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Migration Policymaking in Europe

*The Dynamics of Actors and
Contexts in Past and Present*

GIOVANNA ZINCONI, RINUS PENNINX
& MAREN BORKERT (EDS.)



Migration Policymaking in Europe

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8 The case of Spain

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1 Introduction

Foreign migration to Spain is relatively recent and so, consequently, are policies related to both immigration¹ and the integration of immigrants. The first law dealing with these issues was the Ley de Extranjería, a law on the rights and freedoms of foreigners in Spain (from herein simply referred to as the Foreigners Law) that was enacted in 1985, just a year before Spain joined the European Communities. At that time, there were merely 250,000 legal foreign residents in the country (Watts 1998: 661). During the last two decades, however, immigration flows have swelled significantly to produce a completely new demographic situation. Today the nation hosts more than 4.5 million foreign residents, which represents about 10 per cent of the total population.² This makes Spain one of the European Union's leading immigration countries. Spain's percentage of immigrants in relation to its total population has reached a level comparable to that of other North-Western European countries. Growth has been especially visible in certain regions such as Madrid, Catalonia, Andalusia, Murcia, Valencia, the Balearic Islands and the Canary Islands. This particular background makes the Spanish case an interesting one to contrast with other North-Western and Central European countries. A long-standing tradition of emigration that lasted up until just recently and the increasing momentum that immigration has gathered in two decades have geared Spanish policymaking to a starting point distinct from those that came before it.

Studying Spanish policymaking in these fields is not easy. Although there is a fast-growing body of scientific literature on Spanish immigration and the social processes of newcomers' integration into Spanish society, little research has been systematically undertaken to examine the processes of how policies in these fields are made (Agrela Romero & Gil Araujo 2005; Carrillo & Delgado 1998; Casey 1998c; Lopez Sala 2005b; Morén-

Alegret 2005b; Ramos, Bazaga, Delgado & Del Pino 1998; Ramos & Bazaga 2002; Ruiz Vieytez 2003; Tamayo & Delgado 1998; Tamayo & Carrillo 2002; Zapata-Barrero 2002, 2003a; Kreienbrink 2008). Most literature on policy deals with the content of policies. Even works that specifically focus on the making of policies do not offer a comprehensive view: focus falls either solely on immigration or integration; merely one aspect of either field is analysed; or only a static description is given of relations between actors at a given moment in time.

For background, we will first outline the principal characteristics of immigration in Spain. Next will come a bird's-eye view of the evolution of migration and integration policies. In the following sections, we will zoom in on immigration policies and integration policies. We will delve not only into their formal content as laid down in official documents, but also explore their implementation, thereby describing wherever possible which actors are involved. On the basis of previously scattered information, our endeavour is to produce a basic description of the process of policymaking in the fields of Spanish immigration and integration.

2 Background and characteristics of immigration in Spain

For most of the twentieth century, internal migration and international emigration were key factors determining the distribution of Spain's population at a given time. Both flows were mainly rural-urban ones. Catalonia, the Madrid Metropolitan Area and the Basque Country (the three regions where most industry was concentrated) were the nation's main areas of destination, while Andalusia, Extremadura and Galicia experienced the most emigration. Spain's international emigrants departed for urban areas in European countries such as Germany and France, as well as some Latin American countries. This resulted in an unequal distribution of the population never before paralleled.

It was only in the mid-1980s that the country experienced a visible reversal of migration patterns. Explaining why countries such as Spain, Italy, Portugal and Greece became immigration destinations during the 1980s and 1990s, King, Fielding and Black (1997) point to internal migration patterns and the demand for labour. Their model highlights three specific trends from the 1950s to the 1990s: the coexistence of high- and low-productivity sectors; the rapid transfer of indigenous workers from low- to high-productivity sectors through short- or long-distance migration; and the rapid decline of an available supply of indigenous labour in rural areas. The late 1980s and 1990s ushered in a new phase for Spain altogether, as a reduced rate of investment was combined with economic restructuring, recession and high unemployment. Since low wages were the only means for businesses to retain a competitive edge, employers turned to immigrant

workers. Labour immigration to Southern Europe was thus not only a matter of supply, but also a particular response to employers' demands for cheap labour (Calavita 2005: 68). As shown in Table 8.1, immigration rose to unprecedented levels, notably beginning in 2000. This rapid growth was linked to a booming Spanish economy driven by expansion of the housing market (and subsequent construction industry) as well as Spain's strong foothold in the tourist industry. These economic developments went hand in hand with the government's rather lenient immigration policy.

The present-day immigrant population – with its more than four million people registered in local censuses, which also includes undocumented immigrants – presents very diverse origins. As shown in Table 8.2, the largest groups are Moroccans and Ecuadorians, each comprising a total of approximately half a million. Romanians, Colombians and British nationals each comprise over one quarter of a million. Many other nationalities are represented in another two million foreigners. As the table also shows, there is a sizeable immigrant population from the EU-25, of which a significant part corresponds to the migration of pensioners of North-Western Europe (mostly from the United Kingdom and Germany). Moreover, there is a sizeable new immigration of economic migrants from Central and

Table 8.1 Annual inflow of foreigners in Spain, 1998 – 2006

Annual inflow of foreigners	Year				
	1998	2000	2002	2004	2006
	57,195	330,881	443,085	645,844	802,971

Source: Estadística de Variaciones Residenciales, National Institute of Statistics (INE 2007)

Table 8.2 Foreign population according to local register, 1 January 2006

Origin	Foreign population
Europe	1,609,856
EU-25	918,886
UK	274,722
Rest Europe	690,970
Romania	407,159
Africa	785,279
Morocco	563,012
The Americas	1,528,077
Ecuador	461,310
Asia	217,918
China	104,681
Oceania	2,363
Australia	1,633
Total	4,144,166

Source: National Institute of Statistics (2006)

Eastern Europe, namely Romania and Bulgaria. Latin Americans account for another important share of immigrants, their high percentages being a reflection of preferential treatment in legislation as well as the effects of re-creating old social networks.

In terms of economic sectors, the majority of migrant workers from outside the EU are concentrated in services (58.1 per cent), construction (24.6 per cent), industry (11.1 per cent) and agriculture (6.2 per cent) (Pajares 2007: 52). If we analyse these figures according to gender, we find that 42.3 per cent of the total of male foreign workers have jobs in construction while 89.7 per cent of the total of female foreign workers are in the service sector – more than half of them in domestic employment and nearly less than half in commerce (Pajares 2007: 52). In terms of concentration by origin, the rotation or displacement of certain collectives in specific sectors or provinces should be remarked upon. For example, in 2002, Moroccans were displaced by Ecuadorians in the countryside of Murcia and by women workers from Poland and Romania who came to pick strawberries in Huelva (Cachón 2003: 264). Increased immigration from Latin America has also meant there are more women domestic workers from Ecuador, Bolivia and Peru. Finally, the position of immigrants in the labour market also depends on the time of legal residence: while newcomers or recently regularised immigrants represent the majority in sectors like agriculture or domestic service, after an initial period of legal residence, migrant workers tend to move into sectors like construction as well as, in the case of women, other services (Pajares 2007: 51).

3 Legal framework and the evolution of migration and integration policies

From a legal perspective, the evolution of Spanish immigration and integration policies can be divided into four different phases, each corresponding to major legislative events. Running from the mid-1980s until the early 1990s, the initial period produced a first generation of laws on immigration, including the first Foreigners Law. Spanning most of the 1990s, the second phase witnessed the birth of the next generation of immigration laws and the simultaneous adoption of the first policies on immigrant social integration. Thirdly, 1999 onwards marks a phase that brought about significant changes to the Foreigners Law, as well as ushered in a new turn in integration policies. Finally, 2009 has seen again significant changes in the basic legislative framework concerning immigration and asylum.

