

Can the Immigrants' Struggles be Emancipative?

By

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The Struggles of Undocumented Immigrants in 2001 in Spain: Subjects of Legality in a Complex Legal Field

Migrant struggles are as old as migrations. Racism, exclusion, social conflicts have been constant processes in heterogeneous societies. However, there are certain characteristics that have no similarities with the past. Immigrants all around Europe are erupting collectively, with new demands that redefine legal concepts, identities and spaces.

The Northern societies are attending the surfacing of immigrant movements, not as folkloric or ethnic celebration associations, but as social movements that claim the recognition of rights, the end of legal exception and of social and institutional racism, etc. Refugees, economic migrants, smuggled victims, or transnational activists, among others, join together under the same flag: rights and papers for all! This implies the acquisition of new collective consciousness: the *Sans-papiers*.

In January 2001, more than 800 undocumented immigrants (mainly from Pakistan, Bangladesh India, Morocco and Black Africa) shut themselves (in *encierros* that is they cordoned themselves off) during 47 days in 10 churches of the city of Barcelona. At the same time, other coordinated protests occurred in other places of Spain (Madrid, Valencia, Almeria, and Murcia). The objective was clear: to protest against the Aliens law that discriminated, criminalized and condemned undocumented immigrants to an unlawful status. After three months of *encierros*, massive demonstrations and even hunger strikes, the Spanish government was forced to negotiate and to open an extraordinary regularization process. This is why the *encierros* of Barcelona in 2001 should be perceived mainly as a legal struggle. The initial political collective action approaches moved on to negotiation

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strategies on legal terms and conditions. The juridification of the conflict, and specifically the use of diverse legalities, pushed the State to the corner.

We cannot explain the case study from the single legal point of view of State law, aliens' law in this case. Nation state monism has historically imposed its "methodological nationalism" (Wimmer and Glick-Schiller 2002), excluding the analysis from other legalities. The transformation of the formal law, the recognition of certain rights and the seed of a future new legality was fruit of the inevitable collision of multiple legal orders. This idea of new legal subjects (Wolkmer 2006) carved across multiple legalities – inter-legality (Santos 1995, 2002) - needs a detailed reflection.

The first point we must underline is that, the analysis of the struggles has been done according to its inherent legal diversity, this is, and the *encierros* is seen as a space with multiple legalities. We would call it *horizontal complexity*. As we have seen across the case study, there were multiple normative sources coexisting in the terrain that were relevant in solving, transforming or enforcing the conflict. Each of these legalities has presented different grades of impact, and even borders between them are not as delimited as a researcher could wish. However, instead of limiting the analysis to those that have been decisive in the agreements (Barcelona agreement mainly, but the *Real Decreto* of June 2001 as well), we will also refer to those legalities that have arisen during the whole process of struggle and that have drawn the path for the resolution.

Secondly, before referring to the specific sources of law that have shaped the case study we need to refer, not only to horizontal complexity, but also to the multiplicity of scales among which the immigrants have posed their resistance. This is what we could call *vertical complexity*. Of course national legal norms have been central, mainly because the Government was always forced to maintain the negotiation within the framework of its legality, in appeal to the Rule of Law and Democracy. This requirement has shown how many times the rule of law (Estado de Derecho) and other democratic principles have adopted new meanings, such as the State law (Derecho del Estado). Thus, immigrants have strategically transferred their demands to supranational institutions such as the Catholic Church or the European Parliament seeking external agents that guarantee a real Rule of Law through trans-national human rights. Local institutions, such as the city councillors and social assistance workers from municipalities, have also intervened, not directly, but complementing the agreements.

Thirdly, following the ideas of Boaveature de Sousa Santos, we need to refer to the trichotomy legality-ilegality-alegality. Most of the actors involved in the *encierros* used illegal and alegal tools to achieve their goals, not only immigrants and their supporters, but also the State officials and the politicians. This aspect also expands the plurality through the third dimension, the *spatial complexity*, which explains the presence of multiple norms not necessarily recognized by the State law, but on its margins.

