 reached just 21% of its GNP, while the comparable figures were 50% for the United Kingdom, and between 34% and 38% for the United States, Germany, and Italy (Elgar 1993:401).

³ A number of Spanish social scientists have addressed this internal movement, which at the time was conceptualized as immigration. Thus, when sociologist Carlota Solé wrote in 1982 of the importance of "immigrants" in Catalan society, it was these internal migrants who were her focus (see also Jutjar 1977).

The Spanish economy is cross-cut by sharp structural divisions as well. Again like its Italian counterpart, the economy in Spain is bifurcated into a technologically advanced primary sector which is highly unionized and state-regulated, and an extensive underground. This underground—traditionally concentrated among homeworkers, agriculture, and the self-employed—expanded dramatically in the economic restructuring of the 1970s and 1980s (to be discussed below as part of the ongoing “post-Fordism”) and now includes sectors that are integral parts of Spain’s industrial economy. One author notes of this expansion, “The news in recent years is that ‘irregular’ work has become ‘organized,’” that is, it has moved beyond the confines of a relatively chaotic and small-scale, secondary economy to become a central component of Spain’s industrial strategy (Miguélez Lobo 1989:118). In 1985, one official survey concluded that 22% of all work in Spain was underground, with the figures for agriculture at 31%, services at 23%, and industry at 16% (cited in *ibid.*, p. 116). A recent study concludes that there has been a “spectacular” increase in the underground economy since 1986, and that by 1997 it contributed some 14% to the gross national product in Spain (cited in *El País* 1998:55). Some specific industries rely primarily on underground labor. It is estimated, for example, that 80% of the vast shoe industry in Valencia operates in the underground economy (Miguélez Lobo 1989:118).

A second duality permeates the contemporary economy in Spain, as a result of the proliferation of part-time and temporary work. While long-term contracts are highly regulated in Spain both by the federal government and by unions, contracts for less than three months are subject to far fewer restrictions. According to one study, 75% of work contracts in 1996 were for three months or less, with 50% lasting only one month (Mazuelos 1997:17). As a result of this trend, the labor force is increasingly split between older, long-term workers whose job security is ensured by government regulations and union contracts, working side by side with contingent employees with fixed-term contracts.

Unemployment in Spain is the highest in Western Europe, hitting a peak of over 24% in 1994 before settling at about 22% in 1996 (*Boletín Mensual de Estadística* 1997:297; *Anuario El País* 1997:434).⁴ The figures are worse for certain regions and segments of the population. In Extremadura and Andalusia, for example, it is estimated that unemployment reaches as high as 33%, and among those under 25, the national unemployment rate is more than 40% (*Economist* 1996:6).

⁴ The rate of *registered* unemployed was about 15% in 1996 (*Economist* 1996:6). The higher figures reported here are derived from official labor market surveys and are generally considered to be more accurate, although it is often pointed out that the extensive underground economy may absorb some of these “unemployed” workers (*ibid.*, p. 7; Maxwell & Spiegel 1994:89).

It has become popular to attribute this high unemployment rate to the “rigidities” of the Spanish labor market (*ibid.*; Elgar 1993; Maxwell & Spiegel 1994; El País 1997; for further discussion, see Navarro 1997:13). Some observers, for example, point to the fact that people no longer seem willing to move to seek work (*Economist* 1996:7). Indeed, internal migrations away from the poorer regions of Spain have come to an abrupt halt; in recent years, Andalusia, Extremadura, and Galicia have even registered net increases in migration into their regions, as former migrants out of the area return home for their retirement (Ministerio de Asuntos Sociales, Dirección de Migraciones 1995a:197–98). Others (Maxwell & Spiegel 1994:89–90; Maté García 1994:26) point to the “inflexibility” of government regulations and collective bargaining—which now covers 75% of the country’s private workforce—overseen by the two major union confederations in Spain (the socialist UGT and the communist CC.OO). Counterintuitive as it may seem, it is argued that Spain’s high unemployment rate is due to the laws and union contracts that make it expensive and legally complex to lay off workers (and hence, the argument goes, discourage new hiring).⁵ So widespread is this notion that the rigidity of the Spanish labor market is to blame for high unemployment that one commentator has referred to it as the “new dogma in Spain” (Navarro 1997:13).⁶

A relatively generous welfare state cushions the worst impacts of this unemployment. Between 1980 and 1993, Spain registered one of the highest rates of growth on social spending in the EC, together with Italy and Greece (Consejo Económico y Social 1995:491). While the bulk of this spending goes to old-age pensions and the national health care system, Spain ranks first in the European Community in the proportion of social spending on unemployment compensation (*ibid.*, p. 493). This compensation, which applies only to those who have been previously employed and has a maximum duration of two years, is less generous than that of some of its European neighbors. Nonetheless, it is indicative of Spain’s commitment to at least minimum income-maintenance policies. In part as a result of the country’s economic growth and in part because of these social welfare policies,

⁵ The latest response to this perception of labor market rigidity is a labor-management accord struck in the spring of 1997 between the largest employer associations and the union confederations. This highly acclaimed and increasingly controversial pact makes it easier and cheaper for employers to lay off workers and provides for a certain percentage of subcontract wages for entry-level apprentices. In exchange, employers have promised to limit the amount of part-time, fixed-term contracts (Noanin 1997:17; Zaguire 1997:64).

⁶ That analyst counters this dogma with the observation that Spanish employers are intransigent in their labor relations, seemingly trying to reproduce the conditions that existed before the legalization of independent labor unions in 1977. He points out, “As much talk as there is about labor rigidity, there is little discussion of the great rigidity of employers” (Navarro 1997:14).

the poverty rate in Spain has fallen substantially since 1980, no matter which indices are used to define poverty (Ruíz-Huerta & Martínez 1994:47–49).

Roughly coinciding with the end of the Franco period in 1975 and the acceleration of Spain's economic development in the 1980s are two other developments shared by most advanced capitalist economies. First is what has been loosely called "globalization." The term has been used in countless ways, for myriad purposes, and with much slippage.⁷ Henk Overbeck (1995) suggests that the term "globalization," as it applies to increased integration of the world economy, is misleading. He argues that instead of more economic integration of the world economy, the contemporary period is undergoing a capital "*contraction*," with economic activity increasingly centered in three principal regions—North America, Western Europe, and East Asia—and with the Third World (particularly Africa) heavily marginalized in this restructuring. He notes that in 1967, 31% of foreign direct investment was located in the Third World; by 1989, that figure had plummeted to 19%.

Overbeck's insight is important here. The argument is that the late 20th-century world economy has crystallized around a few decisionmaking capitals in the First World (whose economies are increasingly integrated and interdependent), some low-wage manufacturing in select Third World countries, and the majority of the world's population marginalized from this "global" process. Thus, I use the term *globalization* guardedly to refer to this process of the stepped-up integration of First World economies, their increased dominance of world economic processes, and their increasing reliance on Third World labor in select countries, even while many countries of the world are heavily marginalized from this process.

The second development of importance here is the phenomenon known as "post-Fordism." A substantial literature since the early 1980s has noted the "crisis of Fordism" in late capitalist economies (Harvey 1982; Lipietz 1987; Piore & Sabel 1984; Sayer & Walker 1992). As this literature explains, these economies had operated since World War II on the "Fordist" principles of mass production of standardized products, mass consumption, internal job ladders, relative employment security, and a government system of social security and income maintenance.⁸ Beginning in the mid-1970s, the argument goes, line-balancing problems (with gluts and shortages in production inputs and inventories), labor

⁷ For an excellent discussion of various "globalization narratives," see Silbey 1997.