Taking chronological stock of policies on immigration and integration within a four-generational framework allows us to contextualise them within different historical and political lights. However, grouping policies in phases for the sake of theoretical comparison does not deny the continuity

that runs throughout the core of the legal system, particularly in immigration policies. Although political majorities of every era have inspired either more progressive or more conservative tendencies, the main guiding principles of immigration legislation have remained pretty near to those promulgated by first regulations. Yet, the number of regulations and the sheer volume of the main legal texts have increased. Such substantial continuity cannot be presumed, however, in the field of integration policies. These emerged only in what we above defined as the second phase of national policies, and they changed significantly in later phases. Thus, the first general trend to be noted is that immigration policies in which central state institutions are almost exclusive actors show much more continuity than integration policies whose design and development is influenced by many more actors and stakeholders at different levels of society.

To reiterate, Spain had primarily been an emigration country and only in the mid-1980s did its reversal of migration patterns become visible. In 1986, the number of Spanish returnees from abroad was for the first time higher than the number of Spanish emigrants. In that same year, the number of foreign immigrants was still growing, though it remained low, at a level just below 300,000 (Watts 1998: 658, 661). Just the year before, in 1985, the first Foreigners Law³ was passed in the central parliament. The way these events unfolded indicates that Spain's full incorporation into the European Communities in 1986 played a more important role for introducing the law than any immigration statistics.

Although the main aim of this first substantial regulation was to build a framework for legal support and to specify conditions of stay for foreigners in Spain, it also introduced opportunities to restrict entrance. Moreover, granting residence permits on a one-year basis encouraged the notion of temporariness to predominate in policies. In view of the earlier absence of a comprehensive immigration and integration policy at Spain's central level, the law was a relative novelty. This marked the birth of the first generation of legislation.

The 1985 Foreigners Law, however, was not the first regulation to be born to this generation. In fact, it was preceded by other related pieces of legislation that were developed in unison and had a bearing on Spain's inclusion in the European Community. Thus, the Law on Asylum⁴ was passed in 1984 and its implementing regulation⁵ in 1985. The Foreigners Law would also be developed through the corresponding developing regulation in 1986.⁶ In addition, the Royal Decree of 1986⁷ regulated the situation of European Economic Community state citizens ('European' citizenship, *per se*, did not exist at that time). To get a complete view on the legal framework of immigration policies, two important Constitutional Court rules must be cited. The first is judgement number 107/1984.⁸ This ruling, issued prior to the approval of the Foreigners Law, had already clarified the basic rights that would or would not be enjoyed by foreigners,

according to the new constitutional system. As such, the Constitutional Court established three different groups of rights, with the recognition that foreigners could be entitled to enjoy two of them under different conditions.

According to the court, a first set of fundamental rights had to be equally recognised for everybody, including foreigners regardless of their legal situation in the country. These included basic rights such as rights to life, freedom of expression and judicial guarantees. By contrast, most so-called political rights (e.g. to vote or to participate directly in public affairs and responsibilities) were not applicable to foreigners. Article 13.2 of Spain's Constitution prohibits such possibilities (the only exception being the right to vote in local elections if there is a reciprocity agreement with a foreign resident's home country). The remaining rights recognised in Title I of the Spanish Constitution may be extended to foreigners depending on their legal situation in Spain, and according to what has been established in the Foreigners Law. The conditionality also applies to differences in how legislation can regulate the concrete implementation of these rights in cases concerning foreign inhabitants. This early Constitutional Court ruling of 1984 would later have an obvious influence on the drafting of the aforementioned legislation.

The second important Constitutional Court judgement is classified as number 115/1987.⁹ It was provoked by the national ombudsman, finding that some articles of the 1985 Foreigners Law, such as those regarding the right to form associations and to demonstrate,¹⁰ did not conform with the 1978 Spanish Constitution. The Constitutional Court ruled partially in favour of the ombudsman's position and, as a result, some specific paragraphs of the law were declared void.

As for Spanish nationality law, many of the country's constitutions included the basic regulations of naturalisation during the nineteenth century. From the twentieth century up until the present-day, however, the main bulk of this legislation has been incorporated into the civil code. Reflecting the legacy of emigration tradition in Spanish society, the criterion for nationality assignation is more an *jus sanguinis* model than an *jus soli* one. Moreover, in Spanish legal tradition, the terms 'nationality' and 'citizenship' are mostly synonymous. According to the regulation in force, foreigners can acquire Spanish nationality by residing legally in the country for a continuous period of ten years. This being a general rule, some exceptions are also accommodated. For example, only a two-year legal residence is required to acquire Spanish nationality by nationals from Brazil, Andorra, Portugal and former Spanish colonies (apart from the Western Sahara and Morocco), as well as descendents of Spanish Sephardic Jews. A significant number of immigrants who arrived in Spain within the last ten to fifteen years have become Spanish nationals; those of Latin

American origin are among the highest-ranking numbers. This practice works to minimise the total number of foreigners reflected in the statistics.

As a whole, this bundle of first-generation legislation puts clear-cut emphasis on the control of immigration flows and the regulation of formal requirements for foreigners to enter and stay in Spain. After 1985, most foreigners were obliged to conform to new, concrete legal stipulations, and therefore many immigrants would sooner or later fall into an illegal administrative situation for the first time. Beyond this general rule, both European Community citizens and asylum seekers enjoyed a privileged status provided for in specific pieces of legislation. The privileges of asylum provoked a flow of applications from certain groups of immigrants. However, within a few years, the restrictive interpretation of the asylum regulations followed by national authorities curbed this tendency.

A significant shift in migration policies is identifiable around 1990. On 26 June of this year, the United Left (IU)¹¹ parliamentary group submitted a motion to the Congress of Deputies asking for regularisation of those undocumented foreigners who had resided and worked in Spain for some period of time. This motion pleaded the right for families to reunite and requested preparation of a draft immigration bill to help realise the right. It also urged the government to prepare a report on the situation of foreign immigrants in Spain. The ensuing political discussion thus introduced significant elements of integration policies into the discussion. In office at the time, the Socialist Party (PSOE)¹² responded by conveying a communication to Parliament regarding the situation of foreigners and supplying basic policy guidelines. On 13 March 1991, almost all parliamentary groups agreed on a resolution urging the government to organise a regularisation process and to adopt more legislative and/or administrative integration measures that would complement the existing framework. The consequence of this resolution was an extraordinary regularisation procedure, which was instated the following summer. With enthusiastic collaboration by most relevant social actors, the government received approximately 120,000 applications of undocumented immigrants. Most of these applications led to residence permits.

After the EU treaty entered into force in 1994, the Law on Asylum was substantially modified¹³ and, in 1995, its implementing regulation was also adapted to the new demands of European inter-governmental agreements in the field.¹⁴ A restrictive view of asylum was thus instated and, since then, foreign immigrants have hardly used asylum to enter Spain. This wave of changes did not alter the 1985 Foreigners Law, though it did significantly change its developing regulation, which was derogated and substituted by a new text in 1996.¹⁵ Following the main concerns expressed in previous years both in Parliament and in the public debate, the new 1996 Royal Decree focused on the social integration of immigrants. Indeed, it included more specific regulations about family reunification procedures,

unaccompanied minor immigrants and some basic social rights. Furthermore, the new developing regulation permitted another regularisation process for undocumented foreigners.

All such changes were nevertheless still part of a legislation that basically aimed at immigration control and management. The introduction of an annual quota or contingent system from 1993 onwards testifies to this. In practice, however, a very specific relation developed in this period between regularisations, on the one hand, and the annual quota, on the other; the regularisations seemed to fill the largest part of the quota.