So, considering these three angles through which the observation of the legal plurality has been done in the *encierros*, we are able to list a number of legalities that shaped the struggles:

- State aliens' legality
- International and trans-national legality
- Natural legality
- Religious or Canonic legality
- Legality of the place of origin
- Alternative dispute resolution legality
- Informal Administrative legality
- Insurgent or alternative legality
- Legality born in the struggles
- Unlawful legality

The Use of State Foreigners' or Aliens' Law: From Legal Restriction to Progressive Interpretation or Exceptionality

As we have seen, Spanish alien legal regime covers a wide number of norms that go from the highest constitutional level down to the administrative level of instructions and circulars. It is also worth saying that the whole regime is embedded to what international treaties and European Union Law foresees. Although all of them are formally submitted to constitutional and legality control, Courts are not as fast as Legislative or Executive powers and many times the damage is irreparable. Once somebody has been detained, imprisoned for several days, or even expelled to their home country or to a third country where human rights are not guaranteed, there is little to repair. As we have seen before, almost seven years after the enactment of Law 8/2000, the Spanish Constitutional Court has declared some of its articles to be unconstitutional. On the top, the main tool of regulation has been the Organic Law that, in spite of its rigid nature in the last 8 years, has been reformed several times most of them under the conservative Government in order to adapt it to the objective of external and internal control of migrants.

This legal context was crucial in the coming up immigrants' struggles in 2001. The continuous slogans published in the media and pronounced by the politicians were a constant menace to anybody in irregular situation.

The deficient regularization processes held during 2000 and the resolution letters sent in December 2000 by the Foreigners' Office notifying the denial of the regularization application and the subsequent order to abandon the State's territory were also a decisive factor.

Summing up all these circumstances, we get to what Solanes (2008) or Izquierdo (2004) called the institutional creation of illegality. It is the institutional legal system that fosters illegality in order to control immigrant

population and to deny fundamental civil, political and social rights. In the year 2001, thousands of people were submitted to this regimen.

Secondly, we must underline that this legal framework was imposed by the Government to negotiate during the conciliation process. The initial demands to cease the police repression, non-application of deportation sanctions and regularization of all the immigrants in Spain, were refused by the Governors, in the name of legality. In this sense, legality, State law, was a limit to regularization and recognition of rights. Several ministers even dared to hide behind European law to safeguard their position. Supranational norms prevented them from accepting the demands posed by the immigrants.

This argument was turned round by legal activists. According to the European law, jurisdictional guarantees in borders and to detainees, and compromises to erase racism and xenophobia were the only State orders. These say nothing about regularization processes. During the fight, the voluntary work of lawyers to interpret the legal order progressively was decisive. Law was formally integrated to international humanitarian treaties and to democratic constitutional principles. There should be a gap through which demands could be presented as legitimate and legal.

The need for adapting the political demands within the framework of law (as a result of critical engagement of the legal activists) resulted in demand of the basic claims which were presented publicly on 27-28 January 2001:

- The extension of the revision assumptions foreseen in the regularization decrees for those who were not able to fulfil all the requirements.
- An urgent assignment of a special budget for acquisition of staff and means to solve the delay in foreigner's offices.
- The guarantee that detentions and expulsion would not be carried out
- The granting of the residence permits according to what the law named "exceptional circumstances and humanitarian reasons".

Later these four claims were even more "juridificated" during the negotiation with the Ombudsman and face to face with the Government. The result was the Barcelona agreement. Under these circumstances, "juridification" could be seen more as a strategy of using alternatively hegemonic state Law (foreigners' law) rather than as a strategy of State to submit the movement to his terrain.

Undoubtedly, the key to the movement's victory was, apart from a continuous political struggle inside the churches and on the streets, the shrewd process of adapting the political claims into the legal-positive framework. It could be said that the legal struggle was decisive. What was initially presented as a repressive aliens' legal regime, turned out to have important gaps through which demands were fitted out. What was established as exceptional, unusual, and the last stage in case the Rule of Law failed, the "exceptional circumstances and humanitarian reasons",

became the main rule to be applied to a big number of *sans-papiers*. This idea, apart from being a character of this process, is also a specificity of the everyday life of lawyers and activists that struggle with foreigners Law. Foreigners usually walk on the margins of an exceptional law.