⁸ This was referred to as "Fordism" because of the recognition by Henry Ford early in the century that widespread consumption—and thus increased profits—depended on a workforce with expendable income and that worker productivity was enhanced by worker loyalty to the company, as well as by the dictates of scientific management. Gramsci (1971) was the first to subject what he called American Fordism, and its effects on class-consciousness, to critical analysis.

resistance, low-wage competition from less developed countries, and a generally rigid production structure, jeopardized profitability, and the system started to unravel to varying degrees in all late capitalist economies. Whatever its precise causes, Fordist principles of mass production, internal job ladders, relative job security, and welfare state protections have increasingly given way to an emphasis on “just-in-time” production inputs, labor cost reductions, flexibility in hiring and firing, an increase in contingent or part-time jobs, and gradual retrenchments of the welfare state. This constellation of economic and policy changes comprises the ongoing “post-Fordism.” In Spain, its symptoms are most clearly evident in the rapid proliferation of part-time and contingent work and in the increasing importance of the underground and secondary economies, side by side with persistent complaints by employers and state officials about the “rigidities” of the labor market.

It was within this context that Spain crafted its first immigration laws. Despite the restrictionist rhetoric accompanying immigration politics, the value of immigration was fully recognized in some circles. The former Director-General of Migration put it bluntly in 1991, noting that immigration helped offset the “rigidities and strangulation of the labor market” (quoted in Izquierdo 1996:162). To preview the argument I make here, Spain’s immigration laws—which systematically marginalize Third World immigrants but do not stem their immigration—provide the Spanish economy with precisely the type of vulnerable workers required to impose post-Fordist discipline on at least a substantial segment of the workforce. Further, this “immigrant control” is by no means antithetical to the current globalization, as I have defined it; indeed, the increasing polarization of the world economy and the integration of rich countries that characterizes this globalization finds its domestic counterpart in the sorting of people through immigration laws into categories of “otherness” according to their positions in this global economic order. Thus, as we will see, while foreigners from other First World countries are easily integrated into Spanish social and economic life, Third World immigrants from countries on the margins of the current globalization find their marginal status—and economic function—reinforced from within by Spain’s immigration policies.

Overview of Spanish Immigration

It has become a commonplace to observe that Spain has gone from being a country of emigration to a country of immigration over the past two decades (Casey 1997:9; Cornelius 1994; Izquierdo 1996:38–39; Solé 1995:20). Massive labor migrations are by no means a new phenomenon in Spain; as we saw above, they have been an integral part of the country’s industrialization pro-

cess. What is new is the unprecedented level of *external* immigration. In fact, since the mid-1980s Spain has experienced substantial net immigration into the country for the first time in modern history (Ministerio de Asuntos Sociales, Dirección General de Migraciones 1995). This migration into Spain includes large numbers of returning Spaniards who had sought work in northern Europe and the Americas after World War II (*ibid.*, pp. 73–80). More pertinent here, beginning in the 1980s rapidly increasing numbers of Third World immigrants entered Spain seeking work.

One observer has called this the “tercermundialización” (or “Third Worldization”) of immigration to Spain (Casey 1997:12). While in 1980, about 66% of foreign residents in Spain were from Western Europe and North America, and tended to be retirees and others seeking the pleasures of the Mediterranean climate and lifestyle, by the 1990s this percentage had shrunk to a little more than 50% (Comisión Interministerial de Extranjería 1995:138; Ministerio de Asuntos Sociales 1994, 1995a, 1995a; Casey 1997:12–13).

A terminological curiosity reveals the disproportionate weight of Third World immigration in the public discourse. The official term for all foreign residents in Spain—regardless of how long they intend to stay—is *extranjero* (“foreigner”). There is no official category of “immigrant,” probably in part because as we will see later, until 1996 there was virtually no permanent legal status for foreign residents and thus no “immigrants” in the sense that the term is used in the United States.⁹ But in popular parlance a distinction is made between *extranjeros* on one hand and *inmigrantes* on the other, with the latter category reserved for those who come from the Third World seeking work. Thus, when the “immigration problem” is discussed in government circles, in the media, among academics, or in public opinion surveys, it invariably refers to Third World immigration, leading one commentator to refer to First World immigrants as “authentic *desaparecidos*” (Izquierdo 1996:71).¹⁰

The absence of an official category of “immigrants” in Spain, and the popular use of the term “immigrant” to refer exclusively to Third World residents (regardless of the length of their sojourn) presents an awkward terminological dilemma. For the

⁹ People are classified officially as legal immigrants in the United States largely on the basis of having secured a “green card,” which qualifies them for permanent legal status. Foreign students, temporary workers on short-term visas, and others who are admitted for fixed periods are not considered immigrants.

¹⁰ So pronounced and taken for granted is this distinction that an acquaintance of mine—an expatriot of the United States who has lived in Spain for 25 years as a freelance writer—reports that he is regularly corrected if he refers to himself (playfully, because he too knows the distinction) as an *inmigrante*. He is politely but firmly told he is an *extranjero*—*los inmigrantes* are those who toil in the fields and factories, even if, unlike my American friend, they remain for only a few months and have no intention of “immigrating.”

sake of simplicity, I will use the generic terms “foreigners” and “legal (or illegal) residents” when referring to the whole population of foreign residents, consistent with Spanish law and official documents, and “immigrants” when referring to those from less developed countries, as is the convention in Spain. It is this latter group that is the focus of this article. While I recognize the risk of reinforcing stereotypes by using this separate terminology, nonetheless “immigrants” are in fact socially constructed as different and it is this social construction that is of interest here.

As shown by Table 1, the number of legally resident foreigners in Spain increased from just over 183,000 in 1980 to almost 500,000 in 1995. Estimates of the number of foreigners living in Spain without valid residence permits range from 60,000 to 600,000 (Casey 1997:14; Colectivo Ioe 1992; Solé 1995:25; the Red Cross, cited in *ibid.*, p. 25).¹¹ It is difficult to arrive at good estimates of these *irregulares*, in part because the undocumented often leave no paper trail, but also because these are not distinct populations: Not only do legal residents lose their status when their work permits expire, as we will see, but periodic regularization campaigns temporarily reduce the number of illegal residents, sometimes rather dramatically. Nonetheless, the more reliable independent sources estimate that the combined number of legal and illegal residents is close to one million (see, e.g., Solé 1995: 25).

Table 1. Foreigners Living in Spain with Valid Residence Permits, 1980–1995

Year	Legal Residents	Year	Legal Residents
1980	183,264	1988	380,032
1981	197,870	1989	249,559
1982	200,743	1990	278,796
1983	210,177	1991	360,655
1984	226,289	1992	393,100
1985	241,971	1993	430,422
1986	293,208	1994	461,364
1987	334,933	1995	499,773

SOURCE: Comisión Interministerial de Extranjería 1995:24; Izquierdo 1996:21.

Roughly 51% of these legal foreign residents come from other countries in Europe, who by virtue of being citizens of the EC are extended the same rights of Spaniards to reside and work in Spain, and may even vote in local elections (Comisión Interministerial de Extranjería 1995:24, 22). Indicative of their special status among foreigners, the rights of EC members in Spain

¹¹ One scholar points out that the wide divergence in estimates may have to do with the political agendas of those who use these numbers. For example, the low estimate of 60,000 comes from the communist union confederation CC.OO, an advocate for immigrants' rights in Spain, which is concerned for what the confederation sees as the sensationalizing of the immigration issue; the high estimate of over 600,000 comes from the Red Cross, which is a principal source of social services for immigrants in Spain and which, this observer notes, may have an interest in highlighting the problem so as to enhance funding (interview with John Casey, Universidad Autonoma de Barcelona).

are dealt with primarily through the regulations and treaties of the EU, rather than through immigration law.

The single largest source country of foreign residents is Morocco, with about 75,000 legal residents. Africa as a whole provides 19% of Spain's legal foreign residents, the Americas 22%, and Asia 8% (*ibid.*). It must be remembered that these numbers and percentages refer only to those with legal status. Were legal and illegal residents considered together, the proportions would shift substantially, since the legal status of citizens of Third World countries is dependent on elusive visas and residence and work permits (discussed below). One immigration scholar estimates that about 40% of all foreign residents in Spain—legal and illegal—are from the developed world, with 60% coming from the Third World (interview with John Casey, Universidad Autonoma de Barcelona).

Most Third World immigrants work in agriculture, construction, or services. Statistics gathered during the 1993 regularization process reveal that of the more than 110,000 legalized immigrants that year, most worked in domestic service (where the vast majority of women are concentrated), followed by construction, agriculture, and hotels and restaurants (Table 2).

