THE MAKING AND UNMAKING OF IRREGULAR MIGRATION: MIGRANT 'ILLEGALITY', REGULARISATION AND DEPORTATION IN SPAIN AND THE UK

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INTEGRIM ONLINE PAPERS

4/2014

ABSTRACT

In their endeavour to effectively 'manage' migration, states not only create specific patterns of legal inflows according to their economic and/or political needs, but also implicitly produce (or allow) some degree of irregular migration. Accordingly, every migrant receiving country employs a combination of policy approaches to reduce the number of irregular residents. This paper systematically analyses and compares past and present policies of regularisation and deportation in Spain and the UK. The aim of this comparative analysis is to shed light on two interrelated aspects: Firstly, the specific function of regularisation and deportation within both countries' immigration policy frameworks, and secondly, the role that these particular measures play in the legal and political construction, as well as the management of migrant 'illegality' in each national context. In doing so, this study constitutes a first step in a broader research agenda to analyse and compare the specific sets of opportunities and constraints that shape irregular migrants' socio-economic integration in different national and local settings.

In recent years, the issue of irregular migration has increasingly dominated the public and political discourse as well as much of the regulatory measures taken in the field of immigration. In the face of intensified control of its external borders, between 1.9 and 3.8 million people were estimated to be residing illegally within the European Union by 2008 (CLANDESTINO 2009a). Most of them have either entered legally and subsequently overstayed their tourist visa or temporary residence permit, or for different reasons did not (or could not) return to their country of origin after being refused asylum or other right to remain (Krause 2011, Düvell 2011). Structural mechanisms that contribute to irregular migration range from a lack of legal immigration channels to inefficient procedures and the specific labour demands of informal economies (CLANDESTINO 2009b, Düvell 2011). Accordingly, it has been argued that irregularity should primarily be seen as the result of an active (and intentional) legal-political construction by state authorities rather than the consequence of individual migrants' actions in neglect or violation of immigration restrictions (Düvell 2011, De Genova 2002, Goldring et al. 2009, Calavita 1998, Samers 2004). In their endeavour to effectively 'manage' migration, states thus not only create specific patterns of legal immigration according to their economic and/or political needs, but also implicitly produce 'illegal' immigrants, by defining "those who are deemed to be 'illegal', 'irregular', '*sans papiers*' or 'undocumented'" (Samers 2004: 28). However, the exact definition, meaning and function of migrant irregularity, as well as governments' responses to it, have been shown to vary considerably across time and between different countries (Morehouse and Blomfield 2011, Düvell 2011, Goldring et al. 2009, Garcés-Mascareñas 2010).

The concrete policy options available to national governments facing sizeable (although usually uncertain) numbers of undocumented migrants *already living within their borders* are, in principle, rather limited[1]: On the one hand, they can tacitly accept the unlawful presence of foreigners. In doing so, however, they limit the extent of control they effectively exercise over their territory and population – one of the core functions of the sovereign nation state (Joppke 1998). In order to stay in control, on the other hand, states can either 'legalise' the presence of those already living within their territory although (at least partly) outside of the corresponding immigration framework, or physically remove them from both their territory and jurisdiction. In other words, while any immigration regime 'produces' (or allows) some

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1 Given the focus on irregular migrants already present on state territory, the issue of illegal entry, and thus measures of external (i.e. border) control are not considered here.

kind of 'irregularities', every migrant receiving country employs a combination of policy approaches to reduce the number of irregular residents. Since (at least theoretically) these measures can be thought of as a continuum ranging from regularisation, i.e. offering possibilities of *ex post* legalisation of immigration status, to deportation, the following analysis focuses on these two elements. From the perspective of the receiving state, both serve pragmatic as well as symbolic functions and have been described as constitutive elements of citizenship (De Genova 2002, 2010, Walters 2002) and nation-building (McDonald 2009), thus providing evidence of the persistence of state sovereignty[2] (Gibney/Hansen 2003, Castles/Miller 2009). Approaching regularisation and deportation from the (opposite) perspective of the migrants themselves, Garcés-Mascareñas (2010) points in a similar direction by suggesting to define 'illegality' as an in-between state framed by the possibility of being either regularised or deported. The availability and use of these policy measures thus ultimately shapes not only the lives and conditions of irregular migrants, but also the meaning and scope of irregularity itself.

Based on this conceptual framework, this paper systematically analyses and compares past and present policies of regularisation and deportation in Spain and the UK. The former has often served as a prime example for both the 'cheap model' of immigration management which accepts sizeable proportions of illegal entry and stay (González-Enríquez 2009a) and, at least until 2005, the repeated use of large-scale regularisation programmes (Finotelli/Arango 2009). The latter has become emblematic for what Gibney (2008) called the 'deportation turn' (cf. Anderson et al. 2011, Paoletti 2010, Fekete 2005). The aim of this comparative analysis is to shed light on two interrelated aspects: Firstly, the specific (and potentially changing) function(s) of regularisation and deportation within their overall immigration policy frameworks, and secondly, the role that these particular measures play in the legal and political construction, as well as the management of migrant 'illegality' in each national context. In doing so, this study constitutes an important first step in a broader research agenda to analyse and compare the specific sets of opportunities and constraints that shape irregular migrants' socio-economic integration in different national (and local) settings.

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2   At the same time, these measures have often been related to government failure to prevent 'illegal' immigration in the first place, and especially regularisation was described as quite the opposite of a well-planned and effective approach towards migration management, both by the European Commission (2008) and within academia (Brick 2011, Levinson 2005, Apap et al. 2000, Arango/Finotelli 2009, González-Enríquez 2009a).

THE MAKING OF IRREGULAR MIGRATION: ECONOMIC AND LEGAL-POLITICAL CONTEXTS OF MIGRANT IRREGULARITY IN SPAIN AND THE UK

Migrant irregularity has always been linked to (national) frameworks of immigration regulation and restriction. Early examples of systematic immigration restrictions imposed by modern nation-states were usually directed against very specific groups of foreigners, including

> morally undesirable individuals, such as single mothers, unmarried couples, prostitutes and vagrants; politically undesired individuals such as labour militants, communists and anarchists; socially undesired individuals who were suspected of becoming 'liable to public charge'; and racially undesired individuals such as Chinese, Poles and Jews (Düvell 2006: 22).

Although they were usually not called 'illegals', their entry and presence was deemed undesirable (and thus restricted) based on very specific characteristics. Today's undocumented, irregular, or 'illegal' migrants, in contrast, are better defined as those who do *not* fulfil certain requirements established by national governments for legal entry, stay and/or employment. In most cases, they are thus negatively defined, so that "the contours of illegality mirror those of legality, [and] the meaning of illegality depends on that of migrants' legality" (Garcés-Mascareñas 2010: 80). This partly explains the conceptual difficulties surrounding contemporary migrant irregularity, which a growing number of scholars has been trying to overcome by questioning the strict dichotomy between 'legal' and 'illegal' migratory status, and replacing it with alternative concepts describing a rather diverse, fluid and multi-facetted range of in-between statuses (Chauvin/Garcés-Mascareñas 2012, Goldring et al. 2009, Cvanjer/Sciortino 2010a, 2010b, Ruhs/Anderson 2010, Kubal 2013, Morris 2003, Düvell 2006). Others have related the rise of irregular migration to the increasing restrictiveness of many Western governments' policies on immigration from outside the EU since the 1970s, which have been "firmly embedded in essentially nationalist political discourses, which are ideological rather than pragmatic" (Baldwin-Edwards 2008: 1456/7). Beyond the stricter policing of external borders, this trend comprises new and more demanding visa requirements, restricted access to asylum and the curtailment of other legal means of entry like labour and family-related migration, all of which contributed to driving more and more immigrants into irregularity (Düvell 2011, Krause 2011, Samers 2004). At the same time, as De Genova (2010: 38-9) powerfully argues, irregular immigrants increasingly fulfil the role of a cheap and highly flexible labour force:

> It is precisely their distinctive legal vulnerability, their putative "illegality" and official

"exclusion", that inflames the irrepressible desire and demand for undocumented migrants' highly exploitable workforce – and thus ensures their enthusiastic importation and subordinate incorporation.