Supranational Law: Internationalization and Trans-Nationalization of Control of Labour and of Struggles

Supranational norms have a similar legal effect as the Foreigners' State law. Depending on the interpretation and prevalent application, they may be considered as progressive or emancipative, or, on the contrary, restrictive or conservative.

On the one hand, along the case study we have come across some references to bilateral agreements, the Fortress Europe, neo-liberal exchange of labour.

The *encierros* lasted from January to almost June 2001. In the meantime, the Government negotiated the first bilateral agreement between Spain and Ecuador on global control and management of migratory flows. It was not the first bilateral agreement, because there were other related to deportation, but it was the first one that created the concept of 'foreign labour'. Afterwards, other agreements were signed following the schema of the Spain-Ecuador model.

The government presented the Ecuador Plan as the kind face of migration management. However, as it was emphasized in the study, one of the principal purposes of this new regulation was to boycott the struggles that were taking place. To be exact, the immigrants, who died in the car accident in Lorca, were from Ecuador, as well as those who first stood up in the rallies and assemblies in Murcia. Similar "voluntarily return" plans concerning the main nationalities in Spain which were to be signed with other sending countries, took the shape of labour and repatriation agreements. This was the first step for a market-supply migration regulation.

Europe was presented as a fortress because of all the physic and legal border mechanisms that were raised around it (Schengen, for example). The plea against supra-nationalization of control was incorporated in immigrant demands. Mottos in demonstrations and references in political manifests presented Europe's frontiers policy as the direct cause of death in the *Estrecho* seashore between Morocco and Spain, and as the practical machinery of selective labour migration.

On the other hand, however, certain supranational formations, and especially some institutions, such as the European Parliament or the Catholic Church were seen as allies that could act "from above" and change Spanish migratory course. The spokesperson of the Defence commission of the Bar Association of Barcelona Elvira Posada invoked the inalienable jurisdictional guarantees that foresaw conclusions of the Tampere European Council. Tampere was also mentioned by the euro-parliamentary Krivine when he referred to the immigrants that were sitting-in inside the churches

in Barcelona. He demanded, firstly, the cease of Schengen and Eurodac systems in order to achieve a real freedom of movement inside the European territory; and, secondly, the enforcement of a real equality of rights that could lead to the European citizenship based in residence instead of nationality, and that granted political rights to the third country nationals.

The Catholic Church is undoubtedly a trans-national organization that, as Santos said in his research in Recife, sometimes acts as a vertically organized trans-national service provider corporation, and other times as a trans-national NGO able to mobilize all its resources to achieve its purposes (1995: 382). In this specific case, the Church plays the role of an NGO, and sometimes it is even more close to the Marxist movements, because of the socially oriented ideology of some of the priests and parishioners. References to the resolutions of the Fourth Worldwide Congress on Migrations and to messages sent by the "chief" of Vatican, Pope John Paul II, demand a general regularization and recognition of inalienable dignity rights.

Other trans-national NGOs, such as the Red Cross or Medicus Mundi, also intervened in the *encierros* offering voluntarily (or not) their help and services.

Finally, the direct appeal for the application of rights contained in the UN or ILO conventions is constantly presented in manifestos and other documents. As it was said before, the emergence of supranational rights regimens clash with States' policies and regulations. In this specific case the Freedom of movement principle, contained in the UN treaty of human rights or the Non-discrimination before Law and at work, so many times repeated in the ILO conventions, are the bases for the demands for equality or freedom to settlement.

The Natural Law: "No One is Illegal, Everybody Deserves Dignity"

Most of the demands claimed during the struggles in 2001 were based on natural law, (sort of universal values that should be necessarily inherent in the rights of a human being, and that immigration regulation do not recognise nor guarantee). We could establish three clusters or main ideas that fit under the demands based on universal values: Dignity or Respect of humanity, Equality and Freedom.