What did change in this period was the very fact that integration had arisen as an issue in legislation and policy. Apart from the social aspects that were introduced in 1996's new developing regulation of the Foreigners Law, as mentioned above, three major steps were taken in this respect. First, the central government started to look at immigration as more than a mere trans-border flow. As such, integration policies were for the first time considered and, in 1994, a national strategy was drafted. This was known as the Plan for Social Integration of Immigrants. With the benefit of hindsight, the document can hardly be considered influential; however, it was still an important hallmark of the new field of integration policy. Parallel to this plan, two instruments were created to assist the development of social integration policies: the Foro para la Integración Social de los Inmigrantes, a forum on the social integration of immigrants (from herein simply referred to as the Forum) and the Observatorio Permanente de la Inmigración (OPI), the permanent observatory on immigration. The Forum¹⁶ is the supreme government's consulting body on immigration and integration policies. It comprises representatives of the public sector and social organisations involved in the field as well as immigrant associations. Though in the beginning the Forum lacked ministerial support – besides the Ministry of Labour and Social Affairs – its position was subsequently consolidated to ensure participation by all relevant ministries and institutions in its functioning. OPI was developed as a tool to monitor immigration and integration and, on the basis of such analysis, suggest policies.

The introduction of integration policies in this period added to the complexity of relations between the different levels of governance in Spain. Immigration policies remained the exclusive competence of the central institutions. This decision was made in accordance with Article 149.1.2 of the 1978 Spanish Constitution, which stated that all legislative and executive powers related to immigration, asylum, nationality, passports, borders and aliens are the sole responsibility of the national parliament and government. On the flipside, the system generated by the autonomous communities established a distribution of responsibilities in which the regional governments were responsible for all key policy vis-à-vis the accommodation of immigrants.¹⁷ This came as the result of transferring responsibilities from central to regional administrations.¹⁸ Thus, autonomous communities

and municipalities had begun endeavouring to manage immigrant integration through their own policies in matters such as social welfare, education, health and housing. Later on, they began to formulate 'immigration plans', referring mainly to certain aspects of integration. As the fifth section in this chapter shows, in various places such bottom-up initiatives had a range of contents and forms.

The third phase in the development of legislative initiatives dealing with immigration started in 1999. The beginning of this period was marked by political turmoil and changes in government. What emerged was a long social debate and resounding consensus among political parties that the 1985 Foreigners Law needed to be adapted in view of Spain's increasing rate of immigration. A second Foreigners Law, passed by Parliament at the end of 1999,¹⁹ was seen by many as a positive turning point. Although it did not contain very substantial modifications, it intended to change how the quota functioned in order to effect its instrumentation for labour market policy and new entry, rather than regularisations. From the social perspective, the new law recognised a significant number of immigrant rights, including clear provisions favouring individuals in an illegal situation. Thus, basic social aspects such as access to education, public health, social benefits and assistance were guaranteed to all those foreigners residing *de facto* in any municipality. Furthermore, legal residents enjoyed a substantial number of additional rights. This second Foreigners Law entered into force in 2000.

Nevertheless, the political consensus on this new law was not shared by the conservative People's Party (PP).²⁰ They argued that this new legislation provided few possibilities to fight undocumented immigration to Spain and conceded too many rights to undocumented foreigners. Thus, after the PP had won the national 2000 elections in an absolute majority and again came into power,²¹ its recently elected conservative government showed no intention of drafting the developing regulation of the new 1999 law. In fact, it came with a significantly modified law that was accepted with the help of the PP's overwhelming majority in December 2000.²² This new law took three divergent directions. Firstly, legal provisions became more restrictive, and many fundamental rights were denied for immigrants without a residence permit. Granting resident permits to undocumented immigrants already residing in Spain was strongly restricted. Secondly, the whole regime of issuing sanctions against undocumented foreigners – or people collaborating with them – became much harsher both on paper and in procedure. Finally, the discretionary competence given to the government to develop the law's actual content was enormously expanded. On this basis, the government proceeded to pass an extensive reform of the developing regulation in 2001.²³

In 2000, the government approved a plan for integrating foreign immigrants called the Programa Global de Regulación y Coordinación de la

Inmigración en España, or the global programme of immigration regulation and coordination in Spain (GRECO).²⁴ This plan was primarily aligned with the restrictive policy reflected in the PP's Law of 2000. Having been based largely on the conception of temporary migration, it thus strongly emphasised return.

Legislative reforms on immigration under the conservative government continued with November 2003's approval of a new set of modifications to the Foreigners Law.²⁵ The new set contained concrete rules on sanctions, extended the scope of visa requirements and regulated – and widened – the opportunity to detain undocumented foreigners in specific centres. Both the legal reform of December 2000 and the November 2003 Foreigners Law were challenged before the Constitutional Court for possible violations of fundamental immigrant rights. These appeals were instigated by several regional parliaments and governments. While the second appeal against the November 2003 Foreigners Law is still pending, in November 2007, the Constitutional Court decided that some of the legal reform of December 2000 articles did indeed violate the fundamental rights of foreigners.²⁶

The general elections of 2004 ushered in a left-wing parliamentary majority, a PSOE government and, overall, a new climate with a different configuration of actors in the field. A new developing regulation of the Foreigners Law was adopted in December 2004.²⁷

The above-mentioned regional appeals bring to bare something that was less visible in the earlier Spanish legislative periods. Coming into focus in the third period was regional authorities' insistence on influencing policies at the national level. On the one hand, these initiatives expressed resistance by some autonomous communities against the restrictive policy implemented by the central government, especially during the years of the PP government (1996-2004). On the other hand, on the basis of their own policy initiatives in the field of integration within various regions (Catalonia, Valencia, Andalusia, Madrid, Navarra and the Basque Country), Catalonia and other regions claimed more executive powers. But it took until 2006, upon approval of a new version of Catalonia's statute of autonomy, to admit formal participation of the autonomous community in the immigration process. The Catalanian track was subsequently followed by the amended Statute of Andalusia. Still, it should be noted that other autonomous communities have shown much less interest in sharing these powers with the state when amending their statutes (Santolaya 2007).

To a certain extent, this last trend has resulted in the latest generation of regulations on immigration issues. This very recent phase has primarily entailed a parallel modification of the two main legal instruments in the field, which were amended in the last quarter of 2009. To begin with, in October, the Act on Asylum was abrogated and the new Act 12/2009 was adopted. This legislative change was catalysed by the need to adapt

Spanish legislation to EU directives, something basically affecting procedural issues. In December, the Foreigners Law was subsequently modified. The new law incorporates not only some recently issued European directives on the matter, but also aligns the new act with important decisions adopted by the Constitutional Court in 2007. The new law seeks to facilitate some degree of decentralisation in the implementation of issuing working permits. In this respect – following what was foreseen in the Statutes of Catalonia and Andalusia – autonomous communities are given a voice. This is probably the most significant shift within the fourth generation of immigration and integration legislation. Nonetheless, this does not mean that the Foreigners Act fully takes on a pro-integration stance. In essence, it remains a legal instrument for regulating immigration.

Immigration and integration policies in Spain thus follow relatively divergent ways. The competences of national, regional and local authorities are different, as are the ranges of actors involved and the subsequent development of policies over time. For this reason, it is productive to separately analyse the policies and their respective developments. In distinct sections below, we will nonetheless endeavour to indicate where the policy fields may touch upon – and influence – each other.

4 Immigration policies and policymaking

As stated above, the first generation of regulations dealing with immigration came about in the mid-1980s. Their emergence had more to do with Spain's imminent accession to the European Community than with immigration itself, which was at that time still at a low level. Basically, these laws and regulations introduced much of the instrumentation for regulation and control that was earlier developed in European Community countries in order to satisfy the European bodies. The background and timing of the immigration policy's institutionalisation explain how the first Foreigners Law (1985) was passed without amendment and with virtual unanimity. These factors also explain why there was hardly any involvement of social, civic or economic actors in the drafting of these immigration regulations, nor any significant reaction at the local or regional levels. In terms of policy effects, the Europeanisation of the first generation of migration regulations produced a permanent conflict between an externally induced restrictive policy and the economic situation in Spain, which was characterised in the 1990s and especially in the 2000s by an increasing demand for unskilled labour (Moreno Fuentes 2005: 110).