Table 2. Economic Activities of Regularized Immigrants, 1993, by Sector

Sector	%
Domestic service	21.2
Construction	15.2
Agriculture	14.3
Hotels and restaurants	12.2
Retail	7.9
Other	29.2

SOURCE: Ministerio de Asuntos Sociales, elaborated in Izquierdo 1996:114.

Many of these immigrants work in the underground economy. One study of Moroccans, Central Africans, and Filipinas in 1987 found that 80% of the immigrants interviewed had obtained their first job in the underground economy and had remained there for three or four years (Solé 1995:28). Qualitative studies of Moroccan communities in Madrid (Gonzalez-Anleo 1993; Pumares 1996), African farmworkers in Catalonia (Jabardo 1995) and Andalusia (Roquero 1996), Africans and Latin Americans in Barcelona (Valls, Estrada, & Ferret 1995), and other Third World immigrants (Ramirez Goicoechea 1996) consistently come to the same conclusion. These immigrants—sometimes with legal status and sometimes not—work at the most arduous and low-paying jobs and experience rapid turnover, not infrequently working up to seven jobs in one year (Pumares 1996:88).

Wages vary widely, depending on the sector of the economy and the region of the country. Women from Morocco who do

live-in domestic service work in and around Madrid reportedly make between 70,000 and 80,000 pesetas per month, or roughly \$550 (Pumares 1996:75). Another study reports that Moroccan domestics sometimes make as little as 40,000 pesetas (Ramirez Goicoechea 1996:29). Moroccan men in construction, working as day laborers in the underground economy, can make as much as 8,000 to 9,000 pesetas a day, or about \$60, while their counterparts in agriculture make less than half that (Pumares 1996:81; Roquero 1996:19). Those who distribute propane gas tanks bring in only about 8,000 pesetas per *week*, depending on tips to make it through the month (Pumares 1996:85).

Despite this variation, one thing remains constant: Immigrant wages are beneath those paid to Spanish workers in every sector. One study carried out by the Catalan government found that remuneration per hour paid to immigrant workers was 21% less than that paid to indigenous workers for similar work in agriculture, 18% less in construction, 40% less in industry, and 50% less in the service sector where most immigrants are concentrated (Generalitat de Catalunya 1995:63). The former Director-General of Migration once estimated that 25% of the immigrants in Spain receive less than minimum wage (cited in Malgesini 1994:16–17). Studies done for Caritas, a Catholic immigrant-advocate group, estimate that 78% of immigrants in Spain have a monthly income of less than 50,000 pesetas (about \$360) (cited in de Lucas 1996:34).

Spanish Immigration Law: Rhetoric and Reality

The Legal Framework

Prior to 1985, Spain had no explicit immigration policy or any comprehensive legislation regarding the treatment of foreigners within its territory. The Spanish Constitution of 1978 had specified only, “Foreigners in Spain will enjoy the rights and liberties put forth here, according to the terms set by international treaties and the law,” with the qualification that foreigners did not have the same rights as Spaniards to vote and to serve as elected officials (Spanish Constitution, arts. 13 and 23, reproduced in Ministerio del Interior 1996:210, 214). A Constitutional Court decision in 1984 was similarly vague: “There exist rights that are equal between Spaniards and foreigners . . . [but] there exist other rights that do not by any means apply to foreigners (e.g., those recognized in Article 23 of the Constitution . . .); and, there exist others that apply to foreigners or not according to various treaties and laws” (quoted in Santos 1993:94).

This absence of legal specificity created a kind of legal limbo for immigrants “who carried out their work and social lives without any great anxiety and without a consciousness of being ille-

gal" (Izquierdo 1996:142). One study of Moroccan immigrants prior to 1985 found that they were better integrated in the social fabric than later cohorts, were more likely to be self-employed, and often had their families with them (*ibid.*).

In June 1985, Spain joined the European Community, and that same month five EC member countries (Belgium, France, Germany, Luxembourg, and the Netherlands) signed the Schengen Agreement, designed to dismantle their internal borders. While the primary purpose of Schengen was to unify further the EC, security and external border controls were central themes. In this broader European context, the Spanish Representative Assembly passed the *Ley Organica sobre Derechos y Libertades de los Extranjeros en Espana* (Organic Law on the Rights and Liberties of Foreigners in Spain). The Senate quickly followed suit,¹² and the law became effective on 1 July 1985, just days after Spain signed the treaty for entry into the European Community (*Boletín Oficial del Estado* 1985:20824–29).

Evidence suggests that the law was in part the result of negotiations surrounding Spain's entrance into the EC (Casey 1997: 24). Indeed, many observers have noted that the evolution of Spain's immigration laws goes hand in hand with the process of European integration (Borrás 1995a:21; Casey 1997:24). It is important to note here that while the EC has increasingly attempted to coordinate its border control policies, each country retains exclusive jurisdiction over immigration matters, with coordination being confined largely to statements of intent and principals.¹³

According to its Preamble, the Organic Law on the Rights and Liberties of Foreigners in Spain (LOE) had the dual purpose of guaranteeing foreigners' rights and controlling illegal immigration (Congreso de los Diputados 1985). The law has been called "vague and imprecise" (Sagarra & Aresté 1995:169) and "ambiguous and incoherent" (Aresté 1995b:192), in part because of its generality and absence of detail. Together with its regulations, which were finally published in May 1986, the LOE had six main foci. First, they made sharp distinctions between types of foreigners and their corresponding rights, with a dichotomy being drawn between the *Regimen Comunitario* (which applied to

¹² The bill, which was introduced by the Socialist government, was uncontroversial in both the House and Senate and elicited little public debate prior to its passage. In the House, 274 representatives voted in favor, with 3 against and 3 abstentions. In the Senate, there were no negative votes, with 136 in favor and 34 abstentions.

¹³ The third major step in European unification—the Maastricht Treaty, which officially created European citizens—was signed by EC members in February 1992, to be effective in November 1993. Title VI of this agreement dealt with asylum, border controls, immigration, drugs, and establishing a European policing system (Europol). It also formed a committee to advise the Council of Ministers of Interior and Justice of the member countries. While Schengen and Maastricht have attempted to move toward a coordinated European policy on immigration and asylum, as one high official put it, there remain "teething problems" (quoted in Benyon 1996:365).

EC members) and the Regimen General (which applied to all non-EC members), with EC members being granted all the rights of free circulation, residence, and work in Spain. Second, the new policies required for the first time that most non-EC entrants have visas (LOE art. 12). Third, in addition to these entrance visas, those who intended to stay in Spain longer than 90 days were required to obtain residence and work permits (LOE arts. 13 and 15). As a result, "The great majority [of immigrants] became illegals" (Sagarra & Aresté 1995:165). Fourth, the law provided that legal residents would have certain rights of assembly, public education, and unionization, with the proviso that these rights were operative only insofar as they did not conflict with the "national interest, security, public order, health, morality, or rights and liberties of Spaniards" (LOE arts. 7–10, LOE, in *Boletín Oficial del Estado* 1985:20825). Fifth, the law made sharp distinctions between legal and illegal aliens and explicitly excluded the latter (which as a result of the law made up the bulk of non-EC foreigners) from any of the rights spelled out above (LOE arts. 7–10). In recognition of the vast numbers thus excluded from any legal rights, a "regularization" program was established through which foreign residents could apply for legal status within a brief window of opportunity.¹⁴ Finally, the LOE spelled out the grounds for deportation, including lack of proper residence and/or work permits, being involved in activities that are "contrary to the public order or internal security," being convicted of a felony, and being without sufficient funds (LOE art. 26).¹⁵

A privileged status was created for foreigners from Latin America, Portugal, the Philippines, Equatorial Guinea, and for Sephardic Jews, Andorrans, and natives of Gibraltar, who were not required to hold entrance visas and were given preference in obtaining residence and work permits; in addition, natives of the Maghreb countries (Morocco, Tunisia, and Algeria) were exempt from the visa requirement—a privilege that was soon to be revoked, as we will see (LOE art. 23).