- *Dignity*: The main critique raised against Foreigners law was based on the respect of humanity. As many voices claimed during the *encierros*, and are still claiming, contemporary migration regulation favours all kinds of abuse and exploitation. Labour market and prisons have been presented as core contexts when talking about inhumanity. The lack of fundamental rights is in itself an attack to dignity, as the Constitutional Court has said recently.
- *Equality*: Since 1985, and especially when Law 8/2000 entered into force, in Spain, society was stratified in at least three main groups of

people: nationals, with all rights; regular foreigners, with some rights; and irregular foreigners, who have some rights, but also have difficulties to enjoy them. "Papers for all" had a second meaning: equal access to rights regardless of the origin or nationality. And even equality between men and women presented very much during the *encierros*. Firstly, because the gender discourse was incorporated in most of the documents. Secondly, demands that were specifically linked to women were incorporated in the Agreements. And, finally, we must refer to the relevant role women played as individual fighters and leaders, but especially as spokespersons and negotiators chosen by the practically male Assembly of Barcelona. This fact supposed to be a personal and pedagogical experience for many men coming from extremely masculinised societies.

- *Freedom*. If contemporary borders regime needed to be described, such words as "limit" or "control" should have been necessarily incorporated to the definition. This is the reason why the third pillar of the *sans-papiers* movement is freedom to move from one country to another without the required visa, and to work and establish wherever desired. Although freedom of movement and establishment is partially formalized in the UN treaty of human rights, it is still considered a universal value that needs to be entirely recognized.

Some steps in the recognition of these universal values were taken in the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. However, in practice, most of them are still considered to be natural law rather than positive rights.

Could one even say that these universal values could be considered as trans-cultural values? As we have seen, there were many people with diverse cultural, ethnic, political and religious background in the *encierros*. Probably, individually or inside the community, these principles are not understood in the same way. However, as a collective they all shared and reclaimed equality, dignity and freedom as intrinsic principles connected to personhood.

Religious and Canonical legality: "the Law of Gospel is beyond Foreigners Law"

As we have seen, all of the *encierros* in Barcelona, and some of them in the rest of Spain, took place in religious catholic temples. Although the Spanish State constitutionally declares itself as "non confessional" (Art. 16.3), in some circumstances religious norms prevailed over State law, at least in practice.

The power of the words pronounced by the parish Mossen Vidal, "the Law of Gospel is beyond Foreigners Law" had an enormous symbolic weight.

First of all, it prevented the police from entering into Santa Maria del Pi. It eventually located a non-positive norm, gospel, above an Organic Law. Of course, the Police would have entered into the church following a mere order of the sub-delegate or any other public officer, but a kind of non-written social rule had stronger legitimacy than the formal legal source order. The second effect of the previous comment is the reinforcement of the *1953 Concordat*. This canonical norm that offered shelter and asylum inside the religious buildings was abolished in 1979. Somehow, due to the social respect of the inviolability of the temples or because of the ignoring of the abolition, the historically considered asylum in temples norms had full effects. Nevertheless, it is also worth saying that this social rule was no longer in force some years later when in 2004 again immigrants occupied the Cathedral of Barcelona. Neither gospel law nor social rule prevailed. The Police entered the church and moved all the occupants out.

Law of the Place of Origin

People usually migrate carrying their cultural background as well as their legal or normative values. If possible, norms sourced in the society of origin are transplanted into the society of settlement. Additionally, in many societies, religion, community culture and law are so strongly linked that it appears to be really hard to differentiate between cultural norms, religious norms and legal norms. One is as binding as the others.

During the analysis of the gathered information it has been difficult to find out whether legalities based on those notions from the country of origin were applied or not in the *encierros*. We must bear in mind that by 2001 we cannot talk about community conformation or ethnic structures. There were basically men, with no families (irregularity did not allow reunification); South Asians did not have their own mosque, and most of the ethnic organizations that exist today were still incipient. However, we have come across certain facts that indicate the influence of behaviour patterns that may be considered as coming from sending societies.

