

Foggy Social Structures

Irregular Migration, European Labour Markets and the Welfare State

MICHAEL BOMMES & GIUSEPPE SCIORTINO (EDS.)



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Irregular Migration, European Labour
Markets and the Welfare State

edited by Michael Bommes and Giuseppe Sciortino



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*To the memory of Michael Bommers (1954-2010),
a great scholar, an even greater human being*



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INTRODUCTION



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1 Irregular migration as a structural phenomenon

Michael Bommers and Giuseppe Sciortino

All the evidence available seems to suggest that the current world migratory situation is characterised by the growing significance of irregular migration in most regions of the planet (Hutton & Williamson 2005).¹ This issue has become particularly controversial in Western Europe, where concerns about irregular migration have created political tension in several countries since the 1980s. Public opinion and, indeed, sometimes legal frameworks have increasingly regarded all unwanted flows of immigration as irregular, and often as illegal. Slowly, a large set of interpretative frames, stereotypes, folk wisdom, icons and slogans has accumulated, making irregular migration part of a complex symbolic discourse within the public sphere. A growing number of undesirable political outcomes are currently being interpreted by European elites as a result of their failure to deal effectively with irregular migration. The fight against irregular migration has ranked high on the European agenda in the last two decades. It has not been a mere bonfire of the vanities. Since the early 1990s, the development of common controls against unwanted migration has been the immigration policy area in which there has been the most consensus among European Union member states. Still, Western European countries are currently involved in several irregular migration systems, able to produce undocumented populations estimated at several million.² Since the recruitment stop of the early 1970s throughout Northern and Western Europe, most new immigration has been unplanned and largely unwanted. Southern European states have become, largely through the backdoor of irregular migration, the largest net receivers of migrants in the EU. The traditional labour-importing countries of Western Europe have witnessed both the continuing impact of ongoing flows as well as the emergence of new irregular migration trends.

The presence of a sizeable number of irregular migrants raises important questions, both scientific and humanitarian. As far as the former are concerned, the existence of a large irregular population – able to live and work in the country for years, or even decades, without an ‘official’ identity – triggers several important questions about the very nature of contemporary states and societies. Contemporary nation-states have a right – sanctioned by international law – to determine if, and under which conditions, foreigners may live on their territory (Plender 1998). Regulation of the labour

supply through migration restriction is part and parcel of the regulation of their economies (Zolberg 1999). The capacity to control the number of individuals eligible for welfare provisions is a key pre-condition for the operation of welfare programmes ever since they were established (Bommes 2003; Lucassen 1997). The self-understanding of modern states, as tied to specific nations, implies a political concern for cultural and ethnic heterogeneity (Castles 2004). Being able to control the composition of the population is also considered crucial for both internal and external state security. Given these states' interests, the existence of a sizeable population of irregular foreign residents presents a puzzling challenge to existing notions of political statehood and societal membership (Cvajner & Sciortino 2010b).

This becomes even more apparent when seen in the context of modern state practices. The current understanding of sovereignty translates into an extensive and historically unprecedented political regulation of access to labour markets, housing, consumer markets and infrastructure for mobility. States have established a successful monopoly of both the means of mobility as well as institutionalised identities (Torpey 2000, 1998). Moreover, contemporary state operations, with their complex bureaucratic machinery, embody a generalised assumption of the universal transparency of the composition of their population, as well as of the social transactions taking place within their territories (Scott 1998). Given this context, policymakers and public opinion alike are inclined to interpret the existence of a sizeable irregular foreign population as an epochal challenge to state sovereignty, a proof of inadequate governance and an indicator of institutional crisis (Cornelius, Martin & Hollifield 1994; Hollifield 1996). Albeit popular, such interpretations do not satisfactorily account for some well-known facts: the overall efficacy of immigration controls in regulating international mobility (Zolberg 1999), the many structural 'pull' factors operating within the very same fabric of receiving societies (Samers 2003), the steep increase in a capacity for monitoring and preventing unwanted migration in recent years (Engbersen & Broeders 2009) and the strength of domestic legal provisions that often allow a politically unwanted flow to continue (Joppke 1998).

On the other side, critical theorists and humanitarian activists interpret the existence of an irregular population as evidence of an (equally epochal) hardening of exclusion processes, as proof of the emergence of a new revolutionary class or as a factual betrayal of the inclusive nature of the liberal creed (Agamben 1998; Carens 1987; Hardt & Negri 2000). Irregular migrants are defined as a vulnerable – and consequently easily exploitable – segment of workers, forced through legal action to function as a reserve labour army (De Genova 2007; Portes 1977). Analyses of such irregular migrants, bringing to light the frequent violations of human rights that derive from the lack of a certified identity, are morally and politically compelling. As analytical frameworks, however, they are at pains to account

for some significant features of the current migratory situation: limits to repressive action resulting from legal norms, frequent cases of individual and collective regularisation, the existence of an extensive philanthropic infrastructure tolerated and, in some cases even financed, by public authorities and the relative serenity with which many migrants are able – albeit at significant human cost – to live irregularly for a protracted spell of time.

Given the topic's importance and sensitivity, it seems somewhat surprising that current research into migration to the EU has not yet developed a consistent and systematic research tradition regarding irregular migration. The study of irregular migration is currently heavily under-theorised – unable to provide a satisfactory analysis of the dynamics and structural significance of this form of spatial mobility. To be sure, a significant and often highly commendable body of work on the subject exists. However, this has failed to trigger a sustained cumulative effort towards developing an analytically adequate understanding of irregular migration as a specific form of population movement. Such failure has often been blamed on the methodological difficulties associated with the subject – there simply isn't enough systematically collected and analytically adequate empirical material. This claim, however, is not very convincing. A quick comparison with the wealth of empirical research into irregular migration conducted in the United States reveals that there is no reason to assume that reasonably sound empirical evidence on irregular migration cannot be produced (see e.g. Briggs 1984; Massey, Durand & Malone 2002; Singer & Massey 1998). Our point is underscored by the fact that important empirical research is also being carried out within the borders of the EU (Blangiardo & Rimoldi 2002; Engbersen, Van San & Leerkes 2006; Van Liempt 2007).

Our main claim here is that the difficulties involved in building a systematic research programme and a consistent climate for cumulative debate stem from the current intellectual structure of the field. The plain fact is that most of the research currently available is deeply embedded in either policy considerations or in the somewhat militant framework of humanitarian reporting. There is little doubt that the current irrationalities of much existing immigration policy would benefit from greater attentiveness to the contributions of policy scholarship and recommendations. And the role played by NGOs and humanitarian-based exegeses in revealing and preventing the abuse and degradation of irregular migrants should not be underestimated. Still, we maintain that these kinds of activities are necessary but insufficient components for serious contributions to the field of migration studies. Policy studies operate under the assumption that there is an identifiable (and usually quantifiable) 'problem' predefined by policy concerns, a perspective that is often reproduced in their findings. Humanitarian reporting has a structural bias towards the worst-case scenario and, moreover, defines its task as an assessment of reality in the context of some external moral standards. Consequently, policy studies and

humanitarian reporting converge in interpreting irregular migration as a social – rather than research – problem. They do not provide a satisfactory account of irregular migration as an everyday, mundane reality, but instead consider it a social pathology.

To develop an adequate understanding of irregular migration, we need a more differentiated conceptual framework – one that is able to define the phenomenon independently of policy and humanitarian concerns. Such an approach would attempt to analyse irregular migration naturalistically, as a particular feature of modern society. It would develop its own research questions and evaluation standards. It would contribute towards arriving at an explanation for, among other things, the structural preconditions for mass-scale irregular migration systems and social consequences of the variety of irregular statuses created and legislated by and in receiving countries (Cvajner & Sciortino 2010a). It would also assess the actual impact of irregularity on a variety of social interactions, and explore the ways in which irregularity manages its various consequences of inclusion and exclusion. Such an approach would help us understand how hundreds of thousands of migrants have been able to live and manage their irregular status in Western Europe for years, usually, but not always, thanks to the systematic self-restraint exercised by democratic liberal states.³ Countless numbers of migrants treat their living conditions as a practical problem to be managed according to the logic of expediency, a reality difficult to grasp within the logic of the ever-popular concept of Fortress Europe. What kind of survival strategies enable migrants to avoid detection, to establish false identities and to find – albeit at high human cost – alternatives to the provisions of political power and legal protection? These are the types of questions left unanswered when irregular migration is defined as a social pathology to be ‘cured’ rather than as a social phenomenon to be *understood*.

By adopting the latter stance, it becomes clear that in-depth analyses of irregular migration are not only crucial to the field of migration studies, but may also result in ‘strategic research material’, in Merton’s (1987) sense, for the study of contemporary society. The studies compiled in this volume are very diverse in terms of topic, thematic focus, locality and methodology. What makes these contributions part of a coherent intellectual project, however, is their common interest in understanding irregular migration as an everyday social phenomenon and its place as a stable feature of contemporary Western European society. As such, it is a social experience that requires careful, empirical analysis and systematic attention to the mechanisms that make possible its existence and sustain its development. In short, all of the studies presented here start – broadly speaking – with an analytic ambition rooted in common theoretical and empirical goals. All of the authors have an undeniably strong and passionate attitude towards the plight of irregular migrant workers. Furthermore, many of the contributions have clear, innovative implications for assessing and

improving current policies. For example, by studying migration transnationally, often – but not always – from ‘East’ to ‘West’, some represent an improvement on strictly methodologically nationalist studies that rely solely on material from the country of origin *or* the host society. This is crucial, considering the continued regional-level trend towards EU-wide immigration control policies, as well as the more generalised idea of a ‘global civil society’. The reader will realise that both humanitarian and policy concerns may be better served by the type of empirical work that is guided by differentiated analytical research problems. As in any other field of enquiry, scientific research becomes most useful to other fields when it adopts an autonomous and explicit definition of the problem and thereby highlights new perspectives for viewing the world from different angles and a variety of alternatives for action and decision-making. Finally, some of the contributions in this volume employ innovative strategies of sampling, triangulation and comparison in addressing their particular loci of enquiry (some of which have rarely been addressed in the literature), speaking to the need for a wide variety of means that can be utilised to illuminate a specific set of social mechanisms and processes.

A brief overview of the contents

From the outset of our project, the aim of this volume was to explore the relationships between irregular migration, the informal economy and the strategies of Western European states. The second aim was to study how such relationships change in the course of one of the largest natural experiments in migration processes Western European societies have experienced, namely eastern enlargement of the EU and the changes it provoked in the mobility of populations across the whole continent. However, it was not our intention to confine our analyses to an elaboration of East-West flows. Instead, we took the position that a change of such magnitude in European mobility patterns would alter the migratory situation for all irregular migratory systems that have developed in Europe, linking it with a large variety of the world’s regions.

The first three chapters, by Anghel, Brinkmeier and Näre, document in detail the changes produced by eastern enlargement in the dynamics of East-West flows. They show how the development of irregular migration systems have had a strong influence on both the economic transformation of post-socialist countries and on the changes in demand for labour in agriculture, construction and domestic services, three of the traditional magnets for foreign labour. They also demonstrate clearly the fact that irregular migration systems do not comprise undifferentiated, huddled masses: instead, they are distinguished by a variety of backgrounds, some of them already established in the countries of origin (but still transformed by the migratory

experience) while others are created in the process of adaptation to the receiving context. All migratory systems documented by the three authors have their roots in the aftermath of the great transformation of the Socialist countries. However, the development has been triggered by changes in Western European labour markets and the evolution of myriad social networks progressively established across the former Iron Curtain. These three studies also help readers see how irregularity is embedded in various kinds of migratory systems, each of them attributing a different significance to such status and prescribing different ways of managing it.

The following two chapters, by Gendera and Wilmes, focus on irregular migration as part and parcel of European welfare regimes. The presence of irregular migrants is often linked to the existence of a sizeable welfare state that provides services and support to individuals qua human beings, regardless of the colour of their passports. It is also acknowledged that in liberal democratic states, even public administrations often provide services to irregular migrants that are *de facto* and sometimes *de jure* – in other words, accessible to those who may be residing in that country illegally. But far less attention is given to the fact that in recent decades, irregular migrants have become an integral yet hidden part of welfare regimes in many European countries (Sciortino 2004). In an era of shrinking public budgets, the social pressures arising from the rapid growth of ageing populations, coupled with an increasing number of women entering the labour market, result in serious fiscal consequences, which are often managed by hiring irregular workers for a variety of household and care tasks. As Gendera points out, such hiring is frequently supported – whether directly or indirectly – by public funding in Austria, and this is becoming a key feature of the welfare regimes in a number of other European countries. Domestic service work is also a sector intrinsically difficult to monitor, and control strategies by nation-states are difficult to implement. In turn, the typical response of tightening controls even further provides increased incentives to develop irregular migration systems embedded in the opportunities created by accessibility of the welfare state and a growing demand for household and care workers. As the authors in this section highlight, the role of gender is paramount, as women often migrate irregularly towards a labour market that positively discriminates against them and where their employers are often also women.

The last three chapters, by Balch and Scott, Engbersen and Broeders, and Finotelli, deal with the ways in which irregular migration systems interact with immigration policies and governmental actions. They address different countries and different strategies. However, all have a common interest in the assessment of past and current policy decisions – not in terms of their formal structure and consistency, but rather in terms of the ways in which they operate in their particular social settings. The three studies do not intend to offer an account of the current European situation,

nor do they aim to provide a systematic survey of the policies concerning irregular immigration in Europe. Instead, they should be seen as detailed case studies of the three dominant options states have employed in trying to deal with the 'social fog' produced by the reciprocal alliance of irregular migration flows and informal economies. They deal, respectively, with: the most sustained recent attempt in Europe to regulate irregular migration through the increase of control measures on irregular employment; the most systematic attempt to repress irregular migration by a steep increase in internal controls; and the attempt to dissolve social fog by means of collective regularisation. As the reader will see, all these strategies have a significant impact on the structure of irregular immigration and employment. Indeed, policies are a crucial structuring element of the migratory careers of new arrivals into European receiving countries. Some policy action may also have a significant effect on reducing the size of the irregular foreign population. All of these efforts, however, suffer from the difficulties states encounter when attempting to increase their degree of control over the vastly diversified social networks that comprise contemporary society and over the operations of differentiated subsystems. Moreover, the studies document how each policy innovation is never the final one, but just one operation among many in a complex, non-linear sequence: the relationship between control policies and irregular migration – and the same applies to informal economies – is never a matter of unilateral determination. This harkens back to what Parsons (1968) called a 'double-contingency interaction': a situation where all actors involved try to anticipate the likely reaction of the others to their own performance and make their choices accordingly. Policies have their own history, infrastructure and knowledge. They are not mechanical reflexes triggered by societal processes, but rather a selective, internally generated achievement of their political systems (Bommes & Geddes 2000; Sciortino 1999). And the same holds true for migration flows: they have their own life cycle, activate their own resources and develop their own infrastructure over time. Throughout the migratory process, specific kinds of knowledge develop and become institutionalised into practices, including knowledge on regulations and ways to react to – or circumvent – them. Each side works to anticipate how the other will react to changes, based on limited knowledge and uncertain assumptions.

In the final chapter, editors Bommes and Sciortino elaborate a number of theoretical themes that may be read throughout the whole volume. They argue that irregular migration must be seen as a structural feature of modern society, rooted in the internal structural tension, embedded in world society, between shared legitimate goals and available means. They argue that irregular migration should be seen as a case of 'structural anomie', which is resolved by irregular migrants through innovation and (ostensibly and temporarily) 'repaired' by state organisations oscillating between means of

repression, silent toleration and resigned acceptance. Consequently, perverse effects, unexpected outcomes and sheer tragedies are inevitable – and indeed, frequently played out in reality.

Social research of the type undertaken by the authors in this volume cannot provide a shared normative culture or resolve its internal tensions. Nor should it try to define what the actors involved *should* want. But it may provide an important first step towards any reasonable approach to the situation. Foreseen here would be moving irregular migration away from the realm of social pathology and into that of structural phenomenon, embedding analyses in the very same structure of modern society and highlighting the need to deal with its complexities in a strategic, rather than parametric, approach.

Notes

- 1 The terminology employed in the literature on these migration flows, as well as migrant populations themselves, is far from standardised, and all available terms are questionable on some cognitive or moral ground. Readers may encounter authors talking about, to mention only the most common usages, illegal migration, irregular migration, undocumented migration, clandestine migration, unauthorised migration, unsponsored migration or unwanted migration. There are many reasons for such babel, reflecting not only different administrative and legal traditions and intellectual philosophies, but also a variety of other factors. After some reflection, and with considerable uneasiness remaining, we have decided to use the term ‘irregular’ as the generic qualifier for such flows and populations. When not taken to be a quality of human beings, we believe that ‘irregular’ brings to focus better than any alternative the specific relational nature of the phenomenon of the conflict between certain mobility patterns and the regulations enacted by nation-states. It also allows us to cover, under the same term, the lack of compliance with residence regulations and, where pertinent, with work regulations, as well as the whole set of possible combinations of the two. We also consider it more accurate than ‘undocumented’ (most irregular migrants are in fact in possession of documents), clandestine (many enter the country with duly issued visas) or illegal (in some countries only civil, rather than legal, offences are being committed). As the concluding chapter elaborates, we do not assume in any way that ‘irregularity’ is a total status that defines the individual, but only certain categories of the social transactions in which the migrant is involved. For a recent argument in favour of choosing a different term, see Noll (2010).
- 2 The most sophisticated attempt at providing a detailed estimate of irregular foreign population in the EU is the recently completed ‘Undocumented Migration: Counting the Uncountable – Data and Trends across Europe’ project, known as CLANDESTINO, which was funded by the European Commission. The results are available at <http://irregular-migration.hwwi.net>. The project estimates that for 2008, from a total EU population of 497.5 million people, there are approximately 30 million third-country foreign nationals (representing 5.8 per cent of the total), an estimated 6–13 per cent of whom are irregular migrants (see http://irregular-migration.hwwi.net/European_Union.6169.o.html and http://irregular-migration.hwwi.net/Stock_estimates.6170.o.html).

- 3 In recent years, some countries – including Nigeria, Libya, Kuwait and Thailand – have shown that contemporary nation-states can indeed dismantle long-established migratory systems and repatriate hundreds of thousands of foreign residents in a matter of days. Their examples, moreover, show that such capacity does not require extensive bureaucratic infrastructures or state-of-the-art technology. The legally unrestricted option to make use of the ordinary, old-fashioned tools of the Leviathan seems to suffice.

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PART I

IRREGULAR MIGRATION AND EASTERN ENLARGEMENT



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2 From irregular migrants to fellow Europeans: Changes in Romanian migratory flows¹

Remus Gabriel Anghel

In the past ten years, international migration between Romania and Italy has developed steadily. At the beginning of the 1990s, only a few thousand Romanians lived in Italy. By 2002, Romanians had come to represent the largest migrant community in the country. The regularisation process that took place in 2002 was surprising due to the large number of Romanians who obtained legal status. With over 240,000 (Ricci 2005) legal migrants, Italy became one of the main destinations for Romanian migrants, with the movement of people between the two countries growing considerably. According to different sources, in January 2007, there were some 350,000 to 550,000 Romanian migrants living in Italy (ISTAT 2008; Caritas Migrantes 2008). Estimates for 2008 suggest between 625,000 (ISTAT 2008) and 1,016,000 (Pittau, Ricci & Silj 2008) Romanians living on the peninsula. By 2009, 796,477 legal Romanian migrants were resident in Italy (ISTAT 2010). Entire communities from Romania had moved to Italy, maintaining transnational ties between the two countries – a circulation of capital, goods, people and values. This migration has opened up a complex field of investigation into migration practices, social change and mobility in Europe.

Although a number of issues emerge from this high rate of migration, such as the effects this migration produces and how European Union enlargement affects migration, this chapter has a more limited objective to analyse how Romanians made their way to Italy. I focus on migration strategies and accommodation processes: how Romanians migrated, up until the point mature networks of migration were formed, and the kinds of mechanisms of migration that subsequently developed.

I analyse migration from the city of Borşa in northern Romania to Italy. First, I address a number of theoretical considerations and introduce the case under analysis. I then present the research methodology and analyse strategies of migration by pioneers, elaborating how migration developed between Borşa and Italy. I conclude by presenting the changes that have taken place in Italy since 2002, when visa requirements were lifted for Romanian citizens, as well as the major changes that occurred in Borşa that led to further migration.

Theoretical background and research context

Analysing international migration, the classical view in migration research holds that labour flows from regions offering fewer opportunities to regions with greater opportunities, and that labour supplies and demands balance out at the international level (Lucassen & Lucassen 1997). Regarding the actual patterns of international migration, a number of theories follow the classical view and maintain the analysis at a macro-perspective, locating the cause of migration at the destination. These perspectives stress that structural inflation, the problems related to labour motivation, the duality of the labour markets and the demographic structure of the labour supply in developed countries are factors that largely explain international migration.

The theory of dual markets stresses the fact that a structural deficit exists in the labour markets of developed economies, creating pressure on the labour supply. Jobs that do not require qualifications have a low social prestige, are less well paid than jobs requiring qualifications and often remain vacant; immigrants appear to provide the solution to the scarcity of labour (Massey, Arango, Hugo, Kouaouci, Pellegrino & Taylor 1993). Applied to the Romanian case, this view may provide useful insights, since Romanians in Italy generally perform low-prestige work. Although I will not deal directly with the theory of dual markets in describing the mechanisms of market incorporation used by Romanian migrants, this view will be implicit in the analysis. At the same time, even considering the general macro-factors that influence migration, the theory may be refined by also considering the structural factors within the origin societies that cause migration. In this case, we recall the post-socialist transformations in Romania and the effects they had on local labour markets: in some cases, we consider the role of former socialist commuters in the emergence of international migration (Sandu 2000, 2006) when the socialist industry was restructured. In addition, I discuss the role Romanian Germans played as the transmission belt for Romanian migration to Western Europe.

I use a combined theoretical perspective in this research. Although I highlight structural elements whenever they are important in the analysis, I undertake the research at the micro-level, looking at the individual, household or community factors influencing migration. In this respect, I generally use two theories: the network perspective on migration and the theory of cumulative causation.

The fact that migrations are enabled by social networks was documented as early as in the 1920s (Massey 1987). Regardless of the structures of the receiving and sending countries and the specific factors that initiate migration (recruitment, economic crisis, labour shortages and so on), migration is considered to develop a social structure over time that perpetuates migration.

Once [international migration] has begun, it eventually develops a social infrastructure that enables movement on a mass basis. Over time, the number of social ties between sending and receiving areas grows, creating a social network that progressively reduces the costs of international movement. (ibid.: 1373-1374)

Defining migrant networks, Palloni, Massey, Ceballos, Espinosa and Spittel (2001: 1263-1264) state:

Migrant networks are sets of interpersonal ties that connect migrants, former migrants, and nonmigrants to one another through relations of kinship, friendship, and shared community origin. Network connections increase the likelihood of international migration because they lower the costs and risks of movement and increase the expected net returns to migration.

The ties established in migrant networks pave the way for others to migrate, through the use of social capital that allows them to accumulate the means and information required for migration. Since migration implies costs and risks, the first migrants are usually those who are able to sustain such risks. Analysing migrant communities in Mexico, Massey (1987: 1374) argues that, in time, migration becomes part of the life strategies of migrant communities. While better-off families tend to migrate first, migration becomes less selective over time due to the expansion of networks, with more families becoming involved in migration. In its final stage, migration is dominated by migrants from poor families.

In this chapter, the network perspective helps us understand the mechanisms of migration employed by migrants, the practices associated with access to the labour market and the use of ethnic- and network-based social capital. This approach may highlight specific mechanisms through which migration is enabled and developed. Moreover, a network perspective brings to light the regional character of Romanian migration (Sandu 2000) – why, for instance, irregular migration to Italy evolved from specific localities (and regions) in Romania. Without attempting to undertake a full network analysis, this approach is used here to explain the development of migration from Borșa to Italy.

The second theoretical approach used in this chapter is the cumulative model of migration, which stresses that

once initiated, the process [of migration] builds upon a growing base of knowledge, experience, social contacts, and other forms of social and cultural capital in self-reinforcing fashion. It argues that the process of migration alters sending and receiving localities. (Massey, Goldring & Durand 1994: 1503)

It changes the motivations, household strategies and community structures of the origin communities (Massey 1987: 1374), becoming part of the economic strategies of households.

Migration affects individual motivations and social structures in ways that encourage additional migration... transnational migration tends to become a self-reinforcing process... In time, migration becomes increasingly independent of the conditions that originally caused it. (Massey et al. 1994: 1496)

In this respect, I will address the main changes (both structural and behavioural) that occurred in Borşa to promote continuous migration. As I will point out, although the incentives of migration have changed and mass migration has already taken place, migration continues despite a shortage of labour and the prospect of higher earnings in the country of origin.

Initially, inhabitants from Borşa migrated to various Western European countries. Later, however, most Borsheni headed towards northern Italy (especially Milan), where they eventually established migration networks and accommodation strategies. This chapter analyses their main migration strategies and highlights the periods of migration, presenting data concerning the push factors of migration, the restructuring of the local economy and the use of different kinship and friendship structures for migration.

Borşa is a small industrial city in northern Transylvania with approximately 30,000 inhabitants. During the socialist regime, the economy was based on mining and forestry, which employed the majority of the labour force at the local level. In the Romanian socialist economy, the mining industry received generous subsidies from the state, and miners were better-off than other Romanians. While international migration was controlled by the state during state socialism (Verdery 2004) and Romanians did not have any international migration networks (Castles & Miller 1993), in the post-socialist era, the state lost its control over movements from Romania, leaving the Borsheni free to migrate. Even before the collapse of Communism, a culture of migration existed, which provided information and incentives for migration – particularly in the region of Borşa. This was possible due to internal migration, a tiny amount of international migration to Western Europe and North America, as well as the migration of ethnic Germans from two neighbouring localities.

In the immediate post-socialist period, several major changes occurred at the local level. There was a growing impoverishment of the population, and the restructuring of industry brought about a sharp economic decline and the incapacity to develop alternative sources of income. The mining industry was unprofitable, and the Romanian government instigated a gradual mine closure programme in the absence of alternative ways to develop the local economy. In this situation, the perceptible drop in living standards

motivated Romanians to migrate. This tendency escalated, especially when the mining industry was radically restructured (that is, almost closed down) after 1997 and people started to lose their jobs. In many cases, the compensation awarded to these workers by the Romanian government was used by families to finance their migration. In the following years, a very complex system of migration developed between Borşa and Western Europe, particularly to Italy. This chapter analyses how the Borsheni initially moved to Europe and established migration trajectories. I will look at the specific mechanisms of migration and the causes that cumulate, thus enabling an explanation of migration from Borşa to Italy and how and why migration occurred to such an extent.

Field-work methodology: Participant observation and interviews

When conducting my research, I applied multi-sited ethnography (Marcus 1995; Burawoy 2000). The methods involved ethnographical analysis in different places, studying the interconnections between Milan and Borşa, and travelling with migrants between the two cities.

I commenced my field-work in August 2004 with a trip to Romania, visiting cities and regions where large numbers of residents had migrated to Italy. The first thing I observed was the relative wealth of migrants compared to other Romanians; high levels of investment were reflected in houses, new clothes and cars. By and large, consumption patterns were different from before.

I then headed for Turin, where more Romanian migrants and Romanian churches and organisations exist than in any other Italian city. By visiting Turin, I believed I would have a better opportunity to get a closer look at the lives migrants lead. At this stage of the research, I first attempted to leave behind the theories and my research experience as a Romanian sociologist. I relied on participant observation and started to frequent the public places where migrants meet: the Porta Nuova railway station, the Porta Palazzo, Romanian churches and Valentino Park. Access to Romanian organisations and churches was easy. After presenting my research, members of these organisations were open, and I was able to conduct informative interviews, including with Romanian migrants at the churches I visited. In addition, I frequented the places where Romanians met almost daily. Here, however, I was only able to observe them, without conducting interviews. After a month of observation and holding discussions with migrants and members of Romanian organisations, I had a rather fuzzy picture of what Romanian migration means in Italy. People generally arrived in large numbers as irregular² migrants, especially after 2002, when visa requirements for Romanian citizens were lifted. They had no prior knowledge of what Italy signified: in many cases, they merely had

an idealised, often inaccurate idea of it as a wonder country where anyone could get rich. At the same time, a number of representatives of Romanian organisations pointed out the precarious situation these migrants found themselves in, at least during the first years after their arrival. Many came without any education or initial sense of how to adapt to Italian society and economy. After their arrival, they passed through very difficult stages: many slept under bridges or in municipal parks, often overpopulated by Italians or other migrants.

With this image in mind, I went on to Milan, where I spent around three months conducting research into migrants from Borşa and other Romanian locations. It was more difficult to gain access to information in Milan, since the city has fewer Romanian organisations and churches than Turin. Since I had no prior access to migrants, I only managed to conduct a few interviews at the Romanian church. Through one of my acquaintances in Germany, however, I gained access to Daniel,³ a Romanian migrant in Milan who was in contact with a migrant from Borşa. At the very beginning of my field-work, Daniel had told me about his migration experience, the milieu of migrants and the risks they face, as well as the opportunities open to them in Italy. The initial experiences of migration seem to be essential in the constitution of migrant groups: as Daniel related, most Romanian migrants have experienced difficult situations, sometimes sleeping for months in parks, in the open or in abandoned houses around Milan, in much worse conditions than in Romania. In more favourable cases, migrants were able to live in crowded houses. Due to the large number of irregular migrants in Italy, a migration underworld emerged – a realm in which people are not permitted to hold bank accounts or to have health and social insurance, and where the risk of being caught by the police or reported by other migrants or Italians is omnipresent. Daniel has been involved in all kinds of activities: he has worked as a driver for transsexual prostitutes, lived with thieves, worked in the construction industry and has now ended up in quite a good position, working as a lorry driver. He highlighted how important for migrants' sociality public spaces were, such as parks and railway stations, including Milano Centrale, where social relations are established and broken. Through these frank discussions, I gained a glimpse of a world of uncertainty, speculation and mistrust – that of Romanian migrants – which I continued to analyse by observing and discussing with numerous other Romanians in Milan.

As a Romanian PhD student in Germany, I had full access to all migrants of interest for my research, who spoke openly to me. As a sociologist, I was constantly regarded with suspicion, since sociology 'does not exist' as a profession for most of the interviewees. At one point, thanks to a small Romanian organisation, I established contact with Romanian migrants living in a small town on the periphery of Milan. In addition, Daniel sent me to Ionel, one of the men who regularly accommodate

Borsheni in the same area. There, I was accepted as a sociologist, thus able to spend time each day holding discussions. Although I was only able to conduct a very limited number of interviews and hear a few life stories, my discussions with migrants proved useful. On some weekends, I was permitted to accompany them to such places as Milano Centrale, where Romanians gather. While living for a while in Milan near the migrants' haunts, I also became familiar with various work opportunities and made 'friends'. At one point, I was allowed to visit a group of Romanians at their workplace for a few days.

Considering the suspicions I often faced, I approached my research in Milan rather cautiously, relying mainly on participant observation, and going every week to places where Romanian migrants meet, such as Milano Centrale and metro stop Molino Dorino, without inquiring too deeply into their personal histories. Social relations and new acquaintances are made in these public spaces. People find jobs and gather 'recommended relations' – other migrants whom they can trust. To give further insight into how sociality, trust and interests are negotiated, I recall an episode that occurred at Milano Centrale, as recorded in my fieldnotes.

I am with Gabriel from Borșa. A young woman, Mariana, from a Romanian mining town, is looking for a job at the 'fixed post'. She lost her job in Romania a few years ago, has a child, but is divorced and no longer able to care for her child. For this reason, she decided to come to Italy irregularly. At that time, she only knew Lucia in the Centrale, a woman who came to Italy from southern Romania. The four of us went to McDonald's. Gabriel's acquaintance Lucia told me about parts of her life – that she divorced in Romania, is alone and has been in Milan for a few years. With her stories of Romania, time passed, and Mariana started to ask Lucia to find a job for her. 'I don't know yet, but we may find something,' she said. Returning to the Centrale, Lucia met a Romanian 'friend' who had just arrived. He was looking for a lady to clean and cook, because he needed one in the house where he lived with three other Romanians. Mariana talked to this person close to the small shop in front of the Centrale and started to bargain: the men offered her € 5 per hour, for four hours a day. For some reason, Mariana was dubious: 'I won't go there; they pay well, but who knows what they want from me? They are Romanians, you never know.' Meanwhile the Carabinieri [Italian gendarmerie] arrived and in a few minutes, several dozens of Romanians disappeared. Mariana was among them. She was very scared and shouted to Gabriel: 'Let's go; I am afraid here. If the Carabinieri take me, I don't know what they'll do, perhaps send me back, I don't know.' We all disappeared. Mariana was still without a job, in the same uncertain situation.

Somehow, in the course of the day, she and Gabriel became close to one another.

The milieu of Romanians in Milan appears divided between irregular and regular migrants – a society in which new migrants are assisted by older ones to become part of the Italian economy, helping them find housing and job opportunities. It is a dynamic society; for irregular migrants, in particular, I perceived a high degree of mobility, often going from place to place in Italy if they do not have any relatives to support them. In many cases, labour contracts are entered into under similar conditions as in the episode described above. According to my observations, however, they are made in relation to the ways in which trust is negotiated between migrants. Creation of new social relations at the Centrale, especially for migrants without social networks in Italy, may also be seen in this light. In many cases, a relationship may begin with a brief talk, an exchange of short life histories and a piece of music; it can remain temporary or evolve into a long-lasting friendship.

I thus came to understand the centrality of such places for migrants without previous social relations and their role in structuring the milieu of migrants. These are places where social relations can be made and opportunities easily found. I also understood why people were so suspicious of me when I explained I was a sociologist. It is not just that they have an unclear notion of the profession. By regarding me as a Romanian, they also associated me with the suspicion that generally characterises their attitudes towards other Romanian migrants. The milieu where they were embedded is a place where trust is a matter of daily negotiations and where concealing something (information, money, opportunities) is common practice. At the same time, while researching migrants in Milan, I felt a strong desire to enrich the information I gathered there with trips to Romania, their country of origin, to see what they do at ‘home’.

And so I prolonged my field-work with two months of research in Borşa. Here, I had the advantage of very good access to the field, establishing contact with numerous migrants. This time, I had a research assistant whose parents were from Borşa and who had a very large number of relatives and acquaintances there. In Borşa, not only was access easier, but the details obtained very informative. Since the issue of trust was no longer at stake, we conducted a large number of interviews with many of my research assistant’s relatives⁴ and, in turn, their acquaintances. Thus, I was able to discern patterns and mechanisms of migration and to gain a more complete picture of the entire migration process and its effects on Romania. Furthermore, the type of information gathered in Borşa elucidated the migration practices undertaken from the inception of the journey until the moment when networks of migration became mature and successful migration strategies had been established.

Accordingly, in the case of earlier migrants, migration strategies were very diverse. They show that, in the European context, irregular migrants use a wide range of migration practices and experience many different trajectories, relying on the various social relations they may have in European countries. Migration from Borşa proved not only to be migration from Romania to Italy, but European migration directed predominantly towards Italy due to specific conditions encountered there (market opportunities, weak immigration control).

Crossing European borders

As I will show in the following section, migration was enabled by migration networks – friendships and especially members of kin – and networks of intermediaries, who provided European visas or information about crossing European borders. Due to the large families that existed in Borşa in the 1990s,⁵ migration networks were often based on kinship structures that could easily mobilise resources for migration (such as family-based loans), information (e.g. concerning migration strategies and labour opportunities in Western Europe), as well as kin-based supportive relations in Italy. Although officially restricted for Romanians up to 2002, the borders of EU member states proved porous for Borsheni, who were able to find or create efficient strategies to overcome border controls.

According to my findings, the main strategies of migration from Borşa include: a) invitations received from relatives and friends from Germany (Romanian Germans from the region who had emigrated to Germany and were German citizens) accompanied by irregular moves to Italy; b) temporary labour contracts in Western European countries (such as agricultural work in the Trento region of Italy) followed by irregular stays; c) organised tourist visits to Western European countries (France, Switzerland, Austria); d) visas purchased from informal ‘visa entrepreneurs’ in Borşa;⁶ e) organised irregular border-crossings (in sealed trucks, border-crossings by foot); and f) a range of border-crossing strategies by individuals or small groups (through the territories of former Yugoslavian countries, Austria and the Czech Republic⁷).

Also, in analysing migration after 1990, I differentiate between three main phases of migration: a) that of the early or ‘pioneer’ stage of migration and emergence of migration networks, when migration strategies were unsettled and dynamic; b) the development of networks (migrants and intermediaries), where migration reached a certain development, but was still controlled by visa requirements; and c) migration after 2002 that was no longer subject to visa requirements. Migration strategies for individuals or small groups were mainly used in the first few years but, over time, migration became more efficient due to the development of networks. After

2002, migration eventually affected the majority of the population of Borşa, becoming a mass phenomenon.

Pioneers of migration

In the first few years of migration, the most common strategies pursued by most migrants seemed to be irregular cross-border strategies used by individuals or small groups. From the range of strategies employed to cross borders, I present two cases of migrants who managed to enter Italy irregularly. Even though these cases may be viewed as exceptional, they demonstrate the permeability of European borders and the difficulty in stopping irregular migration when migrants have sufficient social networks, capital and information to migrate.

The case of Dumitru

In 1990, I first migrated to the former Yugoslavia. I was with five others from Borşa. In Yugoslavia, we were able to find legal employment in forestry. Initially, I was a technician in Romania, where I taught at high school. In Serbia, however, I did other work. I worked there for about three months. I couldn't earn much there, but still, it was better paid than in Borşa. In the meantime, I came across a person [residing in France] who made us a proposition: I should work for him for a month and, in exchange, he would take me to France. I went there with another person from Borşa. We worked for him and then went to France together. We crossed the Slovenian-Italian border illegally, close to the border office. [Because it was wartime], we heard shooting and dogs in the distance, but we escaped and arrived at the meeting point with our guide. We reached the meeting place the next day [and travelled on]. We [finally] reached Trieste, slept there in the car and our guide said to us: 'I cannot go any further.' We [therefore] took the train to the French border. We crossed the border by night, passing through a train tunnel. We knew that no trains ran after midnight. By then, we were already without money. As soon as we arrived at the first town, we took a train, without paying for tickets, of course. We finally reached Paris, where I ran into problems. I didn't know where poor people could eat. At one point, we were about to break into our last meat conserve. I said to my colleague: 'This is the last one, after that we are finished, we don't have anything to eat, just what we can find in the rubbish.' Once, I remember trying to steal a peach, but the vendor, a black man, saw me and shouted at me. I was no longer able to run; I was too thin and powerless and had lost a lot of weight. I had to give it back. I [even] slept in rubbish skips,

but soon struck it lucky, when I met my brother-in-law, by chance. He knew where we could eat for free and then I was able to continue living, eating at noon and in the evening. After a while, we even obtained papers that we could extend, enabling us to get work allowance. Someone helped me, and I was able to work in forestry for about three months. [We were moonlighting, so to say]. I bought a car, but we had a [serious] accident. [It became public so our employer, who didn't want to be caught employing people without a formal contract, refused to take us on again]. We had to return to Romania.

Back home I tried to start up a business, but it failed. Since I was badly in debt, I made another attempt to migrate in 1996. A friend of mine was a lorry driver, carrying goods between Bucharest and Venice. We gathered ten people together and ... [w]e travelled with him from the Romanian border; we waited until they had sealed the truck, then everyone entered it through a small ventilation window. I remained with the driver, as a second driver, and no one checked me. The truck arrived in Budapest and was then transported by railway through former Yugoslavia. Somewhere in Bosnia-Herzegovina, the army checked the train with dogs. Thankfully, they didn't discover us. In Slovenia, at the Italian border, we all got out of the lorry through the same window. We waited in a restaurant, just across from the border to Italy. We crossed it. After arriving in Italy, we all used the phone numbers that we had to call our acquaintances and relatives in Italy for help. Finally, I moved to Bergamo, where I stayed with my brother and worked on a dairy farm for the next two years.

This case shows how new migration routes are created once the migration has started. Hence, Dumitru initially began in former Yugoslavia, moved to France and ended up in Italy. This and the following case show how migration to Italy was possible because of the country's tolerant conditions for irregular migrants. Furthermore, an infrastructure of migration had developed there: networks, acquaintances and an informal labour market for migrants. Ultimately, these cases show the human degradation many migrants experienced in the first stages of migration.