Together, all these accounts contribute to an understanding of the irregular migrant "not as an essentialised, generic and singular object but rather as a legal and political product of particular historical and national contexts", as Garcés-Mascareñas (2010: 77) puts it. In the cases to be compared here – that of Spain and the UK – these contexts differ greatly. Compared to northern European countries, Spain has only recently received significant numbers of immigrants after being a country of emigration throughout most of the 20th century[3]. The share of immigrants has been below 2% of the total population for much of the 1990s (Larramona/Sanso-Navarro 2011), before their numbers increased eightfold during only one decade, rising from approximately 500,000 in 1995 to four million in 2005 (see figure 1).

Figure 1: Stock of foreign population in Spain and the UK (1985 – 2010) [thousands]
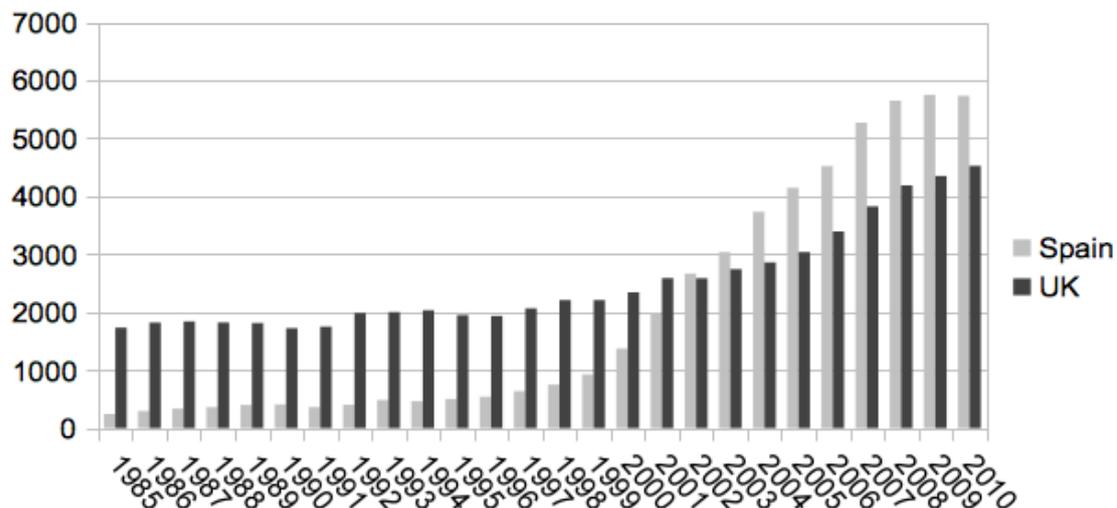
Data source: OECD International Migration Database:
http://stats.oecd.org/Index.aspx?DataSetCode=MIG; except data for 1985-1996 in Spain from Serrano-Martínez (2006: 29)

By 2010, foreigners made up 12.3% of Spain's population, representing one of the highest shares among EU member states (Vasileva 2011). The mass arrival of immigrants in Spain has coincided with a period of continuous economic growth, which not only facilitated their integration into the labour force (González-Enríquez 2009b, Arango 2013), but in addition attracted large numbers of irregular migrants (King 2000, cit. in Dentler 2008: 29). Several

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3   This shift from net emigration to net immigration took place during the 1980s and was described by King et al. (1997) as the *migration turnaround in southern Europe*, affecting not only Spain, but also Italy, Greece and Portugal.

empirical studies have shown that irregularity has been an important feature rather than the exception in Spain's recent immigration history (González-Enríquez 2009a).

In the case of the UK, immigration has historically been largely confined to migrants from countries of the Commonwealth and governed through a rather *laissez-faire* approach. However, this attitude changed as a result of economic decline which led to the introduction of first significant restrictions on immigration in 1962, 1968 and 1971 (Vollmer 2008). In the face of these restrictions, and much like other EU member states, the UK has experienced a steady increase of immigration since the mid-1990s, though less spectacular than in the case of Spain (see figure 2). This trend was accompanied, on the one hand, by a rapidly growing influx of asylum seekers (see figure 3) triggered by armed conflicts spreading across the developing world (Vertovec 2007).

Figure 2: Inflows of foreign population per year (1985 – 2010) [thousands]
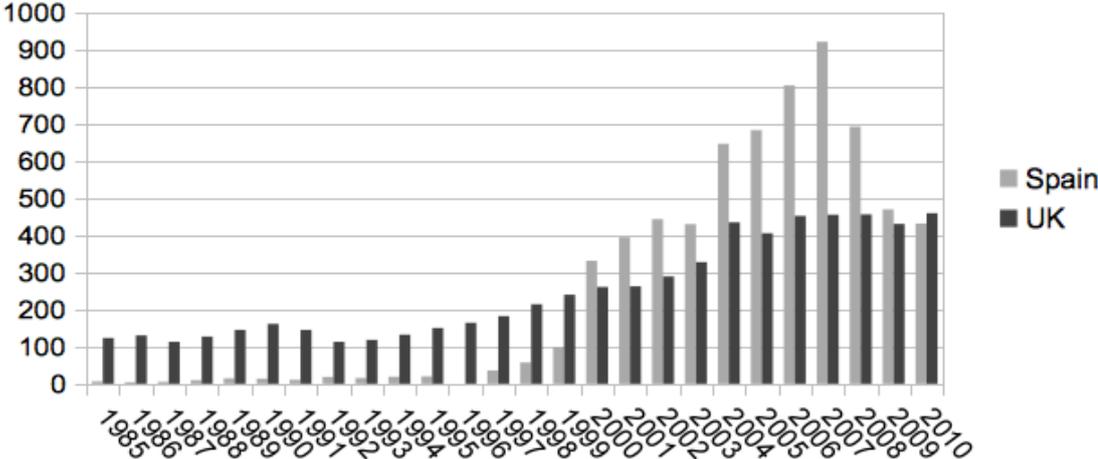

Figure 3: Yearly inflows of asylum seekers in Spain and the UK (1985 – 2010)
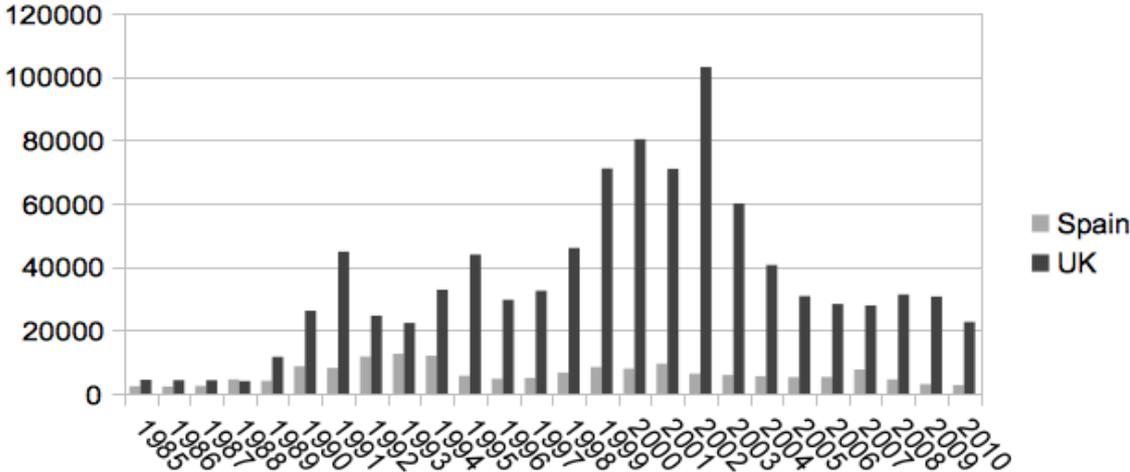
Data Source (both figures): OECD International Migration Database.

