The SJM-España is a network of Jesuit entities dedicated to studying migration and to welcoming immigrants and preparing them. It seeks to promote an inclusive, integral, and intercultural society. Among the entities the SJM-España brings together are the following: the University Institute of Migration Studies (Pontifical University Comillas), the Migra-Studium Foundation (Barcelona), the CeiMigra Foundation (Valencia), the San Juan del Castillo Foundation (Centro Pueblos Unidos and Centro Padre Rubio in Madrid, Centro Calor y Café in Valladolid, and Atalaya Intercultural in Burgos), the Ignacio Ellacuría Social Foundation (Bilbao), and the Voluntariado Claver Association (Sevilla). The SJM-España also collaborates with the Jesuit Refugee Service in Europe and with Jesuit Migrant Services in other parts of the world, especially Latin America and the Caribbean.
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SJM-España expresses its gratitude to the secretariat of the episcopal commission for migrations at the Spanish Bishops’ Conference for its collaboration for the production of this booklet.
Overcoming borders

Purpose of this booklet

As a place, the border is paradoxical: a precise limit, a no-man’s land with blurred lines, a barrier blocking relations, a place of encounter between diverse worlds, the external edge of a territory, and the imaginary limit which marginalizes even within a group. As places of mission, borders are geographic territories to be crossed or travelled in; they are also social and psychological territories to be recognized and overcome.

Borders become most evident when they are the site of international migration. That is obvious, since migration implies crossing borders between states. Immigration policies and laws demonstrate the variety of borders that exist and the profound inequality that comes from crossing borders. It is therefore always necessary to insist that external borders be managed democratically, according to principles of justice and in accord with law.

Migration, however, is not only the movement of persons and families to other countries to live and work there. There is an important relationship between immigration and social integration, which includes both the integration of the migrants into the societies where they establish residence and integration of the receiving societies, which become a rich mixture of both the persons born in the territory and those who migrate there.

The challenge of social integration is not an easy one. Among other things, it requires a new frame of mind, a new way of thinking. If the receiving society does not understand that integration is the responsibility of everybody, it ends up establishing an invisible border between social groups: between those it considers nationals and those it considers foreigners, aliens, outsiders. Such a border is not drawn hard and fast; it does not always separate those with a different nationality, or those born in the territory from those who have moved there, or those who use a different language or profess a different religion or belong to a different socio-economic class. Rather, it is a border that is always selective, variable, based in psychology, in the heart, legitimized by the mass media and political discourse, consecrated by public policies and the law, worked out in social and administrative practices.

The Jesuit Migrant Service finds its place of mission on those borders which our society multiplies within itself, and it discovers there relations of injustice. The SJM situates itself on those borders as a way of following Jesus of Nazareth. Following Jesus means entering into the same dynamic as he did, a dynamic which overcomes physical and socio-religious borders, which announces a message of peace and compassion, which preaches a reign of God offering a new horizon, in which all relations become reconciled. Reconciliation requires of us the responsibility of establishing just relations, and that requires overcoming borders.

To do that a first step is seen as necessary. It consists in changing the way immigration is viewed in Spanish society: it needs to be seen not as a passing phenomenon, but as an inherent part of our society’s very structure. Starting from there, further steps have to be taken toward recognizing the unjust borders that society establishes for some of its members: the immigrants, their families, and their direct descendents. This leads to an analysis of fears that encourage borders, discourses that legitimize them, norms that consecrate them and administrative practices that crystallize them. Finally, we need to propose bridges that overcome the unjust interior borders established by
society, and this we do by offering guidelines for an integrated society. For this aim, the Society of Jesus joins the feeling of the Church.¹

¹ See the document of the Spanish Bishops’ Conference: *La Iglesia en España y los inmigrantes*. Edice. Madrid 22 de Noviembre de 2007. Specially, it urges raising awareness throughout the broad society and particularly among Christians, so that the welcoming society adopts a positive attitude towards immigrants, avoiding prejudices, undervaluation, discrimination, racism or xenophobia.
The structural character of immigration

Immigration and economic situation

A particular social image is becoming ever more prevalent: immigrants are foreigners who have come to Spain to work, and this is true even if they are European citizens. When Spanish citizens are asked about the main reasons why some people leave their own countries and travel to Spain, many mention as the first reason the poverty of the immigrants and the difficulty they have in earning a living in their native countries. But the second reason mentioned is usually the fact that there are good possibilities of finding work in Spain. Such replies refer to the “push-and-pull” factors at work: the difficult conditions in the countries of origin, the attractive possibilities in Spain.2

The connection between immigration and opportunities for work is correct, but it can become distorted if we do not keep things in perspective. Whether there are more or fewer opportunities for work is affected by economic conditions, but the availability of work that requires immigrant labour is a result of transformations produced in the structure of society itself.

Immigration and the structural needs of the Spanish society

We must keep in mind the demographic structure of Spanish society, with its extremely low birth rate: in four autonomous communities the Spanish population is declining, and in four others it is hardly growing. An aging society needs the help of younger persons, like the immigrants, who will do the work and contribute to retirement pension funds; who will provide services for older persons, thus freeing up younger family members to work outside the home; who will stimulate the economy with their purchases; and who will have children, making it possible for society to reproduce itself.

Other social transformation should be kept in mind: the ever higher level of studies, young people’s desire for more rewarding and professional jobs, and everyone’s desire for a better standard of living. No one doubts that many immigrants work at the most difficult, precarious, badly paid jobs – at least at the beginning of their time in Spain, until they work their way up the social scale. The economic crisis and widespread unemployment force many persons, no matter what their nationality, to consider taking jobs that they would have previously rejected. This revision of expectations, however, is a result of circumstances; it does not deny that the general desire for improvement in living and working conditions is part of our structural dynamic.

2 For an exhaustive treatment, see the report of CeiMigra: Attitudes of Valencians toward the Immigrant Population, published in 2010, available in Spanish at:

The structural need for immigrant labour is not limited to jobs that are spurned by Spaniards or other residents of the country. There is also a need for highly qualified labour, albeit in very specific sectors of the economy. This need influences migratory legislation throughout the EU, since it establishes highly advantageous conditions for skilled workers, researchers, etc.

**Beyond an instrumental perspective**

Migration can be explained in terms of current economic conditions. While immigration increased during the years of economic growth, in recent years there have been relatively few people entering the country: Spanish society has become less attractive for people seeking work in a foreign country. It is one thing, however, to explain what is happening and quite another to face up to the reality. The current social and political response to the crisis focuses on one part of Spanish society, the part made up of persons identified as immigrants, and asks them or forces them to leave: the “return.” Short-term considerations cause barriers to be erected and borders to be fortified, even within Spanish society, and the resulting process generates a dynamic of expulsion.

Immigration can also be explained in terms of a society’s need for demographic replacement and for labour in sectors that are short-handed. In light of this, the determination to expel immigrants who have lost their jobs ends up creating more problems than it solves. Again, however, this is a case of viewing immigration from a purely instrumental perspective, that is, purely in function of the interests of a particular group. A barrier is created between those who considered themselves fully-fledged members of a society and those who are merely tolerated or are accepted conditionally, as long as they fulfil a particular need.

There is a need to change our way of viewing immigration. There is no such thing as a “pure” Spanish society, made up of native-born persons who allow strangers into their midst only because of favourable economic circumstances or the structural needs of the society. What actually exists is a diverse society made up of all the persons who live together in it: native-born, naturalized, long-term residents, residents who are becoming integrated, and persons who have recently arrived and desire to remain, despite the obstacles they have to face. This is the real society, the one that will have to deal with whatever problems it has and which will have to seek ways to become truly integrated and socially cohesive.
Some hard data to correct our perspective

The permanent office for the study of immigration (Observatorio Permanente de la Inmigración – OPI) has published data about foreigners resident in Spain, whether by community regulation or by general regulation. It includes persons with a registry certificate or a residency card as of 31 December 2010. The community regulation applies to citizens of the member states of the EU; to nationals of Iceland, Norway, Liechtenstein, and Switzerland; and to nationals of third countries who are relatives of Spaniards or of citizens of the aforementioned countries. The general regulation applies to all other foreigners.

There are 4,926,608 foreign residents with a registry certificate or a residency card. Of these, half are under community regulation: 2,402,632 (48%), and their proportion is increasing. In the eyes of Spanish law, these persons enjoy practically the same rights as Spaniards. The great majority (2,012,538) are citizens of the EU, a status they share with the Spanish population. The most numerous groups are the citizens of Romania (840,682) and the UK (228,829). The common image of residents from the European community is that they are retired persons; they are residents, but not immigrants.