The case of Dan

I first travelled to France. We crossed into Germany and then stayed in Paris for two days. From there, we went to Italy, where people from Borşa were already living. There were also [Borsheni] living in Greece and France, but our friends in Italy [were able to help us]. [They were] a family of friends of my mother-in-law, already

living close to Verona. I left the bus at a station in Verona, which was about 60 kilometres from the place I had to go. I was carrying lots of luggage with me, as well as presents for the people living in Verona. Somehow, I hid the bag close to the motorway and started to walk to the village. I arrived in the evening and returned by car to retrieve my luggage. It was June and pretty hot, so when I first arrived I was very tired and immediately drank about four bottles of water. I stayed there the next few days to recover from my long journey. Afterwards, I went to Milan, where I had some friends. I lived in tents, with about 60 to 70 Borsheni, and didn't even have a sleeping bag ... I just borrowed sheets from other Borsheni and made makeshift beds there. The conditions were rather inhumane, full of mosquitoes, and I had allergies. Although I was wearing jeans, my skin was bad. I was wrecked. I stayed there for about three weeks, looking for work in the meantime. It was difficult to find anything. One day, a man from Cluj [a city in Romania] told me that I could find work at Trieste Harbour. I went there with my brother-in-law. We slept for about three days in boats, but the information was false and we had to return to Milan, where it was back to the disastrous tents [again]. One day, I came across someone living in Como, an acquaintance of mine, who had a car that had to be taken to Romania. He offered me the chance to take the car to Romania for him, and I accepted, simply because I couldn't bear living in a tent any longer. My brother-in-law and I drove the car to Romania.

I stayed at home for another year, but by then people in Borşa had started to migrate and find jobs abroad. The man from Como said that he would help me find a job. I decided to go back and sold some wood [to give me enough funds]. Two other boys and I went with a guide, which cost about DM 700 (€ 358,00) each... We went further towards former Yugoslavia. We crossed borders by bribing the border control officers, and travelled for about a week and a half. War was being waged there and nobody at home knew anything about us. We tried repeatedly to cross to Croatia, but every time they turned us back. At a passage point across a river, we went by car on a boat and they allowed us to pass. We then reached the border to Slovenia. We got out of the car and the guide said that he would wait for us on the other side of the border. We passed through the forest by night. It was difficult because there were rocks and bushes. My clothes were absolutely destroyed, I was covered in blood and the boy with me lost one of his shoes. The passage to the other side took a few hours. We tried to find the guide's car in a car park, but it wasn't there. A police car arrived later and the other man remained hidden under a bridge, while I decided to walk on

towards Trieste, close to the road. Whenever I saw a car, I hid in the bushes. At one point at a crossroads, I emerged to look for the signs to Trieste, but a police car pulled up. I tried to run ... but they caught me. They kept me at the police station in Slovenia for about two days. I had to pay a fine of about DM 200 (€ 102) and they sent me back to Croatia. From there, a policeman brought me to the Hungarian border and I finally went back home.

I remained in Borşa for another three to four months [and then decided to go again]. I had a friend I could trust, who obtained invitations to visit Austria for a week as a tourist. He prepared one for me. He charged about DM 500 (€ 256) for it, but only after I had reached Austria. This time I didn't take too many things with me. I had no money left, I was bankrupt. I didn't even have enough money for a train ticket. I hitchhiked to the Romanian border. Hitchhiking, I finally reached my destination in Austria. I stayed there for a day and a half and then went to Udine [with a guide]. I finally reached Milan at one o'clock at night. The next day I went to Como to see the man whose car I had once driven to Romania. When I arrived at my destination, the Italian said that no Romanians had ever lived there; the man was simply lying to me. I went back to Milan, but [I also] had another address – that of my wife's cousin, who was living in Trento at the time. Again, I couldn't find him. Too bad! My last resort was the address of one of my cousins, Paul, in Modena, which I got from my uncle. Paul was living in a caravan, where he also worked. [He only helped me because the Italians for whom he was working requested him to do so.] I remained there and, finally, an Italian woman ... offered me a job. [I worked for Paul for another three months to pay him back for the food and accommodation he offered me, but he asked too much for it]. The people where I stayed couldn't give me papers because they only had a small company. After a while, I went back to Romania because I couldn't stand being away from my family for so long.

After two to three months, I decided to go again. [This time], I also had some money. I knew all of the borders between Romania and Italy. I took a car from Borşa and three other Borsheni with me. This time I became a guide myself. We wanted to pass from Croatia, but the police caught us. We stayed at the border office for half a day and they sent us back. No problem, [I said]. They freed us, but I knew another crossing point a bit further on. Croatians let you go, but the Slovene patrols stop you. When [we crossed the border], the police searched for us in jeeps, but we ran through the bushes and escaped. It was about 80 kilometres from there to Trieste, and we decided to walk there. We walked for three days on

the peak along the road to Trieste. We had no food or water, nothing. It was terrible. Finally, we arrived at Trieste, in a village close to the harbour. We had money and went into a restaurant, where we called someone in Treviso to come and pick us up. We had already hidden our bags outside, so as not to be found by the police with passports on us. But then, the Guardia di Finanza showed up and we simply couldn't run. We stayed there for one night under arrest. They issued expulsion letters. [They thought we would go back, but we didn't] and [we have] remained in Italy [irregularly]. [From Trieste], I [then] took the train to Modena [where I have finally found work], and I worked another year and a half there.

Ultimately, the Italian employer for whom Dan was working gave him official papers, and from that moment, Dan was able to enter Italy legally. Dan still works in Modena, where he lives with his family, leading the operations of a construction company at one of its sites.

Analysing these cases, it is evident that the networks and acquaintances of early migrants did not always help them. 'Checking' strategies existed, and when something did not work out, they tried other strategies, as was the case with Dan's migration, for instance. What is more, they migrated to various European countries, but moved to Italy because the conditions they found there were better for irregular migration. Finally, the fact that migrants were caught by the police did not stop them. In fact, migrants were able to employ a range of migration strategies to overcome migration controls in different European states. This was the case in both examples above, where the migrants returned to Romania, knowing they would be able to re-enter Western Europe. In this respect, structural conditions, such as impoverishment in Romania and the need for labour in Italy, advanced migration from Borşa further. These main structural causes may be reviewed for the following two periods of migration (network, controlled migration and free migration), when other causes, such as the establishment of migration networks and different cumulating causes in the origin community, may be more suitable for providing answers to continuous migration.

In the first years of migration, housing or basic shelter was a general problem for Romanian migrants. Primary concerns regarding sleeping arrangements included securing one's savings, sanitary conditions and minimising the risk of being caught by the police or robbed by other migrants. However, this situation is similar to many other cases of irregular migrants.

Given their status as target earners, during the first few trips and in the early history of migration from a community, migrants tend to live in rather Spartan conditions, sleeping in barracks or sharing apartments with other men and sleeping in shifts to save money. (Massey et al. 1994: 1499)

However, the Romanian case is different from many of the Mexican cases, which have revealed that middle-class people migrate first (Durand & Massey 1992). Although there were economic differences in the origin community, socialism maintained a relatively equal economic level, and the resources mobilised for migration were provided in some cases by the post-socialist state – in the course of the restructuring of industry. Accordingly, the first migrants did not come from the middle class; instead, they were individuals with more initiative who had the support of their families or even small-scale, post-socialist entrepreneurs whose endeavours in Romania had failed.

The development of migration: Kinship networks and strategies of success

After a few years, when migration networks had matured and money could be mobilised easily, people preferred to buy visas from intermediaries instead of crossing the border as clandestines. For instance, using intermediaries in Borșa is how Ioana migrated. She perceived this to be a ‘safe’ strategy, and the risk of being caught by the police was lower than for the pioneer migrants. Although this type of migration implied higher costs, it was preferred over types of strategies that prevailed in the first wave.

I got married in 1996 and became pregnant in 1998. I was thinking of going abroad to work. I went on an excursion to Switzerland. The trip cost about DM 1,700 (€ 869), which was given to me by one of my uncles who was working in Germany. We stayed in Switzerland for two days and then went on to Italy. A cousin of mine was waiting at Porta Garibaldi in Milan. I then went to one of my cousins, where I lived for about two months. She also helped me to find work with an elderly lady, about 79 years old. I paid everything [to my cousin]: housing, food, everything. And I started to work for the lady, who was quite awful. Since I didn’t know the language, it was really difficult – I couldn’t stand more than three weeks with that lady. I then moved somewhere else, after receiving help from one of my cousins in Milan.

Unlike Dan, who took many risks, Ioana could not fail to lose her investment in migration because it was a substantial amount of money. In fact, she had taken out a loan because she thought the risks were low and she was sure of her success. Others also migrated to Italy irregularly, but had supportive relations in Italy whom they could rely upon.

Finally, there is Sandu’s case, which I consider characteristic of migration from Borșa and the ways in which migrants’ networks function in enabling migration. Ultimately, Sandu and his wife brought about twenty migrants from Borșa and helped them find work and accommodations. The

process was roughly as follows. After attaining legal status, Sandu rented a flat in Milan. He lived with his wife, who had come from Borşa when he became a legal migrant. They sent a loan back home to one of their relatives to help a second migrant named Vali migrate. With the money, Vali bought a Schengen visa on the informal market in Borşa and migrated to Italy. He was hosted by Sandu, who meanwhile was looking for a job for him. After getting a job, Vali started to contribute to the household expenses. Finally, after repaying his loan, he remained with Sandu and his wife. The proceeds of the first loan were then sent back to Borşa, and another member of the family was brought to Milan. This practice continued, and other relatives arrived. When the house became too crowded, one of the migrants would find another home in the city, opening up a place for the new migrant. The mechanism I have briefly described here is part of a kin-based migration strategy that emerged after earlier migrants in both contexts, in Borşa and in Milan, had paved the way. It demonstrates how migration developed from Borşa and how kinship networks functioned to streamline the process.

When the initial networks of migration had matured, new migrants were able to find accommodation and work easily, minimising the risks associated with migration. As Durand and Massey (1992: 17) explain: ‘after the first migrants have arrived [...] the costs of migration are substantially lowered for friends and relatives living in the same community of origin’. For more recent arrivals, living in tents or other precarious conditions was replaced by a system of common housing arranged for irregular migrants by those already regularised, where the latter rent flats and sublet rooms to the former. In addition, due to a multiplication of contacts and friendship relations in Italy, job opportunities increased substantially compared to the initial period, which was dominated by a great deal of uncertainty.

After 2002: Free movement of people

On 1 January 2002, visa requirements to EU countries were lifted for Romanian citizens.⁸ Migration was no longer difficult and the costs were lowered substantially.⁹ While initially Romanians needed networks to migrate and substantial funds to obtain visas, after 2002, migration was comparatively easy. After 2002, Romanians migrated at a massive rate, mostly to Spain and Italy. In Borşa, estimates suggest the number of migrants doubled in just two years. The total outmigration is unofficially estimated at 30 to 50 per cent of the total population.¹⁰ People migrated mainly to northern Italy – Milan, Treviso and Trento – where there are many informal labour opportunities. In addition, many groups of friends and relatives from Borşa already residing there were able to provide support for newcomers, which was essential under conditions of irregularity. Throughout

Milan and the nearby cities, the number of groups and networks of Borsheni multiplied exponentially.

In order to highlight the shift in migration strategies that occurred after 2002, I present the case of Vlad, which shows the ease with which people migrated and found jobs via established networks in Italy.

I had seven years of undergraduate education, five years at a university of applied sciences and another two years of distance learning. I couldn't find anything decent that would have been well paid in [Romania]. It was badly paid in my field of specialisation, and I said there was no sense in remaining here being supported financially by my parents. I had intended to move to England, but gave up because I could not obtain a visa.

I therefore moved to Italy because I had friends and relatives there. If you go without having acquaintances, nobody helps you and you cannot find accommodation. Where should you go? I therefore moved to Italy in 2003, near Milan, where my brother was living and had legal status. I first went on holiday and lived with my brother; he rents a flat there. For the first three months I did not pay anything, but when I got a job and started to work, we [started to] share the rent. In Milan, I also made acquaintances, because there is a place there where Borsheni meet. There I met a former school-mate, who had a small company in Italy. He asked me whether I needed work; I said, 'Yes', and remained there.

[In time], I got used to life in Italy. First, I worked for about three months in construction, renovating buildings, interiors and so on. I then came home for a while and moved back to Italy after a month. I have worked in a plant for about a year and a half, where I make furniture. The plant is ten minutes from home, but I have to work 'unofficially'. If there are controls or such, I have to run. There are still risks involved. If you fall ill or if the police catch you and you are expelled, the Romanians confiscate your passport for five years. It is not a 'rosy life', but it is slightly better than in Romania.

For other cases, such as with temporary work contracts, migration is enabled by the high levels of Borsheni migration overall, although this type is legal and is limited to a certain period. It is not necessarily kinship-based. Instead, it is a by-product of the intense migratory flows from Borşa that, in effect, created multiple opportunities and different forms of migration in the context of the free movement of people. This is the case for Dan, who purchased a labour contract from one of his acquaintances.

I obtained my first labour contract through the intermediary of my brother-in-law, who had been in Italy for about two to three years.

He knew an Italian who was looking for workers in agriculture, and he got me a contract. I went there; I worked for two months, picking apples. Then another Italian saw me working hard and hired me for longer. So I worked for the first Italian for one year and then for three years for a different Italian, who is still giving me contracts. I rely on him and he, in turn, relies on me. He offers good working and living conditions and free accommodation.

In 2007, Romania joined the EU. As European citizens, Romanian migrants no longer enter or reside irregularly in Italy; only labour may be irregular. As a result of the intense migration from 2002 onwards, the circulation of people and capital between Borşa and Italy developed, and a number of significant changes appeared at the local level. These provide new incentives for migration that differ from the local causes that initiated migration. This is demonstrated primarily in the changes in consumption patterns, house construction and small-scale investments. There is an inflow of capital throughout the year, but in August, when migrants return home for their holidays, there is an entire *mise-en-scène* of wealth and prosperity, as acquired in just a few years. Many migrants invest their earnings in large new houses, clothes and cars. Some even think about opening a small business in their community of origin. The former socialist economy has nearly collapsed, and local entrepreneurship is emerging to fill its place in the commercial, service and construction sectors, which often target migrants and their families. In August, commerce and the service industry flourish compared with the rest of the year. In fact, the local community is split into migrants and non-migrants, with migrants being considered richer and non-migrants poorer. Young migrants are able to spend more than non-migrants and, by and large, maintain an advantage over the former, even with regard to marriage. In this sense, it is more than the lure of better wages that influences migration. As a result of changes brought about by migration, the marked difference in consumption patterns and the status of migrants compared to non-migrants also play a role in motivating people to migrate. Moreover, migration is no longer costly. Due to the EU policy of free movement, Romanians no longer need a visa to travel between Italy and Romania, and even irregular migrants are able to visit their families without restrictions. Even though labour scarcity has emerged in this area of Romania in recent years, due to mass migration, people prefer to move abroad. Workers from the eastern regions of Romania now come to take their place.

Compared with initial stages of migration, migrants' destinations are more certain and migration strategies are simpler and more efficient. Migration is still mainly pushed by wage differentials between Romania and Italy and by the existence of large social networks in Italy. However, some of its causes have evolved from the changing social relations in

Borşa. We may also conclude that the large families of the Borsheni helped them migrate, facilitating migration and helping migrants to cope with an uncertain and speculative milieu in Italy.

Conclusion

In this chapter, I analysed how international migration from a Romanian mining city to Italy developed. I first showed that the restructuring process of the local economy represented the main push factor of migration, since people started to lose their jobs. The first wave of migration, in the 1990s, was possible due to an array of factors: the existence of a prior culture of migration, earlier migration to Germany and other European states, the proximity to Western Europe and the compensation received for job losses all enabled many pioneers to migrate.

In addition, migrants used highly imaginative and diverse strategies of migration, repeatedly overcoming border controls. As irregular migrants, they were able to find innovative solutions, and many have remained in Italy, where they have found jobs and are now subject to less strict migration policies. By analysing the narratives of migrants, it becomes evident that this is not simply a story of migration from Borşa to Italy. It constitutes European migration, with many migrants having used their relations in other Western European states to get to Italy.

This migration developed from rather unique and innovative strategies to easier and more standardised forms once networks of intermediaries were established. At the same time, following Massey et al. (1994), we may consider the extent to which the migration of Borsheni was a self-sustained process led by its own inner logic and the extent to which it was influenced by external factors. In the Mexican case, migration was found to be a self-sustained process that eventually became mass migration (*ibid.*). The Romanian case differs. After 2002, Romanian migration became mass migration precisely because of external factors. When travel restrictions for Romanian citizens were dropped after 2002, migration changed dramatically: since it became easy to migrate, mass migration occurred and the mechanisms of migration changed.

Finally, migrants in Italy had to cope with a speculative and uncertain environment of migration. In this context, kinship proved to be essential for migration and integration. It provided resources and information on migration for new migrants, as well as support, trust and opportunities in Italy. Due to the presence of large families in Borşa, as well as a dynamic field of social interactions between the two countries, these migrants' endeavours were successful, and they were able to create a new environment in Italy.

Notes

- 1 This study is part of my PhD research at the University of Bielefeld's Institute of World Society Studies in the doctoral research group World Society – Making and Representing the Global and the International Graduate School in Sociology. The research was conducted with the financial support of the German Research Foundation (DFG), awarded by the Institute of World Society Studies. I would like to thank my professors and colleagues for their comments and suggestions. I would also like to thank the Romanian migrants who tolerated my presence and research curiosity, especially Dan (from Rona), as well as members of the NGOs and Romanian churches in Italy who agreed to speak to me. I am also grateful to Mioara Bolboacă for being my research assistant during the field-work in Romania.
- 2 I use the terms 'irregular migrants' and 'irregular migration' (Ghosh's definition) rather than 'illegal migrants' or 'undocumented migrants'. In this sense, Ghosh (1998: 4-7) specifies the following:
 non-nationals are generally considered to be in an irregular situation: (i) when they have not complied with the required formalities, or have not obtained the authorisation required by law, for admission or stay or for their activity during such stay in a country; or (ii) when they cease to meet the conditions to which their stay or activity is subject.
 Gosh also distinguishes between different types of irregularity: irregular entry, irregular residence and irregular activity or employment.
- 3 In this chapter, I use pseudonyms rather than disclose the names of my interviewees.
- 4 Her cousins alone numbered around two hundred.
- 5 According to census data (Oficiul de Statistică 1966, 1977, 1992), between 1970 and 1992, the population aged 29 and younger was twice that of the older population.
- 6 Prior to 1999, a visa cost approximately 2,000 German Marks (around € 1,022).
- 7 Romanians could travel through Serbia, Hungary and the Czech Republic, for instance, without requiring a visa. From there, they had to cross the border irregularly.
- 8 The visa-free agreement for Romanian citizens was adopted by all EU member states except the United Kingdom.
- 9 Prior to 2002, the cost of migration was between € 1,200 and € 2,000. It is now just € 150, which is the cost of transport.
- 10 These estimates are relative. No clear statistical data is available. However, according to interviews with local authorities, local statistical offices, non-migrants and migrants from Borșa, medical doctors and school teachers, many believe that more than 60-70 per cent of the labour force has migrated, which would translate into more than 35-40 per cent of the total population.

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3 Illegality in everyday life: Polish workers in Dutch agriculture

Emilia Brinkmeier

The topic of Polish migration to the Netherlands is hardly addressed, either in Polish or international scientific literature. Polish labour migration has become an issue of public concern in the Netherlands, though not in Poland. However, it is becoming increasingly urgent to take a closer look at the situation of Poles in the Dutch labour market in the light of European Union enlargement. This chapter explores whether the accession of Poland to the EU on 1 May 2004 and the lifting of the transition period by the Dutch government on 1 May 2007 has brought about changes in Polish migration patterns – in particular, their irregular aspects. According to the Labour Inspectorate Report (Arbeidsinspectie 2006), the evidence of irregular work, particularly in agriculture, which is ‘occupied’ by Poles, is relatively high. Further, the employment situation of Polish workers in Dutch agriculture is an example of how state classifications of migrants are reflected in everyday life. Thus, this chapter endeavours to answer the question of whether the classification of migrants into regular and irregular statuses makes a difference in social relations between employers and workers.

The importance of the Netherlands on the map of Polish labour migration seems to be underestimated. Even though the Netherlands is not the main receiving country for Poles at the national level, some regions seem to gravitate towards this destination. In 2003, it was the second main destination of choice after Germany for migrants from Silesia¹ (Jończy 2003). In fact, it was probably the first sending region in Poland from which migration to the Netherlands started in the 1990s, after the collapse of the communist regime. The migrant population was primarily dominated by indigenous inhabitants of Silesia, which is located in south-west Poland. The majority of German Poles² hold dual Polish-German citizenship, which gave them open access to Western labour markets, including that of the Netherlands, long before Poland’s accession to the EU. They were followed by Polish Poles, who currently constitute more than 82 per cent of workers from Central and Eastern Europe on the Dutch labour market (Versantvoort, Vossen, Van der Ende, Zoon, Nugteren, Nauta, Azzouz, Donker van Heel, Kreft & Ceglowska 2006). Their concentration is

particularly visible in horticulture and agriculture (CWI 2008). At the same time, the evidence of irregular employment, especially in these two sectors, seems to be particularly high, not only among Polish Poles but also among German Poles.

This chapter is divided into four sections. First, a brief overview of research into Polish irregular migration is presented, followed by information on the research design of this study. The third section considers the changes that EU enlargement has brought about with regard to Polish out-migration. The in-depth analysis of the ways in which the irregularity of status makes – or fails to make – a difference in the interaction between immigrants and employers (as well as any other social actor of interest) is presented in the fourth section. Finally, a number of concluding remarks are made.

Overview of research into irregular Polish migration

I divide the relatively limited research into irregular Polish migration into two parts. First, I focus on studies on irregular Polish migration in general. Second, I review the literature on Polish migrants in the Netherlands.

The majority of studies on Polish migration conducted in, or related to, the period before May 2004 refers to three groups: legal seasonal workers (migrating mainly to Germany); individuals with dual Polish-German citizenship (German Poles); and irregular migrants. The last group is probably the most intensively studied, since the majority of Polish migrants at the time were irregular. With the exception of people with German citizenship and legal seasonal workers, Poles had very limited opportunities for residing and/or working legally in the majority of European and non-European Western countries.³ In fact, they ‘could legally be only tourists in those countries which rarely was their actual motive of a foreign journey’ (Kicinger & Weinar 2007: 13).

A complex study conducted by the Centre for Migration Research from 1993 to 1997 is an example of research concerning all three groups. It analyses migration patterns and consequences of migration (Jaźwińska & Okólski 2001). A few conclusions related to legal and irregular statuses are worth mentioning here. The research indicates that the size of the community determines migration patterns, including regular and irregular status abroad. Migrants from large centres (e.g. Warsaw), rather than small peripheries, were more likely to take up legal employment. The employment performed was also more frequently suited to migrants’ qualifications than the jobs of those from the peripheries. The ‘consistency’ of the community was also a significant variable. Residing in ‘sedentary’ (dominated by German Poles) vs. ‘mobile’ (inhabited by internal migrants, i.e. Poles from former east Polish territories) areas is reflected not only in different

migration development stages and different mobility patterns, but also in its legal or irregular character. Paradoxically, the population from the sedentary rather than from the mobile areas represented high mobility (Iglicka, Jaźwińska & Okólski 1996). Finally, according to the study, the intensive migration of German Poles could be explained by the combination of three factors: personal and family connections in Germany that facilitated migration, the short distance between Poland and Germany and the possibility of legal work.

The theory of incomplete migration, developed by Okólski (2001a, 2001b) explains migration not only from Poland, but also from other Central and Eastern European countries. Rapid industrialisation – characteristic of post-socialist countries in the 1960s – followed by the limited development of housing infrastructure, led to a permanent flow of (mostly) low-skilled workers between ‘peripheral’ and urban centres. The modernisation of Polish industry in the 1970s, as well as the loss of jobs, low wages, the restricted capacity of the labour market and the high rate of foreign currencies on the Polish (black) market, caused some of these employees to seek alternative sources of income – including abroad. The pattern of behaviour established in the 1960s was taken to the international level in the 1970s, turning it into a common strategy for outmigrants. The movement continued to accelerate, especially after the liberalisation of border policies in 1989. Constant relocation between peripheries and centres in Poland turned into circular migration between Polish peripheries and centres abroad. In turn, this created a particular type of migrant, called ‘people on the swing,’ who lived neither in Poland nor abroad and were, in practice, excluded socially from both societies (Jaźwińska & Okólski 2001).

The topic of labour migration by German Poles living in Silesia has been deepened by Jończy (2003, 2006). Although he does not make a distinction between regular and irregular migrants, and further, representativeness of the findings should be viewed with caution because there are no methods to verify it, the particular value of his research lies in its unique results. German Poles are a difficult group to study, due to historically high levels of distrust of outsiders. For this reason, not much data on this group is available. According to Jończy’s (ibid.) estimations, German Poles from the region of Silesia permanently living abroad permanently at the time numbered over 80,000 – 60,000 of whom carried out work there. Jończy’s research also indicates that migration has risen by 26 per cent since 2002. In 2005, 84 per cent of all German Poles working anywhere were doing so abroad.

Small-scale, exploratory studies have proven particularly efficient for analysing irregular movements. Polish immigrants with an irregular status are rather reluctant to participate in research studies, with partial exemption granted to Polish interviewers. This is especially the case when interviews are conducted in the destination country – where researchers’ personal

networks become highly valuable. Perhaps it is also a factor in explaining the small amount of research carried out into Polish migrants in the destination country. Further, the majority of these studies do not analyse the situation of individual irregular migrants, but rather consider the population of Polish migrants in general, focusing on its various aspects.

Rosińska-Kordasiewicz (2005) indicates that the experience of migration and the employment situation of many Polish women in domestic work in Italy is dramatic, not least because of the insecurity of their status but also due to, for example, health-related problems. The situation of Polish women working in Italian households can be compared to living in a totalitarian institution, under the constant control of employers and in isolation from the rest of society, stigmatised as inferior individuals.

Kowalska-Angelelli (2006) shows that the accession of Poland to the EU changed the situation of Polish migrants on the Italian labour market positively, allowing many to legalise their status. On the other hand, many remained in an irregular status – in fact, this is typical, especially for Polish women working in domestic jobs (Grzymała-Kazłowska 2001b; Kuźma 2004, 2005; Slany & Małek 2005). The irregular status of such migrants is shaped and sustained by new as well as old migration networks and ethnic institutions developed by earlier waves of Polish migrants. Migrants find work through them, and illegality does not appear to be a barrier. Moreover, support through networks and institutions decreases the feeling of insecurity caused by a lack of knowledge about the new country and its regulations, as well as a lack of competence in the foreign language (Grzymała-Kazłowska 2001a). Romaniszyn (1996, 1997) suggests another factor influencing irregular status, which is more country-specific: culture. Using the example of irregular Polish migrants in Greece, she indicates that the Greek tradition of openness towards newcomers makes new laws restricting irregular migration ineffective.

Many studies analysing the irregular status of migrants – in the sense of residence and/or employment – have focused on the legalisation strategies of Polish migrants (e.g. Cyrus & Vogel 2000, 2002; Düvell 2004; Jordan 2002; Lutz 2004; Schuster 2005). These strategies usually turned out to be either unrealistic (through origin, in the case of German Poles, or work permits) or unattractive and expensive (e.g. marriages of convenience). The majority of migrants therefore remained or became irregular residents and/or employees again. Using the evidence of Polish and Latin American migrant women, Lutz (2004) shows how differently individuals mentally cope with their irregular status. For some migrants, an irregular status is a source of crisis and constant insecurity, while for others, '[i]llegality is an aspect of [...the] overall biographical process', consequently perceived as a situation in their life stories like any other and thus does not represent a threat (ibid.: 52). This leads to a division between migrants determined by their

irregular status and those who, to some extent, self-determine their irregular status and shape it according to their possibilities.

Polish migration to the Netherlands

Polish migration to the Netherlands is an understudied topic. The available research is related mainly to three aspects: migration strategies and patterns; immigration regulations and migrants' practices, including the effect of EU enlargement; and the relationship between workers and employers.

In her study, Wolf (2006) gives a brief description of migration patterns and the employment situation of irregular and regular Polish workers in the horticulture sector. She points out that irregularity appears not only with regard to unauthorised employment, which is understandable, but also within documented employment, where various breaches of the law occur. This raises a question as to whether this is particular to this sector or whether migrants working in other economic sectors within the Dutch market experience the same phenomenon.

Pool (2005) suggests that irregular Polish migrants are victims of migration regulation. Liberalisation of immigration law at the EU level, which started in the 1990s for Central and Eastern European countries, led to the opposite effect in the Netherlands, due to increasing restrictions for migrants. What was supposed to be possible according to the new EU regulations became impossible to achieve in practice. Pool also made a predictive analysis of the influence of EU enlargement on the position of individuals from Poland with German citizenship. The study predicted that the situation of German Poles will deteriorate because these individuals are not competitive enough to hold their ground against Polish Poles, whose legal job opportunities in the Netherlands were limited prior to 2004 (Pool 2004).

A study carried out by Pijpers (2005) exemplifies an approach that helps us understand the current situation of both irregular and regular Polish workers. Based on interviews with employers, she found that a mutual dependency exists between employers and their workers, which gives migrants a certain amount of space to decide and shape their trajectories for work and life. This implies that migrants have agency, which, in turn, raises several questions. How do both parties perceive this relationship? How much independence do migrants really have in this condition? And how do they use it? How does their perception of irregularity influence their behaviour?

All of the above studies were conducted not long before, or soon after, the accession of Poland to the EU; hence, a lack of data on possible changes after 1 May 2007. Moreover, previous studies focused primarily on German Poles, who dominated the migrant population from Poland at the time; Polish Poles were only touched upon briefly. More research also

needs to be conducted to verify the hypothesis made by Pool (2004) that the position of German Poles on the Dutch labour market will change when the Dutch government's restrictions for new member states are lifted.

In short, very few studies focus primarily on irregular migrants and their status, although the issue of irregularity is present in the majority of works. Most of the existing research refers to two types of irregularity: unauthorised residence combined with unauthorised employment; and legal residence with unauthorised employment. No studies have yet been undertaken on the condition in which migrants are legal residents who work legally yet some or all of their working conditions violate legal regulations. Moreover, none of the available literature analyses the social context of the irregular employment status of migrants. Finally, there is also a need for more specific studies within different economic sectors. It would help not only to observe whether there are any sector-specific factors determining migration patterns, but also to gain a broader, more complex overview of the situation of Polish migration within the Dutch labour market.

The research presented in this chapter attempts to fill some of these gaps. It is a small-scale study conducted in the destination country, focusing on the social aspect of irregularity and the ways in which irregular migrants deal with their status subjectively and socially in their everyday lives.

Design of the study

The analysis is based on seven interviews conducted with key informants, e.g. experts on the Dutch labour market,⁴ 38 biographical-narrative interviews with Polish migrants working in Dutch agriculture (twenty women and eighteen men) and field notes. The interviews with migrants were conducted in the Dutch province of Limburg in August 2006, between February and March 2007⁵ and between July and August 2007. The majority of the respondents' interviews were audio-recorded, while in eleven cases detailed notes were taken because the interviewees did not wish to be recorded.

Sampling hidden and/or deviant populations and questioning interviewees about sensitive topics prove highly problematic. The sample is also non-representative because it aimed at a high variance of attributes among interviewees, not only those working regularly and irregularly, but also those experiencing various work violations *within* regular employment. The respondents were selected using snowball sampling methods. Different 'gate openers'⁶ were used to ensure that findings would not be based on just one network.

The age range was between eighteen and 50 years old. Most of the interviewees were married (N=13) or living in a cohabitational partnership (N=17). Among those in a relationship, the majority were accompanied by

their partners/spouses during the interview. Nineteen respondents had children. The majority of respondents had vocational training; the second largest group was made up of high school graduates, including current students. Only two respondents had a university degree. At the time of the interviews, the length of their total stay (including any periods of absence) in the Netherlands ranged between one week and ten years.

The respondents came from various regions, which included Poland's peripheries and centres. There was one German Pole, and several were close relatives of such individuals and/or came from the region of Silesia. All interviewees had experience working in agriculture. The majority was still in this sector at the time of the interviews, while others had moved to positions in factories or, in one case, at a job agency. Some also moved between various informal jobs, sometimes working in agriculture and sometimes in construction (especially in renovation work). The respondents had performed various jobs in agriculture, such as working in open crop fields (e.g. leeks, lettuce), greenhouses (cucumbers, strawberries) and the white mushroom industry. A small number of migrants had performed 'multitask' jobs, namely shifting frequently from one job to another or performing various duties at one workplace.

At the time of the interviews, the majority of respondents had been unemployed in Poland. Among those who held jobs in Poland were working students and a few high school graduates. A few migrants had an alternative (informal) income in Poland (e.g. owning a tanning salon). At the time of the interviews, three respondents had an irregular employment status in the Netherlands. The rest were working legally; although, with the exception of two people, they all had undocumented employment experience in Dutch agriculture. They also had all experienced various types of violations within their regular employment status.

The impact of EU enlargement on irregular Polish workers in the Netherlands

The particular case of Polish migration to the Netherlands between 2004 and 2007 is an ideal way to study how regular and irregular migrants and employers reacted to prior regulations and their abolition. First, however, I elaborate the context by discussing three changes related to the issue of irregularity: changes in the structure of the Polish migrant population; changes in employment status; and changes in migration patterns.

To adequately discuss the topic of changes in the structure of Polish migration to the Netherlands, the phenomenon must be embedded in a historical context. Polish labour migration to the Netherlands commenced in the 1990s and was primarily dominated by German Poles. The majority had dual Polish-German citizenship, which gave them unlimited access to

Western labour markets, including that of the Netherlands, long before Poland's accession to the EU. This gave them the legal opportunity to enter into documented employment, which many took up. There is no data on the number of German Poles working in the Netherlands, since they fall into the category of 'Germans' in the statistics. Nonetheless, this group was estimated to be around 30,000 in 2006.⁷

Over time, Polish Poles followed the German Poles, even though the former group was only able to obtain documented employment in 1998 and later in 2002. This was made possible thanks to an agreement reached between the Dutch government and the national agriculture and horticulture organisation (Land-en Tuinbouw Organisatie Nederland, LTO). The agreement led to the partial halt of irregular employment (mainly of Poles), which previously dominated both sectors. Polish Poles were able to find legal low-skilled work in seasonal horticultural and agricultural jobs and were later able to become self-employed in the construction sector. After that, their numbers grew steadily up until May 2004, when a dramatic acceleration of migration was observed, despite the transitional period introduced by the Netherlands. In reality, migration rules on the Dutch labour market were liberalised – simplification of application procedures for employers in sectors with labour shortages played an important role here. This sudden growth can also be partially explained by a lack of precise information in Poland on the situation of EU labour markets following accession. Numerous migrants working in Dutch agriculture reported the arrival of many new Poles immediately after 1 May 2004. They thought that the Dutch labour market was open and sought legal jobs. Indeed, due to the liberalisation of rules and demand in the seasonal sector, many of them found legal employment, reflected in the number of work permits for that period.⁸

The rapid growth continued until 1 May 2007, when the Dutch government lifted all remaining restrictions and opened its labour market to citizens of the new member states. Since then, Polish Poles have practically colonised a number of economic sectors within the Dutch labour market (as both regular and irregular workers). In the agricultural sector, they not only displaced Turkish and Moroccan immigrants, but also Dutch women who worked there part-time. What is more, German Poles no longer constitute a significant group in this sector. The labour force's shift from German Polish to Polish Polish appeared to be caused by the latter's higher competitiveness, which would confirm the previously discussed hypothesis made by Pool (2004). German Poles required higher wages; they were less flexible and worked fewer hours per day. Polish Poles accepted jobs for less; they worked longer and were more vulnerable regarding work conditions. What happened to the German Poles, we may ask? Have they migrated elsewhere or returned to Poland? One hypothesis is that they have 'migrated' upwards, spreading to other economic sectors of the Dutch labour

market (e.g. floriculture, recycling, production and hotel housekeeping), and moved to larger agglomerates (ibid.). Further, the massive appearance of Polish Poles increased tension between the two groups.

Others believe that significant policy changes are responsible for the shifts in migrants' labour market positions (Van der Leun & Kloosterman 2006) – for example, the new employment status of Polish migrants. The liberalisation of immigration rules in 2004 (despite the introduction of the transition period) could in fact be responsible, at least partially, which contradicts Pool's hypothesis (2005). A shift from an irregular to a regular employment status or, in fact, a semi-regular status, occurred.⁹ The change is evident mainly among Polish Poles, since German Poles had open access to the Dutch labour market long before Poland joined the EU. The first indicators of this tendency occurred around 2004 and intensified between 2004 and 2007. While in 2003, the number of Poles who received a *sofinummer*, a social insurance number required in the Netherlands to be legally employed, was as high as 16,957, the number increased to over 30,000 in 2004 (Ter Beek, Mevissen, Mur & Pool 2005). An intensification could be observed especially in May of that year, when 7,000 Poles received a *sofinummer*. This data should be viewed with caution, however, since many Poles believed they could work legally once in possession of such a number. This legalisation strategy did not work because they still required a work permit despite having a *sofinummer* (Pool 2005).

The change was also sustained by regular and temporary employment agencies, which discovered a new potential in hiring Poles with only Polish passports. Many of these agencies focused exclusively on German Poles, since their employment procedures were simple and fast. From the beginning of 2007, however, agencies started to develop strategies and procedures to employ Polish Poles. Since then, more Poles have found legal work through them, and many new agencies focusing on Polish Poles were set up, both in Poland and the Netherlands.¹⁰

There is a whole portfolio of violations that migrants with a semi-regular employment status experience. Major violations include low wages, the lack of a contract, working hours longer than permitted by law and sub-standard working conditions – for example, lacking basic safety procedures and equipment. Migrants are often charged additionally for services, such as transport between the place of work and their place of residence. There are cases where migrants either have no bank account (as necessary for legal employment) or they share one belonging to the employer, receiving only a debit card to access cash machines. In the latter scenario, they do not usually receive their salaries regularly, but instead are allowed to withdraw only a limited amount of money per week (e.g. € 50), which they spend on basic food and sundry costs. The remaining salary is withheld until 'five minutes' before their Poland-bound leaves, and is sometimes

lower than agreed upon. In this situation, migrants have no time (and are often too tired) to protest, much less fight for their rights.

Finally, the change in Polish migration patterns is related to the shift from seasonal and incomplete migration to more permanent migration. This was already observed in the early 2000s among German Poles switching from seasonal work to jobs that could be performed all year round (Pool 2004). This implies longer periods of stay in the Netherlands and perhaps even settlement, although no data is available to confirm this.

The shift among Polish Poles is better documented, although its scale is unknown. Many long-term and commuter migrants who already spend half or more of the year in the Netherlands are becoming interested in settling down. This shift is linked to the prospect of legal residency and employment, which arose after 2004 and 2007. Even though many of these migrants had been living in the Netherlands for several years (ranging from three to ten), it was always considered temporary. There was a typical incomplete migration with repeat circulation between Poland and the Netherlands. A possibility to regularise their status increases migrants' interest in long-term employment, often beyond the agricultural sector, and in settling down in the Netherlands.

This is also reflected by their interest in language courses, which they perceive as a path to better jobs. The heightened interest is mirrored by a rapidly growing number of Dutch language courses. In 2005, there was only one Dutch language course for Poles in Venlo, one of Limburg's larger cities and the closest to agricultural areas. The majority of its participants were motivated by a future marriage to a Dutch citizen or higher job aspirations. In 2007, there were three such courses, including two within predominantly agricultural areas, in small villages where migrants were living (e.g. Horst, Meterick). Migrants are increasingly considering renting houses, which enables them to live in less temporary, more 'civilised' conditions and to be able to bring their families – children included – to join them. This is still mainly in the planning stage, and such cases are rare, though the fact that the topic even arose in the interviews suggests that further changes may emerge.