On the other hand, the same period saw increasing numbers of irregular immigration. Throughout the following decades, both developments made a series of policy changes necessary, which "were strongly geared towards the reduction of asylum seekers and other 'unwanted' population movements leading to an envisaged managerial approach of regularised migration flows"[4] (Vollmer 2008: 5). In spite of their efforts to reduce the number of new immigrants, and especially those deemed 'illegal' under national law, both countries currently face considerable numbers of irregular residents. Estimates for 2008 ranged from 280,000 to 354,000 irregular residents in Spain[5], compared to 417,000 and 863,000 for the UK (CLANDESTINO 2009a). In both cases, this development can at least in part be explained with reference to both economic and political factors, as well as the countries' specific immigration histories and regulatory regimes.

Figure 4: Stock of foreign labour in Spain and the UK (1985 – 2010) [thousands]
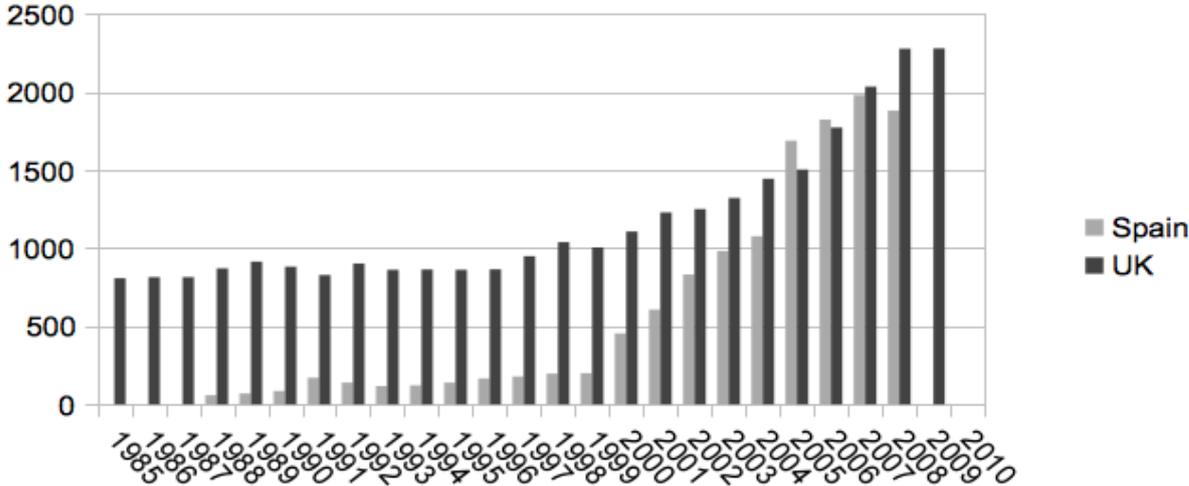
Data Source: OECD International Migration Database

Spain's first immigration law dates back to 1985, a time when the country did neither receive considerable numbers of immigrants nor depended on foreign labour as it would several decades later (see figure 4). Rather than Spain trying to manage its own immigration, González-Enríquez (2009a: 140) argues that "the idea behind the law was to ease the concerns of countries in central and northern Europe about the possibility that new members of the European Community – Spain[6], Greece and Portugal – might become an entry point for

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4 In this context, asylum seekers increasingly faced the general suspicion of abusing the British asylum system, with terms like 'bogus' or 'economic asylum seeker' becoming widespread in both the political and public discourse on immigration (Vollmer 2008: 21).

5 Updated to between 300,000 and 390,000 for January 2009 (Gonzáles-Enriquez 2009c).

6 Spain joined the European Community in 1986 and the Schengen Agreement in 1991.

undocumented immigrants". Accordingly, the overall character of the Spanish immigration regime is described as rather restrictive and "characterised by a certain lack of realism concerning possible ways to meet the substantial demand for foreign labour" (Arango/Finotelli 2009: 83). In addition, the Spanish economy has traditionally been characterized by a high share of informality. A comparative study by Schneider et al. (2010: 24) estimates that between 1999 and 2007 Spain's informal economy accounted for 22.5% of total GDP, compared to 12.5% in the UK and 8.6% for the US economy. Strong and continuous economic growth starting in the second half of the 1990s caused an insufficient domestic labour supply for certain sectors of the Spanish economy[7] (OECD 2000) making them increasingly dependent on imported labour force (Arango 2013). In contrast to many other European countries, however, the necessary recruitment of foreign (low-skilled) labour "has not come about as the result of a planned, rational immigration policy nor of effective recruitment programmes" (Arango/Finotelli 2009: 83), but instead strongly relied on a steady inflow of irregular migrants. Until quite recently, their presence was thus perceived as an economic necessity rather than a significant problem (Sabater/Domingo 2012). Accordingly, rather than controlling immigration, Calavita (2003) argues that the most important function of Spanish immigration policy is to ensure immigrants' marginalisation and "the contingency and precariousness of legal status and […] substantial economic penalties for the illegality that ensues with predictable regularity" (ibid.: 402). For her, the frequent recurrence of irregularity not only follows from the temporary and often contingent nature of legal work and residence titles, but also from the many specific "lapses into illegality […] built into Spanish immigration law" (ibid.: 404).

In the British context, irregular immigration started rising with entry restrictions being tightened and extended to new segments of potential immigrants, such as citizens of Commonwealth countries and former colonies[8]. Unlike in Spain, however, the increasing influx of immigrants to the UK during the 1990s has been coinciding with "an expansion in the number and kind of migration channels and immigration statuses" (Vertovec 2007: 1036). Unfortunately, with the complexity of the immigration regime growing[9] more and more potential paths into irregularity arose, until in 2008 a new points-based system was introduced

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7   Especially construction, domestic services, the care and hospitality industry and agriculture (Arango/Finotelli 2009).

8   Couper and Santamaria (1984) provide a historical overview over the growth and changing definition of the legal category of 'illegal immigration' in the UK.

9   According to Vollmer (2008: 11) there existed around 85 different immigration categories, "each with specific rights, conditions and possible restrictions".

with the aim of simplifying the overall policy framework and, once again, tightening restrictions for non-EU citizens (Düvell 2011). Over the last decades, arguably the most significant route into irregularity has resulted from the failure of the British asylum system to keep up with an unexpected number of claims, especially during the late 1990s and early 2000s (see figure 3). The UK Home Office has repeatedly been criticised by the House of Commons' Home Affairs Committee, which estimated the number of unresolved asylum cases accumulated during this period to lie between 400,000 and 450,000 (House of Commons 2011). On the other hand, the fact that failed asylum seekers make up a significant share of the UK's irregular population[10] can to some extent be attributed to the introduction of stricter rules for asylum to be granted (Vollmer 2008), as well as the streamlining of asylum appeals and the introduction of fast-track decision procedures (Papademetriou/Somerville 2008, Gibney 2008). It also reflects the fact that for many of those now routinely labelled 'bogus' or 'economic' asylum seekers, seeking asylum increasingly does represent their only option, facing an otherwise ever more selective immigration regime. Since 2006, yet another pathway into irregularity was created by requiring recognised refugees to regularly renew their status by proving that the reasons upon which it was initially granted continue to exist (Vollmer 2008). Instead of returning to their countries of origin, however, many of those whose refugee status has expired, or (more commonly) whose initial application was rejected[11], nevertheless stay in the UK 'illegally' – and thus in many ways share the fate of those who had entered Spain on a tourist or other temporary visa but did not manage to find (or stay in) regular jobs in the formal sector: Although most of them are contributing to the economy of their host country in one or the other way, they remain legally excluded and are thus (at least potentially and to varying degrees) facing deportation – unless, of course, the host state offers a way to at least temporarily legalise their precarious status.