Despite many changes in the law (in 1985, twice in 2000, in 2001 and in 2003) and the development of subsequent regulations (in 1986, 1991, 1996, 2001 and 2004), Spain has never resolved the mismatch between its very restrictive entry policies and simultaneous labour demands. This has

resulted in the emergence of an irregular immigration model (Izquierdo 2001) and the implementation of frequent regularisation measures endeavouring to surface ever-growing stocks of irregular migrants. Moreover, very short-term residence permits – and the fact that their prolongation is contingent on a formal work contract – have led many regularised immigrants to fall back into irregularity.

A crucial question that must be answered to understand the significance of immigration regulations and, particularly, their frequent changes is how these regulations have actually worked. To this end, we will focus not only on the formulation of measures, but specifically on their implementation and effects. Inasmuch as immigration policies remain the exclusive competence of the central government, analysing the formulation and implementation of entry and regularisation policies enables us to distinguish two important nuances. First of all, in contrast to entry policies, regularisation programmes – which, in practice, have been the primary avenue for conferring legal status – have come as the result of bottom-up pressures exerted in great measure by social actors as well as by regional and local governments. In this regard, as we will see in the following section, their policy-making more closely resembles that of integration policies. Secondly, in terms of implementation, we have observed increasing participation, ever since 2000, by social actors (particularly employer organisations and trade unions) and a gradual decentralisation of administrative functions to regional and local governments. In the following paragraphs, we will analyse these two key elements of immigration policies.

4.1 *Entry*

The Foreigners Law of 1985 (in force until 2000) maintained the previous policy's practice of submitting each labour migrant entry to administrative control. Employment of non-EU workers was only permitted if employers could demonstrate that they were unable to hire any otherwise suitable citizen or resident of the country. In terms of policymaking, this implied that the evaluation of labour needs was administrative rather than political. Since this evaluation was undertaken by local public employment offices, permission for the employment of foreign workers depended on discretionary interpretations and practices of labour market tests. The absence of a political decision further implied that there was no judicial control on the implementation of entry policies. In terms of policy implementation and effects, this work permit policy (referred to as the 'general regime') obstructed legal entry. This occurred in the following ways: 1) labour market tests were often conducted in a very restrictive manner; 2) there were no clear, objective criteria for admission, which meant employers were faced with excessive uncertainty when it came time to hire; 3) there were insufficient mechanisms to match labour demand with supply; and 4) even when

work permit applications were approved, it took months before securing the actual document.

In order to create new avenues for legal entry, in 1993 the Spanish government launched a quota system. The idea behind this second work permit system was to create a direct way to enter regularly into Spain without submitting individual applications to a test of the labour market. This was only possible in particular economic sectors determined annually by the government, and for a maximum number of applications. In contrast to the general regime, the quota system thus introduced a political evaluation of labour needs. However, in practice, this system functioned as a regularisation programme, as most applications were filed by irregular migrants already in the country. Once applications were approved, foreign workers went back to their country of origin (or to a Spanish consulate in Southern France), applied for a visa and then re-entered into Spain as regular migrants. In contrast to a regularisation programme proper, prior residence was not needed, economic sectors were determined by the state and there was a limited number of annual applications.

From 2000 to 2004, the right-wing government closed off the possibility of entry through the general regime. Although several court judgements deemed this illegal – therefore letting entry remain formally open – in practice, the general regime was no longer an option as labour market tests were done in a very restrictive manner. In these four years, the government endeavoured to channel regular migration exclusively through the quota system. For this purpose, the quota system was modified in two ways. First, in order to avoid the regularisation of irregular migrants through the quota system, job offers could only be made through anonymous recruitment. By signing bilateral agreements with countries such as Colombia, Morocco, Poland, Ecuador, the Dominican Republic and Romania, the selection process became the responsibility of the individual countries' governments. Second, in order to adapt the annual quota to the requirements of the labour market, included in the process were regional governments, employer organisations and trade unions who could help determine the number and type of workers to be covered under this system. In particular, employer organisations' and trade unions' estimations were evaluated at the provincial level by regional governments and then proposed for acceptance to the Ministry of Labour. In turn, the Ministry was responsible for the final decision after consultation with the Higher Council on Immigration Policy.

At this point, it is important to note that the inclusion of regional governments in defining the annual quota indicated recognition of their role in the immigration policymaking process. In practice, however, regional governments had rather limited influence. In many cases, regional governments chose for a zero quota or a very limited one (Catalonia was an exception), thereby requiring the central government to re-evaluate its

estimations (Roig Molés 2007: 292). By contrast, employer organisations and trade unions had a fundamental role. While trade unions took rather restrictive positions, employer organisations defended higher quotas. However, annual quotas have been rather low. To explain this outcome, Roig Molés refers to the fact that many Spanish employers do not follow in a tradition of accounting for their future labour needs. Moreover, in many provinces, employer organisations do not represent the medium and small companies that have the highest demands for foreign workers (*ibid.*).

Although proffered by subsequent governments as Spain's main channel for legal entry, the quota system offered no more than 20,000 to 40,000 jobs per year. While the annual quota had always been rather limited, the number of employer applications registered through this system was even lower. The outcomes may be explained by the rigidities imposed by the annual quota (as established by economic sector, job speciality and province), the limitations of the recruitment process (managed by the governments of countries of origin), and once again, excessively long administrative procedures.

Given the limitations of the quota system, in 2004, with the PSOE again in power, the general regime was restored. The idea behind this decision was that those employers who wanted to hire a foreign worker in particular or who had not anticipated their labour needs in time to be accounted for in the quota system would still have the opportunity to undertake nominative employment of foreign workers. From this point onwards, in order to facilitate procedures in those sectors with huge staff shortages, the Spanish government has issued a quarterly list of occupations in which nominative employment of foreign workers is permitted without first having to conduct a labour market test. The national employment office disseminates this list to the regional governments, where it is discussed at the regional level with employer organisations and trade unions. Ultimately, the list is approved in the Tripartite Labour Commission, which features representation by the Ministry of Labour, Spain's largest employer organisation (CEOE) and the two largest trade unions (CCOO, UGT).

Since 2004, the general regime has become the mechanism *par excellence* for entry into the country. Between June 2004 and June 2007, 352,307 authorisations were processed under this system. Consolidation of the general regime as the main form of entry should be explained firstly by the fact that it was not limited by an annual ceiling and secondly by the existence of significant social networks among immigrants already in the country as well as those yet to come. In other words, these networks have been used to contract new migrants in countries of origin. As such, immigrant social networks have come to fulfil the function of mediation, something which the state has not yet been able to achieve.

After more than twenty years of entry rules and regulations, Spanish policymaking has had its own distinct development. Parallel to the gradual

deployment of a more comprehensive set of policies, there has been a shift from a policy based on discretionary, administrative evaluations of labour needs to a policy based on political decision-making. Such decisions were first made by the Spanish government alone and, from 2000 onwards, by the Spanish government along with regional governments, employer organisations and trade unions. Our first analysis of the attitudes of the different partners involved reveals that regional governments have not always been in favour of open-entry policies. Secondly, while employer organisations have commonly claimed less restrictive policies, their position has varied according to region and depending on whether medium and small companies were represented. Finally, trade unions have often been reluctant to an open-labour migration policy. While they have pushed for the legalisation of irregular migrants who are already present in the country, trade unions have had a much more restrictive position regarding the entrance of new migrants.

4.2 Regularisation

In view of how entrance has actually been controlled, it is no wonder that regularisations have constituted the primary avenue for conferring legal status in Spain. Concretely speaking, the easiest and most common way to obtain a legal status had been to enter with a tourist visa, work illegally for a while and then get regularised in one of the frequent regularisation programmes. Between 1985 and 2005, six exceptional regularisation processes were implemented (in 1986, 1991, 1996, 2000, 2001 and 2005).²⁸ Moreover, the general regime and, in particular, the quota system have often functioned as regularisation programmes. Since 2004, individual regularisation (referred to as *arraigo* – ‘rooting’ in English) has been possible once a migrant has lived in Spain for two years and has established a work relationship of at least one year (*arraigo laboral*) or three years and the prospect of entering into a work contract (*arraigo social*).