There are 2,524,976 residents under the general regulation. The principal groups are from Morocco (757,809), Ecuador (369,692), Colombia (222,061), and China (153,883). Some 63% of them (1,591,528) have a long-term residence card. That means that they have been legally resident in Spain at least five years (to which should be added the years they had to wait to regularize their situation). The residency card allows for automatic renewal, independently of whether they have a current contract to work or not. As regards temporary residence, 153,371 initial cards have been issued, 379,414 have been renewed once, 352,511 have been renewed twice, and 68,152 are exceptional.

The present economic situation explains the decline in entries into the country. The structural need for demographic replacement and the need for immigrant labour explain why temporary residence cards are still being issued. The much larger number of long-term residency cards under the general regulation, together with the nearly 50% of the foreign population under community regulation, reveals a society in which a sizable portion of its citizens are in some way “foreign” or “immigrant.” Yet all of them are members of one and the same society.
Fears that encourage borders

Fear as a psychological mechanism

Fear is a basic emotion, necessary for survival. The brain evaluates stimuli, and if perceives them as threatening, it sets off alarms. A potential threat produces aggressiveness. Our perception of threat, however, is not always accurate: our interpretation of reality can be distorted by feelings, prejudices, cultural conditioning, etc. And even when we correctly evaluate a threat, the response can vary: there are appropriate responses and exaggerated responses. Unfounded fears lead to a vicious circle in which feelings, perceptions, and behaviours feed into one another and generate responses that are inappropriate and become ever more harmful.

Fear, even when it is kept at appropriate levels, tends to distort reality and exaggerate difficulties. It paralyzes people and closes them off from others. It views the other as the enemy and encourages false solutions. It is important for people to learn to be aware of when they experience fear, so that they can work with it and try to distance themselves from it when analyzing the relevant data and seeking the best solutions. The threat should be correctly evaluated, allowing reason to prevail over emotions in our speech and our responses. We should avoid an automatically fearful reaction, responding instead in ways that are constructive, thoughtful, reasonable, and considerate. Fear, when controlled and subject to reason, can be of help to us. Often, however, persons surrendering to fear lose self-control and let themselves be dragged in the wrong direction. Though fear may seem to protect people from potential dangers, it can actually make them more vulnerable.

Economic crisis, immigration, and fear

An economic crisis generates fear when people cannot maintain the standard of living they desire. When they lose their work and are unable to find a new job, or when they lose their unemployment benefits, they fear impoverishment. Fear brings with it feelings of uncertainty and anxiety. The crisis does considerable damage to the social support structures. In the face of this threatening situation, different responses are observed, some promoting solidarity and some not. One possible response to a threat consists in joining forces together and sharing resources. In unity there is strength. When fear prevails, however, some people view others not as allies but as competitors, adversaries, enemies. Fear makes people deal with threats, not by uniting together, but as isolated individuals or in closed, restricted groups.

History shows us that in times of crisis a scapegoat is often sought. Certain persons or social groups are made responsible for a precarious situation, and collective rage is visited upon them. Frequently political leaders encourage or tolerate this type of response in order to channel people’s aggression away from themselves. Normally, when a particular group is designated as the cause of the crisis, psychological borders are drawn between that group and the rest of society; arguments are developed to justify socially isolating the group and laying the blame on them; and sometimes even violence is permitted, in the name of the law. When a clearly defined border is established between groups living together and competing for the same spaces and resources, then they easily become aggressive toward one another.

In some European countries the immigrant population has become the scapegoat, especially since the petroleum crisis of 1973. This can be seen in the national parliaments of countries like France, the Netherlands, Sweden, Austria, Italy, and Switzerland, where xenophobic populist parties have increased their strength greatly. All sorts of fears are stirred up regarding immigrants, some fears related to the scarcity of work and other resources in these times of economic crisis, and others to changes in the social landscape, moral values, and shared cultural patterns.
The search for scapegoats makes use of mechanisms of collective identification, which define who are “our people” and mark out the borders which separate “us” from “the others,” but these mechanisms do not always function the same way. Certain common traits help to explain a collective identification: appearance, language, creed, ideology, style of dress, aesthetic preferences, etc. However, mutual knowledge and personal contact would help toward a shared identity for persons who might otherwise be assigned to different groups, and the barriers would fall between people who in fact have much in common. The best way for preventing hostility between groups is personal knowledge that is aimed at broadening the collective identity.

One source of fear and aggressiveness is the feeling some people have that they are becoming a minority: people experience greater vulnerability in the face of threats, and they fear they will eventually be attacked by those who are in the majority. This happens often when a street or a locality is “taken over” by a particular group. People have always been conscious of the risk involved in crossing through the territory of neighbours who are hostile. We see this dynamic operating today with the youth gangs: they mark out their territory and punish members of rival gangs who cross the established borders. Similarly, people may feel a certain unease when they see particular groups becoming concentrated in a certain area, whether they be English retirees, Spanish gypsies, Latin American discotheques, or ethnic businesses.

Working with the fear

Given the present economic crisis, there are social groups in Spanish society that project their fears onto other groups by which they feel threatened. Or perhaps it is better to say that certain people share their fears with others whom they consider part of their own group, and they project those fears onto other people who are thought to belong to other groups. This way of categorizing people distinguishes Spaniards from foreigners, or even native-born Spaniards from Spanish citizens born elsewhere. Fear raises barriers in groups who think that other groups are a threat to them. Fear is a reality, and we need to work with it.

It would help to understand which fears correspond to threats that are experienced by all the groups in our society. The current crisis has aggravated the shortage of jobs available, thus reinforcing the mechanisms by which the labour market excludes the new labour force represented by immigrants. However, exercising a preference for native-born workers over foreign resident workers would be comparable to preferring friends and family without regard to merit. When income falls short, individuals and families need to seek social assistance: unemployment compensation, food banks, school aid, public housing, etc. Such assistance is always limited, and it is normal for people to feel frustrated and somewhat angry when it is denied them. But frustration at not receiving assistance – or the fear of not receiving it – does not justify accusations that immigrants are getting privileged treatment from the public authorities, nor does it justify branding them with the stereotype of living at society’s expense.

When there are threats to everyone in a society, taking refuge in a small group is usually not an appropriate response, for it does nothing to help solve the problem; in fact, it can create new problems. When everyone faces common threats, what strengthens the society and helps it to face the situation squarely and fairly is the broadening of a true collective identity. That is the best solution that can be found.

A second strategy is to take charge of the fears experienced by each person and each group, according to their circumstances. The economic crisis threatens everybody, but not equally. The people who have been living here for a long time can count on a broad support network of family
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and social relationships, which are a tremendous help in dealing with critical situations. On the other hand, the immigrant population, especially in their first years here, have to work hard to develop their social capital: their support networks are less extensive, but even so they are often quite skilled in finding resources that allow them to move forward.

There are, however, still other kinds of fear, which may be experienced by everybody but are strongest among immigrants. For those immigrants who have not arrived in regularized fashion, the worst fear has to do with lack of documentation, possible detention, and even deportation. Living for years with such fears is extremely debilitating.

After years of living here irregularly, there is the additional fear of not being able to obtain the certificate of residence or the one-year labour contract that would allow the immigrant’s residence to be regularized in extraordinary fashion. Even for the immigrant who has a temporary residence permit, loss of a job deals a triple blow: lack of income, loss of opportunity to reunite the family, and possibly the refusal of the authorities to renew the permit, thus making deportation a new threat.

In all such situations the immigrant experiences fear of rejection: either social rejection of a xenophobic type or bureaucratic rejection of the documents that attest to one’s professional qualifications. The immigrant also fears discrimination and the invisible borders that make social advance difficult and keep him/her from earning the same as other persons with the same qualifications.

There is also the fear of disappointing one’s family, which has invested so much in the migratory effort. There is fear of losing the love of those who are closest, and the fear of becoming permanently alienated from the country where one was born.

Fear and neighbourliness

Immigration forms part of society’s structure. It is not just a way of keeping the population youthful or of providing labour for jobs that no one else wants. Spanish society needs to understand its own complex character and work toward greater integration. As fears grow stronger, individuals and groups raise defensive barriers, which make it more difficult to live and work together to resolve problems shared by the whole society. This is the greatest problem. By creating borders among different groups within the society (native-born Spaniards, naturalized Spaniards, other European citizens, foreigners with regular status, and immigrants with irregular status), we do nothing to resolve the problems we all share, and we fail to avert the threats hanging over any particular group.

The threats hanging over the whole Spanish population in this time of crisis are quite serious, but they are temporary. If the threats generate fears and raise barriers between social groups, then the result will be hostile relationships that produce new threats and new fears. We end up in a vicious circle. When the peaceful coexistence of different social groups is threatened, then the very structure of the society comes under attack, and its opportunities for dynamic development become limited. The resulting damage is long-lasting.