First of all, trying to understand the patterns of organization of each community, some of the respondents agreed to say that South Asian communities (Pakistanis, Indians and Bangladeshis) had a strong hierarchical structure. There was no way to verify if it corresponded to a religious, cultural or social pattern.

Secondly, when the Ombudsman mediation was to be opened, some of the Pakistanis and Indians talked about *Sarpanch*. This institution refers to a democratically elected head of local self-Government in the Punjab region (India and Pakistan). It is the focal point of contact between government officers and the village community. As one of the relevant persons in Pakistani community, Nawas Keyani, declared to *La Vanguardia* newspaper (3 February 2001) when he was talking about the Catalanian ombudsman mediation, he had mediated many times between members of his community and now the tradition was maintained in Barcelona. This

does not mean that *Sarpanch* institution was transplanted to Barcelona *encierros*, but somehow the similarities between institutions could have helped to the communities to understand the role on the Ombudsman.

Thirdly, we need to refer to the prohibition of eating pork meat and *Hallal* food among Muslim people. According to *Quran's Sunna* [2:173] "He only prohibits you eating of animals that die by themselves (without human interference), blood, meat of pigs, and animals dedicated to other than GOD. If one is forced (to eat these), without being malicious or deliberate, he incurs no sin. GOD is Forgiver, the Most Merciful."

The Quran is the Holy book of Islam. Most of the Pakistanis, Bangladeshis, Moroccan and some Indian people were Muslims, and after the hunger strike the Assembly had to organize food for all the immigrants inside the churches. This Islamic rule was fundamental in the taken decision. In this sense, the food providing commission in the *encierros* organization organized the menus with due respect to the Sunna norm.

Talking about community norms, we should also mention what we could call the "Malica case". She faced community pressures to leave the women's *encierros*. She was criticized because she was not with the men of her community. Finally she abandoned the women's sit-in. While the entire legal system imported from home countries was not applied to the *encierros* case, but the social, religious or normative patterns influence the struggles.

Alternative Dispute Resolution Practices

Since the beginning of the *encierros*, the immigrants demanded a meeting with the governmental representative to negotiate. The Government publicly showed the determination of not negotiating with irregular immigrants, and afterwards always used backdoor methods to solve the conflict. Firstly, the *Generalitat* was asked to mediate since the autonomous government did not have the jurisdiction for granting residence permits, this mediation was refused by the Assembly. The second proposal came from the Catalanian Ombudsman, the *Sindic de Greuges*. His mediation was accepted and several meetings were held to come to an agreement. After each party had presented the demands and requirements, he and his group of lawyers presented the preliminary agreement that was signed by the parties on 3 February 2001. The Government accepted some channels of regularization and promised that the police would not prosecute immigrants for the lack of permit. The immigrants, from their part, acceded to abandon the hunger strike. In the following days the *Sindic* continued the contacts with both sides, but finally decided to quit the mediation. According to the text presented to the parties on 5 February 2001, the ombudsman had reserved two circumstances under which the mediation process could be ended: the lack of enough progress of negotiations and the refusal of one of the parties. Since government did not accept anybody representing the Assembly in the negotiation board, the *Sindic* gave up on the same day.

Insurgent or Alternative Legality

The *encierros* or the occupation of public squares and buildings, hunger strikes, boycotts, assemblies, demonstrations, civil disobedience was not mere instruments of protest. They were the only pacific tools irregular immigrant could use because they were deprived of any right for political and social participation. They could not have their voices heard within the bounds of legality. There was not a single article of State law that recognized any of this means of action.

For example, irregular immigrants could not join demonstrations, but the police could not prevent them from, especially in groups of five thousand or fifty thousand people, marches. The right to hunger strike does not exist in the Spanish legal system, but immigrants did use it and nobody could prevent them. Even the *encierros* as occupation of symbolic buildings was tolerated by the authorities.