The impact of irregular status on the interaction between migrants and employers

This section is an in-depth analysis of the ways in which the irregularity of status makes – or fails to make – a difference in the interaction between immigrants and employers (as well as any other social actor of interest). Two types of irregular migration will be discussed. One relates to the irregular status that occurs when working without a work permit.¹¹ This classification is created by the migration regime. The second is principally a

regular status: the migrant holds a work permit and is therefore in a position of documented employment, a condition desired by the state – whose migration policy is supposed to help create. In reality, however, it is often a semi-regular status, since some or all work regulations are, according to Dutch law, violated. The semi-regular status is principally a condition not created and defined by state classifications. Is it then an outcome of migrants' lack of knowledge about labour regulations and/or the superiority of employers who dictate the conditions due to their power? Or perhaps it is the result of a deal – collusion between workers and employers from which both parties benefit.

Irregular status complicates the relationship between workers and employers. In contrast to regular status, where worker-employer relations are very formal and businesslike, irregular (and semi-regular) status makes their interrelation more informal and personal. It allows migrants to react quickly to the needs of the market and employers. When jobs are available, they work and earn money, but when there is little or no work, they leave and return to Poland or change jobs.

Relations between irregular migrants and employers changed after 2004. Prior to that, irregular status was often shaped by collusion between migrants and employers, based on mutual trust. Since the mid-2000s, however, due to a high supply of (Polish) labour in Dutch agriculture and new possibilities for legal employment (which is often semi-regular from the point of view of labour laws), power relations between the two parties has become unequal. Migrants can still leave work whenever they wish. However, feelings of insecurity and the fear of losing one's job have increased significantly, and it has become considerably more difficult to find a job. Employers dictate the conditions because they know there are other Poles 'queuing up' for the same work. Migrants then become more vulnerable to exploitation and the pressure to meet employers' expectations and retain their jobs.

Relationships based on mutual agreement led to various non-monetary benefits, such as the promise of employment in the following season or year, though not always for a high (or much higher) wage. A personal relationship is almost a guarantee of employment, as in the case of Dominik,¹² a 50-year-old migrant who worked irregularly for the same employer for five years. He found it the best option, especially when comparing it to his current job (with a different employer). He now works semi-legally, but the threat of losing his job is greater than before, mainly due to the high supply of Polish workers. As he mentions, friendly relations with his former employer enabled him to lead a very convenient life, in which work and leisure spaces of both migrant and employer overlapped.

[For] five years, I didn't worry about the job, that I could lose my job. And it was a comradeship with the Dutch [employer]. He

visited me [in Poland], then I came to his house with my family on holiday. And it went on like that for years.

Such informal and personal relations are especially prevalent among irregular workers and owners of small farms, as in the case of Dominik and his former employer. Such ‘employers’ do not offer contracts because they do not perceive themselves as employers. The relationship between work and employment is therefore not based on employment rules (e.g. hierarchisation), but rather on more friendly relations with migrants.

Personal relations, especially between those who work for one employer for a long time, also lead to non-monetary and monetary benefits, particularly for special workers such as foremen, who are responsible for managing workers and recruiting a new labour force. Their high position is based not only on long-time seniority, but also on social and cultural capital (e.g. knowledge of the Dutch language and having networks that can produce potential workers) and the mutual trust that has developed between them and their employers. These factors lead to promotions, which under a regular status would occur through businesslike relations. Due to a lack of such competencies, it is much easier for individuals who possess them to return to the same employer, especially if they have a very long working relation and a personal relationship has developed. Thirty-year-old Jacek had been working for the same Dutch employer since 1999, first irregularly and now semi-regularly. In 2004, he decided to return to Poland because he was suffering from asthma, caused by unhealthy working conditions (namely, the pesticides commonly used in Dutch agriculture). A year later, he felt better and returned to the Netherlands for the summer to ‘repair’ his home budget. His return evolved into a permanent stay. He decided to leave his job with a Polish company, where he had worked after falling ill, and began working for the same Dutch employer again. The break did not undermine his value, but actually enhanced it. This allowed him to negotiate better working conditions, i.e. higher wages.

[A]nd I came here [to the Netherlands, after the illness] and the boss asked, ‘How are you?’ I said: ‘I feel good, I don’t have to take any pills any longer, and I can breathe easily.’ [Then the boss said]: ‘Then I would like you to stay here. [...] How much do you want? Because it suits me for someone to manage things here, because there isn’t anybody, and it’s also about the language.’ [I said]: ‘Oh God, I have to go back to my company [in Poland].’ And we reached an agreement and it remained like that. [...] And this year I was promoted again.

Unlike Jacek, Magda, 32, who works for the same employer and has a regular status as a seasonal worker, found a relationship with her employer

much more businesslike and distant. She and her colleagues found themselves feeling stressed in the presence of the employer, afraid of being fired at any time: 'And we are...simply afraid because sometimes you know, they can say, "*Weg* ["*Out*"]," as they say here, and that's it, and I want to work here [...]'.

Various types of intermediaries play an important role in sustaining and shaping migration (Elrick & Lewandowska 2008). The function of supervisors, especially of the same origin, includes mediating relationships between workers and employers. They are bearers of a reality employers want to 'sell' their workers, a reality related to migrants' regular or irregular status. Migrants believe they are legally employed because the supervisors, whom they trust, told them so. They help them find jobs, help them become employed, often organise transport and accommodation and support migrants in emergencies as well as in everyday life. Such a close relationship and, in fact, the dependency of migrants on their supervisors, means they place a great deal of trust in them. This sometimes results in an almost unquestioning reliance, when migrants believe they have a regular status simply because the supervisor said so, even if there is no evidence as such (e.g. no contract or bank account, no liquid cash in hand or *sofinummer*). In cases like this, irregular status is shaped by migrants' lack of knowledge about the conditions required to work legally. Migrants are also reluctant to discover the truth, even if they suspect something is amiss, because they would then have to admit to themselves that they are breaking the law and that they have let somebody cheat them. This would further increase their feelings of insecurity. They migrated to earn money and prefer not to ask too many questions in order to fulfil their aims and to return as people who 'made it' – not as losers.

Semi-regular status creates a new form of 'foggy structure' (see Bommès & Sciortino, Chapter 10 this volume), which is even more hidden and difficult to define than irregular status. Relations between workers and employers become more complex: it is a combination of work-oriented attitude and formality, but informal negotiations also take place. And because there are formal contracts, both parties are bound to each other more tightly than in the case of irregular status.

Semi-regular status, which began to increase after 2004, is an outcome of migrants' lack of knowledge about employment regulations, as sometimes in the case of irregular migrants. They become exploited workers, unaware of their rights. This status is also a result of mutual agreements between the two parties. Such collusion makes work and time very efficient for both sides. This is indicated by Gabriela, 43, who is aware of the employment irregularity of this mechanism, but justifies her employer's quasi-regular strategies since they bring more benefits to both sides. Gabriela has a bank account into which her employer deposits the minimum wage stated on her contract. The contract and pay slips are

documents that ‘prove’ the legality of the employer’s activity in the eyes of the fiscal office. In reality though, those who do not work quickly enough to earn at least the minimum wage are discriminated against and consequently fired, or their contracts are not prolonged. This creates stressful conditions for migrants, as well as an unhealthy and highly competitive atmosphere.

It always states on the contract ‘per hour’. [...] It has to be written on the contract. [...] The employer [is] unhappy when somebody [...] is not effective enough – he or she will not collect enough for the basic [salary], € 1,290, and the employer has to pay extra for him or her [...] and he loses out. [...] And, you know, it is for the fiscal office – they [employers] have to prove that you earn this money. [...] And they look for new workers; they don’t prolong contracts with those who collect too slowly. [...] It is a constant selection [...].

Gabriela prefers these conditions, as they are more profitable for her. Even if, according to the contract, she works ‘per hour,’ her efficiency at work is calculated per piece, a practice not permitted in the Netherlands. This way, she can earn much more because, rather than the minimum wage, she always receives the amount she earns – in reality, higher than the minimum wage, as she is very efficient. Instead of the 38-40-hour work week permitted by Dutch law, she works at least 50 hours per week; 70 hours per week is also not rare among other migrants.

It is inefficient for me per hour; [...] Per piece is better. [...] I would lose out because if I worked for ten hours I would earn € 79 gross [...] and I would have received € 50. And when I work ten hours a day I can [...] even earn € 100.

Semi-regular employment status is seen to be more beneficial to many migrants, even if it has obvious disadvantages. Contracts, bank accounts, workers’ tax numbers and work permits protect both parties from legal consequences in the event of unexpected controls at the workplace.¹³ The irregular elements – different wages, longer working hours or a lack of paid holidays and sick days – are difficult to detect unless admitted by one of the parties. Both parties make an effort to hide violations from the authorities. The structure of the interrelation becomes increasingly secretive. The employment situation of 38-year-old Jurek illustrates the strategies that invisibly combine employment regularity with selective violations of the rules. Jurek came to the Netherlands in August 2004 and worked irregularly for the first three months; later, the same employer hired him regularly. He works in the Netherlands for almost the whole year, which is

divided into two six-month periods, during which he is paid an hourly wage (transferred to his bank account). During the first half of the year, in which he harvests leek, he is paid per hour, according to contract. He is paid for overtime, albeit less than according to law, though in cash. This allows him to pay lower taxes, since his official income is much lower, and to receive a substantial amount back from the fiscal office. In the second half of the year, he harvests and sorts lettuce. He is paid per piece, although the contract states 'per hour'. In this period, he has to work hard enough to gain the wage stipulated in the contract, although it is very easy to reach the minimum when working per piece with lettuce. When he earns more, he receives it in cash. He works longer than on the contract, throughout the whole year, and does not have any paid holidays or sick days, but goes home often and for longer periods. While his work in the first half of the year enables him to earn money and to survive, the job in the second half is much more profitable. Even if the winter job is not particularly beneficial, it guarantees his job in summer. This is seen as a privilege of workers with long seniority, which gives him the feeling of security and the continuity of employment. The case of Jurek also shows that, for workers, a semi-regular status is not very different from an irregular one. The working conditions remain the same; the only difference is an obligation to pay taxes. As Jurek explains, 'It is all the same. Work is the same. There are no less or more hours. It's the same. For me – this paper – [...] I don't need it. [...] What is the difference: legal or illegal? Now I have to pay taxes, before I didn't have to.'

The semi-regular status makes the link between migrants and employers even closer than with irregular status. Official contracts link employers and workers, and make the interrelation visible for authorities. Paradoxically, the interrelation is even more invisible than within irregular status, which is observable in the practical sense. Ten years ago, migrants were living on official or makeshift camping sites, which created a physical boundary between the two: officially, employers did not know where their workers were living and, should there be labour inspectorate controls, they could have said they did not work for them, or even know them. The relation was non-existent in a bureaucratic sense. Now, migrants have moved to their employers' premises. Thus, their accommodation is hidden from the outside so that nobody can see there is actually somebody working or living – existing. While before, migrants were independent, they are now more closely bound to their employers, which has further implications connected to power relations between the two. This can be illustrated by the flexibility of return.

In our case, we have good bosses [...] because I can tell him that I am leaving for a month. Now it has all changed, but before

[changing to a semi-regular status], when I started going [to the Netherlands], it was like that [...]. (Male migrant, 30)

While, as one of the migrants indicates, irregular status leads to more independence and flexibility, semi-regular status restricts migrants' freedom of choice but gives them more security, thanks to the contracts. Migrants no longer have to fear deportation. 'The papers' are also important because the years of documented employment count towards their pension. But semi-regular status has not changed their income. Migrants feel that their earnings are now worse than before, though this is due to a change in currency since the euro's introduction to the Netherlands, and not their status. Even if they officially earn a different wage, they have the same amount of money to spend as when they had an irregular status.

In sum, interrelations between employers and workers differ according to regular, irregular and semi-regular statuses. The factors that influence in-group relations between Polish migrants are a high level of competitiveness (due to high supply) and ethnicity – not cooperation (Grzymała-Kazłowska 2001b). There is no group support derived from common nationality. Help is rare because migrants are envious of what other Poles possess and they do not. Ethnic differences between migrants from Poland are, paradoxically, a factor that brings the common feeling of nationality back to life. Relations between Polish Poles and German Poles are marked by tension, derived from the latter's priority in gaining legal employment.¹⁴ Although the regular employment of German Poles has all the features of regular status, and the regular employment of Polish Poles is instead semi-regular, some of the Polish Poles prefer their current condition. The very rich, frequently negative vocabulary describing German Poles reveals the attitude of their Polish co-nationals. They lead separate lives, rarely communicating or helping each other (unless they are family). A negative perception of German Poles is often expressed in terms of their betrayal of Poland and Polish identity – those who criticise emphasise a strong attachment to everything that is Polish. Moreover, it is common knowledge that holding a German passport (colloquially called the 'red passport' because it, like all EU passports, has a red cover) is often instrumental and not necessarily accompanied by a national identification with the country of the second citizenship. This exacerbates the negative feelings towards German Poles, as illustrated by a migrant describing her conversation with a few German Polish women with whom she was working. She speaks of the 'inferiority' of German Poles and the superiority of 'true' Poles.

And I said to the German Polish women: 'Girls, listen, if you are German, then why don't you talk in German?' The women answered: 'Of course we do!' I said: 'What, of course?! "Ja", "bitte" and "danke schon"?! I know that, too. You are as German as

I am Ukrainian.’ [...] They feel superior because they have the red passport because they are Germans [...]. (Female migrant, 25)

This evidence should of course be taken on with caution, though I found such opinions common among the Polish Poles I interviewed. Such exaggerated attitudes are inevitably dictated by jealousy and complex inter-group conflict, which has developed over time between these two groups due to historical events.

Conclusion

The dynamics of Polish migration to the Netherlands clearly reflect the changes that occurred after the accession of Poland to the EU on 1 May 2004. In addition to the quantitative, three qualitative changes require closer examination: changes in the structure of the migrant population; changes in their employment status; and changes in migration patterns. The ethnic aspect of the Polish migrant population – namely, a distinction between German Poles and Polish Poles – is crucial to understanding the dynamics of migration from Poland. The shift from irregular to regular (or semi-regular) status shows how Polish migrants and employers reacted to various policy changes and the real impact of the country’s accession in 2004. Finally, short-term and circular migration seems to be the most common mobility pattern, although a small yet growing tendency towards settlement migration can also be observed.

Different statuses do indeed determine relations between workers and employers. While regular status makes for more businesslike, distant inter-relations, irregular status binds the two parties, making a relationship more informal and personal. Within semi-regular status, the relationship becomes deeper and more complex, while at the same time migrants become less independent than when working illegally. Various strategies used by both sides to hide illegality make the interrelation more ‘foggy’ and difficult to define. Migrants and workers are in collusion to benefit optimally from combining documented employment with the formal and the informal economy. Some mechanisms and factors shaping irregular and semi-regular statuses make them similar. In fact, semi-regular status becomes a new and more complex form of irregular status.

The question of whether irregularity of status makes – or fails to make – a difference in the interaction between immigrants and employers speaks to the issue of how migration regimes and state classifications are reflected in the everyday lives of migrants. As I have demonstrated, especially in the case of migrants with semi-regular status, empirical reality is shaped by other political drivers. Neither status nor classification, but agreements based on individual needs and a lack of knowledge are factors that shape

the work and lives of migrants. Polish migrants with an irregular or semi-regular status are a ‘mobile labour force, responding to new forms of demand for an extremely adaptable workforce’ (Jordan 2002: 15).

The aim of this chapter, based on a small-scale study, was to highlight aspects of the employment situation of Poles in Dutch agriculture. Further research is required to investigate other aspects of the phenomenon of regular, irregular and semi-regular statuses and their impact upon migrants. For instance, how do migrants deal psychologically with illegality? How does illegality influence – or not influence – their life paths? Finally, with the lifting of temporary restrictions on 1 May 2007, there is a whole new host of questions and areas of inquiry.

Notes

- 1 The resident population of Silesia, and especially the Opole region, amounts to 1,000,050 people (2005), 350,000 (one third) of whom are ethnic Germans, i.e. people whose ancestors lived in the region before the outbreak of World War II. A considerable proportion of those people have German citizenship in addition to Polish nationality (Kaczmarczyk 2006).
- 2 It seems to be particularly difficult to find a name for this group because it very much depends on state classifications and individual self-perception and identification. The term ‘*Aussiedler*’ usually refers to those who moved permanently to Germany while ‘ethnic Germans’ is a category found in statistics that also includes people from other countries, e.g. Russia. ‘Indigenous inhabitants of Silesia’, which is used in Poland, is deemed politically incorrect in international literature. The term ‘Silesians’ binds people to the region – they are neither Poles nor ethnic Germans. The term is relatively neutral, although it fails to cover the ethnic aspect, which is important in the analysis presented. Finally, some Silesians consider themselves Poles. The issue becomes even more complex when considering those who have German citizenship in addition to Polish nationality, and those who have only Polish citizenship but consider themselves to be ethnic Germans. I decided to use the term ‘German Poles’, which covers the aspect of ethnicity as well as the country of migration. In contrast, the term ‘Polish Poles’ refers to Polish individuals who have only Polish citizenship. When talking generally about outflow from Poland, however, I use ‘Polish migration’ or ‘migration from Poland’.
- 3 Germany is an exception in this regard for two reasons. For one, a Polish-German bilateral agreement has made it possible for many Poles to find legal seasonal jobs since 1998. Additionally, for historical reasons, many German Poles, especially from the region of Silesia in south-western Poland, were able to acquire or reacquire German passports, which gave them access to legal jobs abroad.
- 4 The experts comprise a policymaker resident at the town hall in Horst, a labour inspector based in The Hague, a Polish consul in The Hague, a fonctionnaire of the Ministry of Social Affairs and Employment in The Hague, a policy advisor of the FNV organisation of trade unions in Amsterdam, a representative of the FNV agricultural trade unions based in Eindhoven and a representative of Dutch job agency OTTO in Venray.
- 5 The interviews were usually conducted in small towns and villages – namely, Horst, Meterik, Tienray, Venray, Venlo, Oirlik, Wanssum, Meerlo – all located in the Dutch

- province of Limburg. The distance between the locales is up to approximately twenty kilometres.
- 6 Gate openers as such were found via the Polish church in Horst, a Dutch language course for Poles in Horst and Venlo and the supermarket in Horst where Poles do their shopping on Fridays.
- 7 Derived from interviews, this figure was estimated by experts on the Dutch labour market, including a representative of the Polish embassy in The Hague.
- 8 More than twice as many work permits were issued to Polish workers than in the previous year (9,510 in 2003 compared to 20,190 in 2004).
- 9 I define semi-regular status as legal employment in which one or all conditions of work defined by employment regulations are violated.
- 10 In Poland alone, 267,000 individuals took up jobs through various regular and temporary employment agencies registered in Poland in 2004, while in 2005 the number increased to around 370,000. At the same time, the number of regular employment agencies for work abroad grew from 271 in 2004 to 1,097 in 2005. While up until 2004, they were mainly concentrated in four regions in Poland, including Silesia, a significant increase was noticeable throughout the entire country in 2005 (Kepińska 2006).
- 11 When considering the situation of Poles before 1 May 2004, it is important to note that irregular status was related to both residence and employment. After 2004, Polish migrants fell under the EU's free movement regulations and could therefore reside legally. Until 1 May 2007, documented employment was restricted and many worked illegally. The analysed data include all types of irregularity mentioned above, although the primary focus is irregular status in the sense of employment.
- 12 In order to protect respondents and guarantee their anonymity, all names used in this chapter have been changed.
- 13 The situation becomes more complicated in the event of employers' accounts being audited. However, no data on how employers solve the problem of illegal money paid to migrants was given in the interviews (which were conducted with migrants, not employers).
- 14 This is related to the period prior to 1 May 2007, when the Netherlands lifted the transition period for member states that joined the EU on 1 May 2004.

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4 The informal economy of paid domestic work: Ukrainian and Polish migrants in Naples

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Introduction¹

Who undertakes care work? Who looks after children and the elderly? Who does the ‘dirty’ work of cleaning our homes and households? It has become almost axiomatic to state that demographic changes, an ageing population and declining birth rates, combined with the dismantling and restructuring of the welfare state, are radically transforming contemporary Western societies. However, these changes are even more pronounced in Southern European countries, especially in Italy. As a result, organising care and care services has become one of the most pressing questions for social scientists and policymakers. It is against this backdrop that migrant domestic and care work – i.e. employing migrant workers in private households to perform various care and welfare tasks – needs to be analysed. Researchers have argued that these changes have contributed to an increase in paid domestic and care work not only in many Southern European countries, but also globally (Ehrenreich & Hochschild 2003; Moya 2007; Parreñas 2001; see also Colombo 2005). In addition, migrant domestic labour presents social scientists an interesting case for studying the relations between the family, the state and the market. An outstanding phenomenon is live-in domestic work, where workers reside in their employer’s household, echoing pre-modern forms of labour relations.²

Moreover, paid domestic work is stratified by gender and social class. In southern Italy, domestic chores have traditionally been perceived as either part of women’s unpaid work within the family, i.e. part of their role as homemakers, or as employment for (usually young) women from the lower social strata, performed in upper-class families. Nowadays, it has become one of the main forms of employment for migrant workers, who are affected in many ways by an irregular juridical status in the country. In this chapter, I explore how irregularity concerns Ukrainian and Polish migrant workers differently and how cultural values shape informal labour arrangements.³

Naples is an interesting case, as the city is known for its extensive underground economy, including both informal and illegal labour markets.

It has also been one of the main destinations for migrants who are not in possession of regular Italian ‘permits to stay’. Discussing the case of these two groups – Ukrainian and Polish migrants – is revealing because they share many similar characteristics (e.g. structural reasons for migration, gender composition, similar migration projects), yet have quite different statuses in Italy (Poles even enjoyed visa-free access to Italy prior to European Union membership; moreover, being predominantly Catholic, they are thought to share a greater cultural proximity to Italians). Ukraine and Poland also differ in many respects: not only historically, but also in their contemporary economic situation.⁴

The remainder of this chapter is organised as follows. In the following sections, I present key theoretical concepts and outline my research context. I then proceed to analyse migration patterns from Ukraine and Poland to Italy, exploring how the women I interviewed managed to find work in local informal labour markets in Naples and how cultural notions of decency affected their search for work. I conclude by discussing the broader implications of this study.

Linking informal labour and irregular migration

What do we mean by the concepts of informal labour and irregular migration? And how are they interconnected? First, it is important to distinguish between the two phenomena: irregular migration and informal labour (Tapinos 1999; see also Chimienti, Efonayi-Mäder & Farquet 2003 for a useful distinction). Although interconnected, these terms do not necessarily go hand in hand; for instance, many migrants with regular residence permits continue to work informally. Secondly, informal labour and irregular migration are phenomena that depend on the social context and on what is defined as regular or formal at a given time.

The informal economy is a concept devised in relation to developing countries, thus carrying rather negative connotations (Portes 1995). Nowadays, it is generally acknowledged that the informal or underground economy⁵ is also a widespread phenomenon in developed countries and that it is growing in importance (Schneider & Enste 2000: 77). In an early article on informal labour, Castells and Portes (1989: 12) offer an extensive definition, according to which we can call informal ‘all income earning activities that are not regulated by the state in social environments where similar activities are regulated.’ This definition aptly points to the fact that informality should not be seen as a clear-cut and stable object, but more as a process that is always specific to a certain social context. For instance, in the case of ‘moonlighting’, a person can shift from formal to informal work in the course of a day (ibid.: 11). More specifically, the informal economy can be understood as including ‘all those work situations

characterised by the *absence* of: 1) a clear separation between capital and labor; (2) a contractual relationship between both; and (3) a labor force that is paid wages and whose conditions of work and pay are legally regulated' (Portes & Sassen-Koob 1987: 31; emphasis in original). Although paid domestic work entails all these characteristics, the latter point is especially relevant. Regarding migrant domestic workers in Naples, informality takes various forms: from disrespecting the collective labour contract to denying a contract in the first place and, finally, to severe violations of basic human rights, such as bodily integrity.

Castells and Portes (1989) also point to the fact that the informal labour sector does not always develop in the margins of the state or outside its control. On the contrary, the state can generate informality indirectly or directly. This can be seen in the case of migrant labour in Italy. Lacking coherent immigration legislation that corresponds to actual labour demands and a lack of regulation regarding labour relations and work conditions not only contributes to, but also creates, informality and irregularity.

What is meant by irregular migration is another complex issue. Irregular migration usually refers to: 1) clandestine entries (crossing borders); 2) legal entries but irregular stay; 3) the loss of legal status due to administrative or political changes; or 4) working illegally (Jahn & Straubhaar 1999: 18-19). For instance, Reyneri (1998) analyses the causal relationship in Italy between the informal or underground economy and irregular migration, coming to the conclusion that underground labour markets are an important incentive for irregular migration: 'Were it not for the shelter of the irregular economy, [the migrants] would soon be forced back to their home country' (ibid.: 329). Moreover, he acknowledges that this 'pull factor' is related to the fact that Italy is a country 'that can be entered only, or almost only, in an irregular or clandestine manner' (ibid.).

These definitions reveal the contingent and socially constructed nature of irregularity: in a Foucauldian vein, 'irregular migrants' can be understood as a produced subjectivity, an outcome of governmental practices. Thus, in the case of Italy, 'being irregular' has been the norm for a long time, a social condition and construction induced by a lack of legislation that affects most migrants at some stage of their migration project. My research shows how there was often a desire on the part of employers to regularise workers, but it was legally impossible. Thus, we need to approach categories such as irregular migrants, as well as refugees, business migrants or tourists, as socially constructed – not fixed – and by no means telling the 'truth' about the migrants' situation (see also Wallace & Stola 2001: 28-29). Let us now take a closer look at migration to Italy.

Italian migration patterns

Immigration to Italy needs to be understood in historical context. For centuries a country of emigration, Italy rapidly transformed into a country of mass immigration in the late 1980s, when it was estimated that over 100,000 people were entering the country each year. Italy was ill-prepared for this change and failed to develop coherent immigration legislation. It was not until 1990 that the first law concerning migration was passed (Legge Martelli). However, the core of Italian migration legislation has long remained in regularisation programmes, under which irregular migrants can apply for a permit to stay (*permesso di soggiorno*).⁶ There have been five amnesties (1986, 1990, 1996, 1998 and the latest in 2002). Concomitantly, the procedures to enter Italy legally have changed. Until recently, there were practically no established routes to enter the country regularly, domestic work being an important exception. A so-called nominative call system (*chiamata nominativa*) existed for domestic work until mid-1990. Under this system, a work contract could be established between an employer and the aspiring migrant. Interestingly, it was the Catholic Church and its missionaries who figured as mediators in these contracts, from countries such as Sri Lanka and the Philippines (Andall 2000; Näre 2007; Parreñas 2001).

Moreover, requirements regarding regularisation have changed, making it harder for migrants to meet the criteria. While in 1986, applications from job seekers were accepted, by 1990, migrants had to prove they had lived in Italy the year before applying. In 1996 and 1998, the requirements were tightened so that a job offer by an employer was required, and in the recent legislation's Bossi-Fini Law of 2002 (L 189/2002), migrants must have held a labour contract for three months prior to the request for regularisation. Regulations concerning family reunification have also been tightened. Until the Bossi-Fini Law, Italy had some of the most liberal legislation concerning family reunification in Europe, including siblings and parents. The new limitations in the definition of family posed by Bossi-Fini complicate and restrict the organisation of care from a distance (Kofman 2004: 246).

Another means for migrants to regularise were planning quotas, established in 1997. These quotas are intended for migrants who are not yet on Italian territory. In practice, however, the quotas are usually used by irregular migrants already working in the country seeking legalisation (Smargiassi 2006). At the end of my field-work in 2005, I noted that Ukrainian migrants were seeking to use the 2006 quota for the benefit of family members who did not fit the strict criteria of the family reunification law. Thus, when the annual quotas of 2006 arrived, over 517,000 applications had been filed for a quota of 170,000 permits. In order to deal with the enormous number of applications, the left-wing government decided to

offer another 350,000 permits to enable most applicants to obtain a permit to stay. The huge success of the 2006 applications can be taken as an indication of the continuous presence of irregular migrants in Italy, despite the regularisation campaigns of the past, as well as an indication that the current legislation is inadequate for dealing with new migration.

Thus, when we consider migration in Italy, we must take into account the presence of irregular migrants as an important factor. In fact, migration to Italy has been perceived as following the so-called 'Mediterranean migration model', which refers to the coexistence of immigration and unemployment, emigration, extensive unofficial labour markets and labour markets that are segregated by gender and ethnicity (Pugliese 1996). However, we should not treat Italy as a unified case. The Mediterranean migration model would seem to better describe the situation in southern Italy (Mezzogiorno)⁷ than in the industrialised north. In Mezzogiorno, migrants have been able to live for long periods without regular residence permits and without encountering a serious risk of deportation. As 33-year-old Katya⁸ from Ukraine explained, she chose Naples as her final destination because: 'This is a city that is much freer. Here you can move around. In the north [of Italy], you can't.' Southern Italy remains a region that Italians also leave to find work in the 'north' (Maciotti & Pugliese 2003: 22-37; Pugliese 2002). Today's south-north internal migration also involves the many immigrants from abroad who arrive in the south and continue their migration project by moving to the north (De Filippo & Pugliese 2000).

Migration patterns from Poland and Ukraine to Italy

Let us now consider Poland and Ukraine as 'sending' countries. Both nations underwent dramatic emigration flows after the collapse of the Soviet regime and the subsequent economic crisis. In Ukraine, the economic crisis of 1998 was a particularly important trigger for migration. The estimates of Ukrainians who have left the country vary from official estimates of one million to unofficial assessments of seven million (Malynovska 2004: 14). According to OECD statistics, over 1.15 million Ukrainians emigrated between 1996 and 2001 (OECD 2003). Malynovska (2004: 14) refers to statistics provided by Ukrainian embassies, which reveal that the majority of Ukrainian labour migration has been directed towards Poland (300,000 migrants), followed by Italy and the Czech Republic, with 200,000 Ukrainian emigrants each. As we will see later, this is almost twice the amount of the official Italian figures during the same period.

In the 1990s, there had consistently been over 20,000 Polish migrants to Italy per year, peaking at 26,900 in 2000. At the same time, however,

migrants are returning to Poland (Iglićka 2005). Using data from a population census conducted in Poland, Kępińska (2003) reports that over 780,000 Poles remained abroad for at least two months in 2002. Their major destinations were Germany and the United States, followed by Italy. According to these statistics, over 39,000 Poles were residing in Italy. More recently, after the EU enlargement of May 2004, thousands of Poles left the country to work in the United Kingdom. It is interesting to note that Poland, which is still a sending country, has concurrently become a destination country for various immigrants, especially Ukrainians, but also for migrants from South-East Asian countries such as Vietnam (Wallace & Stola 2001: 32). We are thus witnessing rather new migration trends from Eastern to Central Europe and from Central Europe to the West and South (see also Okólski 2001).

Polish migration to Italy preceded that of Ukrainians. The first 'wave' of Poles arrived in Italy at the beginning of the 1990s, followed by the Ukrainians some five years later. However, Polish and, especially, Ukrainian migration to Italy skyrocketed at the turn of the millennium. This migration remained invisible in the official statistics until the regularisation of 2002, when over 100,000 Ukrainians were granted a permit to stay. The drastic increase and change in 'visibility' becomes apparent if we consider the fact that there had only been 15,510 Ukrainians with permits prior to 2002 (ISTAT 2005).

Today, according to figures from the Italian statistical office, Ukrainians are the fifth-largest immigrant group in Italy, after Romanians, Albanians, Moroccans and Chinese; Poles are in eighth place.⁹ Both are gendered populations: 80 per cent of Ukrainian migrants and 70 per cent of Poles in Italy are women.¹⁰

What were the motives behind my interviewees' migration? Most of the women I spoke with explained that their reasons for leaving were of an economic nature. Usually the answer to the question: 'Why did you come to Italy?' was similar to 35-year-old Maria's: 'For work. There's work in Ukraine, but no one pays for it.' The Ukrainians recalled the dramatic economic crisis of 1998 that followed the collapse of the Soviet regime. As explained by Tatyana, 45, who arrived in Italy in 2000:

When the Soviet Union collapsed, we lost all the money we had in the bank. Everything. We had zero, our complete savings were gone. I couldn't see a future because I had no money. I didn't have a secure future, and then my health problems started, brought on by the worry.

However, economic reasons were interspersed with various personal motives, such as the hope to 'have a change in one's life' (45-year-old Natasha, divorced) or a desire to get away from a sick, alcoholic husband

(47-year-old Alina). This is in line with findings from other studies, such as Phizacklea's (2003) research into migrant domestic workers in London, where she found that 'money and self-respect' was a central element in the migration stories.

Although the accounts of Polish interviewees were less dramatic, a lack of work and earning opportunities were among the main reasons older women migrated to Italy. Younger women, like Monica, 27, also saw migration as a way to save money for their future and in the light of their personal emancipation.

I wanted to come here for three months to earn money in order to study in Poland. [...] I lacked money, because I have other brothers, well four of them. [...] I am the oldest and had a sense of responsibility that I didn't want to be supported by my parents, but wanted to earn my own money. Then I wanted to have my autonomy. [...] I also wanted to get to know the country, to learn the language.

What is striking about the experiences of these women was their role as sole breadwinners for their families.¹¹ Typically, Ukrainian women were separated from their husbands or were widows. They considered going to Italy as the only opportunity left for them to support their families.

Irregularity and informality in Naples

In terms of being regular or irregular, the actual migration event – i.e. border-crossing – clearly plays an important role. For Polish women, who did not require a visa for Italy, emigrating in itself was quite easy. Polish women often already knew someone working in Naples and a common practice was to start working as a substitute for a friend for a period of three months. The actual decision was rather easy to make, since it was always possible to return home. Existing transnational social networks played an important role in the migration projects of Polish women. Let us consider the case of 42-year-old Dora, as described in this interview excerpt:

Q: How did you decide to come to Naples?

A: [laughs] I didn't decide. Everything happened by chance. After I had lost my job, I was very depressed, couldn't do anything. And at some point, I was asked to come to Italy.

Q: Who proposed this?

A: My mother. She had a friend who worked here. This friend called my mother, saying there was a place where they were looking for someone.

Such mobility permitted Polish women to create flexible forms of rotating work, where two women share a job in Naples, taking three-month turns. The practice has been discussed in the context of migration in Central Europe, especially among small traders (e.g. Morokvasic 1992; Wallace & Stola 2001). Rotation work not only enables close relations to be maintained to one's family and home; it is also important for preserving one's self-esteem. As Ewa, a 60-year-old retired high school teacher, put it: 'After three months [of domestic work in Naples] we are tired, we need to restore our psyche.' Cases of Polish migrants who work on a short-term basis in Naples exemplify how migration can be paradoxically used as a way to create a feeling of settlement in the old home country (see also Morokvasic 2003). The constant movement back and forth allowed Polish women to maintain their social relationships and contacts in two places simultaneously.

Another effect of this freedom of movement was that Polish migrants did not consider it very important to be regular, i.e. to have a regular permit to stay. Being regular did not enhance or reduce a woman's chances of finding work. Moreover, Polish women were likely to pay for a private pension in Poland and to receive medical check-ups at home. Social aspects of citizenship were thus generally bound to the country of origin.

The Polish women's mobility contrasts sharply with Ukrainian women, who had to pay substantial amounts for a tourist visa to get to Italy.¹² By and large, the Ukrainians arrived in Italy legally with a tourist visa, but overstayed its allotted time. They arrived on buses that travelled regularly between Ukraine and Italy. Moreover, Ukrainians had weaker social networks than Poles. Many, like Natasha, decided to come to Naples because of the option to pay to get a job.

We all paid when we got here. My friend knows a person who takes four to eight of us Ukrainian women to sleep at his place and they find you work and you have to pay them.

Natasha had paid \$300 for her first job in 2001, and despite the fact that she had to pay to obtain work, she was grateful to have someone help her in Italy, especially because she did not know a word of Italian at that time. However, since these jobs are sold not only by workers, but also by illegal brokers, the women had no guarantee that the work was genuine. Tatyana, who at the time of the interview worked as a cultural mediator, recounts her experience.

I didn't know anyone here. [...] I couldn't speak the language, I had no information. I bought a job here – I mean – I was sold work. We call this a 'work wheel' [lavoro di ruota]. This means you go to work for an old person and then after two or three days, the sons or nephews arrive and throw you out and you lose the 300 dollars you paid for your work. Then you have to get another job and pay another 300 dollars.

Tatyana describes a situation in which the worker is employed and then fired on the pretext that she does not speak good enough Italian. Being afraid of deportation, victims of this kind of fraud rarely go to the police. Ukrainian women are especially vulnerable to this kind of exploitation due to their irregular position in Italy.

Although the Ukrainian women in my study found work, they were unable to apply for a permit to stay, since this was only possible during amnesties and within small annual quotas. Thus, they found themselves 'stuck in Italy'; if they left the country, they would have to spend huge amounts on a new passport. The women suffered, especially because they were unable to visit their families back home. What thus emerges from the comparison of the situation of Polish and Ukrainian women is that regularity is important for freedom of movement – not necessarily for the work contract in itself. This is in line with theories on transnational migration, which found that contemporary migrants continue to retain close ties to their countries of origin and build cross-national social fields (Basch, Glick Schiller & Szanton Blanc 1997: 7).

Moreover, in order to apply for a permit to stay, migrants need a regular work contract. Tying the residence permit to a work contract implies that migrant workers are not truly sovereign subjects but more like dependents. A migrant's subjectivity is equal to her or his ability to work and, in practice, immigrants are dependent on the goodwill of their employers to apply for necessary permits. Some Ukrainian women experienced serious problems in convincing their employers to apply for regularisation within the two months of the last amnesty in 2002. Employers' reluctance was mainly due to their unwillingness to pay for social security taxes. In some cases, the women were forced to change jobs or to resort to the help of their boy-friends or other friends, devising fake work contracts. Some migrants were unable to convince their employers in time, as the story of 53-year-old Ludmila shows. A former medical doctor in Ukraine, she had been working for almost two years, taking care of a 94-year-old man who was suffering from Alzheimer's disease, when the 2002 amnesty took place. Her employer was the man's 72-year-old daughter. Ludmila recalls their discussion as follows:

She said to me that we are like sisters. I couldn't believe it. After all, she didn't give me a permit to stay. Because I waited when there was the new law. I waited and waited – all of my friends already had their permits. And when time started to run out, I asked three weeks beforehand: 'Signora M[...], you are not going to do the work permit?' She said: 'No, I can't. Why? Because I can't. I would then have to pay taxes, a lot of money, and I can't.' Then I said: 'Excuse me, Signora M[...], but this document is so important to me. Otherwise, I am afraid of the police. I want to work like all other people, like all my friends. If you can't pay it all, I will pay half.' She kept saying: 'I can't, I can't.' [...] Now, I can't go like all of the other people in this country, I can't go back to my country.'

Ludmila's employer did not relent, and time ran out. She remained in Italy irregularly. At the same time, she was diagnosed with breast cancer. Her employer became worried that if she went to hospital the fact that she was employing an irregular migrant would be revealed, so she stopped paying Ludmila and told her to find a new job. At the time of the interview, Ludmila was without work or a home, apart from short periods as a substitute for her friends. She was about to start chemotherapy and was living in free accommodation run by nuns. Nevertheless, she had the strength and persistence to take legal action against her ex-employer, with the help of a trade union. Ludmila's case demonstrates how irregularity emerges through migrant workers' dependency on individual employers.

Having discussed the different patterns of migration and work for the Polish and Ukrainian migrants I interviewed and how women, in particular, experience the effects of legislation, I now consider domestic work practices and how they are influenced by cultural norms and values.

Domestic work practices

The growing demand for domestic workers in Italy has been explained by the increase in women's wage labour combined with a lack of public services and demographic changes – especially aging and decreasing population (Anthias 2000: 25-27; Hoskyns & Orsini-Jones 1994: 11). Although these are certainly important structural factors, they need to be complemented by an understanding of how domestic work is related to social class. While in lower-class families in Naples it was the wife's duty to take care of the home, among the upper social strata, employing staff to help the *signora*, or 'lady of the house', has a long historical tradition. Lucia, a 74-year-old *signora*, considered it self-evident that she has always had someone to help her with domestic work. She explained that as she was

occupied with her children, she needed someone ‘to help around the home’ (*fare i servizi*). So she employed a young, unmarried girl from the Neapolitan working class who came every morning to do the ‘dirty work’ around the house. In addition, another woman came to do laundry every week and, occasionally, a third woman was paid to do some extra ironing. Employing staff to take care of domestic chores remains a normal practice in the household management of upper middle-class homes. What has changed with immigration is that the stratifications and power relations within households have become much more complex.