Since our aim is to insure that all live together in peace, it is very important that we work with our fears and not let ourselves be controlled by them. We must seek a reasonable understanding of the problems in order to find the most adequate solutions. This is not done by stigmatizing the immigration population.
Fear is understandable, but the stigmatizing of a social group reveals a deliberate effort to discharge frustrations onto the group. This process always seeks to legitimize itself through various arguments, but we need to analyze those many arguments that try to justify the setting up of borders.
Discourses that legitimize borders

Our fears do not come only from within us; they also surround us. While it is true that fears are highly emotional, they are not simply irrational: they take the form of words and stories. We need, therefore, to complement the previous section, about the fears that nourish borders, with another section, which analyzes the discourses used to legitimize those borders. We find such arguments in many places: in public opinion, in political interventions, in the mass media, and on the streets themselves.

Scholarly studies have been done on the discourse about migrants in politics and the media. Though they go beyond the scope of this booklet, the studies can help us to identify and understand five very significant and representative types of discourse concerning our social situation: the instrumental, the legalist, the competitive, the mono-culturalist, and the “anti-do-gooder.” Using more graphic expressions, we can analyze the five types of discourse in terms of the monkey wrench [called “English key” in Spanish], the German ticket, the Chinese store, the Islamic veil, and the Latin heart.

Instrumental discourse, or the image of the monkey wrench

The first type of discourse corresponds to an instrumental perspective: it views immigrants simply as useful labour or as tools for work; they are almost seen as disposable objects. This kind of discourse hold that immigrants should be allowed into Spain only in times of prosperity, and they should leave in times of economic recession. It considers unemployed immigrants to be a burden on society and proposes an equation as the solution to the problem of unemployment: five million unemployed minus five million immigrants equals full employment. Obviously, such a simple equation is completely false.

This kind of discourse can be graphically symbolized as that of the “monkey wrench.” It does indeed recognize the contribution this tool of immigration makes to the productivity of the economic system. The monkey wrench is novel, useful, adaptable, versatile, manageable, easy to use, and effective. And that is the way the immigrants are viewed: they are useful to the economic system because they take the jobs at the lowest level of the social scales, they do the dirty work, they adapt to working schedules and conditions that Spanish workers would not accept, they receive low salaries (in some cases without Social Security contributions), and in general they don’t protest. The usefulness of this migratory monkey wrench explains very well, for example, three structural elements of the contemporary Spanish economy: the boom in real estate construction, the massive incorporation of women into the labour market, and the generalized spread of communication technologies. Can anyone imagine that all of that would have been possible without the toil of Ecuadorian or Polish masons, without the service of Bolivian or Romanian domestics, or without the thousands of ditches dug by Moroccans or Malians to install cables?

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The problem with the monkey wrench is that it is precisely a tool, a thing, an object, something that is used when it is needed and abandoned when it no longer serves. Obviously migrants are not things; they are persons. And they are persons with their plans, their relations, their histories, their expectations, the tastes and desires, their frustrations and potentialities. They are not isolated persons, but members of families. For that reason, any utilitarian vision of migration, any instrumental view of migrants, and any purely economic talk about migratory flows is inadequate and unjust. Since it fails to perceive the social reality in its full dimensions, it proposes mistaken solutions for the problems.

The clearest example of this monkey wrench type of discourse was the establishment, in November 2008, of a program of assisted return for unemployed foreigners. It was announced with great media publicity, and the official discourse insinuated that this measure was going to be a key element in resolving the economic crisis, reversing migratory flows, and achieving social stability. In the first fifteen months of the program, only 8,500 persons had enrolled, of whom more than 5,000 were Ecuadorians. This is obviously a ridiculous low figure given the nearly five million foreigners who live in Spain.

Nevertheless, the message had already been broadcast. Once again immigration had been identified with crisis. The official discourse was encouraging the suspicion that immigrants were responsible for unemployment, suggesting that the solution required them to return to their countries of origin, sowing the seeds of possible social conflict, reinforcing the utilitarian view of migrants, and turning people’s attention away from society’s real problems. This way of addressing the matter was irresponsible, for it neither resolves the problem of unemployment nor helps society to unite for the sake of confronting common problems with greater strength.

**Legalistic discourse, or the image of the German ticket**

The instrumental view of immigration, seeing it as a function of economic needs, needs juridical legitimation. The widespread discourse that captures this view says: “Immigrants, yes, but with papers.” It takes as an ideal the well organized, orderly migration of Spaniards to Germany, and it proposes that all those who migrate to Spain should follow the same model. There is certain logic and sense to the argument and it is widely supported. Diverse elements are very cleverly combined: the social order, the good of the national economy, the protection of migrants’ working and living conditions, and respect for the law and human rights. Nevertheless, the reality is a little more complex than that. It is therefore necessary to reflect on the matter more calmly, analyzing three relevant considerations.

First, it is not so clear that present-day migration is all that different from what happened in other times. There is need to clarify some things about the myth of Spanish migration to German. The fact is that many, perhaps most, of the Mediterranean migrants – those who travelled from Portugal, Italy, Greece, Spain, or Turkey to Central Europe in the decade of the 1960s – did not do so in idyllic conditions. Naturally, it is better to migrate with a labour contract, with lodging, and with knowledge of the local language, but the reality is that such ideal migration has unfortunately almost never been the case. The Irish migrating to Massachusetts, the Italians to Argentina, the Canary Islanders to Venezuela, the Mexicans to California... the history of migratory movements is a history of irregularity, and the reason for that is that the energies of persons and the needs of the economy are stronger and more agile than any legal norms set down by governments in a given historical epoch.
Second, European and Spanish immigration policy is theoretically based on three pillars: promoting legal immigration and integration, impeding irregular immigration, and contributing to development. All observers agree that in practice the channels for regularized immigration are insufficient and clearly ineffective. If, for example, in some African countries there is not even a Spanish consulate where people can request a visa, how can we insist that “whoever wants to come should do so legally”? On the other hand, given the slow and convoluted procedures for obtaining a labour contract, what business is willing to wait months or sometimes more than a year for the government to authorize the hiring of a worker?

Third, this way of thinking, which insists exclusively on the legality of migratory flows, is combined with the proposal that only the most qualified should come. “Let them come with papers, yes, but let only the truly qualified come.” In May 2009 the European Council approved a directive regulating the issuance of the so-called “blue card” for attracting highly qualified foreign workers. This measure can be understood as an attempt to compete economically with the United States at a global level, but it is difficult to justify it from an ethical perspective, for it directly encourages a “brain drain” from the poorest countries (though perhaps it is better called a “brain theft,” since it results in greater impoverishment for the poor countries of the South). It is simply not right to create barriers for poor workers who wish to reach Europe to improve their living conditions, while offering every type of facility to the most qualified persons, and thereby exploiting the countries of origin and reducing their possibilities for development.

The discourse about the German ticket lays the charge of irregularity against the migrants who do not reside in Spain according to regulatory norms. It therefore works to legitimize the borders that are raised between the Spanish and those who reside here legally, on one side, and the irregular immigrant population, on the other. However, it avoids any serious reflection on the ways in which the legalizing processes can be made more agile, so that legal migration becomes a viable alternative.

**Competitive discourse, or the image of the Chinese store**

A third type of discourse stresses people’s anxiety about the increasing competition for scarce goods within a given society. Their arguments start of as economic, but then move into other spheres.
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These voices blame immigrants for many ills, such as low wages, bad working conditions, and crowded clinics. They also charge immigrants with taking too many places in the nurseries or with relying on subsidies for the school cafeterias. This resentful type of discourse has a prompt and deep effect on the native population, especially the poorer sectors, and especially when they are going through a crisis like the present one. Such discourse thrives on people’s desperation and the helplessness they experience in their lives. It manipulates the situation by holding up a target on which people can vent their anger. And it justifies that anger as a reasonable reaction.

When hostility is expressed toward someone who is manifestly “different” and easily identifiable, then it becomes easier to escape any sentiment of guilt. Furthermore, if borders are set up which block personal relationships and mutual respect, then it is easier to dehumanize certain persons or groups and to make them objects of wrath. The discourse of the Chinese store makes use of economic questions toward that end.

The Chinese stores that exist on the street corners in our neighbourhoods illustrate the point we are trying to make: they are open long hours, they have a broad range of products, most of the employees are family members, the prices have high profit margins, and they have an extensive distribution network. These are some of the ingredients that make their commercial strategy successful. Moreover, they are very visible because of the ethnic identity of the owners and the employees. As they view this situation, local workers feel that such ethnic businesses extend working hours excessively, fail to generate employment, and cause labour conditions to worsen. Such sentiments are contradictory, but they become more acute in moments of unemployment and economic difficulty.