The LOE, still the only comprehensive law on the books relating to immigration matters and the rights of foreigners in Spain, took up barely five pages in the Federal Bulletin (*Boletín del Estado* 1985:20825–29), leaving not just the details but vast terrains of uncharted policy to be worked out through adminis-

¹⁴ There were only 44,000 applicants to this program, which was widely criticized for its lack of publicity and coordination and which was launched at a time of widespread fear and confusion among immigrants who had become illegal overnight as a consequence of the new visa and permit requirements. Of these applicants, only 23,000 were able to fulfill the program requirements relating to ongoing, legitimate work contracts or other means of support in the formal economy (Colectivo Ioe 1992; Izquierdo 1992).

¹⁵ A provision that would have allowed administrative authorities to conduct deportations without judicial input was declared unconstitutional in 1987 (Tribunal Constitucional, Sentencia Num. 115/1987).

trative regulation. Subsequent policy has been hammered out almost entirely by administrative policies and official decrees, leading one constitutional law expert (Santos 1993:113) to call it “à la carte” immigration policy. The most substantive of these administrative actions was the Council of Ministers Agreement on Regularizing Foreign Workers of 7 June 1991. This regularization program specified that illegal aliens who could verify that they were already in the country by 15 May 1991, and either had ongoing work contracts, were self-employed in a lucrative, legitimate enterprise, or had previously had a valid residence and work permit could apply for legalization (reproduced in Boix 1991). This legal status was valid for only one year; renewal was possible, but was contingent on the above conditions persisting.

A government decree in May 1991 imposed visa requirements for the first time on entrants from the Maghreb countries and from Peru and the Dominican Republic. The new controls followed reports that these countries were the source of large numbers of illegal residents, together with stepped-up pressure from the EC as Spain joined the Schengen Agreement in June 1991.

On 26 May 1993, a Council of Ministers Agreement established annual quotas for foreign workers in three sectors where there were reported to be insufficient local workers: agriculture (10,000 workers), unskilled construction work (1,100 workers), and various services (5,000 for domestic service and 3,500 for other services) (Aresté 1995b:191). Of the 20,600 slots provided, only 5,220 were filled, primarily due to the requirement that employers make requests for workers 40 days before specific jobs were to begin, and other such administrative hurdles in sectors of the economy known for their informality and unpredictability (Casey 1997:27). The following year, the administrative restrictions associated with requesting these quota workers were loosened, and while the numbers vary slightly from year to year, the program remains an integral part of Spain’s immigration policy.

Finally, a government decree in February 1996 (Real Decreto 155/1996, reproduced in Ministerio del Interior 1996) launched Spain’s third regularization program, stipulating this time that it applied only to those who had once had residence and work permits but who for a variety of reasons had been unable to renew them. This decree also created a permanent residence and work permit for those who could show they had remained in an uninterrupted legal status for at least six years, that is, successfully renewing their temporary permits with no lapses.¹⁶

¹⁶ Throughout this period, Spain’s refugee and asylum procedures were increasingly restrictive, as were those of other EC countries at this time. By 1993, 96% of applicants for refugee status in Spain were denied, with only 1,287 admitted (Izquierdo 1996:104). By 1996, there were only about 5,500 refugees living in Spain, mostly from the former Yugoslavia, China, and central Africa (Casey 1997:28; Comisión Interministerial de Extranjería 1995).

While the Constitutional authority for immigration issues ultimately rests with the federal government,¹⁷ the actual operation of the system is decentralized in the regions, provinces, and municipal localities (Casey 1997:22). The 17 regional governments into which the country is divided in effect have their own set of immigration policies. These are technically administrative blueprints for the execution of federal policy, but in part because the latter is so ambiguous, the regions enjoy “an ample margin of discretion” (Santos 1993:113).¹⁸ As we will see later, this radical decentralization plays an important part in the uncertainty and ambiguity that plagues immigrants who are attempting to secure legal residence, work permits, and social services, and thereby contributes to their marginalization.

Between these autonomous regions and the local municipalities lie the Provincial governments, which exercise substantial authority as well. In fact, they are among the most influential players in the renewal of work permits and in operating the periodic regularization programs. A federal government decree in 1991 established local Offices of Immigration (*Oficinas Unicas de Extranjeros*) within each province (*Boletín Oficial del Estado* 1991), and among other tasks, they—together with the Provincial Directors of Labor—were responsible for implementing the Regularization Program of 1991 (Aresté 1995a:186).

Control and Integration as Rhetorical Themes

Throughout this legal evolution, the justification for policy choices was the need to control illegal immigration and integrate legal residents. The Preamble to the LOE, still the most powerful symbolic statement of Spain’s stance toward foreigners, proclaimed its dual intentions of preserving their rights and—many argue, primarily for the EC audience—controlling its borders. The Preamble declared nobly that its purpose was “to extend to foreign residents the maximum level of rights and liberties” and “to facilitate the integration of aliens into Spanish society” (*Congreso de los Diputados* 1985:29–30), while its text concentrated on restricting immigrants’ rights. One commentator has remarked, “If you were an immigrant and read the Preamble to the LOE, you would think you had arrived in a legal paradise, where words like ‘rights,’ ‘guarantees,’ ‘maximum rights and liberties’ abound,” only to find that the content of the law was actually repressive (Mariel 1994:131).

¹⁷ The office of Director-General of Immigration, after several moves, is currently located in the Department of Labor and Social Security.

¹⁸ Noting the absence of legislative detail in developing immigration policy, one legislator in 1991 told his colleagues in the House of Representatives that they shouldn’t “give a blank check to the executive branch” (*Cortes Generales* 1991:4889).

Similarly, a 1991 Congressional Resolution cited as its dual concerns the fight against illegal immigration and “the social integration of immigrants” into Spanish society (reproduced in *Ministerio del Interior* 1996:248–49). The Council of Ministers launched the legalization program of 1991, urging, “It is necessary . . . to ensure the social integration of the regularized immigrants and facilitate the maintenance of their legal status” (quoted in *Aresté* 1995a:184). In 1992, the Minister of the Interior told the House of Representatives (*Cortes Generales* 1992:17465), “[T]he objective of all our immigration policies is the successful and harmonious integration between the local population and the immigrants who come to live and work among us.” He continued, “[In this] there are two key concepts: control [of illegal immigration] and openness [to facilitate integration].”

In 1994, the Council of Ministers brought to the House of Representatives a Plan for the Social Integration of Immigrants. The stated goals of this plan were to “eliminate all types of unjustified discrimination,” “promote peaceful coexistence and tolerant attitudes,” “guarantee immigrants a legal situation and social stability . . . so as to end their marginalization,” “combat the barriers to integration,” “eradicate all signs of exploitation,” and “mobilize the whole society to fight racism and xenophobia” (*Ministerio de Asuntos Sociales* 1995b:9–10). The plan proposed 26 measures to accomplish these ends, although virtually no funds were set aside or administrative machinery established for their implementation.

Murray Edelman (1977) once observed that political rhetoric serves an important symbolic purpose, in that “it induces a feeling of well-being: the resolution of tension” (p. 38). Quoting Kenneth Burke, Edelman calls “political rhetoric . . . ‘secular prayer’ whose purpose is ‘to sharpen up the pointless and blunt the too sharply pointed’” (p. 33). In fact, says Edelman, there is often a contradiction between the rhetoric and the reality it is meant to “blunt”: “It is not uncommon to give the rhetoric to one side and the decision to the other” (p. 39).

As we will see, the integrationist discourse within Spain’s immigration policies clashes head-on with the actual substance of those policies. A number of observers have noted that there is a striking contrast between “the generosity of the Preamble of the [LOE] and the restrictiveness of its text” (*Sagarra & Aresté* 1995:170).¹⁹ This contrast permeates immigration politics in Spain, with the official rhetoric extolling the importance of immigrant integration and the actual policies ensuring their marginalization. The remainder of this article explores the spe-

¹⁹ Edelman (1977:27) points out, “Typically, a preamble (which does not pretend to be more than symbolic, even in legal theory) includes strong assurances . . . [of] fairness, balance, or equity.”

cifics of this marginalization, in particular the role of law in constructing immigrant precariousness and vulnerability through the construction of their illegality.