THE UNMAKING OF IRREGULAR MIGRATION: REGULARISATION AND DEPORTATION

Offering opportunities for regularisation[12] to persons who have either illegally entered a country, overstayed their visa, or for other reasons find themselves in irregular situations has become a widespread practice among migrant receiving countries both within and beyond the

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10 A report of the National Audit Office (2005, cit. In Lenoel 2009: 105) estimated their number to lie between 155,000 and 283,500.

11 According to Home Office statistics for 2011, 67% of initial decisions were refusals (Blinder 2013).

12 The terms *legalisation*, *amnesty* and (in the Spanish case) *naturalisation* have been used to describe broadly the same set of practices (Sunderhaus 2007, Brick 2011).

European Union (OECD 2000, Apap et al. 2000, Levinson 2005, Finotelli/Arango 2011). Between 1973 and 2008, in the European Union (formerly the European Community) alone, more than 4.3 million people were regularised through 68 national programmes (Kraler 2009: 20). Regularisation thus accounts for "about one-fifth of all foreign citizens in the EU and one-tenth of all foreign born", as Fassmann (2009: 2) strikingly points out. At the opposite end of the same (conceptual) continuum lies deportation[13], here defined according to Anderson et al. (2011: 549) as "the expulsion of individual non-citizens from the territory of a state by the (threatened or actual) use of force". More than any other policy measure, administrative detention and deportation reflect the growing trend of securitisation within immigration control, i.e. the treatment (and perception) of migrants as (potential) criminals. Accordingly, they have increasingly come under scrutiny and critique by NGOs, migrant advocacy groups and human rights scholars (Fekete 2005).

Both measures are part and parcel of 'migration management' and thus based on the right (and perceived obligation) of states to control and regulate immigration, which in turn follows from the idea of their territorial sovereignty. However, while the practice of deportation also plays a key role in (re-)constructing and upholding the legal and normative boundaries of membership in a (national) community (Anderson et al. 2011, De Genova 2010), policies of regularisation tend to question and sometimes weaken these boundaries by offering possibilities to transcend the strict dichotomy between 'legal' and 'illegal' residence status. While deportation has been argued to be a simple necessity in order to maintain the effectiveness of any immigration system (cf. Anderson et al. 2011), regularisation has repeatedly been criticised for undermining such legal frameworks and seen as a consequence (or even instance) of policy failure. Accordingly, its implementation has in most cases been highly contested (Finotelli/Arango 2011, Levinson 2005). The OECD (2000) summarises three most commonly stated reasons for governments' reluctance to grant amnesties: they potentially attract further irregular immigration ('magnet effect'), are unable to cover the entire population of irregular migrants already present, and they imply acknowledging the ineffectiveness of existing controls. In addition to that, empirical evidence shows that a considerable proportion of migrants granted temporary legal status through regularisation later fall back into irregularity because they are unable (or unwilling) to renew their permits after they expired (Sabater/Domingo 2012, OECD 2000). Deportation on the other hand is

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13 Of course there are other, less severe measures like voluntary or 'assisted' return, or policies of discouragement aiming at incentivising return, but they all fall somewhere along the continuum between regularisation and deportation.

highly dependent on external factors (readmission agreements, provability of identity, etc.) and in addition "tends to be expensive, difficult, politically unpopular in local communities, and, particularly over the last few decades, constrained by international and regional human rights law" (Anderson et al. 2011: 550). The following sections will compare policies of regularisation and deportation in Spain and the UK.

POLICIES OF REGULARISATION IN SPAIN AND THE UK

Immigration regularisation can be defined as "any state procedure by which non-nationals who are illegally residing, or who are otherwise in breach of national immigration rules, in their current country of residence are granted a legal status" (Baldwin-Edwards/Kraler 2009: 7). In order to systematically analyse the wide range of policy options that can lead to this particular outcome, Apap et al. (2000) suggest a typology based on five distinctions[14]. In the context of this study, two of them are crucial: Firstly, regularisation can either take the form of a *permanent procedure*, i.e. an ongoing process without time limits and open to an infinite number of claims, or that of *one-off procedures*, which are conducted within a given timeframe (whenever a specific need arises) and often target a specific category and therefore a finite number of people. Both Brick (2011) and Kraler (2009) add an important feature to this distinction: while (permanent) *mechanisms* are part of the regular policy framework, (one-off) *programmes* are based on extraordinary, or *ad hoc* legislation. Secondly, regularisations may be implemented either for reasons of *fait accompli*, whereby a right of residence is derived simply from the recognition that a person has *de facto* (although 'illegally') been present from a specific date, or for reasons of *protection* against certain risks a person would take if not granted legal status (Apap et al. 2000). As will be shown in the case of Spain, regularisation based on *fait accompli* is likely to be linked to (and justified by) economic considerations like labour market needs or problems associated with a growing underground economy. Regularisation in the UK, on the other hand, while in some instances recognising either *fait accompli* or protection-related reasons, has been considered most often in the context of (failed) removal (Guild 2000, cit. in Lenoel 2009). The cases selected for closer analysis thereby resemble what Baldwin-Edwards and Kraler (2009: 29) single out as the two most common objectives behind regularisation, which can either be "a tool in

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14 Regularisations can be (1) permanent or one-off, (2) for reasons of *fait accompli* or for protection, (3) individual or collective, (4) through expedience or obligation, (5) organised or informal (see Apap et al. 2000: 266-71).

addressing irregular employment and the informal economy, i.e. [...] a labour market policy" or "a rectification of illegal or semi-legal residence […] as an alternative to removal".

The way these varying objectives are translated into policy outcomes is substantially determined by the set of criteria that is established to be met by immigrants in order to be eligible for regularisation under a specific programme or mechanism. The comparative *Odysseus* study shows that apart from the definitional precondition of being present (usually from a certain date) on the territory (*geographical* criterion), the eligibility for regularisation can also depend on *economic* (to be employed), *humanitarian* (in need of protection), *health* or *family* related criteria. Moreover, criteria directly related to the *asylum process,* or based on either the applicants' *nationality*, level of *integration* or *professional qualification* were distinguished, while in most cases applicants also had to prove a clean criminal record (Apap et al. 2000). From a very critical perspective, McDonald (2009: 71) argues that by "[d]istinguishing the criminal from the good, the diseased from the healthy, the lazy from the hard-working, the newly arrived from the loyal, […] the regularization process is a nation-building practice", which by itself contributes to the reproduction of migrant 'illegality' instead of reducing it. In any case, the choice of criteria does play a decisive role in determining both scale and scope of a regularisation process and may also constrain its overall effectiveness by discouraging wide-spread participation or creating specific incentives for fraud (Papademetriou/Somerville 2008).