Fear rears its head. Since fears about possible dangers disturb people’s ability to react moderately, it is important to analyze the situation carefully. First, an evaluation should be made of the presence of immigrant workers in the general labour and social conditions of the society. Various studies of the economy of migrations have shown that in the U.S. and in Europe the migrant population constitutes an element that dynamizes the economy, generates employment, increases growth, diversifies markets, broadens initiatives, and produces no negative effect on wages or working conditions. In some countries (Spain and Mediterranean Europe especially), a significant number of foreign workers labour in the underground economy, but this is the result of the structures of the productive system of these countries and has nothing to do with the fact that the workers are foreigners.

Second, it is necessary to stress that all this is taking place in the context of a generalized reduction of public spending, which can even end up dismantling the welfare state. If the population increases but the amount of subsidies remains the same, then it is logical that they will reach fewer persons. In this case, the persons who are economically more fragile and socially more vulnerable are the ones who will be given priority in receiving aid, and this will naturally provoke discontent among those who do not receive aid. Aiming one’s frustration at a neighbour may be understandable, but it is wrong-headed. It would much be more sensible for all, migrants and natives, to struggle together on behalf of public services that are universal and of good quality. In other words, the real issue is not that immigrants get more subsidies than natives, but that there are not enough subsidies for all those who need them, whoever they are.

Identity discourse, or the image of the Islamic veil

Immigration introduces diversity into any society, whether it be ethnic, linguistic, cultural, or religious. For years alternative ways of creating social cohesion among culturally diverse groups have
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been tried, and respectful community ties have formed among certain parts of the population. However, we are still failing in this respect: there still exist great economic differences, and there is de facto discrimination in hiring. This situation has resulted in strong social tensions in some neighbourhoods, producing a permanent situation of low-level violence or sudden social disturbances. When socio-economic differences are combined with ethnic, linguistic, cultural, or religious diversity, it is easier for communities to close in on themselves. Closed communities are a defence mechanism in the face of a hostile social environment. But they are also a mechanism that impedes the advance of social cohesion. The discourse of the Islamic veil functions as a defence mechanism that our society uses in relation to certain communities that are well defined, especially by language, culture, or religion. It is a type of discourse that accuses the target communities of not being able or not wanting to become more integrated into the larger society. It is a type of discourse that seeks out symbolic elements of cultural and religious difference, and it demands that those elements be removed from the public sphere for the sake of social integration. This type of discourse effectively denies the possibility of social integration that is respectful of differences; it claims that it is impossible for certain groups to become integrated if they do not renounce their identity.

In recent times various European leaders, such as Angela Merkel in Germany or David Cameron in the United Kingdom, have made public declarations against multiculturalism. Their remarks were broadcast and interpreted by the mass media as the “death certificate” of a particular political line. Apart from what was achieved by the politicians’ declarations, and apart from their superficiality or nuance, what lies behind these opinions is a push for the assimilation of all foreigners into the national culture of the majority, a culture that was forged over long periods and eventually got translated into politics.

The need for assimilation is not preached in the same way for all the immigrant groups; it is especially aimed at those who are perceived as most “different.” That is why the Islamic veil appears to be a powerful symbol. Does it represent a social stigma, a religious sign, a cultural custom, subordination of women, violation of human rights and individual liberty? It is a religious symbol worn by Muslim women, no matter what their nationality. It is a symbol branded as foreign, even to the point of identifying Spanish women of the Islamic faith as foreigners.

The discourse of the Islamic veil claims the support of reason, namely, the universal need society feels to recognize and respect our common living space. This common living space, however, is founded on certain minimum principles of justice, and it has to remain open to different types of maximum principles. A society which needs shared symbols to reinforce its cohesion can still accept and integrate the different symbols of particular communities as something important for some people. The discourse of the Islamic veil shows itself to be perverse when it judges that it is simply impossible to integrate certain differences and so legitimizes the establishment of absolute borders against particular social groups because of those differences.

It is curious and instructive how the very same type of argument is found both in the U.S., regarding Hispanic immigrants, and in Europe, regarding Muslim immigrants. Here are two significant examples. Samuel Huntington has argued that Hispanic immigrants, especially Mexicans, are a new phenomenon in U.S. history: differently from immigrants of the past, they cannot or will not integrate themselves because they want to keep their identity, their language, their religion. What is remarkable is that in the European context Giovanni Sartori has repeated exactly the same line of argument, but applying it to Muslims: they neither can nor want to integrate themselves because
they want to keep their identity, their language, their religion. Can it be that both these thinkers are expressing a fear of the other, the unknown, and the different? Are they holding on to a fixed essentialist vision of national identity, “white Anglo-Saxon Protestant” in one case and “liberal Christian” in the other? The history of migration to the United States shows that other groups once considered incapable of integrating are now happily integrated, especially the Catholics. It is always wise to discern more carefully, without judging too quickly or on the basis of prejudices.

Criticizing the Islamic veil discourse does not imply a defence of multiculturalism, understood as the simple coexistence of different cultures on parallel tracks, with hardly any contact between them. We should think rather of the possibilities of recreating our complex, pluralist societies on the basis of the contributions that differing cultural groups can make to them. Our society will be more vigorous, more prosperous, more democratic, and more cohesive if every group contributes creatively and constructively to the public realm from their own strengths. This means at least two things: opting for the public realm and recognizing differences. The former moves us beyond mere multiculturalism, and the latter goes beyond simple assimilation. Opting for an intercultural society is not easy nor is it evident, but it appears to be the best way to respond proactively to the heartfelt challenges of our society, both today and in the future. Only in this way will we be able to create an inclusive “we.”

The condemnation of ‘do-goodism’, or the image of the Latin heart

It is possible that at this point in the argument some readers may have thought or even exclaimed, “We’re tired of naïve, well-intentioned discourses. Don’t they realize the problems migration brings with it? If we keep on this way, our schools will deteriorate to hopeless levels, our health care system will collapse, social conflict will grow, and xenophobia will increase tremendously. Don’t they recognize the need for countries to control their borders? Don’t they see that we have to defend ourselves against the avalanche of immigrants and that we can’t accept all of those who want to come? Enough of this do-goodism!

“What is needed,” these voices continue, “is tough treatment. It’s not enough to have a Latin heart that thinks that ‘everybody is good.’ We need less talk of rights and more of duties. There should be integration contracts required for all the immigrants. There should be detention, internment, and deportation of people without regular status. Close down the borders, impose order and control.”

President Rodríguez Zapatero expressed it quite clearly in 2008, when he formulated the three fronts on which his immigration policy is established:

- First, people should not leave their countries driven by desperation.
- Second, border controls should prevent the entrance of immigrants who do not have a guaranteed labour contract.
- Third, persons who enter illegally should be returned to their countries of origin.

To put it concisely, the aim is to prevent people from leaving their countries; and if they leave, to prevent them from entering Spain; and if, despite everything, they do enter, to have them detained

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and repatriated as soon as possible. It seems that the alternative to what is called do-goodism is do-badism.

Do-goodism consists in a lack of good judgment; it denies the reality of the problems in an effort to achieve harmony. It is a simplistic response to complex situations, and it is an inadequate response. The fact is that migration, while it provides an opportunity for the immigrants and their families, also provides assistance to those societies that are in great need of the social contributions that can be provided only by immigrants. At the same time immigration brings problems with it: for the persons who migrate, for their families, and for the society that receives them. Starting from there, we need to evaluate carefully both the opportunities and the costs, both the positive contributions of immigration in all its diverse levels and the problems produced in a society due to population increase, pressure on the labour market, and the difficulties that arise when disparate groups and persons try to live together.

The whole of our society should be able to agree to two basic, complementary convictions: the right of every person not to be obliged to migrate (which implies the possibility of developing a viable life in one’s place of origin) and the right to migrate (seeking a livelihood in another place, if that seems best). Even as we affirm these two rights, we must also affirm a correlation between rights and duties, but not in the sense that the recognition of rights presupposes the prior fulfilment of certain conditions or duties. Rather, just as every right brings with it certain duties, the recognition of rights is implied in the assumption of the duties that correspond to it. This is the only way we can progress toward the fullness of citizenship that reinforces democracy.

In the end, it is always a matter of trying to build a common society, recognizing that all who share life together in a particular place are called to be integrated into a single community. That involves recognition of social bonds and a respect for legitimate differences. It involves a normative framework that regulates the common life and facilitates the integration of migrants and their families into the society that was already there. But such a framework should be in a constant process of re-creation that allows the migrants to participate with a full set of rights and responsibilities. It is not always the case, however, that the norms actually help to regulate the common life in this way. In Spain and also in the EU and its member states generally, the immigration regulations consecrate certain borders that do little to help to achieve this social integration.

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Overcoming borders

**Norms that consecrate borders**

The law seeks to be coherent in its treatment of a social reality, but it has difficulty doing that. The law is the fruit of debate and compromises among different, often contradictory, visions of society. The tensions in a society multiply whenever there is discussion of regulating migration, the rights and duties of foreigners, and their social integration. Different parties reflect distinct visions. Even in a single political party, diverse visions can exist side by side, whether because of the social context of each autonomous community or because of the particular perspective of different ministries, such as the interior ministry or the ministries of labour or foreign affairs.