Constructing Immigrant Marginalization

Mercedes Jabardo (1995:86–87), an anthropologist studying African farm labor in Catalonia, observed of the 1985 immigration law, “The new legislation [LOE] . . . generates irregularity among the vast majority of the immigrant community. . . . In other words, the Law creates the legal category of immigrant and . . . generates the category of the ‘illegal.’” This is true in the obvious sense that before the LOE there was no comprehensive immigration policy in Spain, and thus no illegal immigrants.²⁰ Similarly, the 1991 visa requirement for Moroccans, Peruvians, and Dominican Republicans *ipso facto* produced large numbers of illegal immigrants.

But the law produces “irregularity” in a more subtle way as well, for lapses into illegality are *built into* Spanish immigration law. This construction of illegality through law is the product of a variety of overlapping factors, the most important of which are the temporary and contingent nature of legal status, and a series of bureaucratic catch-22s.

The temporary nature of legal resident status is a central component of Spain’s policies toward foreigners. Spain grants nationality primarily according to the principle of *jus sanguinis* and not *jus soli*. This means that unless one has Spanish “blood,” it is very difficult to obtain the full rights of Spanish citizenship. Thus, for example, children born of noncitizen parents on Spanish soil are not automatically conferred citizenship and indeed may from time to time be illegal, depending on their parents’ status.²¹ Foreigners who marry Spanish citizens fare no better; as of 1996, illegal aliens who marry Spanish citizens must wait three years before they acquire even legal resident status.²²

²⁰ There were of course immigrants who were working illegally in the underground economy, but they were under no threat of deportation and were reportedly better integrated in the community than later cohorts (Izquierdo 1996).

²¹ There are a limited number of ways for those without blood ties to Spain to acquire citizenship (leading some observers to note that the Spanish nationality system is a hybrid of *jus sanguinis* and *jus soli*; Casey 1997:21; Santos 1993:122). For example, if a foreigner has lived for 10 years legally in Spain, s/he can apply for naturalization, but this is relatively rare in part because of the difficulties of maintaining continuous legal status (arts. 17 and 22, Civil Code; see also Boletín del Estado 1990). Somewhat shorter waiting periods are required of refugees and asylees, nationals of countries with historical-cultural ties to Spain, and those with particular ties to Spaniards (marriage, for example).

²² Union official and immigrant advocate Miguel Pajares explains that these spouses “remain in a strange kind of limbo” in which they are not technically legal (and therefore have no right to work) during the three-year wait, but they cannot be deported (El Periódico 1997).

There are few other routes to permanent legal status besides citizenship. Prior to 1996, it generally took 10 years of continuous legal status before one could apply for permanent residence. Since the regulatory reform of 1996 (Real Decreto 155/1996, reproduced in Ministerio del Interior 1996), the waiting period has been reduced to 6 years. Nonetheless, very few applications for this permanent residence category have been received, largely because of the near impossibility of piecing together 6 years of uninterrupted work and residence permits (interview with Miguel Pajares, Director of Immigrant Services, CC.OO [Communist Union Confederation], Barcelona).

The temporary nature of legal status is underscored by the instability inherent in the very program purportedly designed to facilitate integration—the much-touted “regularization” of illegal aliens. The first of these regularizations was launched by the LOE in 1985–86. This was followed by the larger program of 1991 and a smaller one in 1996. While not technically “regularization” programs, the quota worker system established in 1993 for agriculture, construction, and domestic service has also become an avenue of regularization for those already residing in Spain.

All these legalization programs are specifically and exclusively for foreign *workers* (and under some limited conditions, their families)²³ and are contingent on either having a legitimate work contract or having had one in the recent past. The difficulties of illegal immigrants meeting this standard, given their concentration in the underground economy, are legion. Not only are underground employers often unwilling to formalize work contracts, but some clearly *prefer* the undocumented status of their workers and the vulnerability that status ensures. According to qualitative studies based on in-depth interviews with Latin American and African immigrants in and around Barcelona and Madrid, a number of immigrants have been fired for pursuing the possibility of legalization with their bosses (Valls et al. 1995;

²³ When the LOE was passed in 1985, it made no mention of the possibility of, or procedures for, family unification, a “conspicuous omission,” according to one expert (Martinez 1995:196). Subsequent regulations spelled out “preferential treatment” for visas and work and residence permits for those seeking family unification, and required that the family member with whom unification in Spain was sought be well established and have the economic means to support the applicant. Two years later, the policy was abruptly changed by an administrative decree from the Minister of Labor, who set extensive new restrictions on family unification, e.g., adding to the requirements the condition that the family member with whom unification was sought had to have lived legally in Spain for at least three years (*ibid.*, p. 198). The only exceptions were for citizens of the EC, Latin America, Canada, the United States, Australia, Equatorial Guinea, Israel, Japan, and New Zealand (citizens of the Philippines and the Maghreb countries were noticeably absent from the list of exceptions). In 1992, Spanish consulates received “instructions” to place a moratorium on *all* family unification visas, effectively freezing the program until the ban was lifted by administrative fiat in 1994 (p. 199). By the mid-1990s, family unification had become so restrictive that it was only a realistic possibility for a few foreigners in “preferred” categories and for a small number of refugees (Martinez 1995). This despite the fact that in 1993, a panel of EC officials signed a resolution that “all states recognize the right of family unification” (*ibid.*, p. 196).

Pumares 1996).²⁴ An Equatorial Guinean who lost his job when he asked his boss to help him with legalization put it this way, “Here when they hire an immigrant, they prefer that he work in conditions that are not legitimate, and preferably illegal, that way they can pay what they want and under conditions convenient to them.” A Gambian immigrant explained, “If you work in the fields, and you go to your boss and ask for a contract, that’s the day you lose your job” (quoted in Valls et al. 1995:125, 127).

Those who do manage to get regularized find it difficult to retain their legal status. In fact, Spain’s legalization programs *build in* a loss of legal status unless one can demonstrate on an annual basis that the original conditions persist (most important and most daunting, a formal work contract).²⁵ Some immigrants do not qualify for renewal because the work contracts on which their regularization had been based have ended; in other cases, the original contract commitments were never fulfilled by employers. For example, among Moroccans it was not uncommon for “pre-contracts” to evaporate when the employer refused to pay social security or satisfy other formalities, leaving the newly legalized immigrants to work without a contract, and making it impossible for them to renew their regularization at the end of the year (Pumares 1996:87–89; Izquierdo 1996:73).

Izquierdo (1996:125) points out that a large percentage of the women who secured domestic service positions through the 1993 and 1994 quota systems “have been reclaimed by the underground economy.” As he explains (p. 73), “[It is] difficult for the regularized to maintain legal status, for they tend to work in precarious and unstable jobs in sectors (such as construction, textiles, agriculture and personal services) where irregular contracts and the underground economy are the norm.”

Statistics on immigrants who have not successfully renewed their regularization attest to this reality. Of the original 128,000 applicants for regularization in 1991, only 64% of them were legal after two years (*ibid.*, pp. 150–51). The regularization program of 1985, which had drawn only 44,000 applicants, saw an even higher drop-off rate, with only one-third still legal after three years (Pumares 1996:59). Izquierdo (1996:149) surveys the outcome of Spain’s regularization programs and concludes ruefully, “A regularization program that maintains immigrants in il-

²⁴ These studies included, respectively, interviews with 75 Latin American and African immigrants in the Barcelona region and 50 Moroccan families in Madrid.

²⁵ Beginning in 1996, regularized immigrants may secure a two-year permit after their original one-year legalization, to be followed by a three-year permit, and eventually (if they fulfil the rigorous requirement of five years of *uninterrupted* legal status) permanent legal status. Although government statistics have not yet been published on the granting of this permanent status, my informants—including the director of one of the largest immigrant-advocacy groups in Barcelona—know of no instances in which such status has been achieved.

legality or sends a significant portion of the immigrant community back to that status, isn't worth much."