Among my respondents, the negatively loaded notion of domestic work as being ‘dirty’ affected migrant workers’ perceptions of themselves. This was even more apparent among the women who were highly educated in their countries of origin or had a professional career history. These women were painfully aware of the discrepancy between their social position back home and the type of work they were currently performing in Naples.

We agree to take low-wage jobs that Italians would never do; dirty jobs that make you nervous. They don’t take these jobs, but we have to do them; we don’t have any other choice. (Valentya, 52 years old)

Almost all of us are graduates, and I have found so much ignorance in Italy. There is a big difference between people who are educated and those who are not, and in our country, you don’t notice this difference so much. At the same time, our girls are here to earn money, so they can send their children to school – to help, to help so much, so many. (Irina, 32 years old)

These statements relate the feelings of unfairness felt by such women.

It could be claimed that increasing migration, i.e. an increase in the supply side, has made employing a domestic worker accessible to those in social strata who would previously not have considered employing outside help. In particular, the demand for care workers for the elderly has increased across all social strata. Thus, we should distinguish between two forms of the demand side in domestic work: one related to a certain social status and to the reproduction of a bourgeois life style and the other used as a substitute for a lack of, or badly organised, social services (for the care of children and the elderly). Moreover, both models need to be understood in a context of persisting traditional values related to housekeeping and the unchanging, gendered division of labour within households: women still primarily bear the burden for all domestic work. Calloni (2001: 79) notes: ‘In the Mediterranean experience of the welfare state, social policies are often founded on the assumption that a woman has a “fundamental family function”.’ Thus, men are freed from these functions. It is no wonder, then,

that a recurrent theme in my interviews was the absence of men from the daily chores of Neapolitan housekeeping. Domestic workers' important relationships were therefore created with the *signora* of the house.

These co-existent models explain why many households in Naples with women as 'housewives' employ live-in domestic workers (see also Miranda 2002; Anderson 2000 for Spain). In these labour arrangements, the private sphere of the household becomes even more marked by class and gender stratifications. I encountered several ways in which the symbolic distance between the 'maid' and the 'Madame' in upper-class Neapolitan families was underscored, including uniforms or everyday practices such as not letting the domestic worker eat with the family. Eliza, a 23-year-old Polish migrant, described such working conditions.

At the beginning, I thought it was odd, because the signora told me to wear an apron, a thing that servants use. With long sleeves. This was the first time it happened to me. And then I eat alone in the kitchen; I don't eat with them. [...] She also tells me when I can have a shower. I can't go whenever I want. [...] But I'm already used to this.

So what it is that domestic workers actually do? Domestic work performed by Ukrainian and Polish migrants is extremely heterogeneous. When asked about their work duties, the most common answer was: '*Faccio tutto* ('I do everything').' For instance, Silvana, who spoke Italian with difficulty otherwise, proved to have a vast vocabulary when we started talking about household work: 'I clean the four rooms and the kitchen. Clean. Iron. Cook. Do the shopping. Cook again. Do all the things you need to do in a home. I do everything'. If the work involves taking care of elderly people, household chores are only part of the workload. The care worker also acts as a nurse. Silvana cared for a 95-year-old man: 'I gave him his medicine, measured his blood pressure... If you are the only person near to the old person, you have to do everything. I helped him to get dressed, to wash, everything, everything'.

Domestic work thus includes various chores, different combinations of time and space management in the household, as well as care work. Following Anderson (2000), these are summed up as 'the three Cs': cleaning, cooking and caring. This heterogeneous nature of domestic work makes the day potentially endless and the workload extremely heavy. Respondents complained that, although they were tired, they were afraid of just sitting around or taking breaks during the day. This was related to a sense of being under constant supervision. Such methods of self-discipline and control easily lead to a violation of labour rights, i.e. of the collective labour contract that stipulates daily and weekly rest. Interviewees also claimed that they were rarely paid extra for hours or days worked

overtime. Irregular practices were also present in that the labour contract between the employer and migrant domestic worker did not correspond to the real working conditions. For instance, employers declared fewer hours in order to pay less social security tax.

However, migrants are not passive victims. The women I interviewed did not always remain in bad working conditions and left unrewarding jobs. Stories such as that of Elina, a woman from Ukraine, where the migrant worker suddenly decided to quit a bad job, abound in the interviews.

I went to work in a family of three people and ended up working for ten people, for € 550 a month. Even in the morning, I did the gardening, and so on. One day, it wasn't a holiday but a 'red day' on the calendar [a bank holiday]. I said to the signora: 'I'll go now.' She asked me why. I replied: 'Today is a holiday. All of my friends have a free day.' She said: 'Your friends! I am the head of this house. Who are you? You are nothing,' and continued shouting: 'What do you do? You don't do anything in this house.' Do you know what I said to her? 'I don't feel like I'm nobody! Signora, do I belong to you? Did you buy me on the marketplace? No, I'll tell you what I feel like, and I don't feel like a nobody – goodbye.' And with that, I went.

Being treated with respect and not like a 'slave' – as many of the interviewees described their worst experiences – was the most important prerequisite for work. Thus, in most cases, workers did not leave their jobs for economic reasons, but in order to be treated humanely.

Extreme cases of abusive treatment involved depriving workers of their basic physical needs, such as showers or sufficient food. The case of Tatyana is a telling example of the implicit ways in which power relations can be created in households employing domestic workers. Tatyana, a Ukrainian migrant, worked as a live-in babysitter and cleaner in the household of a family of three generations, where the daughter of the *signora* was a homemaker.

I was always hungry, only the signora gave me something to eat. During the day, I didn't eat anything. Nobody gave me permission to open the fridge to get something to eat. [...] I lost twelve kilos.

Q: You didn't eat during the day?

A: The daughter of the signora didn't allow me to open the fridge. She didn't actually say, 'Do not open the fridge', but, for instance, once I took some cheese to put on my bread. She immediately came after me: 'But I wanted to give this cheese to A[...] [her child],

now there's none left.' I felt so sorry that I'd eaten A[...]s cheese. [...] It was as if she just wanted to show me that I shouldn't give myself permission to take food from the fridge. She ate alone.

Tatyana was given no explicit orders not to open the refrigerator, but she was implicitly told that the food it contained was not hers – it belonged to the family and the children. This is worth noticing, since food is a symbolically significant unifier of the family, especially in the Italian context. Depriving someone of food is an extreme way of saying that he or she is not part of the household and not welcome. Depriving a person of food is, of course, also a form of physical abuse. A lack of nutrition finally made Tatyana seriously ill and forced her to quit the job. In such cases, certain legal measures are available to migrants, such as filing a complaint with the authorities, although the processing times can be long and the procedure expensive.

Although live-in work arrangements were generally considered undesirable and stressful, the interviewees did not always describe them in a negative manner. They were also seen as a way to enter the local labour markets and Italian society at large. Ukrainians and Poles had a clear strategy to use live-in domestic work as an entrée to the local culture, to learn the language and the habits – or this was at least how it was subsequently seen. Katya, who at the time of the interview worked on an hourly basis, recalls her experience.

When you arrive, you can't speak any Italian, and who will take you on like this [by the] hour? You have to speak. So to start with, to learn the language and how things work, you work *notte e giorno* ('day and night'). If you like it, you stay. If you don't, you leave and find another job – like I did. I learned the language and I escaped.

For Ukrainians, live-in work contracts were also important because working and living in the privacy of a household kept them safe from police controls.

Decency and trustworthiness in domestic work

Domestic and care work is based on personal relationships, a fundamental element of which is trust. As immigrants are not usually professionals and in most cases do not have prior experience in the work they are going to perform in households, their personality becomes the embodiment and guarantee of their labour. Here, gendered stereotypes attached to certain nationalities play an important role.

In spring 2003, I worked part-time as a trainee at the regional office of the Italian Workers' Christian Association (Associazioni Cristiane dei Lavoratori Italiani, ACLI). One of the associations under this umbrella organisation is ACLI-COLF,¹³ which recruits migrant workers for Neapolitan homes. During my training period, I was able to observe the recruitment situations and to establish contacts with migrant workers. I soon noticed that there was a recurring pattern in how the recruiter described workers to potential employers. The applicants were often presented to employers simply as being good, decent people – '*bravi persone*'. Consider this overhead side of a telephone conversation between the recruiter and an employer: 'She is from Moldavia. No, no, they are decent. *Brava, buona persona*. Yes, yes. She has been here [in Naples] for eight months.' We imagine that the employer on the other end of the line did not know anyone from Moldavia, which is why the recruiter tried to reassure the prospective employer: 'No, no – they are good.' Moldavian people are good: the woman's nationality is presented as a guarantee for the employer. It is only then that the worker herself is described as a good person. The third 'recommendation' the recruiter uses is the fact that she has already been in Italy for eight months. So the employer can assume that she can already speak a little bit of Italian and has some work experience. Interestingly, the employer was not interested in her permit to stay – which she in fact did not have.

Being good and decent refers to moral characteristics of the person, especially honesty and trustworthiness, which were often named by employers as the most important qualities of a domestic worker. Workers also sought good families (see also Spanò & Zaccaria 2003). On the other hand, this reveals the personal nature of domestic work. As Tronto (2002: 37) notes: 'One of the "products" of care is that it creates ongoing relationships among the care givers and care receivers.' Hence, many women typically became extremely attached to the people they were caring for, especially children (see also Hochschild 2000; Parreñas 2001), and vice versa. I met migrants who had cared for children since they were born and the baby had learned to call the care worker 'mother'. I met women who carried the photos of their employer's children next to those of their own children. Forty-seven-year-old Rossana had a grown daughter named Yulia, who lived in Ukraine. She said she had 'another Giulia' in Italy, a daughter she had raised – who was her employer's daughter.

These emotional attachments sometimes complicated migration projects, as it became difficult to leave jobs and move on. Monica from Poland, who did not have children of her own, was trying to pursue part-time university studies while working as a babysitter. During the period I carried out participant observation in the household where she was working, she constantly considered leaving her job to work fewer hours in turn for more time to study. She was, however, unable to do so because of a sense of

duty and responsibility felt towards her employer's children. Monica was quite aware that she was potentially sacrificing her own future for her employer's children.

At the centre of these intimate relationships is *fiducia* ('trust'). Employers considered trustworthiness to be the most important quality in a domestic worker. Sixty-five-year-old Caterina, who employs a Ukrainian woman, put it this way:

Trust is the basis of everything; it is fundamental. Without it, nothing can work. And I don't mean trust in the sense of not stealing, and so on – of course that is also important – but that you can entrust the person you love in the hands of another person, as I have entrusted my mother to Maria's hands.

Since migrant workers do not have formal qualifications – at least not any recognised by Italian society – and many migrants do not even know the language, employers must decide intuitively whom to employ. This was explained by 37-year-old Giovanna, who employs a Polish babysitter for her two children.

Actually, I do not have certain qualities or characteristics that I look for in a person. The important thing is that the kids are fine and that I can trust the babysitter. I mean, I do not require an educational background or things like that. Knowing who is the right person and who is not comes quite intuitively to me. I don't know how to explain it, but you just have a gut feeling.

In turn, migrant workers felt it was important to be trusted. Irina, a Ukrainian migrant, explains why she left her previous job.

In the space of two years, I wasn't able to win their trust, and I do not mean trust with regard to money, these things, jewellery, et cetera, around the house. I mean trust in the sense that if I say I have done something you believe me and don't use your finger to check afterwards. I was unable to gain this kind of trust. If she [the signora] wasn't at home, she thought I hadn't done anything.

This was a typical complaint in the interviews – that the *signora* would check to see whether they had done their work properly.

The opposite of a decent worker is, of course, an immoral, indecent worker. Women's indecency was perceived in relation to their position as mothers and wives as well as potential sexual partners. For instance, in Ukrainian popular media, women migrants are suspected of 'immoral behaviour', while Italian media have portrayed female Ukrainian migrants

as women who leave their families to seek romantic adventures in Italy (Fedyuk 2006: 2). The problematic position of a potentially dangerous woman in the home was apparent in my study. Natasha told me that although she was a professional teacher in Ukraine, she couldn't find work in a family with children.

They [the signora] also explained to me: 'You are a good person, a good woman. [But] I can't take you because our men always turn their heads towards other women.'

Q: So they don't take you because you are too pretty?

A: There was a house where I really wanted to work. My friend worked there and I would have liked to. I went to introduce myself. She [the signora of the house] asked [Natasha's friend]: 'Why did you bring this friend of yours?'

[Her friend answered:] 'Because she is a good person, a good worker.'

[The signora said:] 'No, I want tranquillity in my home.'

[Her friend asked:] 'What does this mean?'

[The signora said:] 'No, you don't understand because you don't speak Italian. Our men are *stronzi* ('assholes').'

Control over the morality of workers was limited not only to families, but was also present in relationships between care workers and the elderly or the sick. Neapolitans seemed to want to control what workers did in their free time. When 47-year-old Alina left to go to the bathroom, to call her male friend in another city, I kept an eye on 88-year-old Giuseppe. To check on the calls she made, I observed how Giuseppe dialled the cell phone number Alina had left written on a note beside the landline telephone.

I have elaborated these examples to highlight how domestic work relations, especially those relevant to live-in work, are personalised and morally loaded. Public opinion of the potentially loose morality of Eastern European migrant women was not, however, limited to work relationships. Polish and Ukrainian women reported cases of sexual harassment from both their employers and on the street. I also observed how Neapolitan men 'looking for company' – as it was euphemistically called – filled the public places and parks where migrant women met on their days off. To emphasise the unwanted nature of these approaches and the power relations involved, one of the interviewees ironically laughed the situation off.

On Thursday afternoons, all the 90-year-old men of the neighbourhood put on their false teeth and take their walking sticks to go and

look for the women in Piazza Garibaldi.¹⁴ They think they can have any one of us simply because they are men and Italian.

This story emphasises that Ukrainian women resisted the stereotypes attached to them with humour and irony. To sum up, values and norms regarding migrant domestic arrangements are not neutral, but clearly gendered and racialised. Notions of decency are intertwined not only with employment, but also with how Ukrainian and Polish women are sexualised in the public sphere.

Conclusion

In this chapter, I analysed informal and irregular practices related to domestic labour migration. I have discussed the norms and values related to the organisation of migrant domestic work and how the economic, gendered and racialised relations in households are experienced as morally unjust by migrant workers themselves. Regarding current debates on the relationship between irregular migration and informal labour, informality seems to have a certain ‘pull effect’ for certain groups of migrants. This question needs to be analysed, however, in the context of possibilities for regular migrant work. I have claimed that a lack of a coherent and realistic migration policy generates and produces what we call ‘irregularity’, as the demand for migrant labour continues to grow.

Moreover, what emerges from the ethnographical data concerning Ukrainian and Polish migrant workers is that the irregular status was a concern especially in relation to freedom of movement, crossing borders. As contemporary migrants continue to retain strong ties with their countries of origin, and as these women bear responsibility for their families, transnational mobility becomes the crucial question for women and for social justice overall.

I have also discussed the inherently personalised nature of domestic and care work arrangements – especially in live-in work – and the moral aspects related to the relationship between employers, care workers and those who are cared for. Domestic workers find themselves in ambivalent situations, as they must strike a balance between emotional attachments and a more rational relationship with their work situation. Dependency on a particular family is further fostered by migration legislation that ties legal presence on a territory to a valid work contract. Finally, the intimate context of migrant domestic labour also brings issues of trust and moral character, such as decency, to the fore in ways that differ from other types of labour relations. These moral notions are not neutral, but are associated with the gendered and racialised stereotypes attached to migrant workers.

Notes

- 1 I am grateful to Russell King, Christina Oegelmoller, Ceri Oepfen and other colleagues at the Sussex Centre for Migration Research (SCMR), as well as Anna-Maria Salmi from the University of Helsinki for their useful comments on earlier drafts of this chapter.
- 2 Domestic work relations are typically divided into live-in and live-out work. In Italy, live-out is referred to as 'hourly based work' (*lavoro a ora*) and can also be full-time employment.
- 3 This chapter is an excerpt from my PhD research into the organisation of domestic work through employment of immigrants in Naples. It draws on ethnographic research carried out in Naples from 2003 to 2005, during which participant observation and thematic interviews with Ukrainian, Polish and Sri Lankan immigrants and Neapolitan employers were conducted. In this chapter, I focus on the experiences of Ukrainian and Polish migrants. The data used here come from thematic interviews with 24 Ukrainian domestic workers and twenty Polish domestic workers. I also refer to interviews with Neapolitan employers (N=10).
- 4 Poland was not part of the Soviet Union, and it has had higher living standards and economic prospects than Ukraine, making it an important destination for Ukrainian migration (Wallace & Stola 2001).
- 5 The phenomenon has been called many things: the 'underground', 'informal', 'shadow', 'parallel', 'second' economy (Schneider 2002: 2). Another important distinction is illegal versus legal economic activities (where legality refers to the product of the economic activity) (Castells & Portes 1989). For the sake of clarity, I use the term 'informal labour' throughout this chapter.
- 6 Although 'residence permit' is a more common term, I wish to use the literal translation of *permesso di soggiorno* = permit to stay. It is also more accurate since not all migrants who have a permit to stay are registered in communal residence registers.
- 7 Mezzogiorno is the official name for the regions south of Rome: Abruzzo, Molise, Campania, Puglia, Basilicata, Calabria. Naples is the capital of Campania.
- 8 All interviewees' names have been changed to protect anonymity.
- 9 According to statistics, there were 153,998 Ukrainians and 99,389 Poles regularly present in Italy on 1 January 2009 (<http://demo.istat.it/str2008/index.html>). Needless to say, we need to consider these figures as being only indicative.
- 10 Ibid.
- 11 This was, of course, less pronounced among unmarried Polish women. However, most of the young unmarried Poles also contributed significantly to their families' income.
- 12 The women interviewed stated they had paid around US \$500 for a visa and their transport to Italy, but that prices kept rising as it became increasingly difficult to obtain a tourist visa. At the time of the interviews in 2004-2005, I was told the trip would cost up to US \$3,000.
- 13 The acronym COLF comes from the term '*collaboratori domestici*' (or in the plural '*collaboratori e domestiche*', meaning 'domestic collaborators'). This is the official title for domestic and care workers. For an interesting history of ACLI-COLF, see Andall (2000).
- 14 The central station was one of the main meeting points for Eastern European women as well as the place where newcomers arrived by bus.

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PART II

IRREGULAR MIGRATION AND THE HIDDEN WELFARE REGIME



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5 Gaining an insight into Central European transnational care spaces: Migrant live-in care workers in Austria

Sandra Gendera

Literature on the role of the welfare state and international migration has emphasised the function of welfare programmes as ‘magnets’ that attract unwanted migrants. Recent research has shown that not only do the welfare state and migration regimes interact with each other, but that irregular migrant workers also play a crucial role in the provision of welfare services (Sciortino 2004b; Ungerson & Yeandle 2007). This chapter looks at the organisation of long-term care in Austria and the role migrant care workers play in providing domestic and care services in private households. It explores the ways in which Austrian welfare state policies have directly and indirectly attracted and relied on migrant workers from Central and Eastern Europe and how this shapes the transnational care arena. However, the rise of ‘transnational care spaces’ that exist between Austria and its neighbouring countries is not exclusively the result of national welfare and migration policies. Transnational care spaces are also the result of the actions of migrants themselves – through organising care circuits and living transnational lives (Gendera 2007). This chapter focuses on the most relevant policy drivers and the complex organisational patterns and migrant networks in Central European care spaces. It also illustrates how this informal economy, with a great deal of effort on the part of the policymakers, has been integrated into the Austrian system of long-term care provision. Finally, taking a closer look at the regularisation of the informal care sector, I discuss the outcomes of these policies for Austrian households, the welfare state and migrant care workers themselves.

Debates and research on irregular migration

There has been much controversy in the academic debates concerning the nature and impact of ‘irregular’ migration. Generally, irregular migration means the unauthorised stay or entry of non-nationals as well as foreigners working without permission, although most research lacks a clear definition of this concept. In legal terms, a common distinction exists between

‘irregular’ and ‘illegal’ migration, contingent upon the ways in which states evaluate violations of the norms on the entry and abode of foreign citizens (Sciortino 2004a: 17). Ultimately, it is a country’s legal framework that determines the modes of legal entry, employment, residence and settlement of non-nationals and therefore also the nature of the ‘irregular’ status of a migrant. At the individual level, irregular migration is often a transient (transitional) and ambiguous state. People may slide in and out of legality over the course of the migration process. Illegal entries do not necessarily lead to irregular residence statuses. Conversely, a legal entry, for example, on a tourist visa, can rapidly turn into an irregular immigration status when the visa is overstayed or when gainful employment is taken up. The interdependence of entry, residence and employment, subject to constant changes in status, makes it very difficult to give a clear concept of irregularity.

Defining irregularity in migrant employment: Three forms of ‘compliance’

The research carried out by Ruhs and Anderson (2006), focusing on migrant employment in the United Kingdom, illustrates that a mere legal/illegal dichotomy no longer captures European migration realities. Similarly, defining a migrant’s status as ‘irregular’ does not provide any clear information on whether this includes breaches against the right to stay, the right to work or both. To facilitate a more nuanced discussion of the irregular employment of migrants, Ruhs and Anderson (ibid.) introduce the concept of ‘compliance’. In this concept, migrants with a legal residence status whose employment relationship in one way or other contravenes any conditions of employment are subsumed by the term ‘semi-compliant’. Whereas the notion ‘compliance’ is exclusively reserved for those migrants who fulfil all requirements according to residence and employment laws, so-called ‘visa overstayers’, migrants who entered the country illegally, as well as failed asylum seekers, are described by the term ‘non-compliant’.

Research into irregular migrant employment in Austria

In their study *Migration and Irregular Work in Austria*, Jandl, Hollomey, Gendera, Stepien and Bilger (2009) illustrate that the irregular employment of migrants, especially those coming from the Central and Eastern European accession states to Austria, is increasingly characterised by neither a completely legal nor illegal working status. Defining a migrant’s status has become more complex in the context of European Union enlargement, where citizens from Central and Eastern Europe have freedom of movement within the European Union, but restricted access to employment in some areas, such as Austria. Although some EU citizens from accession states have limited access to the Austrian labour market – for example, as

students, seasonal workers or self-employed workers – in many cases, their employment relationship still breaches conditions of employment. Instances of semi-compliance arise when migrants work for many more hours than stated or in a different sector of the economy from the one in which they are permitted to work.

Another good example of semi-compliant working arrangements to emerge under the new EU framework in Austria is the phenomenon of the so-called ‘pseudo-self-employed’. Under normal conditions, EU migrants from accession states were not allowed to access the national labour market as employees. However, registration of a trade licence could act as a means to circumvent the transitional arrangements that regulated the employment of citizens from accession states, in some cases until 2011. Jandl et al. (ibid.) found that the bulk of migrants nominally self-employed in the construction trade performed work as de facto employees. Despite their regular working status, their employment relationship still contravened national employment laws. It is this type of semi-compliant working arrangements that represent a growing number of employed migrants in Austria and other parts of the EU (see Ruhs & Anderson 2006 for the UK). In fact, Jandl et al. (2009) identified various means by which a migrant’s work status can become irregular or semi-compliant. This research also showed the connection between specific sectors and the demand for a cheaper, more flexible workforce, which in many cases consisted of migrant workers.

The study by Jandl et al. (ibid.), which focused on the changing nature of irregular migrant employment in Austria after the fifth EU enlargement, highlighted the various forms of semi-compliant working arrangements that exist in major sectors employing migrants, such as construction, agriculture, catering, tourism and private households. However, it failed to link key state policies with some of these developments. Focusing on migrant care work in private households, this chapter will analyse the changing welfare, migration and employment policy context in Austria and draw out its impact on the development of the informal care economy.

The emergence of transnational care spaces

The interconnectedness of welfare, migration and labour regimes: The Austrian case

Before turning to the central part of this chapter – the functioning of transnational care spaces – I shall first give a brief overview of relevant aspects of the Austrian system of long-term care provision with reference to migration. The way in which the provision of long-term care in Austria is shared between the state, households and the market has had a crucial influence on the development of the ‘grey’ care economy, in conjunction with Austria’s semi-permeable border regime.

In 1993, the Austrian government reorganised the existing programme for long-term care provision and introduced substantial changes in this area of social welfare. At the centre of the new system was the *Pflegegeld*, a taxed-based, non-means-tested cash benefit scheme, covering all groups of people with disabilities and in need of care. Allowances are paid irrespective of the age of care recipients or the reason they require long-term care. Seven different levels of allowance exist. According to eligibility requirements, the need for care has to exceed 50 hours per month at level one, whereas level seven is equivalent to a monthly care requirement of over 180 hours. The *Pflegegeld* allowance ranges from around € 154 on level one to € 1,656 on the highest level. Levels four to seven include additional criteria, such as the necessity for regular care-related measures during the day and at night (Österle & Hammer 2004).

Compared to cash-for-care schemes in other parts of Europe, the Austrian model can be distinguished by a lack of regulation (Österle & Hammer 2007; Ungerson 2004). Cash benefits are paid directly to the care recipient, who is completely at liberty to spend the money as he or she wishes. The recipient can pay for care-related expenses (such as adaptations to their home), or alternatively use the money to buy professional care from social services, pay family members, contribute to the household income or hire care workers. By strengthening the purchasing power of care recipients, though without sufficiently supporting an exhaustive development of affordable professional home nursing and social care services, the long-term care system's reform has increased the market sector's importance, particularly the informal care economy (Österle & Hammer 2007). Ungerson (2004: 194-195) clearly stated:

It is only with such an unregulated form of disbursement that this possibility [the 'grey' labour market] arises, and it is not surprising that, particularly in countries where such labour is easily available, these monies are used to recruit it.

Until autumn 2006, when the Austrian government passed a general amnesty, the employment of migrant live-in carers in private homes was only possible on an irregular basis, with employers and migrant care workers breaching a number of laws in the area of migration and employment. Stirred by a huge public debate that took place in the following two years, the government introduced a series of legislative changes with the aim to 'legalise illegal migrant care provision' in Austria. One of the major innovations was the introduction of a sponsorship model that would subsidise *Pflegegeld* recipients needing round-the-clock care to employ live-in care workers on a regular basis. The means-tested funding model, enabling the employment of national and foreign in-home care workers, created two types of working relationships, namely those employed by the care

allowance recipients and those who are self-employed. The new sponsorship model entitles level three care allowance recipients, who have a proven need for round-the-clock care, up to € 1,100 per month if they employ two ‘personal assistants’ on a regular basis, in compliance with national labour and employment standards. Care allowance recipients who hire two self-employed care workers can, under this scheme, receive up to € 550 per month. The design of the model takes into account existing circular migration patterns, which will be elaborated in more detail in the following section. This model assumes that two workers will share the care of a single person and that each care worker will be on duty for a full fortnight without respite. As quality assurance is an important eligibility criterion and care workers can undertake a number of medical interventions, they have to prove basic qualifications for care recipients to be entitled to these state subventions (BMSK 2009; Rupp & Schmid 2008).

Setting the context for circular migration in Central Europe

For a number of socio-political, geographical and historical reasons, Central European informal care markets are characterised by a unique situation, such as circular migration patterns (or temporary rotation schemes) and the active role of placement agencies, which merits more detailed reflection.

Circular migration patterns are a central feature of Central European transnational spaces (see e.g. Cyrus 2008; Hess 2001; Wallace 2002). This form of migration is also known as ‘mobility’ (Morokvasic 2004) or ‘incomplete’ migration (Okólski 2001). In the case of round-the-clock care work, the schemes, which are based on circular migration, commonly involve two migrant workers who alternately provide 24-hour care for the same person. While one care worker is on duty, generally for a period of two weeks at a time (in some cases up to several months), their replacement, most often another woman, takes time off, in many cases returning to her home country. The duration of one ‘care cycle’ is generally dependent on the distance between the migrants’ country of origin and her place of work. Women working in the western part of Austria or in Germany might therefore have considerably longer working periods than those providing care in the eastern part of Austria, which is close to the migrants’ home countries. Other factors – such as the care workers’ own family responsibilities – also influence the length of time they decide to stay away from their country of origin. Overall, temporary rotation schemes enable migrants to live transnational lives, to attend to their own family duties or make use of health care services when returning home during their time ‘off’ work.

The development of circular migration patterns results from several factors, including Austria’s restrictive migration regime, which regulated

immigration from Eastern Europe until the EU enlargement in May 2004. Prior to this date, the bulk of migrants coming to Austria from Central and Eastern European countries entered on short-term tourist visas. Although gainful employment is restricted under the tourist visa, it enabled migrants to legally enter and stay in the country for up to three months. Many of the temporary migrants entering Austria or Germany in the 1990s on tourist visas were involved in either petty trades or the informal economy (Morawska 1998; Morokvasic 2003). While some migrants took up work in the informal sector due to a lack of alternatives, others chose to live a transnational life, which enabled them to stay 'at home', rather than to migrate and settle permanently (Morokvasic 2003). Circular migration patterns continue to be a characteristic feature of Central European transnational care spaces, determining working conditions under the supervision of agencies and constituting an essential aspect of the 2007 legislative framework to legalise irregular care provision in Austrian households.

Professional placement agencies are another notable feature of Central European care spaces. These agencies play a crucial role in meeting the demand for migrant care workers by people in need of long-term services who prefer to be attended to in their homes. When, in the early 1990s, recruitment agencies first initiated their activities, they made use of the pre-existing circular migration patterns and adapted them to the specific requirements of the informal care sector. By defining migrant care workers as 'guests' performing mutual aid, rather than as 'workers', agencies found a way to circumvent the legal framework regulating the employment of foreigners in Austria, Germany and other countries. Migrants may use the services of agents at different stages of their work cycle: some may only need them at the beginning of their career in the informal care economy, whereas others remain dependent on the agency's services for years. Others still organise their work exclusively through personal contacts and informal networks.

Migrant care workers who provide round-the-clock care in Austrian households come from a wide variety of professional and social backgrounds, but predominantly, they are women from neighbouring Central and Eastern European countries, such as Slovakia, Romania and the Czech Republic. These women come to Austria and other Western European countries in search of higher incomes, better employment opportunities or as a means to supplement their social welfare benefits and pensions. Estimates of the number of migrant live-in care workers in Austria range from 10,000 to 40,000 full-time equivalents (Bilger, Gendera, Hollomey, Jandl & Stepien 2006; Streissler 2004). Based on the evaluation of the 2007 legislation and sponsorship model governing round-the-clock care provision in Austria, Prochazkova, Rupp and Schmid (2008) conclude that in 2006 there were between 27,000 and 30,000 migrant care workers engaged in this informal sector.

A further distinct feature of Central European transnational care spaces is the involvement of qualified health care personnel in the informal care economy. This fact is strongly associated with the overall structure of the former Communist Bloc and the socio-economic transformation processes set in place after the year 1989. In the Eastern Bloc, individual communist countries had different strategic tasks to fulfil. Former Czechoslovakia, for instance, was designated the role of educating and sending out medical staff to other communist countries, including Cuba and Libya. Most of these expatriates returned to their home countries after the collapse of the communist system, which explains the 'surplus' of medical staff in the Czech Republic and Slovakia in the early 1990s. Since many of these highly qualified health care professionals were unable to find employment in their home countries, they sought better income opportunities in both the formal and informal care sector abroad (Schneider 2004; Prochazkova et al. 2008: 31).

Methodological approach

Due to the shortcomings of quantitative methods in researching so-called 'hard-to-reach' populations, it seems essential to utilise qualitative techniques. Various qualitative research methods were employed in this project to ensure an accurate depiction of the structural and organisational patterns in the informal care economy.¹

The findings presented in this chapter are based on narrative, in-depth interviews with nine female migrants who care for older adults in Austrian households. In addition to these interviews, I accompanied several of the women on their way to work, visited them at their workplace and participated in their daily routine. I also engaged in participant observation to investigate the governance of an agency organising the relationships between migrant care workers and Austrian employers. To gain better insight into the scope and function of Central European transnational care spaces, I conducted extensive internet research and analysed the information published on the websites of the primary agencies active in this 'grey' care market.

I decided to limit my research to round-the-clock (live-in), paid adult care work, since this area has largely been overlooked in previous academic research. I focused exclusively on migrant women who provided care for older and sick adults or people with a disability. In order to represent the field of informal care provision in its diversity, I included respondents with a variety of characteristics. Consequently, respondents varied considerably according to age, country of origin, work experience in the informal care sector and immigration status. The nine interviewees originated from Poland, the Czech Republic and Slovakia. The initial contact

with three of the interviewees was established via personal networks, and subsequently, a snowball sampling method led me to the others.

While the findings presented in this chapter are based on research conducted prior to the introduction of the latest regulations legalising and sponsoring migrant live-in care work in Austrian households, their relevance remains. I explore the transnational migration strategies of migrant care workers who started commuting to Austria in the early 1990s, after the socio-political changes in the former Communist Bloc and the subsequent opening of borders. It was this specific historic, legal, social and geographical context that gave rise to transnational care spaces between Austria and its neighbouring countries. Today, these care spaces consist of various types of migrant networks, as well as agencies that organise the placement of live-in care workers, which will be the focus of the following section.

Presenting the findings: Organisational patterns and migrant networks in Central European care spaces

In this section, I provide an overview of the various organisational patterns that exist in Central European transnational care spaces. First, I focus on the most structured of these arrangements, namely placement agencies and associations. Second, I take a closer look at more informal organisational forms, which I refer to as either ‘instrumental’ or ‘referral’ networks.

Agencies and associations

In Central and Eastern European countries, a wide range of agencies operates in the transnational care arena, from upmarket and professionalised agencies to small two-person businesses operating in a ‘grey’ legal space. In general, a distinction can be drawn between agencies that recruit professionals mainly for the formal care sector, community and residential social and health service providers versus agencies that recruit for private households. This chapter focuses exclusively on the latter: agencies and associations that organise care for the elderly in private households in German-speaking countries, which operate in a ‘grey’ zone of the informal economy.

It is important to note that the agencies and organisations referred to in this chapter are all located in Austria, the Czech Republic or Slovakia, and in some cases have offices in more than one country. To facilitate the understanding of transnational recruitment processes, I distinguish between agencies and associations located in the care workers’ country of origin and those predominantly operating on a transnational basis.

Country of origin organisations

According to Prochazkova and Schmid (2007), in mid-2007, approximately 37 placement agencies were active in Central Europe, which also provided services in Austria. The Stiftung Südböhmische Volkshilfe (SV)² is the most prominent example of a recruitment agency operating in the country of origin. According to its website, SV has been active in the informal care sector since 1990.³ While its headquarters were located in the Czech Republic, additional branches existed in Slovakia and Austria. The main objective of this for-profit institution is to recruit Eastern European workers for round-the-clock care provision in private households. On its website, however, it defines itself as a 'charitable, non-profit organisation' that provides 'neighbourhood assistance'. The governance structure of the organisation was divided into the SV foundation and a recruitment agency, called Das Beste. The agency was in charge of recruiting care workers, mainly in the Czech Republic or Slovakia, for live-in adult care in Austria, Germany and Switzerland. The agency also advised care workers before and during their work placements abroad. To a lesser extent, they organised placements for au pairs whose primary responsibility involved looking after children. The Foundation, on the other hand, facilitated contact between migrant care workers and potential employers and managed the financial arrangements. From a legal standpoint, the SV Foundation and the agency were separate entities that performed different tasks. In effect, however, they represented a single institution.

In the example of the SV Foundation, the care relationship was organised as follows. First, those in need of care or (most commonly) their kin, contacted the foundation and registered as 'members' of the 'charitable' organisation, paying a registration fee of up to € 350. After completing the registration procedure, the agency would find a 'suitable' migrant care worker for the client, according to the family's requests and the health requirements of the person in need of care. Simultaneously, the care workers – Czech or Slovak women – were obliged to enrol as 'members' of the SV Foundation, for which they paid approximately € 67 (Leibetseder 2004). As soon as the agency had matched the respective care worker with a care recipient, both the future employer and the migrant worker paid a commission to the foundation to reimburse them for establishing the care relationship. This annual commission, referred to as a 'membership fee', amounted to € 1,100 for Austrian clients and up to € 1,300 for German and Swiss clients. Czech or Slovak care workers paid approximately € 667 per year for this service. Compared to similar mediation services, e.g. those that facilitate the placement of au pairs, where the commission is commonly a one-time payment, the SV Foundation charged care recipients and migrant care workers for the entire period in which the care

relationship was sustained. This practice clearly contrasted with their commitment to work as a 'charitable' organisation (see also Prochazkova et al. 2008).

The complex relationship between the foundation, the agency, care recipients and migrant care workers aimed to minimise the organisation's responsibility for caregivers' working conditions. This fact becomes most clearly visible in the agreement signed between clients in need of care and the SV Foundation. In the contract, the foundation explicitly underlined the status of care workers as 'guests' performing 'honourary and charitable activities' for their host families, rather than paid work. Workers' rights were virtually left unacknowledged in this agreement. Migrant care workers rarely signed a contract with their employers. Commonly, the agreements governing their pay and working conditions were arranged verbally. Furthermore, the definition of care workers as 'guests' suggested to Austrian families that they could not be held responsible for the non-compliant employment arrangements. In effect, the organisation's highly complex governance structure aimed at obscuring the employment of foreigners and helped to circumvent various laws regulating employment, taxation and migration in the workers' countries of origin as well as the destinations involved in these transnational care spaces.

As Anderson (2000) has pointed out, a characteristic of live-in arrangements is that working conditions are not clearly defined and workers are expected to be on call 24 hours a day. This is likewise true for the women who cooperated with the SV Foundation. In exchange for their round-the-clock engagement, migrant workers were entitled to lodging and board, and received so-called 'pocket money', ranging from € 40 to up to € 75 per day, depending on the country of destination and the nature of the work. On average, a care worker's fortnightly income ranged from € 560 to € 700. These migrants would typically work for two weeks per month and return home to their country of origin for another two weeks, during which time they were not paid. In some cases, families also reimbursed the migrants' travel costs on a lump-sum basis (Leibetseder 2004).

Organising live-in care provision through transnational cooperations

Another way of organising care in the informal economy is by using transnational cooperations. In the case I will now present, I refer to a 'charitable association' located in Austria, responsible for the recruitment of clients in need of live-in care, which had been collaborating with a Slovakia-based agency to recruit live-in staff in Eastern Europe. I refer to arrangements such as the one described, which are common in Central European care spaces, as 'transnational cooperations'. In this case, the Slovak partner also operated a shuttle service for migrant care workers, which picked up the women from central meeting points, e.g. at railway stations close to the

Austrian border, and brought them to their employers' homes. As described above, migrant care workers remained on duty for a fortnight or longer. The agents in this case had a crucial influence on the social interaction between migrant care workers and their employers. The fact that the agents facilitated the migration process themselves allowed them to maintain personal contact with Austrian clients and the workers. In the event of disagreements between workers and their employers, the agents acted as mediators and tried to solve the misunderstanding. This direct involvement in the care relationship further enhanced the agents' powerful positioning, which allowed them to enforce social control upon the other actors. Consider the following example.

Some workers who had used the services of organisations such as the SV Foundation, which exerted less social control on workers and families, reported that they had stopped making payments and had gained independence, but still continued to work for the employer referred to them. However, in the case of the Austro-Slovak transnational cooperation, the organisation of care and transportation made it difficult for workers and families to disrupt payments to the agency if they wished to continue the care arrangement.

Due to the highly competitive market for informal care-related services, the financial structure of this small transnational organisation⁴ was very different from that of the SV Foundation. Here, Austrian clients paid a monthly membership fee of € 60 to the Austrian charitable association, rather than annual fees. Likewise, the migrant care workers paid the Slovak agent monthly commissions for negotiating the care relationship with Austrian households. To compete with other agencies, this Austro-Slovak organisation offered live-in services below the average rate of € 40 to € 50 per day. The care workers' income, or 'pocket-money', varied greatly according to the tasks performed and the workers' professional background. They could be hired as 'classic' domestic workers, mainly in charge of household chores (€ 35/day), or as 'personal assistants', in charge of their employers' households and their personal care (€ 50/day). Migrant workers with a professional background in health care provision were employed as 'nurses', earning up to € 60 per day.

Recruitment organisations such as the SV Foundation or the Austro-Slovak cooperation appear to be a convenient, albeit costly, way to get a 'foot in the door' of the informal labour market for migrants seeking better income opportunities abroad. Such services are particularly important to those who have not previously worked in the country of destination or who cannot rely on friends and family members for finding employment abroad. Several of the women I spoke to in the framework of this research had made use of such agencies, mainly at the start of their career.