The Spanish government has given different reasons for implementing extraordinary regularisation programmes. For one, the government launched different regularisation programmes to reduce the stocks of irregular migrants that had been generated through previous procedures before introducing a new immigration law or regulation (in 1986, 1991, 1996, 2000 and 2005). Regularisation programmes also emerged in reaction to pressure by migrants and their supporters (e.g. protests in churches in 2001). Moreover, the manifestation of particular events, as selected and amplified by the media, spurred on regularisation programmes. These events, such as 2001’s fatal accident involving Ecuadorian workers, often called attention to the precarious life of irregular migrants.²⁹ Finally, the government also argued, most remarkably in 2005, that regularisation programmes were necessary in order to reduce the underground economy and

therefore benefit both migrants (by improving their working and living conditions) and Spanish society (through more taxes and social security contributions).

Most regularisations required conditions of residency and work to be fulfilled. While residence was normally demonstrated through registration in the municipality (known as *Padrón Municipal de Habitantes*), in 2000 and 2001, passport entry stamps, boarding tickets, utility bills and other similar documents could also be used for this purpose. In 2005, following a number of demonstrations in Barcelona and Madrid, seven other documents (e.g. official health cards, expulsion orders, rejected registration applications, asylum applications) were also deemed applicable for registration 'by omission'. Exceptionally, a special programme was launched in 1996 to regularise those migrants who had fallen back into irregularity. In this case, potential regularised migrants had to prove that they had been in possession of an earlier residence or work permit. Finally, labour requirements were also instated through some regularisation programmes (in 1986, 1991 and 2005), which, in practice, meant that only workers in the formal economy got regularised. Most noticeably, in the regularisation of 2005, eligibility was dependent on the prospect of a bona fide work contract of at least six months.

Although making immigration policies has always been the sole competence of the national authorities, regularisations may to a great extent be considered the product of bottom-up pressures. Concerned by the difficult situation of many irregular immigrants living in Spain, numerous NGOs, trade unions and other social activists have compelled governments to enforce such regularisations by, for example, exerting political pressure in Parliament. The underlying motivation for such petitions was to promote amnesty in the name of justice, though there was not always consensus on the ultimate goals at stake. In this regard, regularisations have often divided social movements. Depending on their expectations, immigrants themselves have cultivated a range of stances: from more moderate, collaboratively oriented positions to the more oppositional and radically defined.

Employers have generally taken a favourable position vis-à-vis regularisation processes. Among smaller companies especially, employers have been grateful for the opportunity to regularise the situation of many of their already employed irregular immigrants. Following the trend throughout Europe, Spanish trade unions have expressed worry about the possible negative impact immigrant workers might have on wages and employment opportunities for native workers, but they – much more than other actors – have demonstrated a positive attitude towards immigration and immigrants (Watts 1998; Calavita 2003; Cachon & Valles 2003). Trade unions have extended their services to immigrant workers, basically regarding them as potential new members through which to reinforce their social presence.

This stance may have something to do with the fact that Spain's dominant trade unions have traditionally had a left-wing political orientation. At the same time, it is also plausible that the remarkable expansion of the Spanish economy during the last decade and the importance of the country's black economy have encouraged the positive attitude among trade unions.

Finally, although some autonomous communities and municipalities have asked the central government to examine the prospect of opening regularisation processes, the role of regional and local authorities has been modest. Any participation on their part has mainly been motivated by the development of specific programmes for the social integration of immigrants, or as a result of pressure by social movements. Since 2000, autonomous communities have been key actors in the implementation of regularisation programmes. While the gradual decentralisation of regularisation programmes increased the state's administrative response capacity, it also introduced important regional differences in the evaluation of applications (Ramos Gallarín & Bazaga Fernández 2002).

5 Integration policies and policymaking

Telling the diffuse story of integration policymaking in Spain and the consequent involvement of different actors presents more challenges than describing immigration's well-centralised policies. Giving due attention to the various dimensions at stake in this analysis, we will first make some general remarks on the policymaking process and then outline its mechanisms. These mechanisms will be examined on three levels: the national; the local and regional; and from the perspective of non-governmental actors involved in both national and local policies.

As already discussed, up until to 2004, policymaking efforts at the national level primarily focused on the immigration field. The elaboration of integration policies mostly occurred on the regional and local levels for three reasons. Firstly, until 2004, Spain's management of migration in many ways resembled the guest-worker policies of Northern European states during the 1960s. Specifically, this means that a labour approach prevailed and the state's main preoccupation was immigration control and regulation, thereby relegating integration to second place. At the national level, policymaking in formal governmental and parliamentary arenas had basically taken shape in negotiations of the Foreigners Law.

Secondly, the sub-national level became the locus of integration policymaking as a consequence of the division of tasks between levels that the established system of autonomous communities. As we described in the third section of this chapter, while the national government manages immigration, sub-national governments have competence for promoting the accommodation of immigrants: regional and local governments are thus

responsible for the policy measures involved in integration (health care, education, social assistance, labour and housing).³⁰ The national policies for integration GRECO (2000) and PEGI (2006) would later institutionalise de facto distribution of responsibilities territorial tiers. This division of work no doubt had consequences for policymaking: namely, the difficult coordination between administrations and the heterogeneity of policies and processes.

More than anything else, this distribution of tasks in the elaboration of policies implies extreme separation between the policy fields of immigration and integration, and their respective networks and policymaking logics (Tamayo & Carrillo 2002). The two separate spheres follow divergent logics: the national government endeavours to restrict the entrance of migrants, while the autonomous communities and municipalities seek to make irregular migrants visible so as to develop policies that improve their living situation. Although the policy areas operate separately from one other, developments in the sphere of integration are hierarchically determined by those in migration. This helps explain how the three national plans for integration developed.

Parliamentary debates over the Foreigners Law have gradually come to deal with the negative ramifications it had for migrants' integration into society. In such debates, the 'integration of migrants' has become an ideological position in and of itself, eventually coming to oppose restrictive positions on migration (Moreno Fuentes 2004). This stance is harnessed by the view that integration policies embody 'the protection of human rights' or 'the defence of equal opportunities' – beliefs that have been promoted largely by social organisations.

Thirdly, integration policymaking in Spain has shifted out of the political arena and downwards to the sub-national levels. One important explanation for this shift is that Spanish political elites at the national level have shown little inclination to negotiate, while at the same time they are increasingly dependent on such negotiations between political forces to reach governing coalitions (Gomà & Subirats 1998; Gallego, Gomà & Subirats 2003). This tendency has been propelled ever since the polarisation of Spain's two major political parties in 2004, leading up to the present-day's political climate marked by division and great hostility. As such, policymaking at Spain's national level is complicated. When it comes to integration issues, the political agenda has become narrower in scope, while simultaneously undergoing shifts downwards, to the regional level, and outwards, to the administrative sphere.³¹

5.1 *National developments*

Although the principal activities of integration policymaking transpire at sub-national levels, the national level has witnessed three benchmarks in

polymaking: the Plan for Social Integration of Immigrants (1994), GRECO (2000) and PEGI (2006). These national policy initiatives have been triggered by bottom-up pressure exerted by sub-national public administrations (i.e. regions and municipalities) and civil society organisations. A significant amount of emulation has also taken place whereby policy concepts and models are patterned after the regional and local levels.

As demonstrated in this chapter's third section, the first generation of legislative initiatives in the 1980s dealt almost exclusively with the regulation of immigration itself, something that had been foremost defined as a temporary phenomenon. Spain's main motive for developing these initiatives was to secure imminent access to the European Economic Community, as opposed to any urgency, *per se*, of migration developments in the country. This explains the relative absence of societal actors in the process of creating these first-generation laws and regulations. Within such a framework, developing policy measures to facilitate immigrant settlement and the process of becoming a multicultural society could not be given political priority.³² The situation changed, however, in the 1990s. During this decade, more and more actors in Spanish society, particularly at the regional and the local levels, could face the consequences of a steadily growing immigrant population as well as the implications of its management. From the very start of the decade, societal action and political mobilisation pressed for immigration regulations that would create a better basis for integration at the local level (e.g. regularisations and rights for family reunification and for minors). This did, in fact, lead to a number of changes during the mid-1990s, and it also pressured the government to formulate an explicit integration policy. A crucial event was the signing of the Declaration of Girona by a number of civil society organisations in 1992. This document backed the statement that public administrations should develop a comprehensive integration policy, beyond a mere contention of problems. It also acknowledged the need for giving specialised attention to immigrants.