The explanation of the reasons for the LOEX⁶ (immigration law) makes clear how difficult it is to harmonize these different perspectives. Immigration reform is said to pursue the following objectives:

1. Establishing a framework of rights and freedom for foreigners that guarantees to all the full exercise of their basic rights.

This is a reassuring, egalitarian vision that seeks to overcome borders, out of consideration of the common human condition.

2. Improving the system for a legal and orderly channelling of migratory labour flows, by reinforcing the linkage between our capacity for receiving immigrant workers and the needs of the labour market.

This is an instrumentalist vision of immigration, which gets translated into the imposition of multiple borders, filters, and barriers that in fact make the desire to regulate migration more difficult.

3. Increasing the effectiveness of the struggle against irregular immigration, by improving the means and instruments of control and providing more enforcers, especially as regards those who facilitate illegal entry or irregular permanence in Spain; this involves making the sanctions more severe in this case and strengthening the procedures for returning foreigners that have entered our country illegally.

This vision sees the immigrant as a danger to society; it views immigration as an intrusion or invasion, assisted or exploited by criminal organizations; it considers irregular status to be a

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Overcoming borders

consequence of the ill will of the migrant and not of the poor functioning of the system which is supposed to regulate migratory flows.

4. Emphasizing integration as one of the central aims of immigration policy, which takes into account the Community acquis in matters of immigration and international protection and opts to create a setting in which diverse identities and cultures can coexist peacefully.

This is a holistic vision of society, one that aspires to equality and social cohesion, with respect for the legitimate diversity of identities and cultures.

5. Adapting the regulations to the agencies that regulate labour, as provided for in the Statutes of Autonomy that determine the norms for an initial authorization to work, and adapting them also to the statutory agencies dealing with acceptance and integration. Improving the coordination of the activities of the public administrations with powers to deal with immigration concerns, and reinforcing cooperation among them so as to provide a better and more effective service to the citizenry.

This also is a holistic vision of how immigration and integration should be handled, requiring close collaboration among the different public administrations.

Harmonizing these perspectives is a challenge and a political aspiration, and it is difficult. That is why contradictory tendencies are observed: even while some borders are eliminated within our society, other borders are consecrated: borders that continue distinguishing and separating “us” from “them.” Only by broadening the “us” and making it more complex will it become more difficult to justify the borders which try to contain and separate “the others.”

There is a basic principle in this task of harmonization, and Benedict XVI points it out with great clarity in his encyclical Caritas in Veritate. immigrant workers, he writes, “cannot be considered as a commodity or a mere workforce. They must not, therefore, be treated like just another factor of production. Every migrant is a human person who, as such, possesses fundamental, inalienable rights that must be respected by everyone and in every circumstance.”

The basic principle thus set forth indicates that objectives 2 and 3 of the law (regulation of migratory flows according to the needs of the labour market, and the struggle against irregular immigration) should be subordinate to objectives 1 and 4 (guarantee of human rights and integration, and opting for a framework where identities and cultures can coexist). This stance should move from the realm of law to the arena of public discussion, and from subject of debate it should move to social ideal. At the present time we have two perspectives in tension: regulation-repression and integration-coexistence. They involve two different discourses, which stand out clearly or become blurred, depending on the circumstances, but which do not achieve harmonization.

It would be good to analyze a bit more two key questions where these tensions are revealed, questions which, to boot, consecrate borders within the society:

1. The tension between the principle of equality in the enjoyment of rights and limitations for different categories of persons
2. The tension between two perspectives on integration.

After that, it would be good to analyzed more carefully two particularly distressing borders:

1. The possibility of not having one’s authorization for temporary residence renewed
2. The limitations on the right to family life.

**Equal, but not quite**

The starting point of all immigration regulations is the attribution of a distinct juridical status to the foreigners who live in the territory that is under the government’s sovereignty. This distinct juridical status is key for understanding some of the borders that are consecrated within the country, often invisibly. The explanation of the reasons for the law indicates one tendency: the integration process as an itinerary from inequality to equality:

In Title I important modifications are introduced for the purpose of outlining what should be the framework of rights and freedoms for foreigners, along with the corresponding obligations. This implies the recognition of the basic rights possessed by foreigners, whatever status they have in Spain. It also establishes a system for progressively attaining other rights as the immigrant gains in juridical status in accord with the length of his/her stay as a legal resident.

Article 3 of the LOEX lays down the general interpretative principle:

1. Foreigners in Spain will enjoy the rights and freedoms recognized in Title I of the Constitution according to the terms established in the international treaties, in this Law, and in those laws that regulate the exercise of each right. As a general interpretative criterion, it will be understood that the foreigners exercise the rights that this Law grants them in full equality with Spaniards.

Here in these provisions, where the extension of rights is proclaimed and the interpretative principle of equality with Spaniards is enunciated, we can already see the legal restriction of the rights: at times these provisions can be interpreted as meaning that foreigners should not exercise their recognized rights in conditions of equality with Spaniards. In order to known what rights a person living in Spain has, it would be necessary to ask first many questions: whether the person is Spanish or foreign, is a legal resident or in irregular status, has special authorization for studies, is certified as a highly qualified worker, has authorization as part of a reconstituted family, is the beneficiary of a permit by reason of exceptional circumstances, etc.

It is important to notice the web of invisible borders that surround individuals, depending on their juridical status, and to imagine what it means to live under the sign of inequality. The next question is whether we are justified in giving privileged treatment to some and discriminatory treatment to others.
Asymmetrical integration

The LOEX uses a single term, integration, to refer to two different processes, though they are connected. It expresses this in number III of its preamble when it states:

On the other hand, Spain is firmly committed to defending human rights. Therefore the public powers should favour full integration of immigrants into our country and should guarantee peaceful coexistence and social harmony between immigrants and the native population.

Integration thus refers to the activity, the effort made by immigrants to become an active part of an already established society. But integration is also the quality that characterizes a cohesive society in which immigrants and the native population live together amicably. This meaning is further developed in number V.4) of the same preamble: (which insists on the need)

To strengthen integration as one of the central aims of immigration policy, which policy should take into account the Community *acquis* in matters of immigration and international protection and should opt to create a setting where identities and cultures can coexist peacefully

There is a richer meaning here because reference is made to the need for coexistence between identities and cultures that are different, whether they are proper to Spaniards or to foreigners. The European heritage offers another definition of integration that seems to simplify the schema further, for it considers integration to be a two-way process that takes place between the nationals of third states and Europeans citizens.

Article 2,ter,1 of the LOEX synthesizes the two perspectives on integration:

The public powers will promote full integration of foreigners into Spanish society, within a framework of coexistence of diverse identities and cultures with no other limit than respect for the Constitution and the law.

The LOEX does not say much about integration as a trait that is characteristic of society as a whole, but rather stresses the effort at integration that is required of immigrants. The law demands of the immigrant such basic things as knowledge of and respect for the constitutional and statutory values of Spain and the values of the European Union. It also expects immigrants to know the official languages of the territory and to respect human rights, public freedoms, democracy, tolerance, gender equality, and work.

The law expects the public authorities to foster integration by sponsoring programs that inculcate values, by guaranteeing obligatory schooling, by teaching the official languages, and by facilitating access to employment. At the same time, the law urges immigrants to work hard at integration, to recognize the importance of requesting renewal of visas, and to seek authorization of temporary residence for reasons of permanence.

If the integration effort is limited to basic knowledge of the official languages and an introduction to the fundamental values of social life, there can be no talk of a legal border. It is quite another matter, however, when we look at the margin of administrative discretion that is allowed when it comes to judging the adequacy of the formation programs offered, the knowledge acquired, and the degree of the immigrant’s personal commitment to society’s values.

Perhaps the LOEX cannot go any further. Perhaps its only role is to regulate integration insofar as it encompasses the immigrants’ efforts to become part of the larger society and the public authorities’
efforts to provide the basic tools of integration. If that is so, then in practice the law seems to consecrate an invisible border within society, because it fails to insist on the effort at cultural and axiological integration which needs to be made also by EU citizens who choose to become part of Spanish society, and it fails to insist on the effort at integration which needs to be made by the Spanish population and by those who have long lived here. All who live in Spain should every day work at recreating the social pact; they should every day seek to enrich the community life, along with those persons who are newly incorporated.

Public opinion more and more perceives integration as a matter of shared citizenship. It should therefore be no surprise that there is an increase in the number of Spaniards who think that long-term residents should have their right to vote recognized. At the same time, public opinion expresses its fears, such as when it wonders about the meaning of fully integrating religious and cultural traditions such as the Islamic – the discourse of the “Islamic veil.” Nevertheless, public opinion basically accepts the model of integration and favours policies of assimilation.