The role of agents and professional recruitment organisations in enhancing the development of informal networks among workers and the

migrants' perspectives on professional placement agencies is the focus of the next section.

Evaluating agencies from the care worker's perspective

Overall, the migrant care workers interviewed for this research were rather dissatisfied with the services provided by the agents and associations. Interviewees uniformly complained about the high commissions charged by agencies and the lack of assistance provided before or during their work placements. Jolanda, a Czech nurse in her late 40s, had started to work for Das Beste in the early 1990s – a time when migrants working on tourist visas risked immediate deportation if interrogated by the authorities. Jolanda mentioned several situations in which she felt let down by the agency. In her case, the agency had not provided any basic information on her precarious working situation or her migration status. The only information she had received before going abroad for the first time was the name and address of her employer.

A friend told me about the agency, so I went there to register. And after the interview, they called me and gave me the address and name of my employer. That was it. I had no other information when I arrived here for the first time. [...] After a couple of weeks, my colleagues told me what to say in the event of police inspections or border controls: 'I am just a visitor here, taking care of a friend. That's all.' I did not know before that I was 'illegal' in Austria.

Although some of the women contacted their agencies to report poor working conditions, humiliating treatment by their employers or problems with border controls and the police, they had been denied assistance or support. As Jolanda described:

If you had an issue with your employer or difficulties in crossing the border, you could never rely on the agency's help. If you called them they would respond, 'Well, that's not our problem. Please try to deal with it yourself.' Or they would tell you not to mention the agency's name at border controls and confrontations with the police... And for the agency's service, you had to pay a huge amount of money, but in fact, they gave you nothing, except an address and a name. That was it... Therefore, it's better to work on your own, without the agency.

Although most migrant care workers felt neglected and exploited by the placement agencies, they were also aware of the agencies' strengths, particularly their ability to provide work opportunities for women. Since the

provision of care for the elderly and sick inherently includes the risk that employers may die, being associated with an agent can help reduce the possibility of becoming unemployed, as agencies are able to allocate new clients in need of long-term care more efficiently. Further advantages of collaborating with an agency are the relationships established with other actors engaged in the informal care economy. Overall, the migrants considered working for an agency to be an important phase in their work cycle. It was, in many cases, when they worked for professional recruiters that many workers established multiple ties to care workers outside of their own networks, to Austrian employers and health care professionals, such as doctors or nurses. In some cases, contacts acquired during this first work phase enabled the care workers to break away from the highly organised recruitment structures to work on their own at a later stage.

Finding live-in care work through instrumental networks

Even though placement agencies play a decisive role in live-in adult care, they represent only one part of the picture. Research into the informal economy has shown the importance of networks, often based on reciprocity and trust, in accessing irregular employment (see e.g. Anderson 2000; Jandl et al. 2009). Equally, many live-in care arrangements in Austrian households are organised by direct hiring. It is, however, important to distinguish between a number of different types of informal networks. In some instances, they can be rather loosely knit, mainly consisting of people engaged in caring for the elderly. In contrast, some may rely mainly on ethnic ties, and yet others may be organised more hierarchically. Since most women were engaged in different networks that occasionally overlapped, the dividing line I draw in this chapter is between ‘instrumental’ and ‘referral’ networks. I refer to instrumental networks when the interactions between the parties involved blended into commercial transactions, in contrast to referral networks, which were predominantly built upon reciprocity and trust.

To illustrate the functioning of an instrumental network, I present the case of Lydia. This 52-year-old Slovak high school teacher, after working for Das Beste for several years, started organising live-in care work for herself and other migrant care workers. She had developed a complex instrumental network as a strategy to cope with the insecurities of unemployment when working independently of placement organisations.

When she started working in Austria, she applied for unpaid leave at her workplace, a school for children with disabilities. She entered and re-entered Austria at regular intervals on a tourist visa, staying for up to three months at a time. After two years of working in the informal economy, she decided to return to Slovakia to her previous occupation. Several months later, when Lydia required money to pay off debts, she once again

contacted the placement agency that had initially helped her find work. In the following years, she lived with several Austrian families and cared for their elderly and frail kin. Lydia returned home at regular intervals of two or three weeks, during which time another care worker took her place. It was during her collaboration with the agency that Lydia intensified the amicable relations with some of her Austrian employers, as well as their neighbours and friends. At this point in her career, she finally decided to stop working for the agency and began to work independently.

I said to myself, 'That's it! I'm not staying with the agency any longer, because they didn't look after me at all.' They would just offer you a job and whether you liked it or not, you had to stay. And for this service, you had to pay them an awful lot of money! On the other hand, I always had a guarantee that they would find me another job in case my patient died. This was the only positive thing about the agency.

Due to Lydia's distinct social and work skills, some of her previous employers had recommended her to friends and relatives who were in search of a trustworthy care worker. This process began rather slowly at first and gained momentum over time, giving her the opportunity to leave the agency. After only a few months, Lydia had been recommended to so many families in need of long-term care that she could no longer execute all of the requests herself. She then started to recruit family members and other women from her hometown to work for her.

Lydia's organisational system was quite ingenious. She passed on only part of the work to other care workers, taking on at least one week of care provision (within a two-month period) for each of her clients herself. Thanks to this system, she was able to maintain her contacts with the employing families and consolidate her position as the 'main caregiver'. In the event of the death or loss of a permanent client, Lydia was able to take on one of the other jobs she had shared with the women working for her. At the time I spoke to Lydia, she was facilitating care for seven Austrian families and subcontracting to sixteen care workers from Slovakia and the Czech Republic. Although she had initially developed this complex instrumental network to escape her dependency on the agency and to reduce the risk of unemployment, while working autonomously, she also profited financially from this scheme. Every woman engaged in Lydia's network had to pay her a one-time fee of € 400 for arranging a job for her. Sometimes, she also provided transportation and charged the care workers for this service.

Compared with professional placement organisations, Lydia's instrumental network not only provided migrant carers with work and transportation, but also gave them essential support and information. Taking on the first

work shift with every new client enabled Lydia to study their specific needs and preferences and to arrange basic working and living conditions with the employing family, such as a separate bedroom for the care worker. This system also allowed her to brief prospective caregivers in detail before sending them to a new job. This work introduction was particularly useful to women with little knowledge of German. At the same time, Lydia regularly acted as a mediator in conflict situations, which arose not only between employers and migrant workers, but also between two care workers providing support to a single client, each on a fortnightly basis. Lydia emphasised the importance of her role as manager and mediator in improving the work climate and minimising bullying among the women in her network.

During my field research, I came across less organised instrumental networks. It appears that such networks are commonly employed by those with easy access to both parties: people in need of long-term care and potential (migrant) care workers. Since many migrants have found work in the professional health care sector, they act (in some cases) as a link between the two parties. Some interviewees stated that migrants employed in the formal health care sector, particularly those working for mobile home-care providers, frequently referred clients to them when they required 'around-the-clock' care.

Finding live-in care work through referral networks

Referral networks, based on reciprocity and trust, can vary greatly in quality, as they can predominantly include persons engaged in adult care provision, or rely in the first place on ethnic networks, which to a lesser extent include persons involved in the informal or formal care sector. These determining factors can strongly influence workers' flexibility in changing or finding a new employer, as I explain below.

Several of the Slovak and Czech women interviewed for this research had worked through a placement agency in the early days of their careers abroad. This initial work experience had helped them establish a large pool of care-related contacts, including former employers, professionals working in social services and other migrant care workers. During the period in which they worked for an agency, the women commonly met one another on their way to, or at, work and exchanged experiences and information. This process was facilitated by the fact that several agencies organised some kind of transportation for the women. Thus, after years of working in the informal economy, most of the women who had worked through an agency had many contacts with people engaged in both the informal and the formal care sector. These contacts and relations were a crucial source of support and information on vacancies they needed when they decided to quit the agency and search for work autonomously. Jolanda, a Czech nurse,

describes how she found work through her referral networks, after leaving the agency.

Friends organised the first contacts [with employers]. And now, my current work is thanks to the relatives of a former employer. And the job two years ago – that came about the same way. But doctors also establish the contact with families in search of live-in care workers. Doctors are obliged to look after patients regularly, so they come into their homes. They therefore know you. They know you and the way you provide care to the patient. If you do a good job, they want your telephone number, because family members consult them and ask for help when they have someone to be cared for around-the-clock.

In most cases, current or previous employers ask care workers to recommend another job candidate. For migrants participating in referral networks, this means circulating information on potential employers to women searching for work or willing to change their current employer. When a woman organises a job for another care worker, she can rely on the help of that particular person if she herself needs a new care arrangement one day. Overall, the principles of reciprocity and trust function very effectively. According to the women I interviewed, care workers rarely demand financial compensation for providing information on potential employers. Participating in these networks increases the chance of finding a new job quickly in the event of the loss or death of a client or unsatisfactory working conditions. Furthermore, they provide a sense of security and support.

My research showed that for migrant care workers unable to rely on strong referral networks, it was more difficult to find a new live-in job. This particularly affected women who had never worked through an agency. In contrast, women who had experience working for agencies, but at the time of the interview relied on their referral networks for finding employment, only worked for a family as long as they were happy with the working and living conditions. As one such woman, 56-year-old Wanda from the Czech Republic, put it:

There is nothing like an ‘ideal’ care arrangement. You can only find better and worse places, and sometimes a good workplace can also deteriorate, when, for example, the client’s health status considerably worsens... When I’m unsatisfied with a care arrangement, I will ask my colleagues to find me another job and hand over my present job to someone else. But I would never let down a family! Never!

The quality and size of the migrants' referral networks therefore had a significant impact on their working conditions. Women who were part of large, elaborate networks changed employers more easily when they became discontent with their working and living conditions. They simply passed on a dissatisfying job to another worker, generally someone who was new to the informal care economy.

All of the Polish women I interviewed – some of whom had never heard of placement agencies organising round-the-clock care – reported difficulties in changing a dissatisfactory care placement or expressed great concern about becoming unemployed. It is important to note that they had all found work through close family members or Polish friends residing in Austria. Generally, these friends were not connected to any care-related networks, but had come across work for them by chance. Two of the Polish women worked in relatively permanent care arrangements. Danuta, 48, had cared for a woman suffering from Alzheimer's disease for over three years, while Ewa, in her late 50s, had been taking care of a woman with Parkinson's disease for eight years. Both Ewa and Danuta worked in the informal economy for several years and had multiple contacts with other Polish women, generally working as live-out domestic workers. Despite this, their contacts with other migrants engaged in live-in care work or with potential Austrian employers or medical staff in the formal health sector were rare. Significantly, none of the Polish care workers had ever found work through a recruitment agency or association. Due to the poor health of those they cared for and their limited referral networks, losing their job was a considerable concern for these Polish care workers. As Danuta put it:

We make our living in this work [and] we are dependent on the women we care for. As long as they live, we have bread and work, [but] as soon as they die, it's all over. We end up with nothing.

Besides the quality of the women's networks, the ability to speak German was an important factor that influenced their decision to remain with or leave a particular employer. As 47-year-old Jolanda from the Czech Republic noted:

I have some colleagues who still work for this [same] family because they hardly speak any German. So it is rather difficult for them to find a better employer. They keep on working for the lady and bear the indignities and the treatment because they have no other option. But I left that family after just one week.

The experiences of the women I interviewed illustrate the ways in which their careers were highly influenced by the amount of social capital they managed to accumulate – in other words, their access to, and active

engagement in, care-related networks. The level of social capital was influenced by personal variables such as language proficiency, socio-economic status or professional experience in adult care. The knowledge of, and access to, recruitment agencies and care-related networks influenced the care workers' mobility in the informal economy and their flexibility to change employers or work independently of professional recruiters. Referral networks, however, consisting mainly of non-care-related contacts, as in the case of the Polish women, could profoundly limit mobility in the 'grey' care economy.

Migrant care workers' perspectives on their work

Migrants who provide adult live-in care in Austrian households are a highly heterogeneous group and have a diversity of opinions about their work. Despite the unique experiences of each woman, similar attitudes can be found among some groups of care workers. A range of variables influenced their assessments, including age, social status and the degree to which they saw their work in Austria as being central to their lives.

For caregivers in their most productive years – those aged between 30 and 55 – main concerns were to legalise their working status and to find work as employees. As many had worked in the informal economy for a number of years – in some cases up to ten years or more – they felt discriminated against. Care workers resented being denied access to the formal labour market and access to most social security benefits, welfare and health services, as these entitlements are tied to regular employment in Austria. Jolanda's comment encapsulates the concerns of this age group.

Nobody will take these years into account when I retire one day. This work here does not provide entitlements to health insurance or old age insurance. That's a pity – because we only take care of the cases no one else wants to take care of... So now, I have to return home and take up employment at the hospital, because otherwise I won't receive a pension when I'm old.

Jolanda's statement illustrates the pitfall of working in the informal economy. After the first 'euphoric' years in the early 1990s, when women earned 'good and quick money', years later, many of those still engaged in the informal economy felt 'trapped' in precarious employment. On the one hand, these care workers needed to earn a living for themselves and those dependent on them; on the other hand, they were worried about their own care needs and the lack of alternative employment prospects. Although several women interviewed for this study tried to legalise their status and find 'proper' employment in the formal care sector, virtually all of them failed to do so. Of all the women interviewed, only one – Jolanda – finally

returned to the Czech Republic and took up her previous position as a nurse in a hospital.

Unlike the care workers between ages 30 and 55, those over 55 years – some of them already retired – found their engagement in the informal care sector to be beneficial in increasing their low pensions or supporting family members back home. Due to their legitimate access to social welfare in their countries of origin, the main concern for this group of women was whether they could continue to work in the informal sector after the legalisation of round-the-clock care provision was introduced in Austria. Similarly, 29-year-old Agnieszka, the youngest interviewee, emphasised the beneficial aspects of her work. Agnieszka's approach was pragmatic; she valued the fact that her work enabled her to save money and improve her German language skills. She viewed working in the informal economy as a transitional phase in her life, as she planned to commence her university studies after passing her language qualification exams.

Apart from concerns regarding social security and the legalisation of their working status, care workers who used the services of placement agencies pointed out the need to introduce independent and free mediation services. They felt exploited by the agents, the high service fees they imposed on them and the lack of support they provided. Overwhelmingly, all migrant care workers, regardless of age and social status, stressed the need to establish minimum working standards in round-the-clock care provision. The most prominent demands included the right to regular rest periods, especially when intense day and night care is required, the right to determine one's own working procedures, particularly when other family members are living in the same household as the care recipient and the need to more clearly define the boundaries of duties and responsibilities. As with other paid domestic work, the boundaries between what is considered 'work' and what is deemed a friendly gesture become blurred due to the uneven power relations between workers and employers (see Anderson 2000). The round-the-clock availability of care workers and the person-centred and 'emotional' nature of care work promote extremely long working hours. The presence of other family members in the household often results in the imposition of additional tasks and duties exceeding the caring obligations initially stipulated. This situation is exacerbated by the fact that formal contracts are uncommon and verbal arrangements can be easily breached.

Next, I briefly discuss the measures taken to legalise the Austrian informal care sector, including in the context of migrant care workers' views about their own work.

Regulating transnational care spaces: Discussing the Austrian case

The regularisation of round-the-clock care in Austrian households (see prior section for more details on relevant policies) can be seen as a first step towards public acknowledgement of the existence and importance of transnational migrant care work and its role in meeting the country's growing care deficit. The publicly funded sponsorship model, which encourages regular employment of live-in care workers, either as self-employed workers or employees, fulfils several roles. First, it meets the demands of households with a person requiring long-term care through live-in (mostly) migrant care workers. These arrangements, which provide care recipients and their families with personalised and inexpensive home-based care, function as an alternative to residential care or support/substitute unpaid family care (Prochazkova et al. 2008). At the same time, the round-the-clock care policy framework provides incentives for employers to regularise the status of their workers by subsidising additional costs arising from the regularisation process. At the national level, the commodification of care and the introduction of cash-for-care schemes have continued the international trend of shifting responsibility for care provision from the public towards the private and market sectors. However, the 'grey' care economy that emerged within the Austrian welfare system has shifted the provision of long-term care from a national to a transnational level. Finally, the revised legislation relating to care workers enables citizens from EU accession states and Austrian nationals to take up regular employment in round-the-clock care work with varying degrees of social entitlements and some definitions of working conditions.

Looking at the outcomes of the 2007 legalisation of round-the-clock care work, by the end of 2009, around 20,000 people were registered as self-employed 'personal assistants' in Austria. The overwhelming majority were migrants from Slovakia, while workers from other Eastern European countries and Austrian nationals were represented to a lesser degree. Although no precise figures exist, Prochazkova et al. (ibid.) estimate that in July 2008, around 300 people were employed under this scheme. The low acceptance of the later model, compared to the high uptake of the self-employed option, clearly illustrates the inability and unwillingness of most care allowance recipients to pay for care that complies fully with national labour standards.⁵ Although the self-employment model also brings benefits to care workers, such as providing access to health care in Austria or contributions to their old-age pension, workers continue to have little job security. Furthermore, the self-employment model places a disproportionate burden on workers, since they carry the major administrative and financial costs, such as registration of a trade licence and payment of taxes.

As Kretschmann (2010) notes, the situation for migrant care workers has remained precarious following these legislative changes, which have largely failed to address pre-existing power imbalances between employers and care workers. In effect, the closer connection of employers and workers – such as the need to provide an Austrian address when registering a trade licence, which is likely to be the care recipient's home address – can create greater dependency on employers' goodwill.

The main beneficiaries of the regularisation programme are middle- and upper-class Austrian families in need of care, the Austrian state and placement agencies. Better-off families who can afford to pay around € 1,500 or more for live-in care have the option to demand legal, relatively cheap and subsidised care services. Recruitment agencies and associations benefit from the regularisation because they can continue their activities within a 'grey' legal space, where the evasion of taxes is common, and where they are not held accountable for workers' rights. At the same time, the Austrian state profits from the legalisation of round-the-clock care. The reliance on a flexible, transnational migrant workforce reduces the burden on the existing long-term care system and the need to further enhance the development of alternative affordable and responsive service models.

Looking at the evidence presented in this chapter, I argue that the legalisation of 24-hour-care provision in Austrian households has failed to address some of migrant care workers' main concerns and needs. These include: access to the formal labour market; care- and non-care-related job opportunities with clearly defined roles and responsibilities and better income; a clear improvement in working and living conditions as well as job security and flexibility to change employers when working in round-the-clock care; access to not-for-profit organisation of care across borders, which means adequate support and lower costs when using professional agents; and finally, the need for greater empowerment and self-organisation of migrant care workers.

To date, migrant care workers in Central Europe have received little representation and lobbying efforts from unions or labour organisations in either destination countries or countries of origin. A number of factors have contributed to this, including the fact that care work is often undervalued and performed in the private domain, as well as the fact that migrants commonly perceive paid work in households as a temporary stage in their careers (Caixeta, Haas, Haidinger, Rappold, Rechling & Ripota 2004). As transnational care arrangements challenge physical boundaries and ideological concepts of the nation-state, national workers' representations may, however, fail to lobby for a highly mobile clientele (see also Kretschmann 2010). This last point also highlights the need for further research in order to identify migrant care workers' priorities and needs, as well as avenues for enhancing empowerment and self-organisation.

Conclusion

This chapter has traced the emergence of Central European transnational care spaces through a case study of Austria and its neighbouring Central and Eastern European countries. It has shown the increasingly important role migrants play in providing round-the-clock, in-home care to older adults and people with disabilities – whether due to the migrants' own preferences or to a lack of alternatives. To date, much of the research into paid domestic and care work has concentrated on migration policies and the ways in which they shape the international division of care labour (see also Parreñas 2001). Only recently have academics paid greater attention to the role of welfare policy in attracting migrant care workers (see Ungerson & Yeandle 2007).

Looking at the intersection of certain Austrian long-term care, migration and employment policies since the early 1990s, the chapter has highlighted the indirect and direct impact of these policies upon the development of transnational care provision. By providing 24-hour care in homes, migrant care workers help sustain the welfare state in its capacity to provide services to its aging population. This is particularly the case when care is commodified, such as in unregulated cash-for-care schemes, and where cheaper, migrant labour is available. While state policies can play a crucial role in enabling and sustaining transnational care work, as in the Austrian case, this chapter has also shown that there are a number of other actors, including the migrant care workers themselves, who significantly shape and transform transnational care spaces. While placement agencies and agents have an important purpose in establishing care relationships between households in need of care and migrants looking for better income opportunities, it is predominantly the migrant women themselves who take action. They build and organise referral networks and develop circular migration patterns that empower and enable them to live transnational lives. These networks and organisational patterns also protect the women from severe exploitation by their employers or provide them a certain degree of security when working in a highly irregular and precarious sector of the informal economy.

The Austrian approach towards regularising the informal care economy by integrating and sponsoring migrant care work as part of the state system of long-term care provision has highlighted some of the challenges involved. In reality, the Austrian model maintains a pool of flexible and cheap labour, without sufficiently meeting the needs and demands of migrant workers. The way the Austrian framework has regularised 24-hour care provision in households has, to a large extent, exonerated the state and employers from their responsibility to provide fair pay and good working conditions. Live-in care workers receive € 40 to € 60 per day for their highly demanding work. While some regulations and definitions of 24-

hour care provision exist, the nature of care work and the fact that it is performed in the private domain, combined with the lack of control instruments and empowerment of workers, is unlikely to have an impact upon the precariousness of paid round-the-clock care work. The Austrian approach can therefore be described as rather short-sighted, promoting inequalities among EU citizens along the lines of gender, social status, citizenship and ethnicity.

Notes

- 1 The interviews and field research were conducted between September 2005 and June 2006 for my Master's thesis at the Department of Social and Cultural Anthropology of the University of Vienna.
- 2 In November 2006, the SV's founder was imprisoned in the Czech Republic for tax fraud of up to € 460,000. There is insufficient information available regarding the degree to which this lawsuit impacted SV's business activities or the extent to which they subsequently continued to operate their services (<http://ooe.orf.at/stories/150435>).
- 3 www.volkspflege.cz.
- 4 At the time of my field-work in spring 2006, approximately 36 Austrian households and 78 migrant care workers were actively involved in this particular transnational cooperation.
- 5 Estimates of the overall monthly cost of compliant live-in care arrangements range from € 1,500-€ 1,700 in the case of self-employed carers to € 2,800-€ 3,000 or more in the case of the employee model (Prochazkova et al. 2008).

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6 Irregular migration and foggy organisational structures: Implications of a German city study

Maren Wilmes

In Germany, the question of irregular migration is increasingly the focus of political and scientific debate. This is occurring as an increasing number of local municipalities are addressing the problem, irregular migrants being perceived as part of the community – either through their own initiatives or as pressured by local organisations and churches. While at the national and European levels, political strategies are directed towards preventing irregular migration, expediting the shielding and protection of the European outer borders, local authorities are forced to acknowledge the unique life situation of irregular migrants, especially with regard to the possible course of communal action.

Irregular migrants – their presence and employment – are part of all larger cities' everyday life (Alt 2003; Krieger, Ludwig, Schupp & Will 2006; Anderson 2003). Their impact in Germany is particularly evident in urban municipalities: children not attending school, illnesses going untreated and a lack of sanctions for substandard working conditions and overdue wages – all of which lead to the emergence of legal vacuums. Moreover, organisations are confronted daily with the consequences of irregular status, whether in the context of educational institutions, health services or administrations. Parents would like to send their children to school, but are rejected because they cannot prove their residence or they are afraid of being found out by the authorities. The ill seek medical treatment at hospitals, doctors' practices and through the official health services, which must deal with the challenges of treating people without health insurance.

These are just a few examples of the problems that immediately affect the lives of irregular migrants and the communal structures and organisations of municipalities. School access must be allowed without legal claim; patients must be treated without social security; people must be able to find jobs outside of tariff regulations, social security and labour laws that actually shouldn't even exist. The subsequent problems faced by municipalities arise from state interventions regarding the stipulations of access depending on legal status in the areas of employment, health care and education – they cannot be impinged upon at the local level. To maintain solidarity in an urban community, in which the visible consequences can become a

moral problem, and to prevent endangering the city's population (e.g. health issues due to untreated illnesses, emergence of legal vacuums), municipalities must take action and find solutions within the scope of local structures.

The results of a study conducted in 2007 on behalf of the City Council of Cologne on the life situation of undocumented persons (see also Bommès & Wilmes 2007; Wilmes 2008) show how irregular migrants manage to adapt to the conditions of the receiving context after overcoming initial obstacles. Some of them embark on very successful careers and become part of residential or religious institutions to such a degree that establishing a family becomes an option and a relatively stable subsistence can be established. For these individuals, irregularity is an everyday reality and a routine in which they structure their lives: they work at locations where the risk of detection is low, and they use health services that guarantee anonymity and are free of charge. When confronted with other social difficulties associated with the structural exclusion from important spheres, such as school enrolment for their children, they consult social work organisations that professionally support irregular migrants and do not report them to the foreigners' registration office (Ausländerbehörde).

After giving a sketch of the group of irregular migrants in the Cologne study, this chapter will explore the uncertain frameworks – the foggy social structures – that are emerging and prevailing in some German municipalities in the areas of employment, health care and education, which represent a reaction to migrant irregularity. In the creation of foggy social structures, organisations declare the resulting structural uncertainty to be useful and necessary, institutionalising such practices in an attempt to address an informal, unregulated situation and incorporate it into their normal organisational procedures (Bommès & Sciortino, Chapter 10 this volume).

It can be assumed that the integration of irregular migrants in the area of employment and the resulting structural contexts differs from the areas of health care and education. The reason for this is that possibilities of inclusion are usually not regulated via organisations (such as schools and hospitals). Instead, each employer decides individually whom to employ. In addition, general social structures of expectation can be identified in the areas of education and health care (all children should attend school, the ill should receive treatment), which do not exist in the area of employment, within the meaning of a general (also legally founded) entitlement to work. Potential contradictions, as visible in the health care system – every individual should in fact receive treatment, but irregular migrants do not have health insurance – therefore do not exist on the labour market. In contrast to analysis of the health care and education systems, therefore, this chapter's section on the situation of irregular migrants on the labour market focuses less on organisational structures, and more on individual working conditions and their impact on the labour market.

Irregular migration in Cologne

The heterogeneous group of irregular migrants in Cologne comprises labour migrants, refugees, rejected asylum seekers, women forced into prostitution, students and au pairs with expired visas, and children and elderly people who want to live with their relatives in Germany but who do not meet conditions for family reunification. The irregularity of these persons is not always a result of illegal border-crossing. The majority initially entered Germany legally (i.e. as tourists, students, au pairs, seasonal workers, asylum seekers) and successively slipped into irregularity after losing their residence permit. Those from countries without visa obligations have the option of entering Germany with a tourist visa valid for three months, albeit without a work permit. 'Pseudo-legal migrants' (see also Alt 1999: 26) often come to Germany with the a priori intention of taking up a job and do not leave after their visa expires. This was and still is a well-used option for entering Germany, particularly for labour migrants from South America and Eastern Europe.¹ Another group of irregular migrants comprises refugees whose applications for asylum have been rejected. Many prefer to lead a life of irregularity in Germany over being deported. This applies, for example, to refugees from Iraq and various African countries, as well as civil war refugees from former Yugoslavia or Turkey.² In Cologne, this group is rather substantial, given the large number of rejected asylum applications. A third group comprises those who crossed borders clandestinely and thus never possessed a legal permit to stay. Here, a distinction must be made between irregular migration and border-crossing with forged documents in combination with irregular stay. The use of forged documents is mainly associated with internationally organised smuggling organisations; according to the experts we interviewed, in Cologne this applies to groups of smuggled Chinese citizens and to African and Eastern European prostitutes who scrape together a living at the mercy of smugglers and pimps.³

Irregular employment in the German context

Irregular migrants cannot work legally in Germany. To enter into a formal, written work contract, foreigners must possess a valid permit to stay or the possibility to obtain such a permit based on the expectation of finding a job. Due to their lack of legal status, irregular migrants cannot rely on contractually stipulated employment⁴ and must content themselves with verbal contracts, since they are legally excluded from the labour market and therefore from jobs governed by tax law and social law. Consequently, they do not pay taxes or make social security contributions, which means they are formally excluded from health services and all other social security models

(pension, care-giving), which has an impact on various areas of their life (see below).

Verbal work contracts not only have enormous implications for being able to deal with conflict, they also introduce special opportunities for participation in certain sectors of the labour market. In particular, the avoidance of welfare state regulations constitutes a 'locational advantage' for irregular migrants, since they can be employed for low wages in exchange for reliable performance. Since neither the irregular migrants nor their employers pay taxes or social security contributions, migrants can earn a relatively good real income. Of course, this locational advantage meets a specific demand, particularly in sectors of the labour market where production and consumption occur in the same place (see also Vogel 1999: 85). Here, employees mainly take up work-intensive, low-skilled jobs, primarily in the service sector, where there is a high level of motivation to accept jobs that are not observed by legal and regulatory agencies. Employers and employees alike are interested in the stability and persistence of these working conditions. For irregular migrants, they represent the only way to live an autonomous life with a high income, especially when compared to the country of origin. They are even able to make remittances to their home countries, since the informal wages they receive are more or less similar to the net salaries of regularly employed workers in the respective labour market sector. At the same time, long-term informal employment is also in the interests of private households and organisations, with cheap but adequate and consistent wages ensuring reliable work performance.

With comparably uncertain employment relationships based on verbal contracts, it is important for both employees and employers, especially in private households, to establish stability and reliability. In order to achieve this, mutual trust is necessary – employees must be sure that employers are genuinely interested in providing a stable, long-term job, will not denounce them at short notice, will pay the salary agreed upon and not report the illegal stay to the regulatory agencies or abuse the employee's legal inability to deal with conflict. In return, the employees work for low wages and protect their employers' privacy. As far as employers are concerned, they must be sure the informally employed will not violate the privacy of their residence and that they will perform good, reliable work. Naturally, neither can be certain that their trust will not be betrayed, but since both are dependent on a permanent and stable engagement, mutual trust is the basis of the work relationship.

Irregular migrants verbally commit themselves to a certain performance for a certain wage. Often, however, they do not receive the salary agreed upon in full, or are sometimes not paid at all. Sometimes, knowing the employee's limited ability to deal with conflict, employers reject complaints or threaten to report them to the authorities. In turn, fear of detection and a lack of knowledge regarding their rights prevent most irregularly employed

people from legally enforcing their claims. Yet, according to Fodor (2001: 134-135), employees do indeed have a claim to the payment of the agreed wage in accordance with §611 (1) and (2) of the German Civil Code (Bürgerliches Gesetzbuch), which stipulates the obligation to pay for any services rendered that were agreed upon contractually. In accordance with the emphyteusis of factual employment, this also applies to all verbal agreements on the performance of services for a salary agreed upon between a person without a permit to stay and another person. There is, therefore, a material legal claim to payment of the agreed salary (Fodor 2001: 141-142). Further, Fodor (*ibid.*: 149) points out that the lack of legal status is not necessarily an obstacle to the assertion of this claim, since the responsible judge is not obliged to report pursuant to §87 (1) and (2) of the Residence Act (Aufenthaltsgesetz). The enforcement of legal protection for employees without a residence permit is not only necessary to claim a salary, but also implicates the possibility to prevent a priori fraud and the emergence of social dependency in the course of abusive employment conditions. Empirically, however, it is clear that expectations of the people concerned regarding the enforcement of legal claims are relatively low, since they only rarely attempt to sue, for fear of the risk of detection when contacting judges and attorneys – despite this fear having no legal basis. Thus, it is technically possible to claim one's due, but experience shows that the option is rarely exercised.

The Cologne study reveals that compliance to verbal agreements between employers and employees is not a given. Both experts and those affected report cases where only some of the agreed salary – or no salary at all – was paid. Although advisory centres frequently highlight the possibility of taking action, the affected employees seldom make use of this option – if they do, it is usually via detours. Apparently, it is not the lack of legal supplements but the fear of detection that prevents irregular migrants from taking legal action. This fear is so intense that the sacrifice of pending wages seems to be the lesser of two evils. Some of the Cologne experts refer to trials currently being litigated at Cologne courts, but in these cases intermediaries with legal residence permits in Germany submitted the claims.

By establishing continuous work relations, workers who have been employed for a longer time have the chance to stabilise their living conditions, find a new job and thus quit, reject or ignore precarious employment resulting from the limited ability to deal with conflict. Once they have succeeded in securing their professional life to a certain degree, their private life also changes: they can rent apartments independently and pay for health care in private medical practices. Thus, a reliable and beneficial job not only facilitates access to amenities such as the housing market and the health care system, but also enables the worker to establish a family. After arrival, taking up work is the most important step for irregular migrants to

break away from their dependence on personal contact in the home country, to take control of their life and, in the long run, to settle in Cologne.

In this context, it is clear which labour market segments are most suitable for irregular migrants, where they can frequently be found and where the demand for their manpower is greatest. The increasing demand for services in private households emerges from the fact that irregular migrants perform these services well and for a low wage, making them affordable to private individuals. Moreover, employing irregular migrants is becoming increasingly socially acceptable (Bommes 2006: 99). This also applies to the construction and food service sectors. However, increasing surveillance by regulatory agencies (e.g. the audit office for 'black labour' known as the Finanzkontrolle Schwarzarbeit), suggests that the demand for irregular migrants, coupled with their willingness to work in these sectors, has already declined; the risk of detection, which jeopardises their entire existence, is becoming too great. Enhanced surveillance increases the risk of being detected and prosecuted for employing clandestine workers, for which punishments have become much more severe in recent years. Below, I outline the most important work sectors, based on the Cologne study.

Irregular employment in Cologne

First contact with potential employers in Cologne is often established by the same references that also provide accommodation. The references have connections to employers themselves and also help newcomers find a job via newspaper classifieds, where they advertise specific functions, such as care services, domestic work and manual labour. Reference persons may also accompany newcomers to their first job interviews and help by interpreting.⁵ New arrivals do not always enter entirely new workplaces, but also attend jobs together with more or less established irregular workers, whom they subsequently replace; they may even share work during the initial phase in order to gain experience and skills in a certain area (see Gendera this volume). Once they have gained enough experience, they usually try to contact potential employers directly, although they often remain dependent on help with translation. Over time, the former newcomers, particularly when working in the domestic sector, are able to build up a base of employers, providing them with a regular monthly income.⁶ Although the uncertainty regarding the duration of employment remains, irregular migrants endeavour to reduce it by taking up several, also 'difficult', jobs. Recommendations by employers to acquaintances and friends are important when building up a client base because employers can establish useful contacts and inform their friends about the merits of a certain

employee; many interviewees claim to have found well-paid, reliable jobs in this manner.

The domestic service sector

In the growing domestic service sector of Cologne, the increasing demand for dependable, reasonably priced work is met by a substantial pool of employees. The sector is becoming increasingly attractive for irregular migrants, especially due to the relatively low risk of detection and the comparably good working conditions. Occupations range from cleaning jobs in private households and public buildings to nanny services, care work and manual labour. The actual working time in one job usually amounts to several hours a week; thus, all of the interviewees held multiple jobs – up to nine each – that they perform weekly or fortnightly. For women, access to this kind of work appears to be easier due to an ascribed competence and a certain trust on the part of employers. However, some male interviewees also reported that they hold regular cleaning jobs. Numerous respondents, nearly all of them women, worked as cleaners, with or without regular working hours. In addition, there is a continuously growing private demand for caring, supporting and supervising the elderly, enabling senior citizens to remain in their own homes despite being ill and in need of care. This requires a considerable degree of trust between the employer and the employee, implying continuity and security for both sides of the work agreement. On the one hand, employers have to trust that employees will do the job well and reliably for the wages agreed upon and, moreover, not abuse this confidence or the privacy of the residence.⁷ On the other hand, employees working under a verbal agreement must be confident that they will be paid regularly and that the employer will not abuse their restricted legal competences or report them to regulatory agencies. This mutual trust and confidence and the bilateral benefits resulting from it are the foundation of long-term stabilising employment relationships. Hourly wages average between € 7 and € 9 plus tips.⁸ As such, they are not necessarily lower than wages paid to people with a regular status working in the informal economy; this is likely to be related to the stability and continuity of employment relationships based on trust.

Male irregular migrants also work as manual labours. Several interviewees described painting, carpentry or bricklaying jobs, which they obtained through newspaper ads or recommendations. However, these are day jobs and do not ensure a regular, stable income, as in the case of cleaning and care work. Depending on the type of job, wages range between € 8 and € 25 per hour; sometimes a fixed price is agreed upon for the whole task.

Since irregular migrants have a limited ability to exercise their legal rights, agreements are also broken in private households, despite generally

good working conditions, e.g. when fewer hours are paid than actually worked or when no payments are made at all. However, the accumulated constant demand in this sector enables those affected to quit problematic and unreliable workplaces.

The food service sector

In contrast to the domestic service sector, competence in the host country's language appears to be an explicit job requirement in most areas of the food service sector. A number of interviewees stated that, particularly during the first period of their stay in Cologne, they took up jobs in restaurants owned by people from the same country of origin; these jobs were often procured through their initial contacts, but they were usually short-lived. Unlike in the domestic service sector, the demand is principally for inexpensive, low-skilled work, with wages starting at € 3 per hour. Newcomers inevitably accept this kind of work because they have few contacts and they need to obtain a job quickly. In time, however, after establishing new contacts and acquiring more differentiated work knowledge, they often manage to leave such jobs. In general, the food service sector is investigated by the municipal public order office more frequently than private households. Although many of the interviewees said they had worked in this sector temporarily, they worried about the high probability of inspections.

The construction sector

Information on employment opportunities in the construction sector is usually inconsistent. According to informants, it is still being accessed via subcontractors; on the other hand, representatives of the Cologne police and public authorities assume that the number of irregular migrants in the construction sector has declined remarkably in recent years due to increased inspections and the threat of severe legal consequences for the respective employers. Unsurprisingly, interviewees pointed out that irregular migrants are generally recruited for interior construction and only rarely for exterior construction work. Compared to domestic work, the construction sector generally seems to be characterised by intense demand fluctuations and considerable unreliability regarding wage payments. Interviewees repeatedly experienced difficulties with their employers, who were often reluctant to pay them in full. This appears to be due to the high degree of informality, the ability to easily replace workers and impermanence associated with irregular employment in this field; interviewees reported frequent job changing and subsequent transfers to different work sites. This might be another reason why more and more men, after having tried out the food service and construction sectors, are entering the spheres of work

typically associated with female labour, such as housekeeping and cleaning.

Sex work in Cologne

Only a few statements can be made concerning sex work in Cologne. Many of the women working in this sector appear to be from West Africa and Eastern Europe. In this field, irregular female migrants can only operate in absolute secrecy, since there is a high inspection rate within the official prostitution sector, implying a great risk of detection. Thus, they are generally found on the illegal prostitution scene, which is much less frequently controlled by the police, the regulatory agency or the health department. According to the interviewed social workers who visit this scene regularly, irregular female migrants can be met in the bars and brothels of certain city quarters where they work either for pimps or on their own. The social workers establish contact,⁹ give them information about disease and pregnancy prevention and point out social and medical counselling facilities, which, in turn, are frequented by the women they encounter.¹⁰ Besides prostitution on the street and in brothels, there are cases of sex work in private apartments, which are even less visible to the public and often induced by coercion of pimps.¹¹ Apparently, irregular migrants generally enter the arena of sex work via smuggling organisations. However, interviewed experts also mentioned the case of young women who took up work in this sector after their visas (e.g. student, language learning and au pair) had expired or after they had been rejected as asylum seekers. Consequently, many find themselves in financial, social and residential dependency, frequently accompanied by physical violence. In Cologne, there is close cooperation between women's rights organisations, health agencies, official boards and the police. Some experts described situations in which such cooperation has led to women succeeding in breaking free from problematic working and living conditions.¹²

Overall, the successful inclusion of irregular migrants in the labour market with stable and relatively well-paid jobs would have a considerable impact on their life chances, representing an important step towards their integration in housing markets and the health care system. The stabilisation of income and employment subsequent to the arrival phase in Cologne enables irregular migrants to gradually disengage from their initial contact persons. They are subsequently able to lead autonomous lives, even if the restrictive conditions of irregularity endure. A consistent income is the basis of being able to rent an apartment, utilise health care facilities, establish a family and generally engage in life planning.