In the Spanish context, ad-hoc regularisations provided the main way out of irregularity, and hence the primary source of legal status for several decades (González-Enríquez 2009b). The first extraordinary regularisation was carried out in 1985-86 and primarily targeted persons of Moroccan descent living (and mostly born) in the Spanish enclaves of Ceuta and Melilla, who were turned into irregular immigrants by the enactment of Spain's first Immigration Law of 1985[15] (González-Enríquez 2009a). Since then, Spanish authorities regularised the status of a total of 1.2 million immigrants through similar programmes enacted in 1991, 1996, 2000, 2001 and 2005, each of which was presented as an exceptional *one-off* measure (Finotelli/Arango 2011, Brick 2011). The most recent, held from February to May 2005, accounted for about half of all regularisations carried out in Spain during the previous two decades, by granting close to 600,000 temporary permits to persons irregularly living (and working) in Spain since August 2004 (Arango/Finotelli 2009). Apart from these extraordinary regularisation programmes, an ongoing procedure under which irregular immigrants can

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15 *Organic Law 7/1985 on Rights and Liberties of Foreigners in Spain*

apply for a temporary permit after having lived in Spain for at least two years was established in 2000[16]. This mechanism, however, played a minor role in terms of both magnitude and frequency until 2006, when the policy of periodic mass regularisation was replaced by the so-called Settlement Programme[17] (González-Enríquez 2009a). It offers foreign nationals in irregular situations the possibility to 'legalise' their status if they can provide evidence of being either economically (*arraigo laboral*) or socially (*arraigo social*) 'rooted' in Spain and have resided in the country for two or three years, respectively (Sabater/Domingo 2012).

In general, these processes have mainly targeted irregular workers, while sometimes being extended to other groups like their family members (1996, 2000, 2001), asylum seekers (2000) or migrants holding specific nationalities[18] (2001) (Arango/Finotelli 2009). The most common criteria for being eligible for regularisation under these exceptional provisions have been the applicant's presence in the country prior to a specific date[19] and the presentation of a clean criminal record (Finotelli/Arango 2011). In addition, for some programmes, "requirements for application included previous employment as a desirable aspect" (Finotelli/Arango 2011: 503). Such explicit labour market orientation became most apparent in the case of Spain's largest and so far last extraordinary regularisation of 2005, where it was "the employer and not the irregular immigrant [who had to] apply for regularization by means of a formal commitment to employ the irregular immigrant" (Sandell 2005: 2). This, together with the requirement to produce a valid work contract for at least six months[20] (Arango/Finotelli 2009), made sure that application was limited to those foreign workers who were going to be absorbed by the Spanish labour market. Against widespread criticism by other European states and the European Commission, the Spanish government presented the result of this regularisation programme – the transfer of some 550,000 foreign workers from the informal into the formal economy – as a major success (González-Enríquez 2009a). On the one hand, it is thus clear that the primary aim of the repeated regularisations has been to cut informal employment and at the same time satisfy the demands of the Spanish economy for low-skilled but highly flexible labour (Sandell 2005, Brick 2011, Sabater/Domingo 2012).

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16 Through *Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration.*
17 The full application of this mechanism was enacted by *Royal Decree 2393/2004*, which initiated the general shift from one-off to permanent regularisation under the new label *Settlement Programme* (Sabater/Domingo 2012).
18 In January 2001, the tragic death of 12 undocumented Ecuadorian immigrant workers led the government to grant regular status to some 24,000 Ecuadorians under a special regularisation programme (González-Enríquez 2009a: 146).
19 Usually, the *reference date* was set between one and nine months before the start of the respective programme (see Arango/Finotelli 2009: 83).
20 Reduced to three month for the agricultural sector.

On the other hand, the direct relation between new restrictions in admission policies and the need for subsequent regularisation was most clearly reflected by the first regularisation of 1985, while the lack of legal immigration channels was still apparent decades later (Sandell 2005, Finotelli/Arango 2011). For example, the so-called *contingente*[21], constituting the only instrument for promoting legal labour immigration between 2002 and 2004, according to González-Enríquez (2009a: 147) "offered 20,000 to 30,000 jobs per year, when more than 600,000 immigrants arrived in Spain each year during that period". Policies of regularisation thus served an important function by filling the gap between the economy's demand for foreign labour and the insufficient immigration channels provided by its legislative framework. While this has proved to be fairly effective under conditions of growth, it remains to be evaluated whether the current model of permanent regularisation will be equally effective in times of economic crisis (Finotelli/Arango 2011). Moreover, the new centre-right government in power since 2011 already announced not further specified plans to reform this mechanism (Lòpez-Sala 2013).

In stark contrast to the Spanish case, UK governments have on several occasions officially rejected the idea of large-scale amnesties (Papademetriou/Somerville 2008). However, the country does have some experience with small-scale regularisation programmes and mechanisms, although usually not referred to as such by politicians. In most cases, they were introduced following changes within the wider immigration regime (Levinson 2005, Lenoel 2009). For example, the Immigration Act of 1971, which suddenly extended the concept of 'illegal entry' to Commonwealth citizens, was followed by the UK's first two regularisation programmes: one held between 1974 and 1978, the other one in 1977, both targeting citizens of the Commonwealth and former colonies living in the UK since at least 1968[22] (Levinson 2005, Lenoel 2009, Brick 2011). A distinct set of regularisations aimed at clearing the huge backlog accumulating within the British asylum system since the mid-1990s, and thus focused specifically on asylum seekers whose claims had been pending for an unreasonable time. In 1998, when a backlog of over 100,000 asylum cases had accumulated (Lenoel 2009), a special policy was introduced to grant indefinite leave to most asylum applicants whose case decisions were outstanding since 1993, while for claims received between 1993 and 1995, family and community ties as well as previous employment were taken into account[23] (Lenoel

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21 A quota set by the government for hiring foreigners in their native countries (see González-Enríquez 2009a).
22 Successful applicants were granted permanent residence (Lenoel 2009).
23 These rules were applied to close to 21,500 asylum cases in 1999 and 2000 (Papademetriou/Somerville 2008).

2009). In 2003, a similar policy targeted asylum seeking families with at least one dependent child under the age of 18, who had claimed asylum before October 2000 (Lenoel 2009, Papademetriou/Somerville 2008).

While humanitarian concerns have obviously played a role in the context of asylum backlogs, this very logic became most apparent in the case of the one-off regularisation programme for domestic workers carried out in 1998-9. Following a revision of the *Overseas Domestic Workers Concession* in July 1998, this regularisation offered an exceptional twelve-month leave to domestic workers (mostly women) who had ended up in an irregular situation after having left their original employer as a result of abuse or exploitation[24] (Levinson 2005, Lenoel 2009). In this case, humanitarian and civil society organisations and trade unions played an important role by exercising advocacy and channelling public pressure, which eventually led to the implementation of the regularisation programme running from July 1998 to October 1999 (see Anderson 1999).

Apart from these rather small-scale one-off regularisations, the British immigration regime – just as in the case of Spain – also relies on permanent mechanisms of regularisation. Drawing on the *European Convention of Establishment*, ratified by the UK in 1969, migrants who have continuously been living in the country for 14 years, regardless of their immigration status, are usually granted a right to stay under the so-called *long residence rule* (Levinson 2005, Leonel 2009). Similarly, as was announced in 1999, families with small children who had lived in the UK continuously for seven years are also eligible for indefinite leave to remain (ibid.). Both categories include large numbers of failed asylum seekers, who became 'illegal' after failing to fulfil the criteria to qualify for asylum but could not be removed because of ongoing conflict in their country of origin or other practical constraints or humanitarian concerns (Papademetriou/Somerville 2008).