Assimilation might be considered as one way of eliminating borders, except that it eliminates them simply by negating the differences that characterize minorities with respect to the majority. It is an apparently comfortable stance, avoiding the need to deal with differences on a daily basis. It is founded on the political will of the nation, but it forces persons and communities to abandon some of their vital traits, and it deprives society of a true broadening and enhancement of its identity, which is valuable, even if difficult.

**Renewing permits during times of unemployment**

The immigrant’s itinerary ends up being an obstacle course in which a person risks practically everything each time a new administrative authorization is required. Indeed, the system for granting permits is an excellent indication of the instrumental perspective, which considers immigration to be merely an instrument at the service of the needs of the labour market. This perspective has a certain logic when it is a matter of regulating entrance into Spain for the purpose of residence: new members should not be admitted if the society cannot provide them an opportunity to support themselves or if they are unable to support themselves out of their own resources; otherwise, new members may be sought actively in accord with the needs for new labour. However, the regulatory mechanisms have not functioned adequately. This is shown by the extremely high number of immigrants who had to enter the country by disregarding the inoperative mechanisms for regulating migratory flows. They were successful in finding opportunities for work in Spain, but they then have to live perpetually under the stressful conditions of administrative irregularity.

We should think about those nearly one million foreign residents with authorization for temporary residence (933,448 as of December 31, 2010). Most of these people lived in Spain at least three years before obtaining residency authorization. Of the 731,925 with permits that have been renewed once or twice, many have succeeded in reuniting their families or are in the process of doing so. In short, these are individuals and families who have followed a path of integration, and they, like the rest of Spanish society, are facing the threat of unemployment. But this threat is much greater for them: while the unemployment rate is about 20.33% for the general population, it drops to 18.47% for the Spanish population and ascends to 30.40% for foreigners.  

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The LOEX makes the renewal of work permits and temporary residence dependent on certain conditions, such as possessing sufficient economic resources, meeting tax and social security obligations, and not having a criminal record.

The regulation of renewal is based on the continuance of the employment contract or self-employment. It allows certain adjustment that comes with a new employment contract, different from the one for which permission was originally granted. There we find fully reflected the direct link between immigration and the needs of the labour market. This relationship between immigration and the labour market is also humanized when unemployment benefits are recognized as a right that the worker has earned by making social security contributions. Furthermore, by allowing renewal for persons receiving public assistance benefits aimed at social integration and employment, the legislation provides those persons an opportunity, while rationalizing public investment in social policies. The regulation of renewal also reflects, even if dimly, a person-centred perspective. For example, when it foresees a situation in which a person becomes unemployed, the renewal of residence can be granted in virtue of the resources of the spouse or another person with a similar degree of affective bonding.

There are other obstacles for renewal. The public administration has a certain discretion in deciding whether to concede renewal or not, such as when a foreigner who has committed a crime has been pardoned or finds him/herself in a situation of conditional remission of the penalty or imprisonment; or when the foreigner has failed to fulfil his/her obligation with regard to taxes and social security. Similarly, the administration evaluates the foreigner’s effort at integration, after taking into account the positive report of the Autonomous Community where he/she lives. While it appears logical that a decision needs to be made about whether or not to renew the permit of someone who has broken the law, it would also be desirable to have evaluative criteria which limit administrative discretion. The integration effort referred to in the renovation regulation needs more careful consideration.

Unemployment is a very serious threat. It does not automatically mean that renewal is impossible. There is allowance for different situations. Still, it does not cease to be a threat, all the more so the more years the immigrant has spent in the country. Prolonged unemployment leaves its mark on every worker, but for residents with temporary authorization, it adds the possibility of entering into irregular status and of having to start all over again from zero, when in fact they have already reached a certain degree of integration.

The limited right to live in family

The rubric of family reunification is one of the ways for regulating the entrance of foreigners into Spain. Since this seems to have more to do with external borders than with the borders legally
erected within the society, it might be argued that it should not be considered in the context of these internal borders. However, family reunification is also the procedure that recognizes that all those residing in Spain and forming part of society have a right to live in family and have a family life.

The LOEX limits the right of reunification to categories of first-degree relatives. Given first consideration is the spouse or another person with an analogous degree of affective bond. The law foresees that the legal system of the immigrant may allow polygamy, but then only one of the wives is allowed to enter. The law also foresees that the immigrant may have been married to other persons before getting married to the current spouse. In such a case, the admittance of the present spouse is conditioned on the divorce of earlier spouses or the nullification of the marriages. The law is especially suspicious regarding any abuse of the institution of marriage for the sake of facilitating immigration (matrimonies of convenience). Although the law expresses caution and restraint in regulating the reunification of a spouse or partner, it nevertheless places value on the moral and economic dimension of the affective relationship. For example, it allows an unemployed migrant to renew a temporary permit when his/her spouse or partner complies with the requirements of family reunification. These requirements are extremely important, and we will consider them later.

Reunification can also include offspring who are under 18 years of age or who are older but disabled. With far more limitations, it can include parents and grandparents, but normally they have to be over age 65 and therefore not in the work force; even then, there have to be good reasons justifying the need for reunifying them. The extent to which the law guarantees the rights of minors is debatable. The law recognizes their right to receive affection and education from their parents and also the right of all children to obligatory schooling. There is even an assumption of family permanence when a foreigner with irregular status has a child who is Spanish. It is not so clear, however, that the law always acts in the interests of minors when it comes to non-accompanied immigrants who are minors. It does not provide them with adequate accompaniment in the transition for childhood to adulthood; there is a scandalous lack of protection for many such young people.

But about one thing there can be no debate: the law is unjust to families formed by immigrants in placing such great limitations on the right to reunite the parents of the adults. The reason is simple. The extended family provides basic support in two areas: coordinating work life and family life and confronting the contingencies of the economic crisis. It is doubtful that older parents coming newly to Spain will provide an economic cushion for their children, and it can be argued that if immigrants do not have sufficient resources for receiving their parents, they should not be able to bring them over. But it is evident that, in limiting the reunification of older parents, the immigrants have serious problems in coordinating their work lives and their family lives. When the work days are long and irregular, when the labour is exhausting, the children may be growing up alone at home, without the care and attention that could be provided by grandparents. Unless the immigrant family has made advances in the process of social and economic insertion, so that it has stability and adequate income, it is difficult for one of the spouses to stop working or to work less in order to take better care of the small children.

One of the contributions of immigration to Spanish society has been the massive incorporation of women into the labour market, with the corresponding adjustment in the relation between working life and family life. It is only right that immigrant women should enjoy some of the same benefits they have made available to Spaniards. Not only is it right, it is advantageous. Personal integration takes place through family integration, and both are necessary if we are to speak of social integration.
The law both regulates and limits family reunification. The original draft of the legislation points to a type of regulation which is much more restrictive than the law. In effect, the law conditions family reunification on the availability of sufficient economic means and adequate housing for supporting the family members who are to be reunited. But when the draft of the law stipulates the guidelines for calculating the economic means necessary for reuniting one or more family members, it seems that only well-off persons have the right to a united family life. It is true that family reunification should be founded on the ability of persons to make a go of it and that family life requires economic and housing conditions that allow it to develop with dignity. Furthermore, it would be wrong to impose an excessive burden on society by having reunited families depend on public assistance. Still, it would not be just to deprive large parts of our poor population of the right to live in family. One of the clearest demands of the social forums and platforms is a reconsideration of the economic guidelines governing family reunification.
Practices that crystallize borders

There are three administrative practices that express very well the determination in our society to crystallize borders that affect a part of the foreign population. Two of them can be seen at the municipal level: the obstacles to becoming registered as a resident, and the blocking of authorizations of temporary residence through emission of negative reports about sociability. A third type of social border is observed in the management of immigration and deportation controls, such as the tendency of the national police to use ethnic traits in requiring documents of foreigners, and the reality of the centres where foreigners are detained.

Barriers to registration as local residents

The municipal register is the administrative list of all the residents of a municipality. It is therefore a statistical tool: it keeps track of how many persons live in a territory. The basis for registering as a resident is the simple fact of dwelling in a place; it is not the title of the house or apartment, nor the type of dwelling, or even the fact of living in substandard housing or being homeless. It is true that evidence needs to be presented to show that one lives in a place, such as title of property, leasing contract, rental receipt, but also receipts for local social services, etc.

The registry allows government resources to be distributed among the different administrations in function of the population resident in each territory. In this sense, there are certain rights, services, and benefits to which people are entitled simply by virtue of residing in the place where they are registered. The registry is, therefore, the legal condition for enjoying certain rights, but of itself it does not grant any right.