This societal insistence led to the Plan for Social Integration of Immigrants, as launched in 1994 by the Ministry of Social Affairs. Despite being a response to pressure from the grass-roots level, the plan was produced in Spain's administrative arena without any political or social debate. Furthermore, several authors suggest that this plan was inspired by – if not patterned upon – the 1993 Catalan Plan (Cais 2004; Zapata-Barrero 2002). Following in Catalonia's footsteps, the national plan showed striking similarities to the former plan in its institutional structure, particularly in terms of instruments promoting interdepartmental cooperation and social participation (e.g. the Forum).

In the formal sense, integration policies were introduced at the national level, a novel development. But, in practice, the importance of the 1994 plan was something more symbolic, acknowledging for the first time that

'integration' was a policy goal (Pajares 2004). The plan, however, led to meagre results, which were not only due to the scarcity of allocated resources, but also difficulties in coordinating the multiplicities of institutions involved. As evaluation by the Ministry of Labour and Social Issues (IMSERSO 1998) concluded, Spain's first attempt to promote its integration of immigrants was little more than a rhetorical effort; there were mismatches between the plan's intended goals and the economic, administrative and human resources actually available. Moreover, the various institutions involved held contradictory opinions on the issue. The clashing views of the Ministry of Interior Affairs and the Ministry of Labour and Social Affairs are a case in point (Gil Araujo 2002).

The new national regulation known as GRECO was launched in 2000. Once again, the plan was designed by civil servants behind closed doors in the Ministry of Interior. GRECO focused mostly on border control, with only one of its four guidelines dealing with integration. The plan's arguments follow that good management of migration in Spain means restricting the number of labour migrants so that national labour offers match demands for foreign work. Two key measures for accomplishing this are the strict control of flows and the promotion of migrants' return to their country of origin. The plan did not establish concrete measures or guidelines for sub-national actors, and neither was it backed by any specific allocation of financial resources (Pajares 2004). GRECO emerged in an extremely thorny historical context. The period was benchmarked by the progressive Foreigners Law 4/2000's reformation into its more restrictive 8/2000 version, 2001's regularisation process, national and regional elections and several mobilisations among citizens from both pro-migrant and anti-migrant sides. Transferring the immigration portfolio to the Ministry of Interior was another sign of the paradigm shift brought about by the PP government. Integration was not their first priority, and this was reflected not only in the policy's two main rationales but also in the actual expenses reflected in the annual reports (Delegación de Gobierno para la Extranjería y la Inmigración 2002).³³ It is not farfetched to conclude thus that, in this case, integration was a political goal only to the extent that it contributed to immigrants' return to their home countries. And, moreover, it helped maintain the status quo of a restrictive immigration policy.

Finally, 2004 saw production of the first real national framework policy for the promotion of integration. Increasing social pressures and the topic's gradual politicisation upped integration policy on a national political agenda being developed by the new social-democratic government. Promoting equality of immigrants nationwide was the main goal of the ambitious PECE 2006. For the first time, these national guidelines were backed by financial commitment – an allotted budget in which € 2,005 million were set for 2007-2010. The funding was to be proportionately distributed among the regions according to their immigrant population percentages as

well as among the municipalities, for the first time thus recognising the important role of local authorities. In addition, the national integration budget sanctioned those regional policies that complied with national guidelines, although autonomous communities could still cultivate their own integration policy.

There are notable differences in these consecutive national plans and the actors who subsequently participated in their elaborations. While all three plans share a technocratic policymaking style that lacks much parliamentary discussion between parties, PECE stands out for having a relatively pro-participation nature. PECE was drafted by independently operating specialists who had also considered recommendations produced by several expert seminars. Although regional and local authorities and civil society were not included in the discussions leading to its drafting, the plan was subsequently subjected to widespread consultation.

5.2 *Regional and local developments*

The description thus far detailing the evolution of integration policies at the national level can sometimes overshadow some of the earliest developments that took place at the regional and the local levels. But policy initiatives and negotiations among their different actors had been taking place in this realm since the mid-1990s (FEMP 1995; Maluquer 1997; Nadal, Oliveres & Alegre 2003). The region of Catalonia, in particular, was a pioneer, having developed the first regional plan for integration in 1993. Other regions launched their own policies more recently, in 2000 or 2001. They include Madrid, Andalucía, Baleares, Canarias, Navarra and Aragón, all of which have high migrant percentages. Already in the mid-1990s, a number of municipalities were launching policies, only to become more widespread at the turn of the millennium. In addition, some municipalities and social organisations such as NGOs, trade unions and migrant associations came to proactively promote the issue on the national political agenda (Casey 1998b; Agrela Romero & Gil Araujo 2005).

In the absence of a guiding national policy, regional and local authorities regularly took initiatives to develop integration plans. This has resulted in great variety in the form, content, involvement of relevant actors and implementation of local and regional policies. Above all, diversity in policy-making processes has led to considerable inequalities across regions and cities (Diez Bueso 2003), particularly since more empowered autonomous communities tend to develop their own policies while others do not. As a result, an immigrant's place of residence has a direct bearing on his or her access to welfare services (Martínez de Lizarrondo 2006). It is commonly assumed that this only exacerbates the uneven geographical distribution of immigration, for populations tend to move to regions and localities that will offer more favourable conditions.³⁴ The inconsistencies may also

create tensions between administrations concerning who has to foot the bill for the integration. The Catalanian Plan, for instance, lacked a clear financial budget because according to Catalanian policymakers, the central state was responsible for funding integration policies (Pajares 2004).

Despite the differences, regional and local policymaking processes also show important similarities. Firstly, when it comes to actual policy content, there are striking resemblances among regional plans' general principles and goals (Martínez de Lizarrondo 2006). Basic principles framing regional policies are equal rights and opportunities for migrants, normalisation (or the tendency to resort to general policies), transversality, gender equality, decentralisation and social participation (Pajares 2004). An important feature shared by both regional and local levels is that they seldom distinguish between regular and irregular migrants. If and when they do, however, the distinction tends to vanish upon policy implementation.³⁵ This has had implications for the policymaking process, particularly because not distinguishing between legal and illegal³⁶ immigrants in fact promotes the registration of irregular migrants in municipal registers. This identification works as the onset of a sort of partial regularisation process.³⁷ Sub-national governments 'survive' by making irregular migrants visible; this allows them to develop policies and services for migrants and to negotiate fiscal compensations with the central government (Tamayo & Carrillo 2002). Still, despite this general tendency, the legal status of migrants implies different levels of access to social-protection schemes depending on region or municipality. In some regions, undocumented migrants are often channelled towards special charity programmes supplied by private agencies and NGOs, although *de jure* they should have access to the general social schemes as long as they are listed in the municipal register (Agrela Romero & Gil Araujo 2005).

Secondly, we find similarities regarding decision-making styles. Regional and local plans have tended to be reactive in nature, focusing on preventing serious problems (marginality, violence, insecurity, exploitation, etc.). Analysis of the type of integration instruments developed shows how such actions have mainly taken place in first reception services and the social services sector (Tamayo & Carrillo 2002; Bruquetas-Callejo 2007; Martínez de Lizarrondo 2006). These priorities can be explained by the fact that sub-national actors have little influence over the growth of immigrant populations in their territory. Sub-national governments experience the direct consequences of this growth, yet they lack the resources and technical capacity to handle them. Inaction by some regional governments overloads the local authorities with responsibility.