The work permit system operates in conjunction with, and parallel to, these regularization programs. Foreign residents who have been legalized must secure a preliminary work contract with an employer, with which they then apply for a work permit. Seven kinds of work permits were provided for in the LOE regulations: Type A was for work of no longer than nine months; Type B lasted a maximum of one year, was only valid for one particular occupational activity and geographic area, and was renewable for one year; Type C lasted for five years and was valid for any occupation or region (preference was given to Latin Americans, Portuguese, Andorrans, Filipinos, Sephardic Jews, and Equatorial Guineans for this highly coveted type); Type D was for the self-employed, lasted one year and was geographically limited; Type E lasted five years, with no geographical or occupational limitations. Type F was for EC members who resided in their own country and came into Spain only to work. As Santos (1993:120) has put it, "[T]he result [of these multiple types of permits] is a system that keeps the alien in a constant state of uncertainty about the immediate future and necessitates engaging in frequent and trying bureaucratic proceedings." Further, all these work permits are temporary, with the vast majority (Types A and B) lasting one year or less. As with regularization, securing a work permit—and renewing it when it expires—is contingent on maintaining a legitimate work contract, an insurmountable barrier for most Third World immigrants.

Hurdles built into the legal requirements and Byzantine bureaucratic procedures compound these difficulties. For example, while Type A permits last only 9 months, in order to renew them the applicant must wait 12 months from the date it was issued, *structuring in 3 months of illegal status*. Even those who secure permits that last one year inevitably experience periods of illegality. It is well known, for example, that in renewing these permits immigrants confront delays of up to 6 or 8 months (Mariel 1994:134; interview with Miguel Pajares, Director of Immigrant Services, CC.OO, Barcelona). In some cases, it takes so long that the permit has almost expired by the time the immigrant receives it; there are even cases in which the permit has passed its expiration date by the time it is issued (Casey 1997:25, 41).²⁶ As Casey (p. 25) describes it, "The attitude of the administration seems to be to erect as many obstacles as possible to getting permits. . . . The consequence is to maintain immigrants in a position of continual supplication and permanent precariousness." Borrás and Gonzalez (1995:213) concur. "Delays in the granting and re-

²⁶ One immigrant worker who had lived in Catalonia for 12 years addressed these delays with resignation and dry humor: "The problem is always the same . . . well, the [Spanish bureaucracy] makes an art out of not-doing" (quoted in Valls et al. 1995:37).

newing of permits and the excessive presence of short-term permits, place a large part of the immigrant population in a position of uncertainty and absolute precariousness.”

A catch-22 in the permit process also contributes to what one Spanish immigration law scholar calls the “institutionalized irregularity” of the system (Santos 1993:111). In order to secure legal status, foreigners must (1) secure a work contract commitment from an employer; (2) take this pre-contract to the provincial Labor Department to apply for a work permit; (3) take this provisional work permit and other documents to the Department of Interior and the police for a residence permit; (4) finally, secure a work/residence permit which authorizes them to live and work in Spain (again, usually expiring after one year). The catch-22 in this already complex circuit is that the labor contract, the work permit, and the residence permit are in effect mutually dependent on each other, a fact that one observer has called “the vicious circle in which clandestine immigrants are trapped” (de Lucas 1994:92).

One Mexican worker living in Catalonia for three years described his experience, “The work permit was very difficult to get because [first] you need to present a work contract . . . but to get a work contract you need a permit, no? So, which comes first the chicken or the egg?” (quoted in Valls et al. 1995:39). On some occasions, “there have been situations so absurd as immigrants losing their residence permit or work permit because one of them expired while waiting for the other to be issued” (ibid., p. 40). A Gambian worker tells this story:

My boss signed a year’s pre-contract with me, but my work permit kept being delayed. . . . I went every two months to Barcelona to get the official stamp . . . well, after a year, still no work permit. One day, my boss says to me, “Well, the year is up already!”

I say, “Yes, I know, but tomorrow I’m going to Barcelona again to see if I can get my papers.” So, I go to the provincial authorities in the Interior, and they say, “Your papers are at the Labor Department,” and I go to the Labor Department and they say, “Your papers are with Interior.” When I go back to Interior, I tell them my name, they finally give me my papers, but then they say, “Oh, but your residence permit has expired . . .”

Metaphors abound in describing these bureaucratic tangles. As one indignant member of the House of Representatives (Cortes Generales 1991:4889) told his colleagues, “It is the famous fish that ate his tail: you can’t get residence if you don’t have a work permit and you can’t get a work permit if you don’t have residence.”

Political decentralization and administrative discretion exacerbate the difficulties. As a member of the Immigrant Collective of Catalonia put it,

[One] fact that characterizes Spanish immigration law is the frequent ambiguity of the concepts employed in its text, which results in very different interpretations in differing provinces and regions. That is what happened with the regularization of 1991, which gave rise to a veritable Tower of Babel between civil servants and applicants. (Kingolo 1994:157)

It is not just that discretion was maximized but that in the process, “a veritable bureaucratic labyrinth came into being, in which the government institutions contradict each other” (Valls et al. 1995:37). So contradictory and ambiguous are government policies that even the experts are divided on what it all means, with some declaring, for example, that all immigrants have a right to public education and health care and others citing government Decrees, “Instructions,” “Circulars,” and Constitutional mandates that seem to affirm just the opposite (see Santos 1995; Sagarra & Aresté 1995; Borrás & Gonzalez 1995). More important here, the lack of clarity heightens immigrants’ insecurity and “can translate into an instrument for maintaining foreign workers in a clandestine status” (Santos 1993:117).

Given the difficulties of securing permits, it is not surprising that most Third World immigrants work without them, illegally. In 1996, with an immigrant worker population of about 300,000,²⁷ fewer than 90,000 work permits—including renewals—were issued (Ministerio de Trabajo y Asuntos Sociales 1997:201). Independent census studies of Third World immigrant communities find a preponderance of “irregulars.” According to Izquierdo’s calculations (1996:24), “Among Moroccan and Algerian immigrants, irregularity is the norm, not the exception.” Among African farm workers in Catalonia, it is estimated that four out of five workers are illegal (Jabardo 1995).

The Social Reality of Exclusion and Marginalization

Public opinion polls show Spaniards to be among the least anti-immigrant populations in Europe. The two most prestigious public opinion surveys in Spain, conducted by the Centro de Investigaciones sobre la Realidad Española (CIRES 1995) and the Centro de Investigaciones Sociológicas (CIS 1996), consistently report relatively low scores of racism and xenophobia, with the number of Spaniards who believe immigration to be a major problem remaining fairly low, even as the number of immigrants

²⁷ EC citizens are authorized to work through a separate system. This estimate of the non-EC worker population is derived from estimates of the number of non-EC immigrants in Spain, nonrenewed work permits, etc. (Casey 1997).

increases.²⁸ Acts of violence against immigrants are by no means unknown, and there is some evidence that they are increasing, as documented by SOS Racismo (1995, 1996); nonetheless, their rates are low compared with other European countries.

Some have linked these limited expressions of xenophobia and anti-immigrant violence to the fact that Spain receives fewer immigrants than other developed countries (CIRES 1995). Others have pointed out that stereotypes, prejudices, and cultural exclusion—particularly directed against the Arab population—are indeed rampant in Spain, but that surveys are unlikely to tap these politically incorrect sentiments (de Lucas 1992, 1996; Santamaría 1993; Buisef 1994). Whatever its causes and contested sincerity, this *laissez faire* stance toward immigrants, relative to other EC countries, contrasts markedly with the high degree of socioeconomic exclusion and marginalization actually experienced by the immigrant population in Spain.²⁹ Extensive documentary evidence confirms what de Lucas (19985) sums up as “the existence of pockets of work, frequently clandestine, such that Moroccans, Guineans, and others, live in conditions of housing . . . health and wages that approach those of slavery.”