The LOEX orders the local administrations to include in the registry the foreigners residing habitually in their territories and to keep the statistical information about them up to date (art. 6.3). In no way does the LOEX make registration depend on prior possession of a residency permit or student visa. It is true that it sometimes links the exercise of a right to the double condition of being a legal resident and of being registered in a municipality: this is true of all the rights provided for in the LBRL, and of the right of a person to be heard in matters which affect him/her (art. 6.2). But in the case of other rights, it only requires that one be registered in the municipality where one habitually resides, but not that one be legally resident; such is the case, for example, for having access to health services in the same conditions as native Spaniards.

The LOEX requires the municipal governments to inscribe foreigners on the registry solely on the basis of their having established residence. But for that reason it considers a serious infraction any falsification of the data that is required for becoming listed in the municipal registry according to this law, even though such offenses do not constitute a crime (Art. 53.1.c). It also considers it a grave

9 Article 16 of the Law of Bases of Local Administration (LBRL).
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infraction for the owner of a house to consent to a foreigner’s inscription in the municipal registry, when the house is not the real residence of the foreigner (Art. 53.2.d).

Some municipal governments have made inquiries about cases concerning foreigners asking to be registered, for example, whether a passport without a visa can be considered valid and sufficient, in the case of foreigners who don’t belong to the EU and want to be listed in the register. The reply to this inquiry arrived through a report of the Attorney General of the State, dated January 20, 2010.

After reviewing the constitutional doctrine and the existing norms regarding the municipal registry and immigration, the reply concluded:

1. The inscription of foreigners in the municipal registry proceeds independently of whether they have legal residence in Spanish territory; it is therefore not proper to deny inscription on the grounds that the foreign citizen is not legally resident in Spain, and

2. For the purpose of processing the requests for inscription of foreigners in the municipal registry, a passport should be understood and considered as valid and sufficient, even if it does not have the prescribed visa.

This response, which leaves no doubt about the legal obligation which the local governments have, gave rise to a further question, about the need to adapt the Spanish regulations concerning registration to what is laid out in the EU Return Directive. The question is whether the local government is violating what is stipulated in the directive when it inscribes in its registry a person from another country who is known not to have authorization for residence -- and accordingly, whether Spain should not modify its regulation concerning registration, as required for adaptation to the directive of return.

The European Commission replied by recalling that the EU Return Directive allows two alternative actions when a public authority has knowledge that a foreign national does not have a regular status: it may issue a return decision (through voluntary means or actual enforcement) or it may proceed to regularize the foreigner’s status. The same directive also indicates that there is a need to address the situation of nationals of third countries who are in irregular status but cannot yet be deported; it deems it proper to define the basic subsistence needs of such foreigners, according to the national legislation.

In accord with the constitution, the LOEX recognizes that some services are so basic that they should be guaranteed to every person who resides with some permanence in Spanish territory, even if the person lacks authorization of residence. The municipal registry, recognizing this fact, allows foreigners with irregular status to have access to such basic services as health care and education (when the foreigners are minors).

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10 For a more exhaustive treatment of the topic, consult the report of Caritas Española and the Jesuit Migrant Service-Spain, Registration of foreigners and social cohesion. Juridical analysis and practical reflections. A review in light of the directive of return. Available in Spanish at:

Quite another matter would be the use of the registry to carry out the provisions of the Return Directive, whether by providing data which facilitates the procedures for imposing return (or deportation, as the case may be) or by facilitating the procedure of regularization.

Right now there is no doubt regarding the legal obligation of local governments to register the foreigners who live in their territories, independently of their administrative status as regards immigration. But there are still many administrative practices that hamper the access of many foreigners to registration.

There are foreigners who lack passport and cannot obtain it, while there are others who have a passport but cannot renew it. Some nations have no diplomatic representation in Spain, so that their citizens would have to travel to other European countries to get the necessary documentation (which of course is very difficult for them). Other nations, even if they have diplomatic representation in Spain, often do not train their personnel for these tasks of documentation. There are also cases like that of the Democratic Saharan Arabic Republic (Western Sahara), whose documentation is not recognized by Spain. Since persons without a passport cannot prove their personal identity, they are denied registration.

There are many foreigners, no matter what their administrative status, who have difficulties in proving their habitual place of residence. In some cases it is because they have rented a dwelling by simple verbal contract and the owner, not wanting to declare this source of income, leaves no documentary evidence. In other cases it is because the immigrants have subleased a dwelling from a lessee who has no right to sublease or who does not want to declare that income in order not to lose social assistance. In still other cases difficulties arise because the immigrants are required to go through further procedures after presenting a title or a leasing contract, and these procedures turn out to be very costly. Especially problematic is the situation of domestics, whose employers often deny them the right to be listed as living in the family dwelling. There are also officials who refuse to register foreigners assisted by social centres, when it is quite legitimate to do so by listing as their dwelling the address of a public service or a social organization. Other officials refuse to register those living in substandard housing, and this despite the explicit instructions of the National Institute of Statistics. The casuistry goes even further, but these examples serve to show the injustice of the present situation, which is the cause of much privation among immigrants.

The barriers to registration reveal some of the borders that crystallize around different groups of people. They reveal the great resistance to including as part of “us” people who are struggling hard to get ahead in life despite the rigidity of an administrative system that makes residency visas very hard to get. Also excluded are those who cannot gain access to a permanent dwelling in worthy condition, or those who occupy dwellings only through unjust contractual arrangements.

In a way, the resistance to registering immigrants reveals a desire to reduce social expenditures by targeting one segment of the population that can be easily excluded. However, the most basic and
universal social expenditures are in everybody’s interest: for example, the refusal to offer health care has repercussions on the health of the whole population.

It is understandable that those foreigners who do not keep their inscription up-to-date should be removed from the registry – the fact is that immigrants, soon after arriving, often move from one area to another. The aim of this policy is to reduce duplications and avoid inflation of population figures, but often the policy makes access to basic social services more difficult for many persons.

**Reports “de arraigo” and reports of integration**

The LOEX requests local governments to issue “informes de arraigo”\(^{12}\) and reports of integration, and these are taken into account in the processes of extraordinary regularization and of renewal of authorization for permanent residence. The elaboration of these reports helps the municipalities to detect the civic context with which the immigrants will enter into contact in their first years of living in Spain – which is therefore the civic context enabling integration. It also helps to trace the new neighbours’ paths of integration into society, and it allows policies to be designed that reinforce community-wide integration and make immigrant integration into society more effective.

There are also local governments that insist on informing about the non-civic behaviour of their foreign residents; they insist that their reports be considered decisive about the approval or denial of renewed temporary residence.

The LOEX foresees the eventuality that foreigners may manifest non-civic behaviour that hampers social integration; such behaviour may sometimes be so serious that it merits deportation or at least the non-renewal of authorization of temporary residence. This is what is spelled out in art. 57.2:

Furthermore, it will be a cause of deportation when, prior to the processing of the corresponding documentation, the foreigner has been convicted, either in Spain or abroad, of delinquent behaviour which in our country would be a crime punishable by more than one year’s imprisonment, except in the case that the penal antecedents have been cancelled.

And the regulation after de LOEX (RLOEX), which is now in preparation, proposes that special consideration should be given to renewing the residence of those who have served their sentences, those who have been pardoned, and those who are in a situation of conditional remission or suspension of the punishment. Also taken into consideration is the degree to which tax and social security obligations have been fulfilled.

Some municipal governments have attempted to make foreigners’ involvement in less serious neighbourhood conflicts or non-civic behaviour an impediment for renewing residence. They are quite right in wanting to combat vandalism and in seeking to improve the ambience in the communities and neighbourhoods, but at the same time they propagate a message that distorts the reality. That message is that the people responsible for the deterioration of neighbourliness are the foreigners, especially during their first years living in Spain. Blame is also placed on the children of long-term residents, who have recently become more active. The municipal authorities err, however, when they think that a policy of deportation is the best solution. Deportation may be

\(^{12}\) Literally translated: reports ‘of having taken roots’. In the Spanish legal system, a foreigner can be regularized giving evidence of having lived in Spain for three years, such report provided by the local authorities, and a labour contract for a whole year. Roots are measured after participation at associations, training, library cards, etc.
called for in some cases, but it cannot be a substitute for policies that improve social conditions, provide civic formation, and promote neighbourliness.

**Two images in the policies of control and deportation**

The first image: a national police patrol stopping a vehicle or accosting a group of dark-skinned persons and asking for documentation.

The second image: an internment centre for foreigners, run along the lines of a penal institution.