Irregular migrants and the health care system

In most Western societies, the treatment of illnesses is guaranteed by an organised health care system. Individuals have the basic right to be treated by the responsible organisations, such as hospitals, doctors' practices, medical services and their staff. Due to the Hippocratic Oath, these organisations cannot ethically refuse treatment to the sick; physicians and their support staff are obliged to provide treatment in good conscience and without taking into account the individual's income, sex, race or, as in the case of irregular migrants, inability to cover the costs involved. For this reason, the health care system has a functional mandate to ensure full inclusion: anyone who is ill has the right to medical treatment and to the best care possible, with the objective of being cured. Thus, when someone is refused treatment or when help comes too late, this constitutes an ethical problem for doctors and nurses. Generally, they are not allowed to deny or terminate therapy, not least because of potential negative effects on a patient's health, but also considering possible accusations of failing to render assistance – which is usually accompanied by a communication of indignation on the part of civic organisations and the media.

In this context, the dilemma of official health care providers becomes apparent: on the one hand, they are obliged to treat all sick people to the best of their knowledge and belief, not only ethically but also against the backdrop of possible risks to public health, for example, the failure to treat contagious diseases. On the other hand, without social welfare, the costs incurred – especially for intensive care of non-insured and non-solvent patients in hospitals – are enormous, constituting a financial risk that should not be underestimated. Consequently, hospital administrations often pressure their medical staff into treating only financially secure people, despite the issue of medical ethics (see also Bommers & Wilmes 2007).

Analogously, irregular migrants experience this dilemma in terms of their participation in the health care system. On the one hand, they have the right to medical care. But if they exercise this right, they live in existential fear of their lack of legal status being documented or revealed to the authorities. If patients are unable to cover the costs of medical services rendered, hospital administrations often attempt to recover at least some of their costs by reporting illegal migrants to the authorities. This often leads to deportation, if no case of hardship can be asserted. Thus, irregular migrants often choose to exclude themselves from the health care system upon weighing the implications of disclosing their residential status against the implications of sickness; they usually decide not to use public medical services.¹³

The municipality represents a public space where serious illness caused by the lack of health care becomes visible. Noticeable suffering and existential threat due to poor health care policies are hard to justify ethically;

the social impact is likely to result in a scandal, with the municipality being accused of violating human rights. But it is also the consideration of public health that prevents municipal authorities from simply ignoring the situation. However, the legal framework of an insurance-based health care system severely limits the communal scope of action, and organisations within the health care field have few adequate options at their disposal to redress this problem.

The Cologne study offers valuable insights into developing solutions that address the problems described above (see also Wilmes 2009). Its findings reveal a range of possibilities that can help facilitate health care for irregular migrants, both within and outside the existing structures of communal and civil health care organisations. The programmes instituted in response to the medical needs of irregular migrants provide immediate care for individuals without legal residence, free of charge and anonymously – assuming the tasks and functions of the health care system, though in a context of support similar to social work.

Health care as social welfare

Since 2005, the Malteser Migranten Medizin (MMM) of Cologne has offered immediate and extensive medical assistance to persons without health insurance. In recent years, the organisation has cared for over 450 irregular migrants per year (MMM 2006), though the number of persons treated in 2008-2009 declined, according to a statement by the attending physicians.¹⁴ As in other large German cities, MMM assumes functions performed in hospitals or medical practices. In addition, it acts quite successfully as an agency, using the staff's existing private and professional networks to place patients in hospitals or specialist practices if MMM is unable to provide treatment. Being committed to providing anonymous and complimentary services, this programme is only possible because MMM is structurally and contextually located as a social work organisation, which can 'manage the exclusion' of those groups that do not possess health insurance and/or financial resources. They endeavour to resolve the practical exclusion that occurs due to a lack of access to the health care system.¹⁵

'Substitutes' like MMM that provide medical care outside the formal health care system are usually found in the context of welfare organisations and churches. Welfare organisations have the opportunity to define the conditions of access to their services independently, without having to account for it afterwards. This enables them to offer their services anonymously in some areas, i.e. to facilitate access for their clients regardless of any administrative documentation (sometimes, however, this is also possible in the sphere of public health care, which will be elaborated below). This is the crucial access criterion, especially for the irregular migrants in

the Cologne study; the inhibition threshold of utilising the service is lowered by reducing, even if not necessarily lifting, the threat of deportation by guaranteeing absolute anonymity.

Unlike the majority of medical services that are usually organised according to specialty, programmes such as those offered by MMM assert a claim, or perhaps are assigned a claim, to a universal responsibility for those whom they serve. This almost happens unintentionally and inevitably, since there are virtually no other alternatives for irregular migrants or people with very low incomes. Thus, it seems to make sense to also cover medical specialties, even if they do not necessarily correspond with the medical staff's particular training.

Organisations like MMM help alleviate the exclusion of irregular migrants from public health care services by offering immediate access without forcing them to identify themselves and providing extensive, albeit not always specialist, medical services. Unlike general social work organisations, the function of this kind of medical service¹⁶ is not merely to foster inclusion in terms of placement within function-specific organisations, but is defined by its substitutive faculty; these programmes offer services that are ostensibly rendered by the health care system. Their primary objective is to offer direct physical help in the event of illness. Secondly, but not unimportantly, their interceding social welfare function is activated by providing services that should be part of the public health care system.

The combination of functions originally assigned to the public health care system, with its insurance-based setup and a structure that corresponds in many ways with organised social work, creates remarkable challenges and several difficulties regarding the recruitment of personnel and fundraising activities. For this reason, the professional staff often works on a voluntary basis, since adequate payment is usually beyond the provider's means. There is often no payment at all, or merely symbolic compensation for the professional work performed. Under these conditions, it is difficult to find permanent personnel; moreover, since the service is free of charge, costly equipment, such as drugs and instruments, must be acquired by other means.

A crucial factor for the establishment and continuance of the programme is the communication of uncertainty; MMM remains vague regarding their services and the definition of their clients. They offer their services 'for all people without health insurance', which also enables them to treat irregular migrants. If the constitutional characteristic of this group – the lack of a residence permit – came into focus, the programme would risk attracting the attention of national security and surveillance machinery. This would lead to pressure towards legitimating their actions, which would ultimately mean endangering their own existence or being exposed to constant existential uncertainty. Thus, the information communicated to the outside must be deliberately vague in order to increase a willingness to cooperate

at the local level, enabling other actors to connect, support and stabilise the programme. In Cologne, even the police know that MMM treats irregular migrants. However, since MMM defines its target group very loosely, the authorities have no formal cause to inspect those concerned during consultation hours. In short, the police cooperate by non-observance and indirectly support the programme.

'Useful illegality'

Another programme, the Anonyme Beratungsstelle zu sexuell übertragbaren Krankheiten einschließlich Aids (an anonymous advice centre for sexually transmitted diseases including AIDS', hereafter: the Clinic) is a service offered by the communal health department of Cologne. The Clinic fulfils a legal function based on the Infection Protection Act (Infektionsschutzgesetz), §19, which defines the prevention of infectious diseases as a public responsibility and puts the health departments in charge.¹⁷ Thus, unlike MMM, it is not compensatory, though it shares a comparably vague sense of its patients and the illnesses treated that are not genuinely part of their responsibility, but which they have to deal with in the course of their activities. By means of a broad definition of the target group – all suspected cases potentially matching §19 of the Infection Protection Act – the Clinic also unofficially, but legitimately, includes female irregular migrants with their specific life situation, even if this means treating ordinary complaints such as stomach aches and the flu.

The women interviewed in the course of the Cologne study state that the Clinic, due to the anonymous, confidential, complimentary and low-threshold service, helps lower their inhibitions to utilise its medical services, despite its affiliation with a public department. Since the Clinic has been long established and is well known in the community, it is even more successful than MMM. It offers immediate medical support and simultaneously serves an important intermediary function regarding regular medical services, such as hospitals and doctors' practices. Unlike MMM, however, the Clinic is integrated within an organisation of the public health care system, and is thus part of the public service; it only succeeds in addressing people outside the system by means of a relatively wide legal framework.

Medical care for irregular migrants provided by MMM and the Clinic have rather blurry organisational structures, which work rather well, not least because they are 'usefully illegal' (*brauchbar illegal*, see Luhmann 1995: 304-305). Organisational practices are defined by Luhmann as being illegal if they violate formal expectations; when organisations create undisputable formal norms, a certain degree of illegality becomes inevitable (*ibid.*). In this context, he emphasises the meaningfulness of such conduct, which only at first sight contradicts successful (in terms of rule-compliant)

behaviour, since it can be useful for all organisations and can provide continuance and stability (*ibid.*: 304).

The ways in which MMM and the Clinic violate formal expectations are different, though are similarly related to their respective organisational structures. At MMM, illegal behaviour through the violation of, or deviation from, formal expectation structures occurs because irregular migrants, in the broadest sense, come under the target group – persons without health insurance; the basic expectation is that the service is intended for German citizens or persons with a residence permit. This is ‘usefully illegal’ because the municipality is relieved from an obligation to create special services for irregular migrants, which would be difficult in the context of formal structures, not to mention the possibility of largely avoiding public disapproval in terms of communicating moral judgment patterns. Violations of formal expectations emerge at the Clinic due to the assumption that public organisations of the welfare state are meant for, and utilised by, citizens who reside legally within the territory. Providing health care to people who have an irregular status contradicts this expectation, as does the fact that more than just illnesses matching the definition of the law on infection protection are treated, thus going beyond the mandated responsibility of the Clinic. This kind of ‘useful illegality’ becomes feasible because it protects public health and avoids the morally dubious issue of leaving an ill person untreated. Accordingly, other actors, such as the police or the foreigners’ registration office, cooperate indirectly through non-observation.

As these examples show, the functionality of organisations is not always achieved through compliance to the rules. The deviations described do not endanger the functional procedures within the organisation to such a degree that they would be considered severely abnormal and therefore be sanctioned or abolished; on the contrary, the violations described above represent useful deviations that have a beneficial impact upon the purpose of the formal organisation (see also Luhmann 1995: 304). Deviation as an expectation in itself is in the best interest of these organisations because it facilitates reproduction, growth and stability. Additionally, MMM and the Clinic find support and indirect cooperation in their immediate environment. Municipality and social work organisations have come to expect these programmes to deal with the issue of a lack of medical care for irregular migrants. Social work offices, in particular, are confronted with this issue daily when the undocumented ill seek their help. In both programmes, the extension of the target group and the scope of activities is a necessary adaptation of the system to the expectations of their environments – one that is explicitly tolerated. Long-term experience and a high level of acceptance regarding these deviations resolve the original contradiction in organisational actions and lead to a practical routine of processes that are best described as ‘foggy structures’. What was previously labelled as a deviation is now publicly observed as a regular part of organisational

procedure, and thus becomes a normality or pseudo-normality. Here, what was initially observed as a breaching of the rules, turns out to be beneficial for the organisation because it is suitable for healing the sick.

The more constant and reliable organisational structures are, the more they become established and regularised. In the case of health care in Cologne, the result is that irregular migrants can become clients of these organisations more or less free from fear. In addition, the city can effectively sanction successful structures of health care in the context of refugee and health politics, albeit informally. This normality is only vulnerable when it comes to challenging new personnel, since the required procedures depend on individual, voluntary commitment, meaning that continuation is necessarily somewhat tenuous. This is an issue that the programmes described here are constantly faced with. For example, MMM works at fostering inclusion through personal networks and manages exclusion using their staff's personal knowledge and capabilities. That being said, every change in personnel endangers the access provided for irregular migrants.

Irregular migration and the German education system

There is consensus that all children should be given the opportunity to receive an education and to attend suitable establishments within the education system. In other words, all children have a basic right to education.¹⁸ In principle, school attendance is compulsory in Germany. However, the domain of education is governed by the cultural sovereignty of the federal states and regulated by the individual state constitutions. Each federal state is free to decide how it wishes to regulate access to nursery schools, schools and universities. In concrete terms, this means that the general expectation of all children being given the opportunity to attend school is regulated in very different ways within Germany. Compulsory schooling for children without a legal residence status is directly regulated in some federal states (Bavaria, North Rhine-Westphalia and Bremen). Others, however, explicitly exclude such schooling (Hesse) or do not specify it in any detail. For this reason, there is a contradiction between the pretensions of the education system to educate all children and the legislation in many states on compulsory schooling – as well as federal government legislation concerning the obligation of school staff to report 'foreigners without a necessary residence permit', pursuant to §87 (1) of the Residence Act.

Technically speaking, these pretensions of the education system are difficult to enforce consistently at the national level. Heads of schools and teachers would have to deliberately ignore the legal sanctionability of schools with regard to irregular children, for instance, to enable children without a residence status to attend school. In the case of Cologne, school attendance in the Federal State of North Rhine-Westphalia is not dependent on the

child's residence status, meaning that children without a residence permit are also required to attend school: §34 (6) explicitly regulates compulsory schooling for the children of female asylum seekers and foreign children and adolescents obliged to leave the country. Legally, children without valid papers are assigned to this group. In its report entitled, 'Illegal aufhältige Migranten in Deutschland' ('Illegally residing migrants in Germany'), the Federal Ministry of the Interior (Bundesministerium des Inneren 2007) also assumes that general compulsory schooling for irregular children in North Rhine-Westphalia follows from §34 (6) (ibid.: 23; see also Heiermann & Glende 2004). Moreover, it follows that there is no obligation to report resulting from §87 (1) of the Residence Act. Only if access to school is dependent on the residence status is the decision-making head of school obliged to report the case. Consequently, there is no obligation to report in the case of Cologne. The residence status is irrelevant to allowing access to educational establishments (see also Fodor & Peter 2005; Bundesministerium des Inneren 2007: 27). However, this apparent legal clarity in the case of North Rhine-Westphalia does not always translate into empirical reality – many heads of school still reject the children of irregular migrants or are unsure about how to deal with them. In addition, parents rarely enrol their children directly. Not only are they afraid that their failure to produce proof of residence or the address they state will reveal their illegal residence status, but they are also at the mercy of school staff, who are ill-informed and unsure about the application procedure. Although not required by law, schools assume a social addressability of the family when enrolling children by usually demanding proof of residence as a prerequisite to attending school. Since irregular migrants are unable to give a registered address when enrolling their child, this practically presages the failure of school access, regardless of the legal framework conditions. As I describe in the following section, the results of the Cologne study show that some children do attend school despite the unfavourable context.

Educating irregular migrants' children in Cologne

In contrast to compulsory schooling, there is no legal right to a place at nursery school in North Rhine-Westphalia. Access to such establishments is highly problematic, due to the level of bureaucracy involved in the application procedure. All interviewed parents with children over three years old described numerous unsuccessful attempts. Their enquiries failed either due to the lack of proof of residence or because they had revealed their irregular status when asked at their initial meeting with the head of the establishment. However, the Cologne study also shows that at least some children of parents without a residence status managed to gain access to the education system even at nursery-school age.

It is, however, unclear how many children of irregular migrants attend school in Cologne. Since it is easier to gain a place at school with the support of advisory centres, it can be assumed that those interviewed in the Cologne study have fewer difficulties in gaining access to school. In fact, there were also a number of cases in which parents were able to find a place at school for their children themselves. Experts involved in arranging admission to school emphasise the importance of private contacts, informal networks and arrangements, without which it would be virtually impossible to gain a place in Cologne. Unnecessary work is created for all those involved. Advisory centre staff spend a considerable amount of time and effort searching for space at nursery schools. The outcome of these efforts is often unknown, making the work appear highly stressful and unrewarding. For the employees of public bodies, such as municipal schools, the lacking institutionalisation of schooling for irregular migrants' children is a considerable element of uncertainty, causing additional work and greater organisational effort, including for the schools themselves. Since the supporting organisations that were interviewed cooperate closely only with a small number of schools in Cologne, those few are overburdened. According to one expert, children in Cologne were enrolled at the school directly by the head, making them officially registered pupils, insured by the school, who may be awarded certificates of attendance. However, there are also children who attend school unofficially. Such children are not insured in the event of an accident, for instance. Moreover, they may be denied certificates, making the transition to lower secondary school even more difficult. According to several experts, the transition to lower secondary school is often more complicated than initial enrolment and entry to the right type of school within the three-tier system is not always successful. This implies the risk of losing previously gained cultural capital or being unable to extend it; the education initially gained can easily be destroyed, making social integration more difficult later in life.

In spite of the tension between legal frameworks, administrative possibilities and impossibilities, parents' fears of being found out and general expectations that all children should be granted schooling, social work organisations attempt to pursue an inclusion policy and to enable children to gain access to the education system, as shown by the example of the City of Cologne. Their work is hands-on and direct. Rather than pursuing an 'exclusion policy', as with the aforementioned 'substitutes' in the health care sector, they follow a direct inclusion policy. These advisory centres, established within charities or existing as independent entities, essentially perform the tasks of social work organisations: if they become aware of exclusion, they help their clients become a part of function-specific organisations such as schools.

The fact that school attendance is free of charge is the specific structural feature of the education system that, in contrast to health care, makes direct

placement possible. Schools that take on extra non-registered pupils do not initially incur any direct additional costs. However, this is more problematic with regard to nursery schools, where places are allocated on a 'per capita' basis. They are financed by parents, who pay either a fixed fee or an income-based proportionate amount. In addition, spaces at nursery school are highly subsidised by the municipality. In other words, nursery school places are not free of charge. Taking on extra children would financially disadvantage parents whose children are officially registered and who expect them to be cared for adequately. In the case of public establishments, the head of the nursery school would have to justify his or her decision vis-à-vis the local authority's funding body. From an administrative perspective, accepting a child with irregular residence at nursery school is an even greater challenge than for schools, because the head must register each child with the local authorities to calculate the fees or bring about an exemption from payments, as well as ensure insurance coverage for the child in the event of an accident.¹⁹

Against this backdrop, greater focus must be placed on structural mechanisms for both organisational areas involved in pursuing an inclusion policy: the social work advisory centres and the nursery schools and schools within the education system.

Considering the relatively open circle of clients, the advisory organisations involved can also help people without a residence status find places. They do not pursue an exclusion policy, as in the case of MMM. 'Migration services' or 'migration advisory centres' are especially involved here. None of these services directly and exclusively addresses irregular migrants, which would be virtually impossible in view of the small number of cases. As with the above-mentioned medical services, here, too, there is relative uncertainty with regard to the definition of target groups, and the performance of task areas is relatively vague. The connection to charities or independent establishments, and the financial independence that comes with such connections, however, enables them not only to define target groups and scopes of services relatively freely, but also to ensure a structural consistency of the inclusion-oriented services. Employees are not governed by the obligation to report, set out in §87 (2) of the Residence Act, even if §96 (1) – aiding and abetting illegal residence – implies their work's impact on this group of clients is debatable and their deeds may perhaps place them on the edge of (judicial) illegality.²⁰ Nonetheless, it is 'useful illegality' that helps achieve the formal goals of organisations focusing primarily on helping migrants in need and on facilitating or regaining their access to important areas of daily life. The undefined structures observed here are also useful, particularly because they allow ample scope for interpretation – no politician or employee of the foreigners' registration office would: a) deny the necessity and right to attend school; and b) want to punish children for being irregular residents. The truth is that most

agree – even seen in the official position of conservative parties recently – that children are not to be blamed for their irregular status and should not be punished by being denied access to school. Hence, they cooperate relatively successfully with nursery schools and schools, leaving little risk of the parents being discovered. By pursuing an inclusion policy, these organisations thus often succeed in enabling children to attend school.

The special structure of this inclusion policy, however, means that these services are subject to the problem of individual and personal dependence, arbitrariness and instability. The inclusion policy is successful against the backdrop of specific clientele, especially within personal network structures, so that it can be assumed that some children of irregular migrants do indeed attend school. It is questionable whether these network structures can be maintained in the event of a staff change. There is still a great deal of uncertainty with regard to the continuance and stability of these services, despite a relatively reliable formal structure and ‘legal’ framework.

In the case of organisations within the education system, the picture is slightly different. As already discussed, the legal framework to enable access to schooling is unclear and contentious – subject to an ever-changing interpretive process. Relevant is how heads of school act and the issue of compulsory schooling taking place in a ‘grey area’ in many federal states, as there are no clear-cut court decisions. Admittedly, a number of legal opinions exists (Fodor & Peter 2005; Heiermann & Glende 2004) – for example, that which determines compulsory schooling for North Rhine-Westphalia. However, there are no definitive court decisions on individual cases, official statements or concrete efforts to amend the laws. The same applies to the obligation to report: in practice, very few heads have been reported based on §87 (1). However, such an obligation does in fact exist, even if it remains unclear for which deeds heads of school are deemed to have acted unlawfully according to §87 (1). In short, school attendance by children of irregular migrants is not clearly regulated by law and is therefore difficult to translate into formal organisational acts by the school. Thus, school attendance by these children is also subject to ‘foggy’ structural mechanisms (Bommes & Sciortino Chapter 10 this volume) and is located ‘in the greyness of an in-between area’ (Luhmann 1995: 304).

Conclusion

As already mentioned, the structures described differ significantly in the areas of employment, health care and education. The contradictions evident in the areas of health care and education (the right to medical care and the right to education versus problems of inclusion due to legal and organisational framework conditions) do not arise in the area of employment. The

'foggy' structures in this respect relate, in particular, to the actual working conditions, which also differ considerably, depending on the field of work.

In contrast, foggy structures in the areas of health care and education are more visible at the organisational level and thus become foggy organisational structures.

The different medical services offered to irregular migrants in Cologne are rather similar regarding their structures, but differ in terms of the context in which they are located. Similarities regarding the fogginess of the target group, objectives and purposes and features of 'useful illegality' demonstrate that these characteristics are usually independent of the respective context, and can be utilised within the scope of organisational self-description. This means that various areas and types of organisations (in this case, the public health department and a social work organisation) qualify to make use of these structures to the benefit of the establishment and continuance of the organisation itself, albeit always in a context of uncertainty regarding permanence and stability. Although medical treatment is the original and primary purpose of health care organisations, they cannot ignore the fact that irregular migrants are not legally entitled to their services, meaning that the inclusion of these persons must be provided elsewhere. The 'foggy structures' described above are the means by which organisations are given the chance to also recognise their responsibilities in the context of irregular migration.

In the education system, it is also part of an informal arrangement on the part of the school, which serves its organisational purpose quite well, i.e. to educate children. By fulfilling the formally valid requirement to educate in the context of such uncertainty, the head of school receives support from other authorities, particularly local governments (e.g. foreigners' registration offices, school authorities), as they demonstrate an indirect willingness to cooperate. In most cases, papers are not checked and irregularities are not pursued further. As implied above, these structures are highly dependent on the people involved, above all, the head of school and his or her willingness to accept children despite legal uncertainty, as well as teachers for bearing the additional workload. It is a different matter with nursery schools: although here the discrepancy is in line with the organisation's aims, there is less tolerance by other institutions, particularly local administrations that contribute to funding. As a consequence, these relatively indefinite structures are useful and unavoidable for organisations within the education system and for social work. They enable fulfilment of a general expectation to educate children and help social work organisations to perform their duty in supporting those who seek help. They all act according to their functions and do not deviate significantly from the formal objectives and purposes of the respective organisations.

The social structures formed by irregular migration therefore differ considerably, depending on the general formation of expectations in various

areas of society. In this study, it became evident, however, that in particular areas that are highly regulated and of considerable significance to the welfare state (education and health care), the support given to irregular migrants within the scope of 'foggy structures' refers to the organisational level and goes beyond personal interaction. A society or, in this case, a municipality such as Cologne, cannot afford to abandon supporting structures in these very areas.

Notes

- 1 This strategy became more difficult after the abolition of the facilitated visa regime for Bolivian citizens on 1 April 2007, following restrictive reforms for other Latin American countries. Apparently, this is one reason the number of irregular migrants from South America, which in the 1990s was on the rise, recently declined. As a result, some migrants obtained documents illegally from adjacent states not yet affected by the revisions in order to gain access to tourist visas. Confronted with the new visa regulations, fewer South Americans even dare to visit their families back home due to the uncertainty of whether they will be able to return.
- 2 Experts estimate the number of irregular Turks in Cologne to be rather high, although quantification is difficult due to the reclusiveness of the Turkish community. It is commonly known, though, that young men sometimes evade the Turkish military by remaining in Germany.
- 3 Due to a lack of data and the qualitative alignment of this research, no statements can be made as to the precise dimension of irregularity in Cologne. Irregular migrants do indeed appear in some statistics of local agencies and organisations, but it is problematic to furnish particulars based on this information. Clinics in Cologne rarely record the annual number of irregular migrants they look after, which means that staff members can only provide non-verifiable estimations at best. In any case, one must proceed from the assumption that, due to the danger of detection, only a small minority of persons with irregular status contacts advisory centres at all, and therefore any statistics provided would not be representative. However, expert statements and observations point towards a rather sizeable number of irregular migrants in Cologne.
- 4 The different employment opportunities for foreigners will not be elaborated further here; in the following analyses, it all comes down to the fact that persons with an irregular residence status cannot take up formal work. At the moment, a number of irregular migrants from Eastern Europe (e.g. Romania and Bulgaria) is situated in a transitional state of regular versus irregular employment due to the politics of EU enlargement; some have a permit to stay, but no work permit. Factually, such politics will ultimately involve legalising specific migrant groups so that, in the future, places of origin of irregular migrants are likely to shift further east.
- 5 Whereas basic communication does not seem to be necessary in the domestic sphere, it is much more important in the food service sector; employees almost exclusively work for people with the same mother tongue.
- 6 Many jobs in the domestic sector are long term, with interviewees reporting tenures between two and nine years.
- 7 Many employers give copies of their house keys to employees to enable them to work in their absence.

- 8 Wages for nannies and care services – especially when they are live-in positions – are usually slightly lower than those for cleaning services.
- 9 Clients are assigned according to the social workers' and physicians' language capacities. Thus, nationality variation among clients reflects not only general migration flows linked to legal frameworks, but also the continuous shifts in institutional staff (due to financial restrictions and organisational restructuring).
- 10 According to one employee's estimate, the health department's free walk-in consultation hour is frequented by one quarter of these women each year.
- 11 Krieger et al. (2006: 130) differentiate between free organised prostitution, free private prostitution and coerced prostitution. Interviews with experts imply that these forms also exist in Cologne, although conclusive statements cannot be made on this matter.
- 12 Acquiescence for witnesses is usually only granted temporarily and generally leads to deportation after the trial.
- 13 In October 2009, important administrative provisions on the Residence Act concerning this matter were changed: in the event of emergency treatment, hospitals are no longer required to forward the patient's personal data to the foreigners registration office. This amendment could lead to a larger number of irregular migrants visiting hospitals for emergency treatment and a greater likelihood that hospitals will be reimbursed for their expenses.
- 14 MMM has observed how patients without regular residence status are being replaced by Eastern European migrants from Romania and Bulgaria, who work in Germany without health insurance.
- 15 Social work organisations observe, describe and process individual exclusions and thereby assume, amongst other things, the tasks of exclusion management (Bommès & Scherr 2000: 142).
- 16 Besides MMM, Medinetz and other small local initiatives in a number of cities admit to this task.
- 17 In contrast to private practices and hospitals, the public health service holds an exceptional position, since its field of duties comprises improving healthy living and environmental conditions as well as protecting the public from health-related dangers (Nitschke 2004: 139).
- 18 For example, this is embodied in international law in Article 26 of the Universal Declaration of Human Rights.
- 19 Due to their specific clientele and many years of practical experience, several establishments involved in the Cologne study 'specialise' in arranging places at schools, whereas others have less to do with this issue or refer parents to other institutions.
- 20 Although no criminal charges have yet been filed against employees of advisory centres, and the moral necessity of these services is not questioned, their practical work is performed in a legal 'grey area'. This means that no landmark legal decisions have been made to the effect that employees of such centres are not governed by §96(1) of the Residence Act.

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PART III

POLICY RESPONSES



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7 Labour market flexibility and worker security in an age of migration

Alex Balch and Sam Scott

Flexible labour markets and government regulation¹

Over the past decade, labour market flexibility in the United Kingdom has increased, becoming synonymous with the international migration of low- and high-skilled workers. At the bottom end of the labour market, this has raised important socio-economic questions around the protection of vulnerable migrant workers and political-legal questions around the status, rights and entitlements of these workers. Two key questions stand out in this respect. First, how do states protect the most vulnerable workers, especially if those workers are migrants, employed on temporary contracts, with very limited union participation? Second, what balance should be struck between the state's protection of exploited workers and its need to 'go after' irregular migrants? Further, if governments have a role to play, to what extent should they intervene and what impact will such intervention have on global competitiveness?

This chapter identifies the contemporary approaches adopted in the UK towards these crucial regulatory questions. They are questions that have grown in importance over the past decade as two dimensions of labour market flexibility have increased: the number of labour migrants has grown (by over one million) and the size of the temporary agency sector has grown (turnover has quadrupled and the number of firms has doubled). We use the UK construction and food industries as exemplars of different regulatory approaches because these two industries have become synonymous with temporary and increasingly migrant-based employment.

Shelter and subsistence are the two most basic material needs that human beings have and, increasingly, both needs are being met through the employment of temporary and migrant workers in the construction and food sectors. Some of these workers are irregular and face all the problems associated with this status (or lack thereof). While most migrant workers are in the UK legally, they are nevertheless in danger of being exploited by unscrupulous employers.

The vast majority of low-status migrant workers in the construction and food sectors find work, initially at least, through labour market inter-

mediaries and informal social networks. They are generally employed on a temporary basis according to the vicissitudes of the market.² While one should not equate temporary work and labour market intermediaries with illegality, it is certainly true that the most exploited workers are those at the bottom of an increasingly polarised (see Goos & Manning 2003; Kaplanis 2007; Sassen 1991) labour market.

The UK, in this respect, particularly stands out within the European Union. It is unique for the following reason:

- It has the *largest temporary agency sector* in the EU (see Figure 7.1) and accounts for around one third of all temporary agency employment (Demos 2007: 10).
- It has one of the *most fragmented* temporary agency sectors in the EU with a significant proportion of small, local operators (depicted by the grey Others category in Figure 7.2) supplying mainly low-status workers as well as a few international operators supplying both high- and low-status workers (Coe, Johns & Ward 2007).
- Almost all (86 per cent) *temporary work in the UK is agency-related*, unlike many other EU countries, with agencies accounting for 5 per cent of total UK employment.³
- Temporary work in the UK is *increasingly migrant-dominated*, particularly in low-status jobs and especially after the recent waves of EU enlargement (see Geddes, Scott & Nielsen 2007; Scott, Geddes, Nielsen & Brindley 2007).
- Not only is the UK recruitment sector the largest in Europe (EFILWC 2006: 6), the *regulatory context governing its operation is limited* when compared to other EU member states (ibid.: 22, 27).
- *Union activity is also very low* in the UK among temporary and migrant workers (ibid.: 30; Wills 2005).

Overall, the UK agency sector is worth an estimated £25 billion, representing a four-fold increase over the 1994 figure (Demos 2007: 26-27), and accounting for 1.2 million full-time equivalent workers.⁴ Around 87 per cent of this agency market is accounted for by the placement of temporary workers (REC 2006: 4). In all respects, then, the UK agency sector is impressive and relatively exceptional, reflecting the UK's role as home to one of the 'freest markets in Europe' (Demos 2007: 10).

Figure 7.1 *Size of gangmaster businesses in UK food production* ◀

Turnover band	March 2007	October 2008
A £10 million +	13 (1%)	11 (1%)
B £5-10 million	20 (2%)	20 (2%)
C £1-5 million	198 (18%)	149 (13%)
D Less than £1 million	875 (79%)	955 (84%)
Total licenses	1,106	1,135

Figure 7.2 *Size of gangmaster workforce in UK food production* ↵

<i>Workers per licence</i>	<i>% licensed gangmasters</i>	
	<i>March 2007</i>	<i>October 2008</i>
0	3%	26%
Under 10	18%	18%
10 – 100	56%	39%
101 – 500	16%	13%
Over 500	7%	4%
	100% (N = 1106)	100% (N = 1135)

The key issue for the UK, as well as other EU governments, is how to manage the costs and benefits of increasing flexibility (i.e. the growth in temporary employment and low-status labour migration). Throughout the 1980s and 1990s, there was a trend towards de-regulation and an adherence to the neo-liberal doctrine. This trend was particularly pronounced in the UK and was associated with a commensurate decline in union power. Recently, the UK government has been aware of the need to ensure the basic protection of flexible workers at the bottom of the labour market who are on, and in some cases below, the minimum wage.⁵ Some have called this the start of a ‘re-regulation’ agenda, and the current debates at the EU level over the Temporary Agency Work Directive, or the idea of ‘flexicurity,’ show just how thorny the issue of labour market regulation is. This said, while most commentators agree that too much regulation adversely affects national competitiveness, most also accept that ‘globalisation’ and ‘competition’ cannot be used as excuses for the erosion of workplace standards and that extreme insecurity can actually damage business productivity. The issues now are: what type of regulation to encourage; how much regulation to allow; and what resources and power governments should give to workplace regulators. Related to these three issues is the more ideological question of where to draw the line between regulation and flexibility.

The UK government must support the legitimate pursuit of profit while ensuring that this pursuit does not become fundamentalist – in the sense that worker poverty, exploitation, hardship and even death is ignored by business. This, after all, is what happened in 2004, when 23 irregular Chinese workers died while collecting cockles in the treacherous tidal waters of Morecambe Bay (the ultimate buyer of the cockles being picked that night was never identified or prosecuted). The Morecambe Bay tragedy was about irregular migration and the exploitation of workers – the focus for this chapter. It also led to the establishment of tighter labour market regulation in the UK food industry: a licensing scheme for labour providers was brought in, and this is now administered through a non-departmental government body called the Gangmasters Licensing Authority (GLA).

Pressures for workplace regulation to fill the void left by increasing worker flexibility, rising levels of migrant labour use and declining union membership existed before Morecambe Bay, but the 2004 tragedy acted as a critical impetus behind the passing of the Gangmasters (Licensing) Act.

The UK construction sector, our other case study industry, actually has more fatalities annually than almost any other (77 in 2006-2007), but uses a different system of regulation – the Construction Skills Certification Scheme (CSCS) cards – focused on the individual worker rather than the employer. These different regulatory approaches will now be compared and their efficacy evaluated.

The re-emergence of legitimate low-status labour migration

We opened this chapter with two questions: how do EU member states deal with irregular migrant workers and how do they prevent migrant workers from being exploited? There are two issues at stake: one around irregular migration and the other around irregular employment practices. Therefore, before discussing the regulation of UK workplace practices – through the GLA (company-based) licence and CSCS (worker-based) permit schemes – we want to discuss the changing policy context governing contemporary labour migration to the UK.

The most notable feature of the UK in this respect is that it has not, unlike many other EU member states, sought to formally regularise so-called ‘illegal’ migrants (see GAO 2006), except in very particular circumstances (Levinson 2005). In the UK, there are an estimated 500,000 to 750,000 irregular migrants – and one would assume workers: how else would these people feed and clothe themselves? (Gordon, Scanlon, Travers & Whitehead 2009; Woodbridge 2005). Although the calculations used to arrive at this estimate have been questioned (see also Dorling 2007; Jandl 2004), no one would deny that there are large numbers of workers in the UK, principally in London and the south-east, living outside formal state institutions.

While *de jure* regularisation has largely been avoided in the UK, the accession of ten new states into the EU led to a *de facto* process of migrant regularisation: between 30 per cent and 60 per cent of A-8 migrants recorded as entering the UK after May 2004 are believed to have already been working in the country prior to EU enlargement (Bijak, Kicingier, Saczuk, D. Kupiszewska, M. Kupiszewski & Nowok 2004; Home Office 2004).⁶ This new route for legal labour migration effectively reduced the issue of migrant irregularity overnight.

The UK government’s decision to allow the free movement of workers from Eastern Europe was a brave one, given the widespread use of transitional restrictions in almost all other existing member states. It emerged on

the back of an important paradigm shift in UK migration policy: from one of stopping low-status labour migration to one of managing it. In 1994, the stated aim of the UK Home Office was ‘to restrict severely the numbers coming to live permanently or to work in the United Kingdom’ (Home Office 1994). A decade later, it had the aim to ‘boost Britain’s economy by bringing the right skills here from around the world, and ensuring this country is easy to visit legally’ (Home Office 2007). The key Home Office report marking the start of this paradigm shift was published in 2001. It argued, ‘... [T]here is clearly unsatisfied demand at *all* skill levels in the labour market’ (Glover, Gott, Loizillon, Portes, Price, Spencer, Srinivasan & Willis 2001: 50). This was the first time since the oil crisis of the mid-1970s that low-status labour migration to the UK was being openly argued for at the heart of government.

The paradigm shift in UK migration policy was economically and pragmatically rooted. It was economically rooted because businesses in the UK employing low-wage labour had, since the end of the 1990s, been struggling to fill vacancies and were turning to increasingly questionable sources of labour. Organisations like the Confederation of British Industry were warning of threats to UK growth without sufficient numbers of low-status workers, warning policymakers that ‘business needs managed migration’ (CBI 2005). UK government departments concurred with this view (GAD 2004; HM Treasury 2002). The Home Office, in a survey of employers, noted that they now ‘place considerable reliance on low-skilled migrants’ (Dench, Hurstfield, Hill & Akroyd 2006: vi).

It was pragmatic because of the large numbers of irregular workers already in the UK (business had moved faster than government in this respect) and the need to regain control of this situation. Denying the need for low-status migrants, given the desire for continued growth and low inflation, was simply not an option. The approach to migration policy at the EU level sums up this pragmatic-economic approach: ‘we had better manage immigration properly as it is going to happen anyway’ (Frisco Ascam, EU Justice Spokesman, March 2007). The one check on this pragmatic-economic policy is the issue of social cohesion and related pressures on welfare services; this explains the UK government’s recent about-turn evidenced through its decision to maintain transitional restrictions on Bulgarian and Romanian workers.

Moving from worker to workplace irregularity

An important outcome of the managed migration paradigm shift was the increase in legitimate migrant workers in vulnerable sectors of the UK economy. The 2004 EU enlargement meant that, virtually overnight, large numbers of ‘illegal’ workers were regularised (decriminalised). This helps

to explain the increased public and policy concern with issues of workplace exploitation. Very simply, irregularly resident, low-status migrant workers have no rights – they are criminalised – whereas regularly resident low-status workers do have rights. The move to open up labour migration to the new EU member state nationals, because of the demand-based pressures placed on government from the turn of the millennium, effectively required greater attention to be directed towards the unsavoury aspects of labour market flexibility. These affect both native and migrant workers, but migrant workers, at least those who are newly arrived, are generally much more vulnerable and, in some cases, may be more willing to trade a certain level of exploitation for financial gain.

Thinking through the dual regulatory approaches that affect the status and experiences of low-status migrant workers in the UK – policies directed at irregular migrants and those directed at exploitative employers – it is important to recognise the overriding tendency towards ‘light touch’ regulation. The UK, unlike the Netherlands, France and Germany, has had a more pervasive and market-orientated *laissez-faire* tradition. Moreover, even in countries with limited state regulation, there is often quite significant union activity. But once again, the UK can be characterised as adopting a *laissez-faire* approach; union membership in low-wage and highly flexible sectors of the UK economy is very limited and there has been a loss of the collective forms of ‘social regulation’ that unions bring (Hjarno 2003).

Alongside the ‘light touch’ discourse, the socio-economic and geographical focus of regulation in the UK has been skewed towards the irregular migrant more than the exploitative employer. The Home Office has the job of controlling the ‘problem’ of ‘criminal’ migrants working in the UK illegally; whether or not these migrants are exploited has traditionally been a secondary concern. Deportation is one of the more obvious outcomes of this criminalisation, and this has been ratcheted up over recent years. In 1996, about 5,000 so-called ‘illegals’ were deported; by 2004, the figure had grown to 12,000. At the same time, fines on businesses employing irregular workers have been introduced via three pieces of legislation: the Asylum and Immigration Act 1996, the Immigration (Restrictions on Employment) Order 2004 and the Immigration, Asylum and Nationality Act 2006. The last policy adjustment followed the Morecambe Bay tragedy, having been announced by Prime Minister Tony Blair in the run-up to the 2005 general election (which, coincidentally, the Conservative Party fought by focusing on immigration). The threat of employer fines seemed to work.

After Tony Blair made that speech the Chinese workers disappeared from Morecambe Bay overnight [...] and then the Polish arrived to take their place! (Health and Safety Executive informant, 2007)

The Home Office has also been given more personnel. In 1997, it employed 2,400 immigration officers, but by 2005, this figure had swollen to 5,400 (with 600 of these posts announced by Blair in a pre-election speech in April 2005). One of the key areas boosted by this increase in resources was the Home Office's illegal working enforcement operations: 1,600 such exercises were carried out in 2004, which represented a massive 360 per cent increase from the previous year. The fact that 23 Chinese cockle pickers died in Morecambe Bay in February 2004 undoubtedly had a major impact in this respect. To put this shift into perspective, in 2001, there was just one prosecution for employing 'illegal' migrants.