All measures taken together, Papademetriou and Somerville (2008) estimate that from 1997 to 2008 between 60,000 and 100,000 persons have been granted some form of legal status in the UK through regularisation. In 2002, the House of Lords Committee on the European Union declared, that "[s]ome form of regularisation is unavoidable if a growing underclass of people in an irregular situation, who are vulnerable to exploitation, is not to be created" (cit. in Levinson 2005: 31). More specifically, the aims of regularisation in the UK have been to

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24 Before 1998, under the D*omestic Workers' Concession,* the immigration status of foreign domestic workers was tied to employment with their original employer – by resigning or changing employer the migrant was automatically left in an irregular situation (Levinson 2005).

correct the status of certain groups of people following changes in immigration law (as in the 1970s), to reduce significant backlogs in the asylum system (as in 1998 and 2003), and to respond to pressure from civil society (as in the case of domestic workers) or international human rights norms and obligations (as in case of the *long residence rule*) (Leonel 2009). Like in the Spanish case, the specific aims of these regularisation exercises relate to certain gaps between the country's immigration reality and policy framework, most importantly, the failure of the British asylum system to keep up with an unexpected number of claims.

DEPORTATION AND DEPORTABILITY IN SPAIN AND THE UK

Deportation not only constitutes the most explicit form of exclusion, but also "the state's ultimate and most naked form of immigration control" (Gibney/Hansen 2003: 1). As such, it has long become embedded within national and increasingly international policy frameworks aiming at a more effective 'management' of migrants' mobility (Fekete 2005). Only recently, however, the practice of deportation has "achieved an unprecedented prominence […and] seems to have become a virtually *global* regime" (De Genova 2010: 34). In principle, the populations targeted by policies of deportation comprise visa-overstayers, clandestine entrants, foreign nationals convicted of crimes as well as 'failed' asylum seekers. With the notable exception of foreign criminals, they thus very much resemble those groups who under specific circumstances (and only upon fulfilling additional requirements) may be offered possibilities to regularise their status – often in cases where deportation proved impossible. It is for a broad range of reasons, that only a relatively small fraction of all individuals who are theoretically eligible for deportation is actually deported, a fact that Gibney (2008) describes as the 'deportation gap'. On the one hand, there are several practical constraints which render deportation a difficult, expensive and time-consuming measure: most importantly, they require proper documentation linking the deportee to a particular state, as well as that state's cooperation and willingness to recognise and readmit that person to its territory (Gibney 2008). By absconding or obscuring their identity, individuals threatened by deportation can thus actively delay or even prevent their expulsion from the country. On the other hand, the forceful removal of persons by liberal states is often directly constrained by governments' obligations under human rights instruments and treaties, or more indirectly through the fact that as a coercive state practice it potentially conflicts with core liberal values and norms. As Gibney (2008: 150) argues, one of the main challenges that states confront, arises from immigrants social integration into the host society, which over time can "form a moral basis

for remaining", independent from whether or not there is a legal entitlement to do so. Once established, social relations with neighbours or other members of the host society often trigger considerable resistance against deportations within local communities, which in turn renders them unpopular with local politicians (Anderson at al. 2011).

For De Genova (2002), however, it is not so much the act of deportation itself which is decisive, but rather the immigrants' '*deportability'*, i.e. the sheer possibility and often uncertain likelihood of being deported. This specific status can be seen as a continuum that ranges from facing immediate expulsion to being under very little threat of actually being deported ever. In principle, deportability is thus not confined to migrants in irregular situations, but can (at least potentially) affect legal immigrants as well, thus radically reinforcing the differentiation between citizens and aliens (Anderson et al. 2011, Paoletti 2010). In practice, however, the threat of being deported is most relevant to those lacking any form of legal residence status or right to remain. For them in particular, "the possibility of removal [...] casts a long, dark shadow over their daily lives, threatening at any moment to take away from them the little they have gained by residence in the host country and their hopes for the future" (Gibney 2011: 43). As with chances for regularisation, deportability not only depends on the specific migratory status, length of stay, level of attachment or criminal history of individual migrants, but also on structural factors relating to a particular host state, including the legal framework, its practical implementation and application, the jurisprudence of courts, as well as the level of politicisation of the issue.

Before analysing the particular cases of the UK and Spain in more detail, some definitional clarifications have to be made: As noted earlier, deportation is defined here as the expulsion of persons from state territory by the *threatened or actual* use of force (cf. Anderson et al. 2011). Importantly, this also includes persons who, having received an enforcement or deportation order, decide to leave the country before actually being deported. The decisive aspect is thus that a person is placed under the obligation to leave the country and could therefore *not* decide to remain. In the UK, the relevant (although somewhat misleading) statistical category is called 'total removals and voluntary departures', whereas in the Spanish context official statistics speak of 'repatriations of irregular immigrants' (*repatriaciones de inmigrantes irregulares*). For the purpose of this study, it makes sense to differentiate between persons who are refused entry at the border and subsequently returned to their countries of origin or

transit[25], and those 'removed' (UK) or 'expulsed' (Spain[26]) from *within* the country. Figure 5 therefor not only shows (a) the overall number of persons forced to leave each country per year (which include those refused entry at the border), but also (b) the number of individuals *deported from within* each country. A further differentiation can be drawn in terms of whether deportation is preceded by a criminal conviction or based solely on the ground of breaking entry, residence or employment regulations under immigration law. The UK Home Office uses the term 'deportation' only in the case of foreign national offenders, while the equivalent category in Spain would be 'qualified expulsion' (*expulsión cualificada*). Both measures, unlike other removals or expulsions, respectively, have continuing legal force beyond departure and prevent the deportee from re-entering the country for a specified period, usually up to five years.

Figure 5: Number of deportations from Spain and the UK per year (2000 – 2012)

a. all persons forced to leave the country (including those denied entry and returned at the boarder)
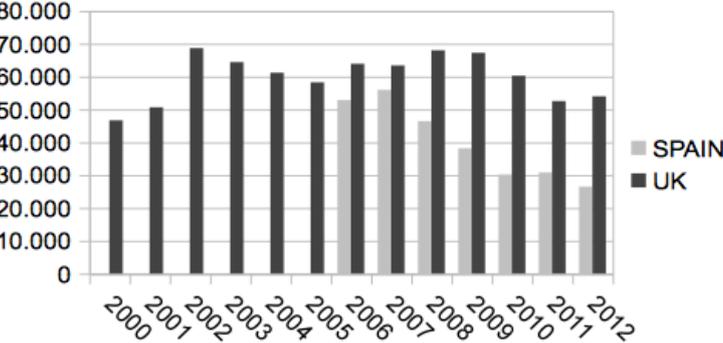
b. persons deported from *within* the country
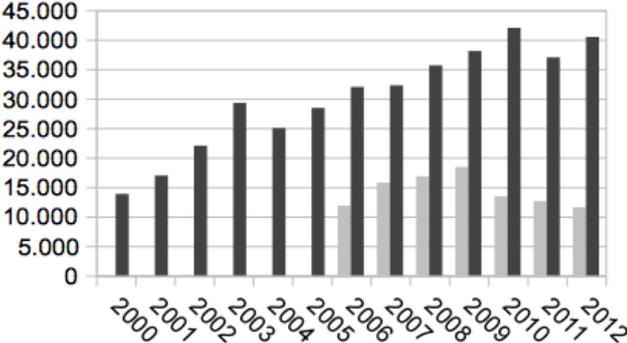
Data source: official government statistics available online: for the UK see: http://data.gov.uk/dataset/immigration-statistics-removals, for Spain: '*Balance lucha contra la inmigración irregular*': http://www.interior.gob.es/file/59/59299/59299.pdf.