Regional and local policies can generally be characterised as technocratic in their development, being designed behind closed doors by civil servants and internal experts. As such, there is little political discussion and negotiation between actors. A minority of regions (e.g. Navarra) has

managed to cultivate greater interaction among independent experts,³⁸ civil society actors and immigrants themselves. The dominance of policymaking in the administrative arena has led to plans often contradicting the political intentions and goals of the political elites in power. For example, the Catalonia Plan (1993, 1998), wove a symbolic banner for multiculturalism and yet still deployed instruments promoting the importance of the Catalanian language and culture vis-à-vis immigrant integration (Cais 2004).

Despite the predominance of civil servants as actors, regions reflect a great diversity of policy actors involved in the decision-making network. Zapata-Barrero (2003a) has made a quantitative effort to describe different networks operating per region. He found that, while in some regions public administration clearly dominates the process (e.g. Andalusia), in others, pressure groups play the most important role, followed by NGOs and immigrant organisations (e.g. Catalonia, where public administration modestly figures at third place). Under the category of 'interest groups', Zapata-Barrero includes trade unions, religious organisations, employer organisations, federations and foundations.

Thirdly, within the dimension of implementation, the networks of actors involved varies not only per locality, but also policy sector. Whereas in some sectors (e.g. education) there is an obvious predominance of public actors and residual participation by private and social actors, other sectors (e.g. social services) have management networks largely linking the regional administration and the civil society actors. At the other end of the spectrum are examples of bottom-up experiences at the regional and local levels. For instance, Catalonia has had cases of self-organisation among citizens that have produced compelling policymaking initiatives and networks (Pascual 1997; Morén-Alegret 2002a, 2002b).

However, there is evidently a dominant national pattern in which a majority of autonomous communities have made first reception a top priority and thus assigned integration management to the Social Services Department (Martínez de Lizarrondo 2006). These autonomous communities transfer part of their responsibilities for first reception to NGOs and other social actors, who function as subsidised policy implementers. In their study on the Community of Madrid, Tamayo and Carrillo (2002) described such a network of actors – comprising the regional administration and non-governmental actors – whose relations are based on two basic instruments: the system of conditioned subventions and the contracts for service delivery. The Centros de Atención Social a Inmigrantes (CASI) network in Madrid and the Service for Attention to Immigrants and Refugees (SAEIR) in Barcelona are illustrations of how the management of social issues was transferred from the regional government to NGOs and private companies (Gil Araújo 2004; Bruquetas-Callejo 2007).

5.3 *Civil society*

Actors from Spanish civil society³⁹ have had a remarkable presence in the domain of integration policies. First of all, they have been the frontline providers of basic services for immigrants since the very beginning of their settlement in Spain, during the mid-1980s. Beyond purely implementing regional or local policies, social organisations formulate their own projects and seek the subsidies of public authorities. These actors have delivered a broad array of services, including juridical support, reception facilities, language training, employment services, health care, child after-school programmes, adult education and home rental intermediation. In addition, as mentioned earlier, these actors have actually tried to influence policymaking by explicitly demanding that public administrations develop integration schemes. Their efforts have had at least two visible results: placing immigrant integration on the political agenda (Girona Report, CAONGCG 1992) and swaying public opinion to favour migrants and support the granting of equal rights to foreigners on grounds of residence (in particular, the right to benefit from welfare state provisions). In a noticeable way, this has framed the issue of integration in terms of human rights and equal opportunities for migrants.

Nonetheless, civil society organisations have not had a substantial influence on the decision-making processes of integration policies in formal arenas. Casey (1998a, 1998c) concludes that, until the mid-1990s, Spanish NGOs had not yet been able to establish themselves as strong, independent actors in policy processes related to immigration and integration. Yet, their indirect role was crucial for pushing the issue on the political agenda and influencing how a particular problem might be defined. Public authorities also came to recognise the legitimacy that social actors had in the policy domain because of their access to migrant groups. While public measures primarily apply general schemes, authorities have found it useful to arrange special measures for immigrants through social organisations (Agrela Romero & Gil Araujo 2005; Dietz 2000).

There are three main factors that explain why participation by social organisations has merely remained indirect and variable, not reaching a more structured position in the decision-making process. We identify the inefficiency of the instruments developed for the participation of social actors (e.g. the Forum), the strong financial dependence social organisations have on public administration and the lack of coordination among social organisations. As mentioned above, social actors such as NGOs and immigrant associations have often been given specific tasks (and budgets) to implement integration policies at the local and regional levels. This delegation changed the position of such partners vis-à-vis administrative and political authorities and, to a certain extent, may have altered their very nature. Many organisations that initially consisted almost exclusively of volunteers

now have a significant percentage of contracted personnel in order to provide services that are subcontracted or promoted by public administration. In many cases, this has meant that both the voluntary nature and ideological impetus of NGOs take a backseat. Moreover, such organisations have become very economically dependent on public administration.⁴⁰

6 Conclusions

Spanish policymaking in the fields of immigration and integration presents several salient features. Fundamental is a separation of the policymaking system into the two distinct subsystems of immigration and integration. Although in other countries one policymaking model predominates (at least for certain periods of time), in Spain, a bipolar model prevails. Pressure to link these two fields has been mounting since the mid-1990s. One sign of this is the demand some autonomous communities make for obtaining competence in migration. The demand has been backed by the argument that, without such responsibilities, regions cannot produce effective integration policies. However, the path towards greater interdependence between the two fields has not evolved into a single, unique model. As such, the immigration and integration policy subsystems still function highly independently. Each field has its own predominating operational logic and accompanying set of actors that participate in decision-making processes.

The distribution of responsibilities within the autonomous community system means that in each field distinct actors and different levels of authority take responsibility for formulating policies. This governance pattern thus entails dissimilar policymaking strategies. As for immigration, the national government has had total responsibility over the related decision-making, and policymaking has consequently followed a distinct top-down direction. In the field of integration, the Spanish central government had until only recently been reluctant to dedicate significant efforts to integration policies. Decentralisation of social policies has assigned integration responsibilities to the regions and municipalities. Bottom-up responses have thus been extraordinarily diverse when compared across autonomous communities, municipalities and civil society organisations.

Another difference between the two policymaking subsystems is the degree of continuity. While the field of migration is characterised by relative continuity, integration is quite the opposite. Interventions in immigration policy have proven considerably consistent over time and throughout political changes because the field has been dominated by a single actor – namely, the central state. The policy style predominating Spanish politics also helps account for the degree of continuity in each subsystem: political elites are described as residing in a position somewhere between little inclination to negotiate between parties and the need to do so for the sake of

reaching governing coalitions. In the latter instance, changes in immigration policy have often been approached through modification of an implementing regulation, as opposed to substitution with a brand-new one. The consistency of migration policy may also be explained by the fact that Spain's main political parties (the PSOE and the PP) have had rather similar approaches. By contrast, stances on integration have been dissimilar – if not altogether conflicting – particularly on the issue of access to welfare services for irregular immigrants. In this regard, political colour seems a viable variable, running the gamut of positions within the field of integration. Since integration policies imply more political conflict between political parties, they have been regionalised and localised, as well as mostly approached through administrative regulations.

The subsystems have also been receptive to dissimilar contextual factors in the framing of policies. When it comes to immigration, the EU has played a leading role in initiating policymaking. These efforts were undertaken before immigration had even become a significant phenomenon and, later, in response to pressure to conform with general EU rules and principles. As for integration, grass-roots organisations and local authorities have created bottom-up pressure to trigger policymaking from below. The immigration/integration issue came to be defined in a highly politicised climate. It was shaped by several political mobilisations that were both pro and against migrants (such as racist events in El Ejido and Can Anglada and mobilisations of irregular migrants demanding residence and work permits in Barcelona and other major cities). The balance that developed between these forces can be read from the different versions of the Foreigners Law: while in the first and third versions of the law (8/2000) a European-wide top-down pressure dominated, the second version (4/2000) tried to introduce the logic of integration and to respond to the specificity of local needs.