The approach by the UK government, following the managed migration policy paradigm shift, can be characterised as 'tough and tender'. For the first time in decades, low-status labour migration was allowed, but this increased inflow of workers (1.1 million in the ten years from 1997) meant that the government had to be seen to be controlling the problem of unwanted migrant workers. In essence, by allowing low-status workers from an expanded EU, the government could limit the geographical (and thereby ethnic) sources of migration, but it simultaneously faced increasing pressure to tackle irregular migrants. The result was an increased criminalisation of certain types of migrants and a greater dividing line between regular/irregular, legal/illegal and deserving/undeserving workers.

An important initial oversight in this 'tough and tender' approach to labour migration was the workplace and the exploitation occurring within it, usually directed towards the most vulnerable workers (i.e. low-status migrants and/or temporary workers). When the Morecambe Bay tragedy occurred, much of the rhetoric (implicitly) centred on migration and specifically the irregular status of the Chinese workers and the snakehead gang-masters who trafficked them to the UK from Fujian. However, there was no escaping the fact that, on the night of 5 February 2004, 23 people died, and howsoever they were implicitly criminalised for their immigration status, they had been abused, exploited and ultimately killed by negligent employers. While the full chain of command and corporate responsibility was never fully identified (largely because of complex sub-contracting arrangements and cash payments), the Crown Court ruling on the case made clear that it was an issue of employer negligence and not one of irregular migration.

This 'defining moment', therefore, helped to re-balance the focus of regulation towards the workplace and away from worker. To use the words of the Labour minister John Denham: the workplace became 'immigration's real front line' (Denham 2006). This followed a distinct lack of interest in exploitative and abusive employers before 2004.

John Denham MP (Labour): 'My right hon. Friend said that he would use the full force of the law. Does he accept that the fines in

prosecutions for the employment of illegal labour are at trivial levels?’

Alun Michael MP (Labour, Defra Minister): ‘There are examples bordering on the trivial, and I agree with my right hon. Friend on the need for concern about that. I believe that in a recent case a fine of about £100 was given, which clearly does not get across the message that the matter is taken seriously by the courts, or, indeed, by Parliament’. (House of Commons 2004a)

We will now review two regulatory tools used to combat workplace informality and the exploitation of temporary workers in the UK. Both are reflective of a desire to shift from a preoccupation with individualised supply-side control (directed towards ‘irregular migrants’) to generic demand-side control (directed towards employers violating workers’ rights). In this respect, the Labour government of 1997-2010 did shift the policy agenda in a progressive way and, even against declining union power, was able to increase the protections available to a growing army of temporary, increasingly migrant, workers. However, it is important not to get too carried away. To use a very simple example: in 2005, Blair talked of the doubling of Home Office immigration officers to deal with irregular migrants, while in 2007, Prime Minister Gordon Brown talked of doubling inspectors at the Department for Business Innovation and Skills (DTI/BIS) to deal with exploitative employment agencies. The former involved an additional 2,400 staff, the latter, an additional twelve!⁷

Agency licensing: The UK food industry

Context

The enforcement of a licence scheme for labour providers in the UK food industry (agriculture, horticulture, food packing and processing, and shellfish gathering) from late 2006 is a move in line with most other EU member states, apart from the fact that it is a sector-specific licensing scheme, rather than an economy-wide one (EUROCIETT 2007). There were two government bodies involved in the regulation of UK agencies before the GLA was established – the DTI/BIS Employment Agencies Standards Inspectorate (EASI) with 24 staff and the Labour Provider Unit of Her Majesty’s Revenue and Custom (HMRC) with 164 staff. The GLA, with 55 staff and a £3 million budget in 2007, was formed to target the food sector only because of the acute problems associated with gangmaster activity and labour exploitation in this part of the UK economy.

The GLA is responsible for issuing licences and maintaining licence standards amongst labour providers in UK agriculture, horticulture, food packing and processing and shellfish gathering. It is quasi-autonomous –

known as a non-departmental government body (NDPB) – and responsible to the Department for Environment, Food and Rural Affairs (Defra). It was set up as a result of the 2004 Gangmasters (Licensing) Act that was initiated via Labour MP Jim Sheridan's Transport and General Workers Union (T&G)-sponsored Gangmaster (Registration) Bill 2003-04 (T&G is the main union in the UK covering workers in the food industry). Sheridan's private members bill was first brought to the House of Commons in December 2003 and given a second reading in February 2004, shortly after the Morecambe Bay tragedy.⁸ The timing was vital in its transition from a private member's bill to an Act of Parliament, as private member's bills rarely have this impact. They are usually used as a way of drawing the government's attention to key issues, and when the bill was first tabled, the government did not favour compulsory registration for gangmasters (House of Commons 2004b: 25-26). Morecambe Bay, and the media coverage it received, effectively shifted the government's preference from voluntary to statutory workplace regulation.⁹

This said, the UK food industry has a much longer history of workplace exploitation and temporary migrant labour use. The origins of the gangmaster system are deeply rooted (Brass 2004) and geographically specific to certain types of agricultural areas in the UK. The system first came under scrutiny in the early nineteenth century when, following the Reform Act of 1832, Britain's first union – the Friendly Society of Agricultural Labourers – was formed by the Tolpuddle Martyrs. Conditions for agricultural workers remained harsh, and in 1867, the Agricultural Gangs Act was introduced to protect children and women from exploitation (it was repealed in 1965).¹⁰ In 1872, the National Union of Agricultural Workers was founded, which eventually (in various incarnations) became part of the T&G – the union ultimately responsible for the 2004 Gangmasters (Licensing) Act.

In terms of licensing gangmasters and other temporary labour providers, a scheme was introduced following World War II (until 1951),¹¹ and some gangmasters were covered by the Employment Agencies Act of 1973. However, the licensing conditions in this act were repealed in 1995 in an era of de-regulation and relatively limited union activity. Only two years later, however, an interdepartmental Working Party on Gangmasters was established, due to rising concern about exploitative gangmaster activity. The calls of Sir Richard Body (MP for Boston and Skegness, the area of the UK with the largest number of gangmasters) in 1997 for a licensing scheme indicate that Morecambe Bay could not have come as a complete surprise to government:

Gangmasters fall into two categories. The first comprises those whose names, addresses and telephone numbers can be found in the telephone directory. They can be easily identified by Government

Departments and, generally speaking, they engage local people. They often employ their friends, relations and neighbours. They depend on having a good reputation, and over the years, they have tried to do an honest job. If they were not honest to their friends and neighbours, they would not have gangs. However, their position has become almost untenable because of the other category of gangmasters who are in the vast majority, many of whom have criminal records and continue to commit acts of dishonesty and violence... The result is unfair competition. Wages are almost the only variable cost in producing and processing vegetables. Farms and factories that can reduce their wage costs can hold down their prices. As the Minister knows only too well, about five major supermarket chains are competing with each other and trying to keep down prices, with the result that at the end of the chain gangers are working at a derisory rate of pay. The position has become worse in the past twelve months...and I can think of no solution other than a return to licensing. (House of Commons 2004b: 9-10)

The 1997 working party led to Operation Gangmaster, a partnership between government departments that was designed to address the concerns raised by Sir Body, among others. In the tradition of 'light touch' regulation, established during the 1980s, Operation Gangmaster involved 'no additional resource of any consequence' and was seen as 'a woefully inadequate response to the complex enforcement issues arising from the illegal activities of gangmasters' (House of Commons 2002-2003: para. 41-45).

However, and going against the grain of this inadequate regulatory context, UK business (especially the big supermarkets and suppliers) realised that they could not be associated with workplace exploitation, which was becoming more publicly visible at the end of the 1990s. As such, a voluntary code of practice for temporary labour use was established in 2000 (launched by the Fresh Produce Consortium). Two years later, the Temporary Labour Working Group was set up, and from this, a voluntary licence and inspection system emerged, notably, at the time an Environment, Food and Rural Affairs (EFRA) Committee was beginning to gather quite damning evidence of worker exploitation in the UK food industry (*ibid.*).¹²

Participation in the voluntary licence scheme was high among companies with direct links to UK supermarkets and/or with direct links to their main suppliers (known as category managers). In fact, supermarkets often insisted that their suppliers use only Temporary Labour Working Group (TLWG)-accredited gangmasters. Further, the voluntary scheme was supported by an alliance of business, unions and government, via the Ethical Trading Initiative (ETI). The one problem with the initiative was that it

was voluntary and lacked any new legislative ‘teeth’.¹³ Furthermore, sanctions for transgressing the voluntary baseline established by the TLWG and ETI did not act as a deterrent for the worst businesses, which continued to operate outside the law.

The contemporary situation

Since October 2006, it has been an offence to supply temporary agency workers to agricultural, horticulture and food packing/processing operations in the UK without a GLA licence; since December 2006, it has been an offence for these operations to use unlicensed labour providers; and since April 2007, it has been an offence to supply and use temporary agency workers in the UK shellfish sector without a GLA licence. These three new offences are overseen by the GLA and based on the 2004 Gangmasters (Licensing) Act. We will now briefly identify their early impact.¹⁴

There are around 1,200 GLA-licensed gangmasters providing mostly temporary workers to businesses in the UK food industry (a licence costs £400-£2,600 per annum, depending on turnover).¹⁵ Ninety-one per cent of these gangmasters employ migrants in some capacity, and one is now ‘... more likely to encounter a gangmaster in the UK employing Eastern and Central European workers, than a gangmaster employing indigenous workers’ (Geddes et al. 2007: 90). Most gangmasters are small, with a turnover of less than £1 million (see Table 7.1), and a workforce of less than 100 (see Table 7.2). The area of the UK with the highest concentration of gangmasters covers the rich fenland peats around the Wash (the counties of Lincolnshire, Cambridgeshire and Norfolk) and, correspondingly, this area is also home to some of the most significant concentrations of Eastern European and Portuguese migrant workers (ibid.: 83-88; Scott et al. 2007: 82-107). In other words, there is a direct link between the UK food industry, gangmaster activity and low-status labour migration; and while the GLA licence scheme is there to protect all workers from exploitation, it is increasingly associated with the protection of temporary migrant workers.

In terms of evidence of workplace exploitation, when GLA licensing first began in 2006-2007, 42 per cent of GLA licences had ‘conditions’

Table 7.1 *Size of gangmasters in the UK food sector: Turnover* ↴

<i>Annual turnover</i>	<i>Number (%) of all GLA-registered gangmasters</i>
£10 million +	13 (1%)
£5-10 million	20 (2%)
£1-5 million	198 (18%)
Less than £1 million	875 (79%)

Table 7.2 *Size of gangmasters in UK food sector: Employment* ↵

<i>Number of workers</i>	<i>Frequency</i>
10,000 – 40,000	6
5,000 – 9,999	10
1,000 – 4,999	49
500 – 999	56
100 – 499	266
1 – 99	578 (=52.3%)
0 or NA	141

attached. The figure had fallen to only 6 per cent by 2008, showing that the voluntary licensing scheme that pre-dated the GLA, while effective to some degree, did leave a number of ‘stones unturned’ (Balch, Brindley, Geddes & Scott 2009: 34). The main conditions attached to licences (i.e. the types of business non-compliance) are listed in Table 7.3. In the most extreme cases, non-compliance leads to the GLA refusing to grant a licence or revoking an existing licence. As of November 2008, the GLA had revoked 78 licences: with only two revocations so far deemed unwarranted on appeal.

The GLA is reliant upon a combination of ‘compliance inspections’ (to generate internal intelligence) and the public and other government departments (to generate external intelligence). In terms of the latter, the GLA receives between 100 to 300 pieces of intelligence every month. The vast majority of this intelligence relates to: low wages, the non-payment of taxes and unlicensed gangmasters.

In terms of unlicensed operators, our research indicates that 25 to 40 per cent of labour providers operating in GLA sectors remain unlicensed (Balch et al. 2009: 95). Furthermore, while the GLA had around 1,200 businesses in its public database by 2008, it had come into contact (since 2006) with a further 900 gangmasters who did not at the time have a licence because either their application was refused or their licence was

Table 7.3 *Non-compliance to GLA Licensing standards (2007-2008)* ↵

	<i>March 2007</i>		<i>October 2008</i>	
	<i>%</i>	<i>Total</i>	<i>%</i>	<i>Total</i>
2. Wages, tax, NI	491	19	20	21
3. General treatment	107	4	2	2
4. Accommodation	58	2	0	0
5. Hours of work	268	10	5	5
6. Health and safety	979	38	41	45
7. Recruitment/contract	315	12	18	19
8. Subcontracting	50	2	1	1
9. Identity issues	174	7	7	7
10. Entitlement to work	169	6	0	0

revoked or not renewed. This means that 43 per cent of all gangmaster businesses that the GLA came into contact with between 2006-2008 have ended up without a licence (ibid.: 91).¹⁶ The GLA is also entitled to prosecute licensed and unlicensed gangmasters, as well as businesses that knowingly use the latter. Its activity in this area, up to November 2008, is summarised in Table 7.4.

Table 7.4 *GLA prosecution data (until November 2008)* ↵

<i>Convictions</i>	1
Unsuccessful prosecutions	0
Cases currently in court	2
Cases with other agencies (Defra, DARD, Procurator Fiscal)	3
Arrests	1
Formal warnings	64
Formal cautions	55
Open investigations (ongoing)	207
Ongoing investigations as % total GLA agency sector	15%

Issues

The licensing and inspection of UK labour providers is not a new phenomenon. The UK government has been concerned with regulating the activity of gang labour since the nineteenth century and has had an agency inspectorate since the 1970s, housed within the Department for Trade and Industry (now BIS). The GLA was established at a time when workplace regulation was extremely ‘light touch’, but when concern over the exploitation of agency staff was on the increase due to the intense competitive pressures within the UK food sector. Further, it was widely recognised that existing laws protecting some of the UK’s most vulnerable workers (i.e. temporary and/or migrant employees) were either inadequate or were not being effectively enforced. In terms of the latter, it is worth noting that, until September 2007, the main DTI/BERR agency inspectorate in the UK had only twelve staff and that in 2005-2006, 1,000 inspections were carried out for the entire agency sector in the UK, yielding only £20,000 in workers’ wages. Moreover, until its revamp in 2009, the BIS helpline – now the wider-ranging Pay and Work Rights Helpline – received only 1,000 calls per year for the entire UK agency sector (DTI 2007), against the 2,574 pieces of external intelligence collected per year by the sector-specific GLA (ibid.: 2009).

The GLA licence scheme does therefore mark an important sea change in regulatory activity. It also changes the migrant worker/government dynamic in the UK, which in the past was largely shaped around a supply-side discourse of the ‘illegal migrant worker’. While there is still concern with irregular workers, two key events in 2004 – the Morecambe Bay

tragedy and the de facto regularisation of Eastern European workers – as well as a more long-running system of industry-led voluntary licensing, moved attention towards irregular employers. This regulatory rebalancing came after a long period of deregulation and had both business and union backing. Statutory licensing, however, is still only a recent occurrence and a number of dilemmas remain.

Most obvious is the GLA's *limited remit*: to only govern employment conditions in the UK food industry and among agency workers. This remit is at odds with economy-wide coverage elsewhere in Europe and calls into question the argument that licences are part of a moral crusade by government to protect the most vulnerable workers. The remit has, however, allowed the GLA to build up considerable specialist knowledge through working with industry insiders.

Related to this is the issue of *light-touch workplace enforcement*. The GLA's formation marked a genuine attempt to prevent worker exploitation through proactive rather than reactive governance. It has a different logic to the traditional 'light touch' agency regulation at the DTI/BIS and is certainly a more proactive and dynamic licensing system than those present in many other EU states. Two questions emerge from this: a) Has the GLA been given suitable legislative powers? b) Should/could the new GLA regulatory model be applied economy-wide in all sectors and covering all workers?

Third, there is the issue of *joined-up government*. There are at least ten public bodies responsible, in different ways, for governing employment conditions in the UK, and even more pieces of legislation. Three have teams set up to explicitly target labour providers (see Table 7.5). The remaining seven deal with gangmasters/labour providers as part of a broader remit. Most of these public bodies are represented on the GLA board, and the GLA has been very proactive in passing on intelligence to its partners. A source we spoke to at the HMRC admitted: 'The majority of new referrals our Labour Provider Unit gets from government bodies now come from the GLA' (HMRC informant, July 2007). At the same time, there has been reluctance within some government departments to actively engage in a genuine partnership. For example, we obtained figures on attendance at all GLA board meetings since 2005 and found that three of the government bodies with arguably the most vested interest in issues of worker exploitation and illegal business activity had some of the lowest attendance rates: the Home Office (25 per cent attendance), police (31 per cent attendance) and DTI/BIS (44 per cent attendance) were all absent at more GLA meetings than they were present. This is, perhaps, indicative of divisions within government regarding both the regulatory model that should be pursued (if any) and where and whom governments should focus their regulatory attention on.¹⁷

Table 7.5 *UK workplace regulation: Government agencies responsible* ↵

Agency workers	
1.	GLA: Labour provider licensing in food production sector (55 staff in 2007)
2.	HMRC Labour Provider Unit: Labour provider (all sectors) fraud prevention (164 staff in 2007)
3.	DTI/BIS EASI: Labour provider inspection across all sectors (27 staff in 2007)
Migrant workers	
4.	Home Office/UK Border Agency: Detection of irregular migrant workers and detection of employers of irregular migrant workers
5.	SOCA/UK Human Trafficking Centre: Prevention of trafficking for forced labour
All Workers	
6.	DTI/BIS: Pay and Work Rights Helpline: covering national minimum wage, gang-master licensing, employment agencies and working time legislation
7.	HMRC: National minimum wage enforcement teams
8.	HSE: Health and safety workplace inspectorate
9.	Local authority: Health and safety workplace inspectorate
10.	Local authority: Housing of multiple occupancy (HMO) inspection (housing is often linked to employer/employment agency)
11.	DWP: Prevention of benefit fraud
12.	Local police: Detection of criminal gangs and unlawful business activity

Fourth, there is the very simple question of *whether licensing actually works*. A survey of around one in five GLA-licensed gangmasters in spring/summer 2007 revealed:

On balance, 40-45 per cent of labour users we surveyed felt that working conditions had improved and business fraud declined as a result of the GLA being set up. However, only six per cent of labour users felt that worker exploitation was not a significant issue for the industry. (Scott et al. 2007: 24)

The message, then, is that the licensing has worked to an extent, but that a number of issues still need to be addressed. There are three key questions in this respect:

- 1 How can the GLA ensure that licensed gangmasters are operating as they say they are? During research we carried out with gangmasters, we were told of a number of tactics to circumvent legislation. This included ‘phoenixing’ (where gangmasters close and then re-form to side-step any enforcement) and ‘double-bookkeeping’ (with a formal set of books to show inspectors and a second set kept hidden). Since our research, the GLA has increased unannounced inspections and special operations to address this question.
- 2 How can the GLA tackle unlicensed operators? Our research estimated that 25 to 40 per cent of labour providers are unlicensed, and that 43

per cent of all businesses that the GLA has come into contact with since 2006 are no longer on its public 'LAWS' database.¹⁸ The issue for the GLA – because many of the unlicensed operators are apparently small-scale and/or amoeba-like – is how many resources to use to chase these 'ghost' companies.

- 3 Even if the GLA gathers evidence of illegal (licensed or unlicensed) gangmasters, can it be expected to prosecute them? Will it ever be able to reach the real perpetrators? And how will victims be compensated? The 23 deaths at Morecambe Bay, for instance, led to a number of prosecutions, but these took over two years until completion and the ultimate cockle buyers were never brought to justice because of the complex, informal and convoluted labour and product supply chains.

These three questions – overprotecting the veracity of the GLA licence, identifying unlicensed operators with unfair competitive advantage and ensuring that licensing is seen to have sharp 'teeth' – will be key to the long-term success of the GLA.

Fifth and finally, licensing in the UK goes back to the late 1990s (in its voluntary form) and was implemented in the food sector because of the intense pressure for labour efficiency savings, on the one hand, and the related increase in concern for more ethical trading on the other. Licensing does make supply chains ostensibly ethical, but it does not address the *structural economic context* that may increase the risk of workplace exploitation as companies seek to reduce labour costs to remain competitive. It is, then, a regulatory approach based on tackling effects, and its success is in part dependent upon the structural economic causes of exploitation not increasing.

Individual ID cards: The UK construction industry

Context

This section looks at a different solution to irregularity and exploitation that has been used within the UK construction sector: individual ID cards. The fortunes of the construction sector have reflected the steady growth of the UK economy since the late 1990s. The industry has benefited enormously from government spending plans and Private Finance Initiative (PFI) schemes that have seen hospitals and schools built and run by private-sector firms. An important aspect of this has been the ability of the sector to overcome a perception that had built up by the mid-1990s of an industry riddled with bad practice and characterised by a lack of coordination and regulation.

This state of affairs was best described in two influential reports on the sector: 'Constructing the team' by Latham (1994) and 'Rethinking

construction' by Egan (1998). Their findings and recommendations provided a programme for change that led to the creation of a whole host of cross-industry bodies.¹⁹ The overall impression was of an industry experiencing good growth, but needing to improve standards and practices in nearly all areas, alongside a deepening skills crisis. The problems were not just related to output or levels of productivity – construction has also traditionally been one of the UK's most dangerous industries. According to the Health and Safety Executive, over the last 25 years, more than 2,800 people have died from injuries they received as a result of construction work, with many more injured. Although the trend over the last fifteen years has been falling, in 2006–2007, the number of fatalities rose to 77 from 60 in 2005–2006. It should be noted, however, that despite higher aggregate numbers, agriculture is statistically more dangerous – 8.1 deaths per 100,000 workers compared to 3.7 in construction (HSE 2007).

The main reaction from the industry perspective to the findings of the reports by Latham and Egan came from the Major Contractors Group (MCG). This organisation, formalised in 1996, was created to represent the interests of the largest companies in the industry (members in 2007 numbered fourteen). Under increasing pressure to deal with issues around construction employment in the 1990s, the MCG used its leverage to set up the Construction Skills Certification Scheme (CSCS) in 1995.

Like the UK food industry, then, the construction sector is organised around a small number of large powerful companies, and these companies were crucial in the development of voluntary codes of conduct from the 1990s onwards. Further, the construction sector, much like UK agribusiness, has a clear structural reliance on migrant labour. Migrants have always filled the infamous 3D jobs – 'dirty, dangerous and demanding'. Traditionally, they came from Ireland. Walter (1997: 61) identified Irish workers as occupying an 'ethnic niche' in construction. Large companies have also openly targeted Irish labour (Cowley 2001).

Similar to the food industry, construction has a history of employing people informally ('cash in hand') and of tax avoidance (by incorrectly classifying employees as self-employed). This latter issue is estimated to affect 300,000–400,000 workers and to cost the UK government some £2.5 billion each year in lost tax contributions (Harvey 2001). The linkage between a reliance on migrant labour and informal employment practices is straightforward. Irregular working practices and tax avoidance traditionally fitted with Irish workers' preference for 'cash in hand' to send or take home (Cowley 2001).

When Ireland's economy was transformed into a 'Celtic Tiger', this source of cheap labour became less plentiful for the construction industry, leading to demand for a functional substitute. At first, this was provided by existing flows of immigration, particularly those from India and Pakistan. However, leading up to and following the enlargement of the EU, this

shifted to workers from the A-8 countries, particularly Poland and the Baltic states. Evidence of this substitution effect is provided by the Office for National Statistics (ONS), which began registering net outflows of Irish by the end of the twentieth century.²⁰ On the other side of the Irish Sea, output in the construction industry doubled between 1995 and 2001, and employment in the sector rose from less than 100,000 to 180,000.

Contemporary situation

The construction sector in the UK is large by any measure. It has experienced steady growth over the last ten years, now employing over two million people or 7 per cent of the total UK workforce (i.e. one in fourteen people in the UK labour market work in construction). The sector is characterised by high levels of fragmentation, providing obvious challenges to regulatory authorities: 96 per cent of construction firms employ thirteen people or less, and one third of all those in the sector are classified as self-employed. The sector has an oligarchic structure (again mirrored in the UK food industry) with relatively few major contractors managing all the larger projects and a vast number of predominantly smaller firms supplying the necessary skills and labour through lengthy subcontracting chains. This feature of subcontracting emerged after the 1960s as a dominant strategy, partly because of sharp peaks and troughs in the economic cycle, making direct employment more cumbersome. It was also bolstered by other factors such as aversion to risk, low levels of regulation and changes in employment legislation.

Employment agencies have become crucial for this system to work efficiently and effectively, with both large and small contractors using them to maintain a flexible workforce that can be project-oriented (i.e. short-term) and used 'as and when needed'. Agencies now provide significant numbers of construction workers and have been blamed by employers (and unions) for problems of irregular working practices and for the general erosion of working conditions.

After a period of stagnation in the 1980s, growth became the norm for construction from the mid-1990s, and labour shortages emerged as a key theme. The Construction Industry Training Board (CITB) reported year-on-year gaps across the full range of skill levels; in 2007, for example, it was estimated that an extra 83,000 workers were needed annually. This is partly due to the massive underlying demand for houses in the UK (Brown pledged in 2007 to build around thirteen million new homes by 2020) and also the construction of major public and private schemes (such as Heathrow Terminal 5, the Channel Tunnel Rail Link and Wembley Stadium). Added to this, London won the 2012 Olympic Games, which is predicted to mean an additional 33,500 construction workers required in the intervening years (CITB 2006).

Although the CITB has succeeded in increasing the number of trainees, some suggest that the limiting factor in labour supply is the willingness of companies to fund placement schemes. The suggestion is that they have little motive to train operatives if they have ready access to a trained workforce in the form of migrants. Applications to university courses are also dramatically down over the last five years – down by 34 per cent for architecture and 50-52 per cent for building/construction and civil engineering (ibid.). Within the building industry, firms continue to report shortages of bricklayers (86 per cent), carpenters and joiners (82 per cent) and plasterers (85 per cent), though managerial, professional and technical positions also cannot be filled.

Professor David Metcalf, head of the newly created Migration Advisory Committee, has already warned the government that the new points system, which initially has little provision for ‘low-skilled’ immigration, will need to be relaxed due to construction sector labour shortages linked to the 2012 Olympic Games.

It is within this context of continued growth, structural reliance on migrant labour, fragmentation, low levels of central regulation and persistent skills shortages, that the CSCS system has assumed ever-greater importance. This is because it represents the most obvious means by which self-regulation can try to solve some of the problems connected with informality, immigration and worker exploitation in the construction sector. A major difference between construction and agriculture, however, is that the former involves agencies supplying workers for a mix of low-, middle- and high-skilled jobs, whereas agencies in the food sector supply largely low-skilled workers.

Issues

The construction sector ID card system, known as CSCS, was originally aimed to certify workers in terms of competency and health and safety training, but it had the important corollary of tackling informality and irregular migration. This was through the creation of a photo ID card system that identifies workers who have received CSCS certification, and indirectly, those who have the right to work on a UK construction site, because the application process requires adequate documentation. Since its inception, there have been numerous changes and enhancements, such as the inclusion of a data chip, which has meant the card can now be used to carry much more detailed information.

The CSCS scheme expanded relatively quickly, and by 2010, there were more than 1.5 million cardholders. In an attempt to streamline and simplify inspections, the scheme has also incorporated other systems of recording onsite personnel. The system is subsidised in order to encourage workers to take up the scheme and to reduce costs for the employees. Companies

looking to put their employees through CSCS are expected to pay for most of the costs themselves and then recoup the money through a grant system.²¹ Aside from the incorporation of a data chip, the system has developed in terms of the training provision – with state-of-the-art touch-screen tests – and has become more sophisticated to allow for different categories/exemptions, etc.

Although not initially its *raison d'être*, the scheme has become increasingly relevant to debates over the control of irregular migration. The operation of the CSCS scheme has been presented a number of times to Home Office officials in irregular migration working groups. Government interest led to the scheme being singled out in 2005 to play a leading role in the new managed migration system.²² Interestingly, while the debate over ID cards has continued to smoulder and a national scheme was finally scrapped by the new coalition government in 2010, an ID card system for foreign nationals carrying biometric information was rolled out in 2008, thanks in part to the successful template provided by the CSCS scheme.

As with the national debate over ID cards in the UK, however, there are some concerns over the type of information that the cards carry and who will have access to it. Some have gone as far as to set up an e-petition objecting to government accessing the information on CSCS cards (although the campaign only gained three signatures!). A more pressing issue is document fraud. There have been widespread reports of false CSCS cards, most famously illustrated when hundreds of fakes were found during construction of the new Arsenal Football Club's Emirates Stadium in London. The problem of forgeries continued to grow in the first years of the scheme, and in 2009, a series of arrests revealed the extent of the problem. The response has been to upgrade the technology with new 'CSCS smartcards', launched at the end of 2009.

Most employers have followed the lead of the Major Contractors Group (MCG) –recently renamed the UK Contractors Group (UKGC) – in demanding CSCS certification of operatives. This has helped the scheme's numbers but, in truth, they have little choice if they are planning to work on sites run by major contractors. The backing of the top companies means that self-regulation in this area is proving to be an important part of the sector's response to the criticisms of the 1990s.²³ However, while this is good publicity and proof that the sector is 'cleaning up its act', there is a question over whether the system is taken quite as seriously at site level. Inspections that have been carried out typically find less than 10 per cent of workers carrying the cards, despite the requirement of the MCG and other large companies for them to be on-site.

Part of the problem is the status of the cards – there are doubts over the real extent to which the card is 'mandatory'. In contrast to GLA licensing, the CSCS scheme is not legally enforceable and has had no new legislation attached to it. The power of the MCG to demand operatives to carry the

card is hardly questioned, but the regulatory reach of the oligarchs is limited, given the complex nature of subcontracting chains. This lack of clarity extends to analysis of the scheme, which, if it were carried out, would probably not be made public. The scheme is wholly administered by a powerful industry body with little interest in transparency or accountability – in contrast to the GLA, which has recently been subject to a major independent evaluation of their work (Scott et al. 2007).

There are other concerns about how the scheme helps to tackle informality and exploitation. Isolated reports exist, for example, of employers charging up to £660 to employees for the application process, and there is no robust evidence to suggest the CSCS card has actually led to a decline in worker exploitation. There are also questions over the integrity of the scheme, with CSCS tests now being carried out abroad (Poland) and elements of the scheme's 'intellectual property' being sold in the Middle East, Asia and Africa.²⁴

Conclusion

Within the European context, the UK could be said to have led the way in terms of encouraging flexible and migrant-dense low-wage workplaces, particularly in sectors like agriculture, food processing and construction, where sub-contracting has been common and where the power of large transnational corporations has been immense. Alongside this, we have had a tradition of 'light touch' government regulation across the UK, and union membership rates for low-wage private-sector workers have continued to decline. The conditions, therefore, have been ripe for exploitation and business informality; the emergence of new forms of regulation, in the guise of the GLA and CSCS, while contentious, must be understood within this context.

From a migration perspective, the GLA licence is especially welcome as it shifts the regulatory gaze of the state away from the worker and onto the employer. In other words, those possessing the power in the employer-employee relationship (the employers) are those being asked to take responsibility for ensuring that the relationship not be abusive or exploitative and does not cause physical or psychological harm to the weaker party. There may well be outstanding questions over whether the 'buck' should stop with gangmasters and labour providers, given that many are relative business minnows within their respective supply chains. The focus on migrant employers rather than migrant workers, however, is to be applauded – even if the regulation of migrants (via the Home Office UK Border Agency) is still much better resourced than the regulation of migrant employment (via a range of government agencies, see Table 7.5).

From a comparative perspective, the differences and similarities between the GLA licence and CSCS ID card schemes are listed in Table 7.6. Both the licence and ID card schemes emerged because of increasing industry concern with workplace practices, itself a reflection of growing public interest concerning ethical trading and corporate social responsibility. However, and notwithstanding the high numbers of construction workers now carrying CSCS cards, we would argue that licensing emerges as the only genuine attempt to tackle worker exploitation. An industry-regulated ID card system, by comparison, remains focused on the worker: reproducing discourses of ‘illegal’ migration and individual responsibility and once again sidelining the issue of employer responsibility.

This contrast is well illustrated by campaigns for the GLA’s expansion as opposed to growing doubts over a national ID card system.²⁵ It also raises a fundamental question over whom or what the state should seek to protect or prosecute and where the costs of enforcing minimum worker or workplace standards should fall.

When the Gangmasters (Licensing) Bill was travelling through the parliamentary process, the prospect of expansion into the construction sector had already been raised. Now the GLA is up and running and the pressure is on to extend licensing into this and other sectors (most notably construction and social care). The argument is clear: construction unions have already expressed fears that prestigious projects such as the 2012 Olympic Games may be tarnished by the use of cheap labour and migrant workers

Table 7.6 *A comparison of workplace regulation in UK food and construction industries* ↵

<i>UK food industry: GLA licence</i>	<i>UK construction industry: CSCS card</i>
* Company-based	Worker-based
* Gang-based	Self-employed
* Majority low-skilled	Low-skilled/skilled mix
* Voluntary until but now statutory	Voluntary
Questions over regulation emerged in mid-1990s	Questions over regulation emerged in mid-1990s
Consensual social partnership approach to regulation	Consensual social partnership approach to regulation
* Pilot (for other sectors)	Pilot (for national ID cards)
‘Bottle-neck’ industry controlled by small number of large TNCs	‘Bottle-neck’ industry controlled by small number of large TNCs
Fragmented supply chain below bottle-neck involving subcontracting	Fragmented supply chain below bottle-neck involving subcontracting
* Public are the consumers	Government is the main consumer
Recent labour supply issues	Recent labour supply issues
Significant migrant worker presence	Significant migrant worker presence
Long history of migrant work	Long history of migrant work

* Indicates major difference between licence and ID schemes

vulnerable to exploitation (T&G 2007). However, the failure of a bill to extend the system in 2007 suggests this will be, at best, a long-term project. (It is also true that one of the strengths of the GLA has been its ability to gather detailed sector-specific insight).

Government regulation of labour markets is not new, and neither are the two regulatory tools identified in this chapter. What is new is the context within which this regulation has been developed. Levels of labour migration to the UK have risen dramatically over the past decade (by over one million) and, alongside this, the size of the temporary agency sector has increased fourfold. What we have described above, therefore, is arguably part of a cyclical regulatory process: a reaction and counterweight to an advanced political-economic consensus around the structural need for labour market flexibility and migrant workers.

At one level, the shift in government concern from the irregular migrant worker to the irregular migrant worker *and* irregular workplace practices is to be welcomed, as is the associated move towards a somewhat 'heavier touch' regulatory regime (especially given the absence of traditional forms of social regulation within the contemporary low-wage workplace). Nevertheless, the (cyclical) re-regulation we have charted has been fragmented, initiated and limited by sectoral business (and indeed government) interests. One must ask, therefore, whether there is a genuine commitment to workplace enforcement in the UK. If there is, then why is there not a well-resourced, economy-wide approach drawing together different regulatory tools and regulatory bodies to protect workers, prosecute employers, reduce exploitation and compensate employees where appropriate?

Notes

- 1 We thank David Nix, Almut Gadow De Mayor, Paul Whitehouse and Tim Carter, all from the Gangmasters Licensing Authority (GLA).
- 2 We use the term 'low-status' as opposed to 'low-skilled' because the jobs being performed by the workers are low-status whereas the migrants themselves may have a relatively high level of skills.
- 3 See www.eurociett.eu.
- 4 See www.eurociett.eu.
- 5 The national minimum wage was set at £5.80 in October 2009. In October 2010, it was raised to £5.93.
- 6 A-8 refers to the eight countries in the 2004 enlargement wave which, in theory, could be subject to 'transitional restrictions' on labour mobility: Poland, Estonia, Latvia, Lithuania, Hungary, the Czech Republic, Slovakia and Slovenia. Only the UK, Ireland and Sweden imposed no transitional restrictions on A-8 labour mobility.
- 7 Since this announcement, the Labour government launched the Pay and Work Rights Helpline (opened in 2009 and covering national minimum wage abuses, Employment Agency Standards and Gangmaster Licensing) and increased the GLA workforce from 55 staff (in 2007) to 93 staff (in 2010).

- 8 A private member's bill can only enter the House of Commons for debate following its selection by a ballot of all MPs.
- 9 In September 2003, prior to Sheridan's private member's bill, MP Mark Simmonds introduced a ten minute rule bill known as the Licensing and Registration of Gangmasters Bill 2002/03. This made no progress, like almost all ten minute rule bills, but was simply designed to raise awareness of the gangmaster situation in the UK.
- 10 This related to the 'Sixth report of the 1862 Children's Employment Commission', published in 1867 (see Brass 2004).
- 11 This was a temporary strategy (lasting until 1951) to stop the movement of casual workers across the country and to prevent gangmasters from exploiting farmers' demands for labour. The logic behind it was to reduce reliance on transport and fuel, thus keeping labour (and therefore food) costs down.
- 12 For details of the TLWG scheme, see TLWG (2007).
- 13 Interestingly, 30 of the 32 GLA licences so far revoked have involved labour providers who successfully passed the TLWG/ETI voluntary audits.
- 14 We evaluated the GLA between 2007 and 2009 and our findings, in the form of three 'Evaluation Reviews', are available at www.gla.gov.uk/index.asp?id=1013265.
- 15 This figure of 1,100 is quite a significant proportion of the total agency sector, which comprises an estimated 10,000-15,000 firms.
- 16 This calculation does assume that businesses with a licence have remained constant, so is likely to be an over-estimate.
- 17 The DTI/BERR, for instance, has historically been against licence-based regulation in the UK food sector. In 2003, it argued that such schemes are: '...burdensome for business and public authorities alike and the burden falls especially heavily on small enterprises' (House of Commons 2002-2003: para 54) and stated unequivocally that it had: 'no plans to re-introduce licensing or bring in a form of registration as it is considered that neither would result in an effective regime' (ibid.: para 57). Continuing this extremely 'light touch' tradition, the DTI/BERR is also opposed to the EU Temporary Agency Work Directive and believes the legislation would cost £80-£194 million for agencies and £239-£387 million for clients.
- 18 The GLA public register of licensed gangmasters is available at <http://laws.gla.gov.uk/Default.aspx?Menu=Menu&Module=PublicRegister>.
- 19 These include the Reading Construction Forum, Design Build Foundation, Construction Best Practice Programme, Movement for Innovation, The Housing Forum, Local Government Task Force, Rethinking Construction, Constructing Excellence and The Construction Clients' Group.
- 20 In 1997, outflows of Irish migrants were recorded at more than 10,000 per year.
- 21 In 2007, employees were expected to contribute £17.50 and £12 for the touch-screen test and the CSCS card, respectively.
- 22 The five-year plan announced in 2005 outlined a new multi-tier 'Australian-style' immigration points scheme.
- 23 The significance of major companies in introducing workplace regulation to 'clean up' the supply chains they head is also evident in the UK food industry.
- 24 The scheme's international sale is planned to allow British companies to ensure that workers be certified to UK standards on foreign sites. A subsequent concern is that these workers may then believe they have a right to work on UK sites.
- 25 In November 2007, the government was forced to explain the loss of two data CDs containing 25 million records of child benefits (i.e. the entire database, which included bank details of 7.25 million private accounts).

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8 Immigration control and strategies of irregular immigrants: From light to thick fog

Godfried Engbersen and Dennis Broeders

Introduction

In the 1990s, a large-scale Dutch research programme entitled 'The Unknown City' highlighted the existence of irregular immigrants in the Netherlands' large cities (Engbersen 1996; Burgers & Engbersen 1996). The study also revealed the existence of informal institutions crucial to the residence opportunities and life chances of irregular immigrants. Significant informal institutions include the informal economy, the informal housing market, the informal marriage market and crime (see also Engbersen, Van San & Leerkes 2006; Leerkes, Engbersen & Van San 2007). In this research project, Simmel's concept of 'secret societies' was used to emphasise that these informal institutions are products of the manifest society, and that these secret societies are characterised by direct links to public worlds or, as Simmel (1950: 330) states: 'The secret society offers [...] the possibility of a second world alongside the manifest world. And the latter is decisively influenced by the former.' The link between secret and public worlds indicates that the underworld metaphor frequently used in journalistic articles and academic studies on irregular migration is not very accurate. The unknown cities of irregular immigrants also feature numerous actors from the overworld: legal compatriots, employers, clergymen, lawyers and public service workers, including police officers and mayors who turn a blind eye to or assist irregular immigrants.