Beyond these terminological differences, it is interesting to observe the meaning of deportation in relation to its precise opposite – genuine *voluntary* return – which the European Council on Refugees and Exiles (ECRE) defines as "the return of persons with a legal basis for remaining in the host state who have made an informed choice and have freely consented to repatriate"[27]. Especially in the UK, this distinction is often blurred by the terminology used

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25 In Spain they fall under the categories 'denied entry' (*denegación de entrada*) or 'devolutions' (*devoluciones*), depending on whether a person is refused entry at a formal border crossing, or caught while crossing the border 'illegally'.

26 In this case, Spanish authorities use the term 'expulsion' (*expulsión*) – or 'readmission' (*readmisión*) when carried out under existing agreements with third countries.

27 In contrast to 'mandatory return', i.e. persons with no legal basis for remaining who may have „consented to leave, or have been induced to leave by means of incentives or threats of sanctions", and 'forced return', i.e.

in official statistics: The European Migration Network (EMN) explicitly notes that what the Home Office calls 'voluntary departure' is different from (genuine) voluntary return because "ultimately, there will be an obligation to return"[28]. This becomes most evident in the case of so-called 'notified voluntary return', which according to the Home Office (2011: 3) refers to situations where "persons against whom enforcement action has been initiated, decide to voluntarily leave the UK". They thus clearly leave under the threat of forced removal. A closer look reveals that in the UK context a very similar logic also seems to underlie the idea of 'assisted voluntary return'. A good example is the so-called 'Assisted Voluntary Return of Irregular Migrants Programme' (AVRIM): while it does not generally provide reintegration assistance, it leaves little to no scope for decision-making on the part of the migrants, who, "[i]f accepted for the programme, [are given] up to three months […] for the process [of returning], unless in detention, during which time enforced removal will not be pursued"[29]. Here, in line with Anderson et al. (2011), these returns are thus not considered to be 'voluntary', but instead part of the overall 'deportation regime'. In Spain, in contrast, voluntary return programmes, which have been part of the countries migration agenda since 2003, have mainly focused on regular migrants (Lopez-Sala 2013). While some of those programmes were also open to migrants in irregular situations, they did never specifically target individuals already placed under the obligation to leave (ibid.). Thus, while in the UK 'voluntary departures' play an important (and in fact growing) role within the realm of deportation and deportability, Spanish voluntary return schemes fulfil a rather separate function and target different populations.

In the case of the UK, early instances of large-scale deportations of foreigners from its territory occurred in the context of both World Wars and were directed primarily at enemy aliens, mostly Germans (Bloch/Schuster 2005). Along with increasing restrictions on non-European immigration during the 1960s and 70s, the state's power to deport unwanted foreigners from its territory grew progressively, with possibilities to appeal against deportation orders diminishing (ibid.). The steady growth in removals which in the UK began at the end of the 1980s coincided with the sharp increase of asylum applications. Since then, rejected asylum seekers make up a significant share of overall removals carried out by the

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"the return of those who have not given their consent and therefore may be subject to sanctions or the use of force in order to affect their removal" (see http://www.ecre.org/topics/areas-of-work/returns.html).

28 see EMN Glossary: 'Voluntary return': http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_r_en.htm (18-12-2013).

29 See Home Office website: http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/workingwithasylum/assistedvoluntaryreturn/avrim/ (18-12-2013)

Home Office: according to official statistics, in the decade between 1993 and 2003, the number of persons removed following negative asylum decisions rose from 1,820 to 13,500 (Gibney 2008: 149). After peaking in 2006, it since fell considerably (reaching 8,400 by 2011)[30], mostly as the result of a decline in asylum applications. Overall, the number of removals and so-called 'voluntary departures' following an enforcement order increased from around 30,000 in 1997 to a peak of 68,000 in 2008 (Anderson et al. 2011). Since then, numbers declined to 52,500 in 2011, before increasing again to 54,000 in 2012 (see figure 5a). In the face of growing immigration and increasing pressure on their asylum systems, many Western governments have similarly augmented the use of deportation during the first half of the last decade (Fekete 2005, De Genova 2010). Unlike in many other countries, however, in the UK this trend was accompanied by an unprecedented politicisation of the issue of deportation as a necessary means to regain control over immigration. The promise made in 2008 by then Immigration Minister Liam Byrne, to "remove an immigration offender every 8 minutes" (Daily Mail 2008, cit. in Anderson et al. 2011: 550) is emblematic for this development. While many of the sometimes excessively ambitious removal targets set by UK governments during this period have not been fully met, the country has (perhaps more radically than others) extended and improved its deportation capacity, partly by introducing policy innovations that "have been highly successful in enabling officials to bypass legal and social constraints to boost the rate of removals" (Gibney 2008: 158/9). Among these 'innovations' were measures to speed up, or 'fast-track' the asylum procedure itself, the increased use of detention in order to prevent potential deportees from absconding, and an increased active 'facilitation' of 'voluntary' return through positive and negative incentives (ibid.). Overall, deportation and, increasingly, the 'voluntary departure' of individuals facing a deportation order seem to play a pivotal role within the UK's approach to restrict unwanted immigration and settlement. According to official Home Office statistics, the number of 'other voluntary departures' has risen from just over 800 in 2005 to nearly 16,000 in 2012[31]. Interestingly, even in the face of decreasing numbers of asylum applications, the political and public discourses on deportation are strongly focused on the removal of rejected asylum seekers and less so on 'illegal' residents as such, unless they have committed a crime. According to Gibney (2008), there are two reasons for this: on the one hand, the (forced) removal of 'bogus asylum-seekers' accused of exploiting the UK asylum system at the

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30 According to Home Office statistics on removals and voluntary return, see:
    http://data.gov.uk/dataset/immigration-statistics-removals (25/11/2013).
31 see http://data.gov.uk/dataset/immigration-statistics-removals (25/11/2013).

expense of genuine refugees proved relatively easy to justify in public; on the other, while the identity of asylum seekers (as well as foreign national offenders) is well documented and the number of negative decisions easily determined (and publicly available), other groups of irregular migrants living in the UK are hard to quantify and even more difficult to locate, identify and deport.

In the Spanish context, deportation seems to have played a comparatively smaller role within public and political discourses on migration and immigration control, and specifically the country's policies towards individuals already residing 'illegally' on its territory. As Garcés-Mascareñas (2010: 85) notes, "[t]he aim of deportation policies is not so much to reduce illegal immigration as to delimit a symbolic precinct of illegality". In a similar vein, Calavita (2003: 407) argues that mainly due to scarce financial resources "the threat of deportation has always been more symbolic than real". Accordingly, the 'deportation gap' has always been large: In the years prior to 2000, around 15,000 deportation orders where issued per year, but fewer than 5,000 deportations actually carried out (Calavita 2003: 407). In 2009, according to Eurostat data, of more than 100,000 irregular migrants ordered to leave Spain, only 29,000 (were) returned to their home countries (EMN Spain 2011: 43). In addition to that, deportations from Spain have increasingly targeted foreigners who besides residing in the country irregularly, have committed a criminal offence. Most recently, the share of these 'qualified expulsions' has steadily risen from just over 50% of all deportations from within the country in 2008 to nearly 87% in 2012[32]. In the UK, where the deportation of foreign national offenders (FNO) also serves an important symbolic function and has often been stressed by politicians as one of the main functions of deportation (Anderson et al. 2011), their number remained comparatively low (around 5.000 each year)[33]. In fact, between 2009 and 2012 the relative share of FNO decreased from 15% to just over 11% of all removals and 'voluntary departures' from within the UK[34].