The first image takes us to two borders: the legal and the psychological. The law defines, within Spain, a border between persons with authorized residence and persons with irregular status. The law orders the state’s security forces to monitor documentation that gives evidence of lawful residency. There are many occasions when any citizen may be asked for identification, but it is almost always for security reasons. In those customary control points, it would be normal that notice be taken of persons who reside in the country illegally, in order to begin appropriate procedures. Likewise, it would be normal to impose a fine on those Spanish citizens who have failed to renew their identity documents, on EU citizens who have not taken care to obtain the certificate for community residents, and on those foreigners who have decided to reside in Spain without going through the rigid administrative requirements. It would be understandable that in some cases, depending on the gravity of the circumstances, third country nationals in irregular situation would be deported rather than fined.

But there is a second border, the psychological one, which makes a foreigner of any person with distinctive features, whatever the person’s nationality may be. In 2002 a French Jesuit wanted to have real experience of the life of immigrant workers in Spain, so he looked for a summer job in agriculture or the hotel trade. Well, he began to experience the immigrant reality starting with his bus trip from Paris to Alicante. Police officers, first French, then Spanish, asked him five times for documentation; they looked at him suspiciously and demanded that he prove his French nationality. The reason: his appearance, which was that of a Creole from Martinique, both French and Afro-American.

The police receive instructions to check the documentation of anyone they presume to be foreign, and there is a well-established practice of doing so in places of transit: bus terminals, train stations, etc. But it is not a question just of control points which everyone passes through; rather, persons “of foreign appearance” are singled out. The persons most suspected and investigated are those with features that are discernibly Black African, North African, Quechua, Aymara, Indian, etc.
That is not acceptable. The committee for the elimination of racial discrimination, part of the U.N. High Commission for Human Rights, has issued an observation in this regard to the Kingdom of Spain.\(^1\) The committee expresses its concern about information it has received about identification checks and police raids based on ethnic and racial profiles. The raids are carried out in public places and neighbourhoods where there is a high concentration of foreigners, and they are aimed at detaining anyone found to be in irregular status. The committee consequently urges the government to eradicate the practice of identification checks based on ethnic and racial profiles and to modify any regulations and instructions which could be interpreted as justifying indiscriminate detentions and which restrict the rights of foreigners in Spain. Furthermore, it urges the government to provide adequate training of police so that they respect and protect the basic rights of all persons, without any discrimination for reasons of race, colour, or ethnic or national origin.

Anyone visiting the centres for internment of foreigners encounters persons who are subject to great anxiety. They know that they are very likely to be deported some day, without prior notice; they have almost no hope of being freed before the deportation is carried out. Their anxiety is augmented by their separation from their families, and they are fearful that deportation will mean they cannot continue working so as to help out their families in their home countries. The policy of deportation is aimed at persons who have committed crimes. Even so, there are foreigners who have been accused of committing crimes simply because they react nervously at a police checkpoint or are denounced for resisting authority or being aggressive. Deportation also affects those who have never done anything wrong, except for having irregular status. These people find it very hard being detained together with those who have committed crimes; they feel they are treated as if they also were delinquents. The police in charge of the detention centres and supervision of the detainees often behave as if they were penal institutions. They are quite different from prisons, however, since the latter at least offer opportunities for work, study, and other beneficial activities. The people interned in the detention centres, in contrast, have nothing at all to occupy them. The inactivity, the anxiety, and the criminal past of many detainees join forces to generate situations of violence, to which the police respond with even greater violence. Certain courts have allowed denunciations to be made against police officials who have used excess violence or who have acted in a xenophobic or racist manner.\(^1\)

Immigration detention centres are the clearest expression of borders that have crystallized within the country. They are the antechambers of the external borders. Being detained in such a centre, even if it is with the slight hope of being freed again, brings home a clear message from the state: “you do not form part of this society.” It is the most dramatic border, all the more so for those who have spent many years in Spain, for those who have worked hard at becoming integrated, and for

\(^1\) The complete, non-edited version of the report is available at:
http://www2.ohchr.org/english/bodies/cerd/docs/co/Spain_AUV_sp.pdf

\(^1\) For a more exhaustive treatment of the situation of the internment centers in Europe, see the report of JRS-Europe, Becoming vulnerable in detention. It is available at:
http://www.jrseurope.org/publications/JRS-Europe_Becoming%20Vulnerable%20In%20Detention_June%202010_PUBLIC_updated%20on%2012July10.pdf

Also interesting is the Centro Pueblos Unidos report, 100 ventanas a 5.000 vidas truncadas. Informe de Pueblos Unidos sobre el CIE de Aluche en 2010 [100 Windows on 5,000 Truncated Lives. Report of Pueblos Unidos on the Aluche Detention Centre in 2010], available in Spanish at:
those who had nearly reached the point where the authorities would certify their permanent
residence, allowing them to become regularized thanks to a labour contract.

Only too revealing is the situation of some twenty Indian citizens who arrived at Ceuta more than
four years ago. Upon arrival they were sent to the temporary stay centre for immigrants. The
temporary stay centres, unlike the detention centres, are open. These immigrants have learned
Spanish perfectly. They have collaborated in the society and have been able to work. They have
received support and sympathy from the Ceutian population, which feels they have become
integrated. They have not been permitted to register, nor have they been allowed into the
peninsula, but neither have they been deported quickly.15

To learn more about their situation, consult the web page of the Elin association, which is advocating that
the process of having them be deported be halted: http://actuable.es/peticiones/promesas-incumplidas-
paremos-deportacion-los-20-indios-de

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What need to be done to overcome borders

1. **We need to broaden our perspective about who “we” are:**
   - The following equation is incorrect: there is unemployment, so let the immigrants return home. Nor is it correct to think that we should accept immigrants only because Spanish society still needs labour and generational replacement.
   - Immigration forms part of our society’s structure: “Spanish society” is made up of both Spaniards and foreign residents with diverse juridical status.

2. **We need to evaluate how we perceive the threats associated with immigration and describe the resulting fears:**
   - We need to put a name on the fears associated with the economic crisis, and consider carefully the costs and opportunities of responding with solidarity and resisting the temptation to react with antagonism.
   - We need to consider what makes the various types of immigrants more vulnerable to the crisis and what makes them more resistant; we need to compare their situation with the vulnerabilities and protections that Spaniards have; and we need to learn how we can join hands to move beyond the crisis.
   - We need to put a name on the fears about dilution of identity, loss of linguistic and cultural heritage, being introduced to new customs and new cultural references; and we need to learn how to create a common identity which encompasses the cultural richness of all the different groups.
   - We need to critique the discourse about immigration and integration that is heard in the political and social spheres and in the mass media: we need to identify the perspective taken regarding the question, by testing to see whether the discourse is based on reliable data that are interpreted correctly, by evaluating the accuracy with which the problems are presented, and by judging whether the solutions proposed work to strengthen social cohesion or to fracture it.

3. **We need to take note of the inequality established by law between persons with different juridical standing, and ask whether it is justifiable to give preferential treatment to some while limiting the rights of others, considering that the horizon which gives law meaning is equality among all persons.

4. **We need to keep in mind what is at stake in integration, considering both meanings of the term:**
   - Determining the responsibility of each active agent in the integration process of foreigners and in the general integration of the whole society.
   - Taking the integration of society to mean its ability to achieve a communal sense among its members, while respecting diverse identities and cultures in keeping with a common respect for the constitution and the law.

5. **We need to understand how some internal borders experienced by immigrants can work against the general integration of the whole society:**
• There are lengthy processes of integration that are cut short when unwanted unemployment prevents the immigration from being able to renew the authorization for temporary residence.

• The difficulties of family reunification have high personal costs which affect the whole society: lack of an affective life, erosion of family cohesion, difficulty in finding personal meaning in life (which affects labour productivity and sociability), and the added difficulty of harmonizing work and family life when a person cannot rely on parents or extended family networks.

• The denial of the right to be listed in the municipal registry deprives immigrants of access to the basic health care that is provided for the benefit of the whole community, and it deprives immigrant children of the education to which they have every right.

6. **We need to seek the best solutions to the problems of communal living in the neighbourhoods and develop the civic consciousness that is essential for a well-integrated society:**

• The first and best response is investment in benefits that encourage civic formation and greater citizen participation.

• Blaming the foreign population for the deterioration of a sense of community in particular neighbourhoods may be an oversimplification or a search for a scapegoat.

• Deporting immigrants for committing non-civic acts or refusing to renew their visas should be a sanction reserved for serious cases, and it should be imposed only after taking into consideration the process of integration of the whole family.

7. **We need to be fully aware of the violations of human rights which take place at the most hard-and-fast borders imposed upon the immigrants, which are document controls, deportation, and prior detention.**

• Document controls that suppose general antagonism toward immigrants should not be tolerated, nor should severe limits on access to stations. Even less permissible are any controls based on ethnic features.

• As long as the immigrant detention centres exist, they should be used only by way of exception, and in every case care should be taken to provide humane living conditions for the detained; they should suffer no violence or ill-treatment at the hands of the guards, and they should receive the assistance and support provided for in the law.
Overcoming borders