The Centro de Investigaciones Sociológicas (Ramirez Goicoechea 1996) voluminous qualitative study of the life experiences of immigrants in Spain attests to the limited access of Third World immigrants to social services, such as health clinics, as well as other life necessities. The inadequate housing of much of the immigrant population was dramatized in October 1994, when a large shanty-town outside Madrid that housed a significant portion of the city’s Moroccan population burned to the ground, leaving thousands homeless (Izquierdo 1996). Recent studies and government reports confirm the more mundane realities of crowding, lack of sanitation, and the ghettoization of Third World immigrants (Ramirez Goicoechea 1996; Valls et al. 1995;

²⁸ In the CIS study done in June 1996 on a random sample of 2,500 Spaniards, only a small minority expressed any hostility toward immigrants. According to the index of xenophobia constructed in a 1995 CIRES study, 60% of Spaniards are “not at all” xenophobic, with about 7% being “quite” or “very” xenophobic. Further, 95% responded that all people should have the freedom to live and work in whatever country they choose. Sixteen percent said they would object to having Moroccans as neighbors (either “a lot,” “pretty much,” or “a little”); 15% would object to having central Africans as neighbors, and 10% would object to Latin Americans as neighbors. Asked to rank 10 ethnic and immigrant groups, Spaniards consistently place “Arabs” and “gypsies,” respectively, at the bottom (CIS 1996; CIRES 1995; SOS Racismo 1996:183).

²⁹ Touraine (1995:12) points out that there are at least three dimensions to the concept of inclusion in a national community. One is nationality, which includes the political rights of citizenship; another is what he calls “integration,” which refers to socioeconomic equality; and the final dimension is assimilation, or the acquisition by immigrants of the dominant group’s cultural codes. Touraine argues that true integration is not possible if assimilation takes place, since the latter extinguishes an immigrant group’s cultural identity, thereby negating their equality. The point here is somewhat different, although I too am arguing for not conflating different levels of inclusion.

Pumares 1996; Comissionat de l'Alcaldia per a la Defensa dels Drets Civils 1995).

More important here, Third World immigrants experience substantial marginalization in the labor market. As we saw above, they are concentrated in the underground economy and receive wages significantly below those of native workers. In study after study, they speak for themselves: Gambian gardeners paid 20,000 pesetas (roughly \$150) for a six-day week; Senegalese garment shop workers paid 28,000 pesetas a week working from eight at night to ten in the morning; a waiter who works for three weeks, is terminated, and not paid (Valls et al. 1995:136; Pumares 1996:86). Jamal, a Moroccan immigrant, sums it up, "It is marginalized work . . . cleaning who knows what. . . I go in a factory and, well, I do the worst jobs: clean, gather, load, unload, do this, do that, whatever no one else can (sic) do" (quoted in Valls et al. 1995:131).

Turnover is high in these jobs, both because the workers cannot subsist long under these conditions and because employment is unsteady and haphazard. As the Gambian gardener cited above said, "The problem is, one week they give you work and the next week they don't. You can't live like this" (quoted in *ibid.*, p. 137). Pumares (1996) found it not uncommon for these workers to have seven or eight different jobs in a year, some of which overlapped with each other, in an effort to make ends meet.

Sociologist Cesar Manzanos (1994:169), addressing the double marginality of incarcerated immigrants, writes, "The situations of marginalization which the current socioeconomic system produces are not residual categories, but necessary for its reproduction." The marginalization described here is similarly not "residual" but is the predictable consequence of immigration policies that ensure immigrant vulnerability. The immigrants themselves explain their vulnerability this way: "I don't like being illegal. Because being illegally in a country means being without words; you can't speak, because if you open your mouth, [they say] 'Where are your papers?' So, when I want to speak, I tell myself, 'I am here illegally'" (quoted in Valls et al. 1995:35). A Peruvian says, "They don't pay me much because, well, because I'm irregular; if I was legal maybe they would pay me more, no?" (quoted in *ibid.*, p. 137). An Equatorial Guinean speaks of the low wages he received in one job and says, "I kept my mouth shut, because I wasn't going to complain. If I complained, they'd show me the door" (*ibid.*).

Spanish law requires that to file a labor complaint, a worker must have a work permit, thus freeing employers of illegal workers from abiding by prevailing labor standards. A grower who employs African farm workers explains the advantages of this system

from his perspective, "I try them out and if I see they don't work hard, I fire them" (quoted in Jabardo 1995:88).

The subjective side of this vulnerability and marginalization is intense fear. Deportation is relatively rare in Spain,³⁰ but the threat of detection is all too real for many immigrants. A provision in the LOE allows for administrative authorities to detain those they suspect are deportable for up to 40 days in immigrant detention centers (LOE art. 26). While statistics on the number thus detained are not available, extensive anecdotal evidence gathered annually by SOS Racismo attests to the relative routineness of this practice and to the disruptions it wreaks on immigrants' lives (SOS Racismo 1995, 1996). One woman described her fear, "I swear, sometimes I wet myself, I'm so scared. I don't have legal residence and when I see the police, I'm terrified" (quoted in Valls et al. 1995:50). An Algerian said, "Our life is a continual flight from the police because we don't have papers. We live with permanent anxiety. It seems like we have a sign on our foreheads 'I am illegal'" (quoted in Dahiri & Acosta 1994:119). This fear of the police and vulnerability to detection has very tangible consequences. A Moroccan woman working as a domestic servant described turning down a better-paying job when her employer threatened to report her to the police if she left (Pumares 1996:76).

Clearly, the production and reproduction of illegality through law enhances the precariousness and marginalization of those who are thereby illegalized. This marginalization is not limited to the illegal population, however, but affects those who are (temporarily) legal as well. Indeed, in this system, there are few real distinctions between the two, since legal status is always a fragile state and almost inevitably gives way to periods of illegality. As Miguel Pajares, director of one of the largest union immigrant advocate groups in Barcelona, told me, "Immigrants in Spain always have to pass through periods of illegality."

Valls, Estrada, and Ferret (1995:35) follow this logic through, "If this [marginalization] is true for immigrants all over the world, it is especially true in Spain, where it is so easy to go from a situation of legality to illegality. . . . The notion that there is a dichotomy of legal and illegal immigrants as if they were two intrinsically distinct categories, is false."³¹

Just as there is not a dichotomy between the illegal and the temporarily legal populations, so there is often little change in an

³⁰ The number of deportations officially ordered each year hovers around 15,000, but most of these fall through the cracks in a system that relies primarily on voluntary compliance with deportation orders. In 1996, 4,837 deportations were actually completed (personal correspondence, Direccion General de la Policia, 1997).

³¹ Legislators and the media continually reinforce this perception that there are two very distinct types of immigrants—legal and illegal—despite the reality that they are generally alternating states (Boletín del Estado 1985; Cortes Generales 1990:2115, 2118; Vanguardia 1997:12).

immigrant's life as s/he goes from one to the other. Pumares (1996:81), who studied Moroccan families in Madrid, described their disillusionment over this discovery: "There was a period, just after the regularization [of 1991], when Moroccans, hopeful over their new permits, tried to use them to get legal work, which many times turned out to be impossible."

There is widespread recognition of this marginalization of immigrants in Spain. Not only immigrant advocates and academics, but politicians and the mass media decry the creation of immigrant "ghettos," even "apartheid," within Spanish society (Cortes Generales 1990:2112). And as we have seen, public policy is almost without exception rhetorically framed in terms of the need for integration and cultural tolerance. In marked contrast with this rhetoric, Spanish law systematically reproduces illegality, marginality, and precariousness. The social and economic exclusion and marginalization of Spain's immigrants is neither unpredictable nor incidental; rather, it is the most significant achievement of Spanish immigration law.

Immigrants and "Others" in a Post-Fordist Economy

Of course, there is no smoking gun of intent here. A comprehensive search of parliamentary proceedings turned up surprisingly little real discussion on immigration policy, in large part because in Spain the debates accompanying parliamentary hearings take place off the record. The bulk of the published record consists of eloquent, formal statements extolling the dual virtues of controlling illegal immigration and integrating legal immigrants (reinforcing the misperception that illegal and legal immigrants are two distinct populations).