In the case of Spain, official numbers suggest that those already living and/or working in the country without the necessary documentation, but who apart from their irregular status did not commit any offence against Spanish laws, are not specifically targeted by deportation. In fact, for a short period of time, Spanish immigration legislation even formalised their 'non-

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32 Own calculations based on annually published official government statistics (*Balance lucha contra la inmigración irregular*).
33 According to Home Office statistics on removals of foreign national offenders, see: http://data.gov.uk/dataset/immigration-statistics-removals (25/11/2013)
34 Own calculations based on official government statistics.

departability' by explicitly de-criminalising immigrants 'illegal' presence: The same law which for the first time established an ongoing procedure of regularisation (Organic Law 4/2000), also stipulated that "while illegal status precludes full membership in the community, it is not grounds for deportation" (Calavita 2003: 406/7). Only several months later, however, the possibility to deport persons on the sole ground of a breach of immigration rules was re-established through Organic Law 8/2000, entering into force in January 2001 (Calavita 2003). However, the same principle of appropriateness is still reflected in the jurisprudence of Spanish courts, as a recent analysis shows:

> Over the past years jurisprudence has been consolidated in a manner which has clearly affirmed that, as a general principle, the sanction that should be applied to an irregular migratory status is a fine, and not deportation, [which should only be] used in exceptional cases and under specific circumstances (CAER/MRI 2010: 31).

At the same time however, the authors add that in practice, Spanish authorities have increasingly resorted to deportation, and thus often ignore the principle of appropriateness established by law (ibid.). This is clearly reflected in the overall numbers of deportations, which at times were rather similar to those in the UK (see figure 5a). In addition to that, Fekete (2005) observes several instances – such as the creation of a special administrative body (the 'Central Brigade for Expulsions') and the almost doubling of funds for deportation in 2003 – which also suggest that in practice, overall developments in Spain are in line with the general 'deportation turn' observed in other Western countries. The extension of the maximum time of detention (from 40 to 60 days) (EMN Spain 2011) as well as the sudden increase in efforts to conclude bilateral agreements on readmission with several (mostly West African) countries of origin points in a similar direction (Arango 2013).

Much like in the UK and elsewhere in Europe, the number of irregular immigrants began to increase rapidly around the turn of the millennium (ibid.). However, the 'fight against irregular immigration' – intensified as a reaction to the sudden increase of unauthorised arrivals by boat in 2006 – was mostly fought at the country's external borders (Lòpez-Sala 2013, EMN Spain 2011). While actual deportations carried out by Spanish authorities largely focus on would-be 'illegal' entrants apprehended in the border areas, for those irregular migrants already living (and working) in the country, "illegality is not anymore synonyms with deportability but rather becomes a form of subordinated inclusion in the long and often winding path toward legality" (Garcés-Mascareñas 2010: 87). Official statistics analysed here in comparison to the UK seem to support this account: While overall numbers of deportations developed rather similarly over the last years (see figure 5a), the Spanish state deports

considerably less persons already residing within its borders (see figure 5b). In addition, as already mentioned above, the relative share of foreign offenders among those deported from within the state, is much higher in Spain than the UK. Thus, non-nationals without legal residence status but a clean criminal record seem to be far less deportable than in the UK. Instead of deportation, as Calavita (2003: 407) argues, they face mostly economic penalties "in the form of wage discrepancies and the absence of worker's rights associated with the underground and informal economy to which they are confined". In the current context of economic crisis, which affects migrant workers even more than natives (Lòpez-Sala 2013, Arango 2013), these 'penalties' can be expected to become even more severe. At the same time, Spanish authorities do make use of deportation as a measure to reduce irregular migration, although – if compared to the UK – to a lesser extent and in a more selective way. In the long run, however, Arango (2013: 13) predicts that "Spain's immigration policies will fall more in line with the dominant paradigm in Europe", of which the 'deportation turn' has clearly become an important characteristic.

CONCLUSION: COMPARING NATIONAL FRAMES OF MIGRANT IRREGULARITY

This working paper tried to generate a first set of conceptual frames for the comparative analysis of migrant irregularity by focusing on two crucial elements of contemporary immigration policy specifically dealing with individuals residing within the territory of a particular state but at least partly outside of their formal legal and regulatory framework. Based on contemporary conceptualisations of irregularity as a diverse, fluid, and highly context specific range of in-between statuses, and against the theoretical background of it being 'produced' by states rather than exclusively following from migrants' illicit actions, the focus of this analysis lies on the 'unmaking' rather than the 'making' of irregular migration – more specifically, its 'unmaking' through policies of regularisation and deportation. After briefly contrasting their overall function as tools for regulating the legal and physical inclusion and exclusion of foreigners and thus the differentiation between members and non-members of a national community, their specific role within particular national immigration policy frameworks has been analysed in more detail for the cases of Spain and the UK.

The evidence regarding past (and partly ongoing) regularisation practices in Spain and the UK shows that in both countries they have filled specific gaps between the immigration reality each country was facing at certain times and their respective immigration policy and

administrative frameworks. The results also indicate that the very diverse reasons for which regularisation programmes have become necessary (or simply been preferred over other options) did not exclusively stem from policy failures but also from factors beyond each country's immigration policy framework – such as the unexpected external pressure on the UK's asylum system or the structural imbalance of Spain's domestic labour market. Overall, regularisation has played (and continues to play) a much bigger role in Spain than the UK. Despite the very different scale and scope of their respective measures, however, both countries have eventually undergone a shift from one-off programmes to permanent mechanisms, thus integrating at least some possibility of regularisation into their overall frameworks of migration management.

In terms of significance and scale, the comparison of Spanish and British deportation policies reveals a rather inverse picture: Whereas in the UK the enforced removal of 'illegal aliens' is at the forefront (both rhetorically and in practice) of the country's struggle against irregular immigration, in Spain it is still widely understood as an administrative measure which *can* be resorted to under exceptional circumstances (such as criminal offences) as an alternative to the imposition of fines. Arguably, given the comparatively limited possibilities for *ex-post* regularisation built into UK immigration legislation, imposing a fine on those breaking immigration rules would hardly constitute a sustainable solution to the 'problem' of irregular migration. While in practice, however, some observers see Spain on a path of convergence towards northern European countries, the most striking (and apparently persisting) difference between both cases seems to be the significantly lower level of politicisation of the issue of deportation in the Spanish context. This is consistent with another observation made by Arango (2013: 2), whereas even in the face of its current economic situation, "immigration has not led to the public and political backlash that has been characteristic of other immigrant-receiving countries in Europe", and which has led many governments to (at least rhetorically) give preference to deportation and detention rather than regularisation policies.

It seems clear that in a world of imperfect border and immigration regimes, both regularisation and deportation will continue to play a role as measures of last resort for receiving states and their governments, after regular tools of immigration management and control have failed or proved insufficient. At the same time, regularisation and deportation are not only functionally opposed policy approaches to 'unmake' irregular migration, but must also be seen as disciplinary measures, as noted by De Genova (2002, 2010). As such, they resemble two sides of the same coin and – seen from the migrants' perspective – function as

carrots and sticks: For them, the failure to regularise their status can sometimes increase deportability (by being known to the authorities), while successfully evading deportation long enough can increase their chance of eventually being granted legal residence status. It is thus between these two poles – the possibility of regularisation and the threat of deportation – that migrants in irregular situations negotiate and construct their position in local communities and labour markets. The results of this study suggest that Spain and the UK in many ways represent rather contrasting legal-political contexts for these peculiar integration processes.

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