At that time, no third country national had political rights recognized, neither national nor local. Democratic system was banned for them, even more when referring to irregular immigrants. These were even considered as outlaws. However, during the *encierros* (also before, and until today) democracy was not understood in the liberal sense of representative-institutional democracy. The connection between immigrants and social movements, especially with Anarchist, Marxist or anti-globalization collectives, initiated the experience of radical or direct democracy. Institutional bodies were useless because of the subjection to Law. And the Law was the reason for the *encierros*.

One single person, regardless its origin, sex or legal situation, could take part in a collective decision process, and what is much more relevant, that person could be elected to represent the community or the Assembly in the negotiation process or in a higher organ such as the state coordinator of *encierros*. And again, no authority could prevent this because it was not illegal by definition.

Of course, inside the *encierros* there were certain organization and certain norms to be respected. For example, assemblies had their own procedure. Not everybody could talk whenever they wished because there was a turn to be respected. Another example was internal cohesion. Unity during the *encierros* became the supreme norm. Divided immigrants had no strength. That is why Government tried so many times to break the group by taking side with some leaders or by playing one against another. These situations generated moments of internal conflict and were solved sometimes with dialogue, sometimes with the expulsion from the *encierros* or the relegation of the leader.

Each *encierro* had its assembly, where most of the problems were solved. Then, at least every spokesperson of each *encierro* took part in the general assembly. And finally, this general assembly designated spokespersons took part in the negotiations and participated as the State coordinator. Volunteers and immigrants formed different commissions that

were in charge of the diverse necessities of the struggle (health, negotiations, financing, food, propaganda etc). In the end, a complex structure was established where each group, commission or spokesperson had a special task, ordered by the Assembly, and to whom later reports should be passed.

In short, the immigrants also developed their own legality, an almost self-governing normative system made up of a number of rules to maintain internal order and external struggle. As well as in negotiation, the tactic was to find those gaps in the legal system that could be used for struggle causing the least danger possible. Irregular immigrants were invisible for rights but neither for protest nor democratic decision making.

Informal Administrative Legality

During the *encierros* the administration played a double role. As we have said before, publicly it needed to be presented as impassive and respectful with legality. Negotiations could only be carried out inside the limits of Law and even no irregular immigrant could take part in negotiation because this could suppose the recognition of irregulars as legal and political subject.

However, on the contrary, Administration had to turn a blind eye to many actions that were decisive for the conflict resolution. For example, some immigrants did not have a passport and without it there was no way to initiate the regularization. Some collectives coming from Black Africa pretended to be from another country, also from Black Africa, whose embassy was providing its nationals with diplomatic documents. As interviewed people said, Administration knew these were fake; however it did nothing to investigate it. Another example could be related to the number of immigrants that took part in the *encierros*. It was uncountable. Each actor in different moments used to give an estimated number. Once the *encierros* ended, around two thousands application forms were presented. Government knew perfectly well that all of them had not been inside the temples. But, from all points of view, the most informality Administration committed was the police omission of the duty of detaining immigrants in irregular situation. Every time immigrants stood outside the temple to read their manifestos or communications, police knew they were "irregulars", every time the negotiation commission met the governmental representatives the half of the spokespersons were irregulars. This temporary omission, as many others, was conquered through struggle and was formally contained in the different agreements.

Unlawful Legality

As mentioned before, *encierros* struggles presented a special dimension of legality. Inside the trichotomy of legality-a-legality-illegality, this last one also played an important role in defining the process. Both sides, immigrants and Government, committed different levels of

transgression. Each one considered that it was legitimate doing it for a certain purpose.

Of course, the Administration could not commit flagrant offences, at least during the *encierros* since the media of the half of the world had its eyes on them. However, we must bear in mind that most of the reasons that carried the immigrants to such a strong protest were the number of irregularities and even crimes (torture, abuse, violations and infringement of humanitarian Law) committed in detention centres, police stations or in the streets against regular and irregular immigrants that went unpunished.