There may be no smoking gun, but there is nonetheless a lot of smoke in the air. For the marginalization that is systematically constructed by Spain's immigrant policies is eminently compatible with the economic flexibility that policymakers and employers repeatedly cite as the sole contribution of immigrants to Spanish society. An employer summed up the advantages of immigrant labor:

Moroccans and Moors are better workers than the people around here: they are tougher [*sufridores*, or tolerate suffering]; and to work here you have to have the capacity to suffer. [Other] workers won't put up with what they put up with. They [other workers] come one week, but they don't last longer than that. These [immigrants] stay. (Quoted in Jabardo 1995:85)

One observer of the role of African immigrants in Catalan agriculture describes their economic contribution this way:

The competitive success of coastal agriculture is based on . . . a workforce that includes segmentation and hierarchy of tasks. It is a matter of being able to attract new farmworkers who oc-

cupy the lowest levels of the labor market. . . . It is not a coincidence that the development of this intensive agriculture is linked to the phenomenon of illegal immigration. . . .

It is precisely their urgency and dependence that make the immigrant workers more economical for employers, even than Andalusian day laborers who . . . are not inclined to agree to the conditions that have been gradually getting more precarious. (Jabardo 1995:81, 84)

Surveying the contribution of Third World immigrants to agriculture and construction, Izquierdo (1996:22) argues there is a "structural dependence" on this pliable labor source.

There is nothing new in immigrants occupying the lowest rungs of the occupational hierarchy and enduring the worst working conditions and wage scales. An extensive immigration literature has for years documented the historical role of cheap immigrant labor (Bustamante 1978; Calavita 1984, 1992; Cornelius 1989; Marshall 1978; Castles & Kozack 1973). There are indications, however, that the contemporary situation is distinctive, particularly as it is unfolding in Spain. First, while in the past immigration to industrializing countries ebbed and flowed with the business cycles, decreasing and sometimes reversing direction during periods of high unemployment, today in Spain as in the rest of Western Europe and the United States, immigration flows are relatively unaffected by unemployment rates. This suggests that it is no longer simply an expanding economy that requires additional labor power, but a particular kind of labor power that is called for.

More specifically, the new immigration to Spain and other Western capitalist economies is occurring at a time of substantial post-Fordist restructuring. In Spain, as we saw earlier, this entails an expansion of the underground economy, rapid increases in the number of contingent and fixed-term contracts, and an emphasis on labor market flexibility. Pugliese (1995:61–62) describes these new conditions:

The crisis of the Fordist model of production has serious consequences for labour demand and consequently on the occupational structure. . . . Very important for the occupational location of immigrants is a decrease in the amount of regular, steady, year-round employment. . . . Precarious employment tends to characterise many of the new jobs in industry and, above all, the service sector. Casualisation of the labour force is one of the most powerful trends in the labour market. . . . This explains why immigrants are located [even] . . . in regions where unemployment rates are high.

Spanish politicians regularly and unself-consciously proclaim the dependence of the Spanish economy on Third World labor, not simply as a way to supplement the labor supply (with a 23% unemployment rate, this would be a difficult argument to make), but to offset rigidity and enhance competitiveness in a post-

Fordist global economy. Third World immigrants whose desperation and vulnerability have been reinforced by law are ideal for these purposes. The former Director-General of Migration has pointed out that a high unemployment rate and the need for immigrant workers are not mutually contradictory, noting that the Spanish labor market “contains certain rigidities” which Third World labor helps counteract (quoted in Mercado 1992:27). The 1993 law that established a guestworker system was accompanied by a government document addressing “the rigidities in the labor market” and a large “informal” sector that required an infusion of Third World workers (quoted in Izquierdo 1996:163). The same year, the Director-General of Domestic Policy announced that the government would not close the door to immigration, since “there are sectors of the labor market that are not occupied by Spaniards” (quoted in Vanguardia 1993). The 1994 Consejo de Ministro Plan for the Social Integration of Immigrants (1995:29) concluded that “rigidities in the labor market, resistance [of native populations] to move with employment opportunities, and high levels of social protection” necessitated importing foreign workers, despite high levels of unemployment among the native population.

Third World immigrants who are excluded by law from the civil, political, and social rights that make up membership in Western democratic societies (Marshall 1950) are the perfect antidote to the “high levels of social protection” accorded to members of the modern welfare state and corresponding labor “rigidities.”

Conclusion

Thranhardt and Miles (1995:5) comment on the effects of the current globalization, “There will be one single organized club of rich countries,” with citizens of poor countries consigned to the margins. Furthermore, they argue, “Underlying and shaping the practice of exclusion are . . . racist conceptions of ‘otherness’” (p. 3).

Immigrants are in some ways the quintessential “other,” having crossed physical borders to relocate in a community other than their own. Sociologist Georg Simmel (1950) long ago discussed the notion of the immigrant as “stranger”—physically present in a community but not part of it. More recently, Bourdieu (1991:9) has described the immigrant as “atopos,” without place, displaced, a “bastard” between citizen and real outsider. And Rogers Brubaker (1992:47) talks about “the modern figure of the foreigner—not only as a legal category but as a political epithet . . . condensing around itself pure outsiderhood.”

But in this new economic and social order, it is more complicated than the dichotomies of immigrant/citizen or stranger/member imply. Legally, politically, and ideologically, the community has extended beyond the nation-state to include—in the case of Spain—the rest of Western Europe, or the European Community. Thus, not all foreigners come from “outside the community” and not all foreigners are “strangers” or “other.”³² Increasingly, the determinant of who is truly an outsider to be restricted and controlled is based on the person’s location in the global economy, not on his or her technical status as an immigrant.

Race, of course, plays a part in this exclusion, but is not the definitive criterion, nor could it be since race itself is socially constructed. Just as Italian and Spanish workers in Germany, France, and Switzerland in the 1950s and 1960s were considered racially and culturally inferior, only to become “Caucasians” and members of the European Community 30 years later, so it is with the marginalized workers of the Maghreb and certain South American countries in Spain that race, exclusion, and economic function are of one piece. The law plays a central role in this alchemy. For migrants who have crossed geographic borders, the law sorts and ranks and, for some, symbolically reconstitutes those borders. No longer physically *outsiders*, they are now *outlaws*.

The visa requirements imposed in 1991 for nationals of Peru and the Dominican Republic serve as a powerful example of the mutually constitutive effects of race, exclusion, and economics. For while in the past the preferences for Latin American countries were justified on the grounds of shared cultural traditions and heritage, these criteria are now trumped by development status. Thus, despite their cultural, religious, and linguistic ties to Spain, those from Peru and the Dominican Republic have fallen from their “preferred” status and are now defined as racially distinct outsiders. In the Spanish context, the “racist conception of ‘otherness’” to which Thränhardt and Miles (1995:3) refer is itself a product of marginal economic status and corresponding legal categories. In other words, the perception of certain immigrants as racially “other” is the consequence of their social, economic, and legal marginalization, rather than its cause.

The presumed paradox with which we began has thus unraveled. For in this era of globalization, immigration restriction largely entails the marginalization of people according to their location in this new economic order. As we have seen in Spain, despite the rhetoric of control and integration, immigration laws and policies have one conspicuous effect: Instead of controlling immigration, they control the immigrant. Indeed, Spain’s immi-

³² Non-EC foreigners are evocatively called *extracomunitarios*, or community outsiders.

gration policies are more accurately policies that define the parameters of foreigners' inclusion or exclusion in the national community and the corresponding limitations on their rights and freedoms.

This emphasis on denying immigrants' rights and marginalizing them from the national community is by no means unique to Spain. There are strong parallels between this control of the immigrant in Spain in lieu of entry controls and recent "immigration reforms" in the United States that focus almost exclusively on barring immigrants from welfare and social services (see Calavita 1996). And as summarized by Cornelius et al (1994:10), most other Western European countries have increasingly "whittled away at . . . the rights and protections previously accorded immigrants" (see also den Boer 1995).

We can take this one step further. Not only are globalization and immigration restriction of this sort not inconsistent, they are natural companions. For, as Spain's politicians are fond of pointing out, post-Fordist economies with an emphasis on flexibility derive substantial benefits from marginalized Third World immigrants. As we have seen, law is a pivotal factor in shoring up this marginalization and the economic flexibility that is its welcome byproduct. Not only does immigration law sort people according to their inclusion/exclusion in the global economy, but—for Third World peoples who cross geographic borders into developed countries—it recreates and perpetuates from within their outsider status.

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