These general tendencies, as they evolved over the years, need to be viewed in a nuanced light. Two elements should be noted in particular. First, although the domains are seen as distinct, the attention immigration gets undoubtedly dominates that given to integration. As such, the policy goals of the former have priority over those of the latter. The heavy emphasis on labour explains not only the chronology of integration policies, but also their reactionary character and primary focus on first reception. Second, within the field of immigration, social actors have put bottom-up pressure on regional and local governments to produce regularisations. Since regularisation has come to represent the primary avenue for conferring legal status, we deduce that immigration policies have, in practice, gone far beyond national authorities' competence.

Finally, this policymaking pattern has revealed inconsistencies. More than anything else, exceedingly separate relations between policy actors have produced two fundamental paradoxes. The first is that the model

lacks inter-governmental instruments that can guarantee the coherence of policies. Each domain operates independently and the facilities meant to integrate these two policy areas (government delegation, Institute of Migrations and Social Services, the Forum and the Superior Council for Migration Policy) have proved insufficient. Furthermore, the regionalisation and localisation of integration policies has been implemented without sufficient coordination between administrations and sectors. An absence of multilevel cooperation reflects a broad problematic within the system of the Spanish autonomous communities. The state has established a very decentralised power structure without resolving the articulation of the whole system in a satisfactory way (Aja 1999).

The second paradox is that even though organised civil society has no formal access to decision-making forums, civil society organisations have brought integration policy to fruition, both informally and at the operative level. Public authorities have even mimicked these civic initiatives. Up until recently, the framing of policies at the national level has tended to produce measures in immigration, rather than integration. This opened up opportunities for social organisations to generate a number of integration-related initiatives on all levels. A lack of receptivity towards stakeholders and civil society and a lack of coordination among social organisations has nonetheless stymied the potential impact such actors could have on policymaking.

Notes

- 1 Unless specified otherwise, the terms 'immigration' and 'immigrant' are used in reference to non-Spanish migrants.
- 2 On 1 January 2007, National Institute of Statistics (INE) data accounted for 45,200,737 inhabitants of Spain (<http://www.ine.es>); among this population were 4,519,554 foreign residents, or 9.99 per cent of the total population (not including immigrants who acquired Spanish nationality).
- 3 Ley 7/1985, *Orgánica de Derechos y Libertades de los Extranjeros en España* (Organic Law of Rights and Freedoms of Foreigners in Spain) of 1 July 1985.
- 4 Ley 5/1984, *Reguladora del Derecho de Asilo y de la Condición de Refugiado* (Law Regulating the Right to Asylum and the Condition of the Refugee) of 26 March 1984.
- 5 *Reglamento de desarrollo*. A regulation is a form of secondary legislation used to implement a primary piece of legislation appropriately.
- 6 Royal Decree 19 November 1986.
- 7 Real Decreto 766/1992, *Sobre Entrada y Permanencia en España de Nacionales de Estados Miembros de las Comunidades Europeas* (Royal Decree on Entry and Residence of Citizens of the Member States of the European Communities) of 26 June 1986.
- 8 Judgment of the Constitutional Court of 23 November 1984.
- 9 Judgment of the Constitutional Court of 7 July 1987.

- 10 Although there was no general prohibition, the exertion of these rights by foreigners needed prior authorisation by public authorities. This provoked a *de facto* limitation on the right of association as well as the right to meet.
- 11 Izquierda Unida.
- 12 Partido Socialista Obrero Español.
- 13 Law 9/1994 of 19 May 1994.
- 14 Royal Decree 203/1995 of 10 February 1995.
- 15 Royal Decree 155/1996 of 2 February 1996.
- 16 The Forum's current status is regulated in Royal Decree 367/2001 of 4 April 2001.
- 17 The national policies for integration (GRECO (2000) and PEGI (2006)) have institutionalised a *de facto* distribution of tasks.
- 18 Some of these responsibilities are shared with the local administrations.
- 19 Law 4/2000 of 11 January 2000.
- 20 Partido Popular.
- 21 For the period 1996-2000, the PP was in power with just a relative majority.
- 22 Law 8/2000 of 22 December 2000.
- 23 Royal Decree 864/2001 of 20 July 2001.
- 24 Its application spanned the period 2000-2004.
- 25 Law 14/2003 of 20 November 2003.
- 26 Judgments of the Constitutional Court number 236 of 7 November 2007 and number 259 of 19 December 2007.
- 27 Royal Decree 2393/2004 of 30 December 2004.
- 28 The 1990s also saw specific regularisation programmes implemented to solve confrontational situations in the border cities of Ceuta and Melilla. These programmes permitted irregular migrants to get a one-year residence permit without having to undergo the standard process. In exchange, the government required active collaboration from NGOs who would see to it that immigrants could move to the peninsula. There they were to be granted some basic reception provisions, a gesture meant to counterbalance the negative impact of their irregular arrival.
- 29 On 3 January 2001, in the Murcian city of Lorca, twelve Ecuadorian migrants on their way to work were killed when their van was hit by a train. Widely covered by regional and national media, the event brought attention to the workers' living and labour conditions, thus publicising the precarious situation of many migrants in Spain.
- 30 Some of these responsibilities are shared with the local administrations.
- 31 The confrontation between the party in power (the moderate social-democratic PSOE) and the opposition's main party (the conservative PP) has compelled the government to minimise the number of issues on the political agenda. As an energy-saving strategy, points of conflict thus become very focused, while many other issues get delegated to bureaucrats so as to reduce general political confrontation.
- 32 This is also reflected in research: studies dealing with the elaboration processes of integration policy are rather scarce (Tamayo & Carrillo 2002; Zapata 2002c, 2003; Ramos et al. 1998), while studies dealing with immigration policy are more common (Tamayo & Delgado 1998; Carrillo & Delgado 1998; Ramos & Bazaga 2002; Goma & Subirats 1996; Lopez Sala 2005). Few studies deal with both policy fields (Casey 1998; Agrela Romero & Gil Araujo 2005).
- 33 The 2002 Report of the Delegation of Government for Alien Policy and Immigration declares an expenditure of € 252 million on border control, centres of reclusion and services for asylum seekers and foreigners. In contrast, investments in integration are considerably less: € 9 million for the covenants with regions; € 12.6 million for subventions to social organisations offering services to migrants; and sundry funds given to refugee and immigrant reception centres.

- 34 However, evidence in this regard is inconclusive. See general discussions on the Welfare Magnet Theory.
- 35 According to Martínez de Lizarrondo (2006), Madrid is the only region that formally excludes irregular migrants from public (specialised) services. However, Tamayo and Carrillo (2002) aver that this policy gets blurred in practice.
- 36 Throughout this chapter, the terms 'irregular', 'illegal' and 'undocumented' are used synonymously when referring to migrants.
- 37 As Solanes Corella (2004) observes, the municipal register is a double-edged sword. Local governments, in collaboration with regional ones, tend to use it as a mechanism of inclusion – by extending service access to all undocumented foreigners who register as residents (as sanctioned by law 4/2000) – rather than as an instrument of control – by trying to protect registry data from police access (as permitted by law 8/2000).
- 38 The formulation of policies by public officers often implies that experts within the administration develop measures. Some regions have developed public services that specialise in supporting local authorities in the elaboration of integration policies (for instance, CRID in Catalonia).
- 39 One basic typology of civil society organisations distinguishes between Spanish NGOs supporting immigrants and associations of immigrants (Casey 1998). The former focus on delivering services for migrants, while the latter tend to take up political representation duties in public institutions. Since the former task list implicates more resources and thus more influence than the latter, tensions are likely to arise among the various social actors (Tamayo & Carrillo 2002). Other immigrant-supporting organisations include trade unions, cultural associations and spontaneously formed groups that mobilise for specific migrant causes.
- 40 Ruiz Vieytes (2003: 186) highlights four additional changes that may take place within such organisations: diminishment of a long-term strategy; influence by personal or practical interests within the organisation; loss of a culture of inter-organisational coordination and networking; and a weakening international presence.

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Migration Policymaking in Europe

*The Dynamics of Actors and
Contexts in Past and Present*

GIOVANNA ZINCONI, RINUS PENNINX
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