On the other side, irregular immigrants also used unlawful strategies to achieve the residence permits. Along the field work, references to mafias and to false documents constantly appeared. As we have seen, we need to differentiate between smugglers that impacted in the migratory process, including after arriving to the destination; and those immigrants that buy labour contracts or other official documents from other immigrants or autochthonous employers and officials. Both circumstances must be included inside the same phenomenon: irregularity fosters promotes unlawful business.

Encierros' Law

During the struggles and negotiations a number of official documents were produced. The Barcelona *encierros*, as well as the ones in Valencia, Murcia, Huelva or Almeria ended with the signing of agreements between government, trade unions and sometimes also immigrants. Besides the difficulty of establishing the capacity of the binding nature of these documents, relevant institutions such as the Ombudsman or different regional sub-delegations of Spanish government ratified those documents written on official papers.

The Barcelona *encierros* deserved a special socio-legal analysis because, as relevant politicians and ministers admitted, what the agreement contained became the legal guideline not only for the rest of similar agreements in other *encierros*, but also for the state level regularization process in June 2001. Definitely, irregular immigrants had become subjects of legality.

Encierros did not Modify the Legal Sense of Citizenship. They Just Produced Partial Modifications in Regulatory Level Norms

Although the final objective of the movement was the transformation or even derogation of the whole regulation of migration, and definitely, radical change of the relation national-foreigner, we must conclude that only small, but relevant, changes were achieved.

It was an incipient movement and still atomized. Previous important daily work and hard struggles had been done but not as big as

2001 *encierros*. In our opinion, those days of the end of January nobody could realise the magnitude of the “storm” that was approaching.

In addition, a part of the immigrants did not share the idea of rights for all and abolition of frontiers, but just wanted their permits or papers (in the selfish sense). As Suarez has pointed (1999), in the last twenty years in Spain obtaining the papers has acquired a fetishist character. The documents are seen as a magic amulet or charm that once obtained the nightmare of irregularity ends and a new life starts. This is why the processing of the applications and the notification of the administrative resolutions after the *encierros* caused so many tension and conflicts. It clouded the struggle. However, the *encierros* achieved a number of legally relevant triumphs.

First, the government had to implement progressively all around Spain the agreement that had been negotiated face to face with the immigrants and their representatives.

Secondly, the agreement modified substantial legal terms contained in the precedent and insufficient legal norms related to regularization processes. Hundreds of thousands of irregular immigrants became visible thanks to the whole struggle of the *encierros*.

Finally, although it is not convenient to establish a cause-effect relationship between some of the clauses contained in the agreement and the later reforms of law and regulation level norms in immigration and asylum Law, specially related to violence to women, exceptional circumstances and humanitarian reasons or settlement (*arraigo*), the legal hurricane that the struggles provoked, and concretely the job done by the lawyers and activists, settled the “before” and “after” in the way of understanding the legal struggle in immigration law.

Nevertheless, *encierros* did suppose the expression of an alternative way of understanding “citizenship in action”, similar to an insurgent citizenship, and initiated a path to state level and even transnational level of struggle.

Above all, *encierros* broke the social, political and legal invisibility that irregularity supposed. Immigrants, at least for a while, became legal subjects and emerged from the bottom of the civic stratification.

Despite punctual critiques, all of the immigrants inside the *encierros* had the same rights for taking part in the decision making. On the top, some rights that had been denied by the Law, were respected and settled in practice in those moments.

The social rights such as universal health aid, which was provided by medical volunteers' legal assistance, offered by militant lawyers and even language classes. The cultural, linguistic or religious rights were practiced when festivities or religious rituals were commemorated, when rules such as Muslim food or prayers was respected, or when each of the words pronounced in the assemblies or contained in the documents were translated into more than six languages.

Gender rights: women conquered spaces for autonomous struggle, winning the respect of the male immigrants, quantitatively dominant in the

encierros. The women were able to pose their claims from their own feminine and feminist perspective.

Participation in assemblies, demonstrations and *encierros* took political beings out of legally inert bodies. Individually and collectively, immigrants took part in one of the strongest struggles immigrant had ever carried out in Spain

To be precise, *encierros* struggles are to be located in a specific moment when Law had seized from irregular immigrants the principal rights for political and social participation the previous law, organic Law 4/2000 had recognized, such as meeting right, demonstration right, the right to join trade unions and labour strike, etc. In this sense, *encierros* supposed to be, at the same time a frontal infringement of foreigners law and the demonstration that autonomous internal and external political organization was possible. Assemblies (General Assembly of Pi, assemblies of different churches, the state level coordinator, etc) provided the space for the movement's self-organization, while the *encierros*, the demonstrations, the civil disobedience campaigns or even the hunger strikes projected the immigrants to the public arena.

Although it is not possible talking about transnational participation in the strict sense, it is also fair to say that intents of trans-nationalizing the struggle existed. For example, immigrants tried to get adhesion of other *sans-papiers* movements and political and trade union group around Europe, and also called for mobilization in diplomatic buildings in the main cities. Besides, the struggle initiated in 2001 established the basis for later transnational collective dynamics around immigrant communities that have settled European and global networks in defence of immigrants' rights.

In this sense, probably it is too much coining the concept of "sans-papiers identity". However, we could talk about a collective sense, not only in Barcelona or in Spain, but all around Europe and the USA, as a reactive response to the social and legal labelling that contemporary regulation do. Far away from national, cultural or religious identity characters, the *sans-papiers* collectives assume a heterogeneous group sense, of course, not exempt from conflicts and contradictions.

Conclusion

The analysis and reflection of the demands, practices and values that the *sans-papiers* movement promoted during the *encierros*, especially in Barcelona, has allowed us to construct a theoretical proposal of an alternative model of citizenship:

- A citizenship based on legal equality, achieved through the universal recognition of rights, exercised in a context on participatory democracy, and based in the freedom of movement and establishment.
- When they said, "No one is illegal!", they were asking for equality before Law and before the Society.

- Equality before law starts with the removal of such legal categories as “Foreigner” or “irregular foreigner” that are contained in contemporary National and supranational legal systems. This implies also the removal of all the elements and institutions created to generate this civic stratification such as immigration laws, and those that preserve it, like police controls, detention centres, expulsion procedures, visa and permit systems, integration tests, etc.
- Equality before Society implied the elimination of the stigmatization that media, politicians, but also Law had, and still creates over immigrants. Illegality is socially associated to crime, terrorism, labour and sexual exploitation. Social equality and the end of social and institutional racism should be seen as a preliminary and necessary condition for integration and life together.
- The motto “Rights for all!” meant that the removal of legal differences created by privileged status and marginalized status is necessarily linked to the recognition of citizenship rights.
- Civil rights, such as due process, freedom to move, security, etc.
- Political rights, such as the right to meet, to organise and to take part in demonstrations and strikes, to join trade unions, to vote in any scale, to take part in decision making processes, etc
- Social rights, such as a regulated and secure work, due housing, health and education
- Gender rights, such as legal marital independence, real protection in case of gender violence, non-discrimination for gender reasons, etc
- Cultural, religious and linguistic rights

It is true that many of these rights, although they are already recognised for nationals, have not been materialized yet or have been deregulated in the last years. As we saw in the *encierros*, the immigrants and autochthonous civil society struggled together not only against a specific immigration law but also against a model of governing and in favour of another model of society. In this sense, the new demos would struggle for a full social citizenship.

The method used by the *Sans-papiers* refers to a horizontal or radical equality that informs participatory democracy. Assemblies, community councils or other tools for decision making are suitable instruments for a trans-scale democracy (local, regional, national or supranational), establishing spaces for discussion and decision.

It can be seen thus that the issues of social and political membership can and should no more be linked to national identities. The freedom of movement, visitation, and residence are symbols of the notion of open society. Clearly, respect and recognition of diversity needs to be complemented with the fight against social and institutional racism. Formal citizenship and formal recognition of rights do not guarantee the full practice of the new model of citizenship that we allude to here. In this

context, the immigrants' struggles can be considered a starting point for reflection about an emancipative concept of citizenship.

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