In addition to The Unknown City, several studies have been published since the 1990s to document secret societies of irregular immigrants in large European cities (Romaniszyn 1996; Alt 2003; Gryzmala-Kazłowska 2005; Bleahu 2007; Van Nieuwenhuyze 2008). All of these studies describe how the informal institutions of irregular immigrants are interwoven with legitimate institutions and actors. They also show other relevant dimensions of secret societies, as described by Simmel (1950: 345-360), such as: 1) patterns of reciprocal trust and protection; 2) the art of remaining silent; 3) cautious attitudes towards written communication; and 4) rituals and strategies aimed at protecting irregular immigrants from other people who could reveal their status.

There are many manifestations of ‘foggy social structures’ in both the overworld and the secret societies that irregular migrants inhabit (Bommes & Kolb 2002; Bommes & Sciortino Chapter 10 this volume). These structures are the product of contradictory economic, social and judicial forces: the economic demands of employers and humanitarian considerations of civil society and state actors, on the one hand, and the political-judicial rejection of irregular migration by the state, on the other. Various actors actively manufacture so-called ‘fog’ – legally and illegally. For instance, regular employers employ irregular immigrants via illegitimate temporary employment agencies; regular citizens house irregular immigrants; irregular migrants use false documents to obtain medical aid; public service workers use their discretionary powers to give irregular immigrants access to public housing and education; municipalities support failed asylum seekers who are unwilling to leave the country; and private households employ irregular domestic workers. A lot of fog is produced, for different reasons, in order to make the activities of individuals and the organisations involved unobservable or indeterminable (Bommes & Kolb 2002). The state has three main strategies to deal with foggy social structures.

- The first strategy is to accept and tolerate these structures for economic and humanitarian reasons. This policy of toleration was characteristic of the Netherlands in the period from 1970 to 1991. It was not a formal policy, openly formulated, but rather an *informal policy* based on a silent consensus among policymakers to deal pragmatically with the economic interests of certain business sectors, especially agriculture. With regard to asylum migration, however, the Netherlands had a *formal policy* of toleration for specific groups of asylum seekers who had been rejected as refugees, but who could not be deported because their countries of origin were deemed unsafe. These people received a legal ‘temporary status of toleration’. This status no longer exists, following the enactment of the new Aliens Act 2000.
- The second strategy is to convert the informal into the formal, or the illegal into the legal, through regularisation programmes. Such programmes bring irregular immigrants out of the shadows of secret society. They also transform such immigrants into regular denizens with corresponding rights and duties, making them less dependent on informal markets and crime. In the past few years, the Italian, Spanish and Greek governments, in particular, have pursued this strategy of regularisation programmes.
- The third strategy is to break open the foggy social structures of irregular immigrants. This is currently a dominant strategy in the welfare states of Northern Europe. Since the beginning of the 1990s, irregular immigration has been considered a more serious social problem in Nordic European countries and at the supranational level of the European Union. As a consequence, a number of measures have been

taken to combat irregular migration, such as employer sanctions, excluding immigrants from labour markets and public services, linking databases, introducing biometrics to identify immigrants and a stronger emphasis on implementation and enforcement. This third strategy confirms the growing importance of *internal border control*. It also shows that the existing gap between rhetorical rejection and pragmatic acceptance of irregular migration is increasingly being bridged.

The Netherlands is an exponent of the Nordic European welfare states that have introduced new legislation and policies of law enforcement to deal more effectively with irregular migration. This third strategy demonstrates the power of the state to affect the life chances of irregular immigrants. This power is twofold. Firstly, there is the *classification power* of the state to define what is a legal or an illegal action, and who is a legitimate actor (Bourdieu 1994; Schinkel 2005). States not only have a monopoly over the control of the 'legitimate means of movement', but also over the allocation of citizenship and residence rights. States are therefore a decisive factor in the distribution of life chances among immigrants (Torpey 2000; Bauman 2004; Bosniak 2006). Those who are classified 'irregular' or 'economic' asylum seekers have fewer opportunities than those classified as regular immigrants or 'genuine' asylum seekers. Secondly, the increased *identification power* of the state to identify irregular immigrants can be witnessed, leading to the increased potential to exclude them from the labour market and public services and to expel them from national territories. The state strategy of detention and expulsion has become more important in the past decade. It is a policy strategy facilitated by the EU through the construction of several databases, in which all types of information are stored on specific groups of immigrants (tourists, asylum seekers and irregular immigrants). These databases may ease the attempts of the state to identify irregular immigrants. The classification and identification powers of the state also reveal that the nation-state is not a zombie category that has become obsolete under the conditions of globalisation (Beck 2000; Schinkel 2008).

This chapter starts with the assumption that it is of vital importance to study the crucial macro-level of the nation-state to understand the nature of irregular migration. A second assumption is that the power of the state to classify and identify immigrants limits the opportunities of regular and irregular actors to produce foggy social structures. However, it could be the case that attempts to dismantle foggy social structures may in fact contribute to the growth of thicker social structures. Classic examples are prohibition policies in the United States (1920-1933) and the current 'War on Drugs' that have contributed to a rise in organised crime. A final assumption is that irregular immigrants are not passive agents; they react to

changing options and create new solutions to their problems (Broeders & Engbersen 2007).

The outline of this chapter is as follows. First, we give a brief overview of the current Dutch policies as well as some EU policies to fight irregular migration. We then discuss the implications of these immigration policies for irregular immigrants' residence strategies, those that enable irregular immigrants to make ends meet and stay in the Netherlands. We analyse three important strategies – labour market participation, criminal behaviour and manipulation of identity – that prevent expulsion. In the final section, we discuss the complexity of contemporary foggy social structures and ascertain whether the Dutch state is successful in dismantling the foggy social structures of irregular immigrants.

Fortress Europe and the Dutch donjon

If the EU can be characterised as a 'fortress', the Netherlands can be seen as its donjon. A donjon, or keep, is the fortified central tower. As such, it holds the most valuable supplies and most important living quarters in the castle. Translated to immigration and immigration policies, the Dutch donjon is the heart of the matter: that which states want to protect and shield from migrants and, notably, irregular ones. It is the welfare state, the labour market and, in essence, the right of residence and all the other associated rights and privileges. Obviously, modern-day donjons and fortresses do not solely, or even predominantly, rely on walls, gates and a moat. Fortifications can be found at the fringes of Europe, where some of the external Schengen borders have been equipped with fences, surveillance equipment, guards and watchtowers. But the plain truth remains that the EU's external borders are simply too long to patrol effectively (Groenendijk 2002). States have gradually come to realise that 'keeping them out' is only part of a possible answer to unwanted migration. One important policy shift in recent years has been the growing relevance of internal control on irregular migrants in the Netherlands, as well as in countries such as Germany and Denmark. This comprises a wide array of policy measures, such as employer sanctions, exclusion from public services and police surveillance (Van der Leun 2003; Cornelius, Tsuda, Martin & Hollifield 2004). Since the early 1990s, the Netherlands has steadily developed a policy programme aimed at excluding irregular migrants who have taken up residence within the Dutch donjon. Exclusion of irregular migrants has become an explicit policy goal. The main instruments of exclusion are legislation, controls, documentation, registration and new forms of digital surveillance.

One of the prime struggles between irregular migrants and the Dutch state apparatus is control over identity and identification. In matters of

migration, control over identity (passports, visa) has always been one of the keys to inclusion and exclusion (see also Torpey 2000). In the age of computerisation, database technology and cross-referencing, however, identity control takes centre stage. Moreover, in a constitutional state such as the Netherlands, identification of irregular migrants is the key to any policy of exclusion. Guarding the Dutch donjon was a matter of internal migration control revolving around three main concepts: exclusion, surveillance and identification. The link between the exclusion of irregular immigrants and policies of surveillance can follow two separate, and essentially contradictory, logics (see Broeders & Engbersen 2007; Broeders 2010). The first logic is 'exclusion from documentation' and the second is 'exclusion through documentation and registration'. Policies operating under the first logic block irregular migrants' access to documentation and registration in order to exclude them, while policies operating the second aim to register and document individual irregular migrants in order to exclude them.

Exclusion from documentation and registration

First, surveillance can be deployed to exclude irregular immigrants from key institutions of society, such as the labour market and the housing market, and even from informal networks of compatriots and family members. Under this logic, irregular migrants are formally excluded from legal documentation and registration, and thus excluded from the institutions themselves, since they lack the necessary 'entry cards'. The state's efforts are primarily aimed at the formal institutions and networks that irregular immigrants use and need in their daily lives. It is a strategy of exclusion through the delegitimisation and criminalisation of all those who may be employing, housing or aiding irregular immigrants. These strategies are prominent in the Netherlands and other north-western EU member states where registration is routinely used to exclude irregular migrants from public or semi-public institutions and the labour market.

Exclusion through documentation and registration

In the second type of logic, the state aims to document irregular immigrants themselves through a strategy of developing detection and identification tools aimed at exclusion. Identifying and 'documenting' irregular migrants is necessary for detection, but especially for expulsion, as states have gradually come to realise that 'unidentifiable immigrants are constitutionally rather invulnerable to expulsion' (Van der Leun 2003: 108). The expulsion of irregular migrants can only function when their identity, nationality and (preferably) migration history can be established. If not, expulsion is likely to be resisted from within (lawyers and judges), from abroad (countries of transit and origin) from the migrants themselves. It is

therefore vital for the state to be able to connect irregular migrants with their 'true' identities. Policies operating under this logic of exclusion aim to document and register the irregular migrants themselves, in their capacity as irregular migrants. Documentation and registration are intended to: a) establish the irregular status of the migrant and b) establish and connect or re-connect the irregular migrant with his or her official identity. In other words, registration is used to identify or even re-identify irregular migrants (see Broeders 2007). This is required to facilitate exclusion in the ultimate sense: expulsion from the state. Investment in this strategy is much more recent than the first strategy, and is again dominant in the advanced welfare states of Northern Europe.

In the Netherlands, successive governments have enacted policies to close off Dutch society to unwanted migrants since the end of the guest worker era in the 1970s. As in most countries, the labour market was the first target. The first measures to curb labour migration were taken up in the 1970s in the field of employer sanctions. The primary aim at the time was to 'demagnetise' the labour market (Martin 2004). In other words, sanctions and policy were directed first and foremost at domestic employers, while irregular migrants themselves were sidelined. Resident irregular migrants did not become an explicit policy or public problem until the early 1990s. Burgers and Engbersen (1999) characterise the period up to the early 1990s as one of an increasingly strict regulation of entry through immigration law and policy and a simultaneous lax approach towards irregular residence and work. Once established, irregular migrants were able to find work, even in the formal labour market. They could still obtain social fiscal numbers (so-called *sofinummers*), which allowed them to hold tax-paid jobs. The enforcement regime on irregular labour was lax. In a number of sectors, such as agriculture and horticulture, where employers find it difficult to fill vacancies in spite of high unemployment figures, the authorities often turned a blind eye.

In the early 1990s, this informal policy of toleration changed drastically. In 1991, the government tied the social fiscal number to a legal residence requirement, thus barring the route to legal labour market participation. Other measures followed, such as the Marriages of Convenience Act in 1994 and the compulsory Identification Act of the same year. In 1994, the Aliens Act was also amended to introduce new policies in the field of asylum policy. The centrepiece of the new policy of internal migration control was the Linkage Act of 1998, which was intended to exclude illegal aliens from the benefits of the welfare state. The Linkage Act amended the Aliens Act and some 25 other acts governing social security, housing, education and health care. The act makes entitlements in these fields dependent on residence status (Pluymen & Minderhoud 2002). Parallel to these legal innovations, the Dutch government has also invested heavily in

database systems that can register, track and identify the resident migrant population.

One of the most recent chords in Dutch policy on irregular migrants was publication of the government's 2004 white paper on irregular migrants. In 'Illegalennota', as it was called, the policies of exclusion from institutions – up until then the dominant policy approach – are increasingly supplemented with policies aimed at detecting and identifying irregular migrants. Priorities in the paper include cutting off access to labour (intensifying labour market controls) and housing, stepping up the fight against identity fraud, increasing controls by the police and the detention capacity for irregular migrants and expelling more apprehended migrants through the expulsion policy programme (Minister voor Vreemdelingenzaken en Integratie 2004). The growing importance of the second logic of exclusion is evident from the emphasis placed on the identification and detection of identity fraud, the use of detention and the importance of expulsion policies. Some of these Dutch policy priorities are shared by other EU member states. Many northern EU member states have, for instance, been increasing detention capacity for irregular migrants and have rejected asylum seekers with the aim of facilitating expulsion (Jesuit Refugee Service 2005; Welch & Schuster 2005).

More recently, Fortress Europe has come to the aid of the Dutch donjon in matters of *internal* control of irregular migrants. The notion that the fortress's outer walls lack deterrence if migrants who pass the hurdle of border controls – legally or illegally – are able to live an unimpeded life in irregular residence has sunk in with the EU ministers for Justice and Home Affairs. This is most clearly expressed in the European Commission's Return Action Plan of 2002, which states: '[T]he message gets across that immigration must take place within a clear legal procedural framework and that illegal entry and residence will not lead to the desired stable form of residence' (in Samers 2004). One of the most important instruments currently developing at the EU level is an emergent network of EU migration databases, consisting of the Schengen Information System (SIS), the Eurodac database and the Visa Information System (VIS), which may become an important tool for identifying irregular migrants. These databases will store an enormous amount of data, including biometric identifiers, on potential irregular migrants. They will register as many migrants from 'suspect' legal categories (asylum seekers are registered in Eurodac) and 'suspect' countries of origin (visa applicants will be registered in the VIS) as possible, in order to gain access to the percentage of immigrants that cross the line into irregularity at a later stage. These systems can be used to re-identify irregular migrants attempting to conceal their identity to avoid expulsion (for an analysis of these data systems, see Broeders 2007). In light of its value for domestic policies, it comes as no surprise that countries such as the Netherlands and Germany are leading advocates in

organising and equipping data exchange at the European level in matters of migration management (see e.g. Aus 2003, 2006).

Shifts in strategies of irregular immigrants

The first step is realising that ‘keeping them out’ (border policies) has to be supplemented with policies of ‘getting them out’ (internal migration control and expulsion). Putting such measures into practice requires political determination, budget resources and delegating the task of exclusion to private and public agencies, especially to public service employees working in agencies that interact directly with citizens and deliver public goods, such as education, health, welfare and public housing (i.e. ‘street-level bureaucracies’, Lipsky 1980). Examples of street-level bureaucrats are police officers and other law enforcement personnel, such as labour inspection officers.

During the Netherlands’ ‘toleration years’, there was a large gap between the national level of policymaking and actual implementation by municipalities and street-level bureaucracies. Professionals, public service workers and local officials used their discretionary and political powers to mitigate the social consequences of anti-irregular immigration or asylum policies for specific groups, enabling them to gain access to public services after all (Rusinovic, Van der Leun, Chessa, Weltevrede, Engbersen & Vos 2002; Van der Leun 2003). With the introduction of ever-stricter policies, the policy gap seems to be closing in the Netherlands because the discretion of these professionals and workers in the execution of their work is bounded by new legislation and new technological equipment, facilitating the effective control of immigrants. Of course, both employers and irregular immigrants continue to develop strategies to circumvent exclusionary policies, often helped by illegitimate agencies. Public service workers, professionals and local authorities also play a role in this respect (Van der Leun 2003), but the margins for creating foggy social structures are becoming smaller.

A crucial question to ask is how do irregular immigrants react to these new policies of exclusion and identification? Irregular immigrants have shown remarkable creativity and inventiveness in developing strategies and informal institutions that enable them to stay and reside in the Netherlands. In other words, they change their tactics in response to changes in policy, looking for methods of circumvention and moving to other spheres and contexts. Irregular immigrants and the institutional surroundings to which they are related and in which they are embedded have a vested interest in resisting the state’s efforts to make society ‘legible’ and thus more controllable (Scott 1998). The means to do this are less sophisticated than those of the state, but that is not to say that they are ineffective. Strategies of

producing foggy social structures ‘from below’ can be very effective indeed.¹ We will discuss three shifts in strategies of irregular immigrants in response to anti-irregular immigration policies: 1) the shift from formal to informal work; 2) the shift from legitimate to criminal activities; and 3) the shift from being identifiable to being unidentifiable.

From formal to informal work

The first line of action governments took against irregular migrant labour was to introduce employer sanctions. The penalisation of employers (and the irregular employees themselves) varies in severity from country to country. In some, fines are very high, while others even allow the imprisonment of employers or the revocation of licences (Robin & Barros 2000). In general, the effectiveness of employer sanctions to deter irregular entry and employment is thought to be in decline since the 1990s. Martin and Miller (2000: 2) assert that the spread of false documents, the rise of sub-contractors and other ‘middlemen’, and inadequate labour and migration law strategies and enforcement budgets – as well as insufficient cooperation between agencies – undermine the effectiveness of employer sanctions. The shifting strategies of irregular migrants combined with inadequate implementation policies are the root of this ineffectiveness. Boswell and Straubhaar (2004: 5) suggest, however, that the Netherlands and the governments of some other countries are increasingly taking the ‘combat of illegal foreign labour’ seriously: ‘Germany, the Netherlands and France all have tough legislation, and have stepped up efforts at enforcement since the early 1990s.’

As previously mentioned, the Dutch government placed a protective ring of documents and documentary requirements around the formal labour market from the early 1990s, blocking access to stable, tax-paid jobs and cutting off any possibilities for people without valid documents to build up a quasi-legal position through the labour market (Van der Leun 2003; Engbersen 2003). With the easy venues into the labour market cut off, irregular immigrants have been seeking new ways to become employable. Assuming, borrowing or buying a ‘legal identity’ has been a key strategy to regain access. Many countries have seen the emergence of a circuit – or more aptly, an illegal market – in which false papers are produced and sold. In addition, there is a widespread practice of lending legitimate documents (passports, social security numbers, etc.) to irregular migrants, either for free or for a cost (Engbersen 2001).

As it became more difficult for individual irregular immigrants to gain access to the labour market, intermediary organisations emerged. Sub-contracting and temporary employment agencies have become important institutions in facilitating matches between the supply and demand of illegal workers. Interestingly, it is often official economic policies of

deregulation and the creation of more flexible labour markets that provide the opportunities for these intermediary structures. In the Netherlands, for example, the boom of legal, semi-legal and shady temporary employment agencies was a direct result of the government programme aimed at deregulating them (Van der Leun & Kloosterman 2006). According to Martin and Miller (2000: 16), the general trend towards deregulation and the greater flexibility in labour markets tend to undercut governmental policies aimed at curbing irregular entry and employment. Portes and Haller (2005: 409) point to a 'paradox of state control', meaning '[...] official efforts to obliterate unregulated activities through the proliferation of rules and controls often expand the very conditions that give rise to these activities.' This does not mean that regulations create informality, but they do seem to enhance opportunities for engaging in irregular activities. Too repressive and authoritarian control on informal activities is deemed risky, as it would drive them further underground, depriving authorities of information and control on them. According to Portes and Haller (*ibid.*: 420): 'The systematic withdrawal of information from government agents has proven by far the most effective tool in the hands of civil society to resist authoritarian rule'.

Still, during the 1990s and into the 2000s, Dutch government tried to get a firmer grip on irregularity in the labour market. First, there were legal initiatives, such as the extension of the Dutch Act on Chain Liability to the garment sector in 1994, which made retailers formally responsible for the illegal practices of their contractors. Secondly, labour market controls were intensified, inspections became more targeted (based on risk analysis) and in certain sectors and industries, the government organised crackdowns. The introduction of a Clothing Intervention Team, which organised raids on Turkish sewing shops and especially targeted violations of the Foreign Nationals (Employment) Act (WAV), was one of the main reasons for the virtual disappearance of the garment industry in the Dutch capital (Raes, Rath, Dreef, Kumcu, Reil & Zorlu 2002). Comparable teams, in which all relevant government agencies cooperate, were introduced for horticulture (Westland Intervention Team), and the new Social Security Inspectorate (SIOD) targeted temporary employment agencies in the Netherlands. During the 2000s, the Labour Inspectorate saw its ranks grow in number. Political priorities were finally converted into extra funds, more human resources – the number of inspectors grew from 80 in 1999 to 180 in 2006 – and a new legal basis for the fine system. Since 2005, the Labour Inspectorate has been able to impose an administrative fine, instead of a lengthy and cumbersome route through the Public Prosecutors Office, resulting in many more and much higher fines (Arbeidsinspectie 2006).

Another trend in labour market inspections is the growing use of computerised and networked checks on identities and other documentary requirements, sometimes even on-site. Although these efforts to improve the

state's grip on the labour market are certainly not without flaws, they do seem to have some kind of effect. From 1992 to 1993, 170 irregular immigrants were interviewed in the city of Rotterdam. One third of these proved to be unemployed. In 2001, 156 irregular immigrants were interviewed in the Netherlands. Again, one third proved to be unemployed, and a remarkable shift from the formal to the informal economy had taken place. In the early 1990s, 30 per cent of those interviewed had worked within the formal labour market; almost none of them still did so ten years later (see Engbersen, Staring & Van der Leun 2002; see also Van der Leun & Kloosterman 2006).² It is also striking that many of these were moving towards the restaurant and catering sectors and into the domain of personal services. These are sectors in which irregular labour is more difficult to control compared to traditional sectors, such as construction, agriculture and horticulture. These 'foggy' economic sectors offer more possibilities to avoid the prying eyes of labour inspectors.

The rise in subsistence crime

Apart from the shift from formal to informal work, there is also a shift taking place from legal economic activities to criminal activities. There are serious indications that, under the influence of stricter policies, irregular immigrants are more likely to become involved in certain forms of crime, such as theft and possession of false documents. These indications are based on a number of studies conducted among irregular immigrants in different periods, as well as on police data regarding the apprehension of irregular immigrants between 1989 and 1994 (figures concerning Rotterdam) and on data regarding the apprehension of irregular immigrants between 1997 and 2001 (figures concerning the Netherlands). The findings support the 'marginalisation thesis': restrictive policies marginalise irregular migrants by excluding them from the labour market and public provisions and contribute to forms of 'subsistence crime'. These criminal activities are meant to enable irregular immigrants to continue to reside in the Netherlands (Engbersen & Van der Leun 2001; Leerkes 2009). In other words, the legal construction of illegality by the state and the measures being taken to combat illegality more effectively stimulate the involvement of specific groups of irregular immigrants in criminal activities.

The marginalisation thesis builds on the premise that the exclusion of irregular immigrants from formal employment and public services has a criminalising effect on those who are excluded. Table 8.1 seems to support this hypothesis. The 25 local police forces in the Netherlands provided apprehension data for the period from 1997 to 2003. It can be seen that in this period, the police made over 97,000 apprehensions of (third-country) irregular immigrants. More importantly, the percentage of apprehensions due to criminal offences, minor or serious, and drugs gradually increased

Table 8.1 Reason for apprehension (in %) of third-country nationals, 1997-2003 (N=97,699) ◀

	1997	1998	1999	2000	2001	2002	2003*	Total
Illegal residence	64	60	59	52	48	48	49	49
Misdemeanours	9	10	10	11	8	8	9	9
Minor offences	17	9	21	27	31	30	28	28
Serious offences	3	4	4	4	5	7	7	7
Drugs	5	6	5	5	7	8	7	7
Other	1	1	1	1	1	1	1	1
Total (N)	12,687	11,775	11,459	12,481	13,600	17,364	18,333	97,699

* Extrapolated figures based on data until 1 October.

Sources: Vreemdelingen Administratie Systeem 1997-October 2003; Immigration and Naturalisation Service (IND) data.

from 25 per cent in 1997 to 42 per cent in 2003. In particular, the sharp increase in minor offences, such as theft, shoplifting and burglary, dovetails with the marginalisation hypothesis. It would appear that it has become more difficult for irregular migrants to support themselves in a legitimate manner.

The marginalisation hypothesis was put to a critical test in a recent article analysis that included four alternative explanations in the model (Leerkes 2009). It emerged that the sharp increase in crime could be partially ascribed to other factors, especially the rise in cross-border crime due to open borders and the stronger focus on the apprehension and registration of irregular immigrants by the state. However, these analyses did not refute the marginalisation hypothesis. The empirical analysis suggests that the intensification of the restrictive illegal alien policy since 1997 has instigated a rise in the number of illegal crime suspects by about 42 per cent in 2002 and 45 per cent in 2003 (*ibid.*). These findings underscore the fact that state classification and actual law enforcement (especially policing labour and the welfare state) shape the life chances of immigrants and contribute to a rise in subsistence crime.

These theoretical and empirical findings were confirmed in a research project on asylum migration and crime in the Netherlands (De Boom, Engbersen & Leerkes 2006). This study was based on an analysis of all persons who applied for asylum in the Netherlands between 1995 and 2004 (N=235,000). In this research project, a distinction was made between: 1) asylum migrants who were in the Netherlands legitimately (their requests had been granted); 2) asylum migrants who were still awaiting a final decision; and 3) asylum migrants whose requests had been refused and who remained in the Netherlands illegally. There are large differences in the legal and social position of these three categories. Recognised asylum migrants have full access to the labour market and access to public services, such as social housing, health care, education

and social security. The position of asylum migrants still involved in the asylum procedure is much weaker. Their living conditions are restricted (they cannot reside where or as they wish) and they have limited access to employment. They are, in fact, restricted to seasonal work because they are allowed to work only twelve weeks per year. In addition, their financial situation is poor.³ The weakest legal and social position is, of course, that of irregular asylum migrants. The empirical results showed that the weaker asylum migrants' status, the higher their involvement in crime. The relative number of criminal suspects among failed asylum migrants residing illegally in the Netherlands is much higher (9.9 per cent) than asylum migrants whose applications are pending (5.4 per cent). In turn, the latter group is much more likely to come into contact with the police than asylum migrants with a residence permit (3 per cent).

We do not wish to suggest that differences between the three categories are entirely caused by differences in status. For example, some of the offences involved are the consequence of the filter effect of the asylum procedure. If a person commits an offence during the procedure, his or her application may be refused. Asylum migrants who are suspected by the police of committing a crime during the procedure therefore have fewer prospects of being granted a residence permit than those who are not. In other words, criminal behaviour can lead to the rejection of the asylum claim and subsequently to illegality. It is, however, highly unlikely that this filter fully explains the observed difference (*ibid.*). The analysis also revealed that the majority of offences that asylum migrants are suspected of committing concerns theft (this applies in particular to irregular asylum migrants, see Table 8.2).

Table 8.2 *Number and types of delicts of different categories of asylum migrants suspected of committing a criminal offence in 2004 (in %) ↵*

	<i>Residence status</i>		
	<i>Residence permit (N=4,327)</i>	<i>In procedure (N=3,337)</i>	<i>Illegal (N=4,069)</i>
Percentage of suspects involved			
Violent sexual offences	2.4	2.2	1.4
Other sexual offences	0.6	1.2	0.5
Other violence	30.5	24.8	20.2
Theft with violence/extortion	3.7	3.5	3.3
Other theft	39.2	56.6	63.1
Vandalism and public order	17.5	17.4	15.5
Traffic offences	16.8	5.9	4.7
Drugs	3.7	2.8	4.0
Other offences	6.4	5.7	5.7

Sources: IND and HKS; De Boom et al. 2006

Offences committed by asylum migrants are closely connected to their social position, particularly of those who are irregular. Economic offences (petty theft, burglary) are often a strategy for gaining sufficient income to be able to remain in the Netherlands. The rise in subsistence crime is a typical example of an unintended consequence of internal immigration control. In the international literature, the greatest attention is placed on the unintended consequences of external border control, such as human smuggling organisations and the death of migrants along the borders. Our analysis shows, however, that internal border control is generating specific forms of subsistence crime. Crime is a classic example of a 'foggy social structure'.

Detention, expulsion and the importance of not being earnest

A third shift taking place is the movement from being 'identifiable' to 'unidentifiable'. Until the early 1990s, irregular immigrants could obtain a social fiscal number, which authorised them to obtain tax-paid jobs. For this, it was necessary to identify themselves. This category of immigrants later became classified as 'white illegals' (being irregular though doing regular work). In the early 1990s, the Dutch government closed off this 'legal loophole', making it increasingly important for irregular immigrants to be 'unidentifiable' in order to shield themselves from state control. As the risk of detention, apprehension and deportation looms large in the lives of irregular migrants, they develop various strategies to change and mask their personal identity and illegal status.

There are three main variants (Engbersen 2001). First, there is the structural or situational adoption of a false identity, for example, through the acquisition of forged papers or the use of legitimate documents – such as passports, social security numbers and medical insurance cards – belonging to others. Secondly, some obliterate their legal identity – in particular, their nationality – usually in order to prevent and obstruct deportation by the authorities. Unidentifiable irregular migrants are the 'unmanageable' cases that the immigration authorities have difficulty coping with; they are seldom deported. Thirdly, they may conceal their irregular status from others, such as employers, public officials and even members of their own ethnic community. They do so out of fear of repercussions and to hide their inferior position in their own community (Staring 1998). These identity strategies show how important it can be for irregular immigrants to lie (see also Engbersen 2001).

A fairly recent development is the determination by a number of countries to create an effective expulsion policy for irregular migrants. An important instrument in executing these expulsion policies is the increased use of incarceration in detention centres, which, in turn, is inextricable from the highly effective strategy of lying and hiding identities among

irregular migrants. These deportation centres focus on organising forced return programmes, on the one hand, and establishing the identities and nationalities of the apprehended 'unidentifiable' immigrants, on the other. Identification of the 'unwilling' very much resembles a struggle between the state and immigrants. Migrants who do not wish to leave the territory, who refuse to cooperate and frustrate the progress of procedures (for example, by stating a false name or inaccurate country of origin), force authorities to enter into a complicated bureaucratic process of identifying aliens, determining their nationalities and 'presenting' them to embassies for the purpose of obtaining travel documents (i.e. *laissez passer*).

The use of administrative detention – a general European trend – is justified by, and based on, the assumption that a prison regime will encourage immigrants to reveal their true identity. Detention is also considered a deterrent to prevent immigrants from coming to Europe via irregular channels. There are now nearly 200 detention centres in the EU located at strategic sites, such as traditional prisons, islands, airports, seaports and detention boats in large cities (Jesuit Refugee Service Europe 2005). If a lack of detention capacity presents, apprehended irregular migrants who are difficult to remove are not sent back onto the street, as was the practice in countries such as the Netherlands (Van der Leun 2003), but are often brought to these regional detention centres. According to the Jesuit Refugee Service (2005), the Netherlands had seven such detention centres, and in November 2007, another two 'detention boats' were put into operation. However, Dutch figures reveal that less than half of the apprehended and detained irregular migrants are effectively expelled from the country and that, contrary to what the political rhetoric suggests, the share of effective expulsions has in fact decreased over the years (Van Kalmthout et al. 2004). One of the primary reasons that expulsions are ineffective is the reluctance of countries of origin to take back their irregular migrants. Another major cause is again the difficulty of identification. Strategies of non-cooperation and hiding the truth are very effective, and many immigrants are still able to frustrate the administrative processing of return programmes.

Governments are obviously aware of the effectiveness of these simple strategies and have been working on a solution for quite a while. EU member states have been investing heavily in new methods of identification, both domestically and at the EU level. Since the struggle over identity is, in essence, a struggle over documents, states have turned their attention towards the traces irregular migrants leave in official administrations and registers in the course of their migration to Europe. In general, irregular immigrants have three possible 'migration histories'. Either they crossed the border illegally (with or without assistance), they were asylum seekers and stayed after the claim was rejected or they came with a legal visa and

stayed after its validity expired. The two latter categories, in particular, leave traces in the administration of migration authorities.

In a Europe without borders, the effective use of such data has to be organised at the EU level. In recent years, European governments have been developing a network of databases at the EU level aimed at documenting these migration histories in order to 're-identify' irregular migrants found within the territories of member states (Broeders 2007). These databases seek to register as many immigrants as possible from 'suspect' legal categories (e.g. asylum) and 'suspect' countries of origin (through the visas granted to them), in order to gain access to the percentage of immigrants that cross the line into irregularity at a later stage. The Eurodac system registers all asylum applications in the EU, and the VIS will register all visa applications for entry into the EU when it becomes operational. Any irregular migrant who is apprehended in one of the EU member states can furthermore be registered in SIS (II). All entries to these systems consist of both the application data and fingerprints of the applicant. Making a link between a dossier and an irregular migrant – no matter how uncommunicative and uncooperative he or she may be – is thus a matter of cross-referencing.

Potentially, these systems undermine the most effective strategy irregular migrants have to resist expulsion: lying. A potential side effect of this new policy approach that closes off the 'identity routes' of asylum and visa may be irregular migrants' increasing dependence on smuggling and trafficking organisations in order to use the direct route of illegal entry (Broeders & Engbersen 2007).

From light to thick foggy social structures

In this chapter, we analysed contemporary efforts by the Dutch state to fight irregularity. The Netherlands has initiated a number of measures to make immigrants' strategies more visible in order to apprehend, exclude and expel them more effectively. In so doing, the Dutch government has limited the scope of irregular immigrants to manoeuvre in the legitimate institutions of society. Consequently, irregular migrants are pushed towards the fringes of legality and beyond. We have documented three shifts in the residence strategies of irregular immigrants: 1) from formal to informal work; 2) from legitimate to criminal behaviour; and 3) from being identifiable to being unidentifiable. We also argued that, in reaction to these strategies, the state counters again with new measures, especially with instruments to identify or re-identify immigrants who refuse to reveal their true identity. The state is also attempting to dismantle illegitimate organisations (e.g. temporary employment agencies and those that produce false documents) established in reaction to restrictive and liberal policies. In other

words, there is a constant struggle in the field of migration, in which the individual and collective actors involved respond to each other with different strategies. The state is clearly the most powerful party in this struggle, and may, in the end, be the winning party.

Yet, empirical evidence shows that attempts by the state to fight irregular migration are pushing irregular immigrants deeper underground. The same mechanisms that play a role in external border control are occurring with internal border control. Both kinds of controls are creating incentives for illegitimate actors to organise illegal entry and residence (including illegal employment and housing, false documents), resulting in aliens' further victimisation. According to Miller (2001: 329): 'The result is sometimes that the medicine makes the illness worse.' One could argue that the former informal toleration policies 'from above' in combination with the toleration practised 'from below' by public service workers led to lighter foggy social structures than the current policies that produce thicker foggy social structures.

Informal toleration policies and practises, however, were untenable over the long run for economic and political reasons. Too many 'white illegals' with regular jobs raised serious questions regarding the displacement of native workers (in an era of massive unemployment), and too many irregular immigrants gaining access to public services led to an illusion of rights – and partly – to a legitimisation crisis of the state. Dutch citizens have no trust in a state that is unable to enforce the law. On the other hand, the current restrictive policies also produce negative side effects, including subsistence crime.

The challenge facing immigration control is to find the right balance between being closed and open and between effective law enforcement (especially employer sanctions) and practical toleration policies that are able to deal with the ambiguities of modern society. Another challenge will be to prevent thick foggy social structures from settling in advanced societies. This requires a combination of measures. Firstly, more temporary labour migration programmes that enable irregular labourers to work legally are required, counteracting the creation of informal labour markets. Secondly, the selective legalisation of irregular immigrants should occur. Thirdly, realistic return programmes that encourage migrants to return to their countries of origin voluntarily and on a long-term basis are required. However, foggy social structures will always exist. A completely transparent society is impossible to achieve. And if such a transparent society were to become reality, it would be unliveable not only for irregular immigrants, but also for regular citizens.

Notes

- 1 In a similar vein, Scott (1985) refers to everyday popular resistance to state policies in situations of extreme inequality as the 'weapons of the weak' – hardly impressive, but nonetheless effective in certain contexts.
- 2 There are also 'legal shifts' that have great impact on irregular migrant labour in the Netherlands. For example, with the extension of the free movement of people to some of the new member states (including Poland), the number of irregular migrants in some sectors – such as construction – dropped drastically overnight. The border is indeed everywhere.
- 3 The allowance for food, clothing and spending money is far from generous: adults receive around € 40 per week. Their income is therefore far below the statutory minimum income in the Netherlands.

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9 Regularisation of immigrants in Southern Europe: What can be learned from Spain?

Claudia Finotelli

Introduction¹

Combating irregular migration has been one of the main challenges facing European nation-states over the last two decades. However, several European countries have combined active intervention against irregular entries with a certain degree of tolerance towards irregular migrants. De facto and de jure regularisations are part of such a pragmatic strategy. Regularisations are usually presented as exceptional but necessary modes of transparency-building that allow irregular migrants to periodically emerge from their 'invisible' life beyond the state and the formal economy. Although Southern European countries have regularised the largest number of immigrants in Europe, recent research has highlighted the fact that regularisations and ex post policy measures are not just a feature of Southern Europe. Germany, for instance, 'tolerated' the existence of irregular migration in the form of circular migration systems and regularised de facto, long-term irregular migrants and refugees through the so-called 'toleration' permit (*Duldung*) (Finotelli & Sciortino 2006; Finotelli 2009). Until the 2000s, widespread tolerance of irregular workers or de facto refugees was also quite common in the Netherlands. More recently, however, Northern European countries have been devoting increasing efforts to strengthening their internal control mechanisms, intervening in the settlement process of irregular immigrants (see Engbersen & Broeders this volume).

In contrast, regularisations in Southern Europe are still a favoured strategy for addressing irregular migration (Baldwin-Edwards & Kraler 2009; Arango, Bonifazi, Finotelli, Peixoto, Sabino, Strozza & Triandafyllidou 2010).² It is thus not surprising that they are also one of the most controversial issues in the political debate on immigration control. In 2005, both the German and Dutch governments sharply criticised the decision by the Spanish government to carry out a mass regularisation process. The Spanish government was also blamed for not having informed its fellow European Union member states about the process in a timely manner. Much of the German and Dutch indignation was fuelled by a widespread fear that regularised immigrants in Spain would begin to 'invade' other

member states, attracted by their generous welfare systems. Such reactions are not surprising, since 'old' European immigration countries in the north still consider Southern European immigration countries to be a paradigm for the binomial relationship 'weak state – strong immigration' (Pastore 2007: 7). Therefore, the frequency and size of regularisation processes in these countries simply represent further proof of the Southern European 'public ambiguity' towards irregular migration and their incapacity to control immigration flows (Brochmann 1993; Baldwin-Edwards 1999).

Recently, EU member states seem to have reached an agreement on the execution of regularisation processes. In the European Pact on Immigration and Asylum, signed on 24 September 2008, the European Council, led by France, agreed 'to use only case-by-case regularisations, rather than generalised regularisations, under national law for humanitarian and economic reasons' (p. 7). According to this formulation, European countries do not forbid regularisation processes – as planned initially – but keep them as a possible regulatory tool for controlling irregular migration. The acceptance of some form of regularisation in extremis does not mean that the debate on these measures has ended, however. Two important questions remain: Are regularisations necessary? Moreover, are they effective policy tools? When it comes to answering these questions, there would seem to be many more critics than supporters of regularisation. There is, for instance, general agreement that regularisations attract an increasing number of irregular migrants rather than limit their numbers (OECD 2000). Furthermore, it is assumed that regularised migrants usually fall back into irregularity once their residence permit has expired because they cannot renew their residence permit in time (Reyneri 1999). Lastly, it has been assumed that a considerable number of regularised immigrants keep working in the informal economy, in spite of having obtained a regular residence permit through a regularisation process (Zincone 2004). As Papademetriou, O'Neil and Jachimovitz (2004: 31) argue: 'evidence is meager and provides only spotty support for the beneficial labour market effects of regularisations'. However, other scholars also highlight the positive effects of regularisations, recognising that such processes can improve social security cash inflows and provide information on the scale of irregularity and informal employment (Papadopoulou 2005). In this respect, it is worth mentioning the study carried out by Carfagna (2002). His research clearly demonstrates that the majority of immigrants regularised in Italy did not lose residence permits they obtained through regularisation. Some authors, however, point to the usefulness of regularisations at the national level, but question the effectiveness of the European harmonisation of such measures (Pastore 2004a, 2004b; Finotelli 2009). More recently, the European Commission published a study on regularisation practices in the EU, which aims to analyse the impact of such measures and their relationship to other types of migration policies (Baldwin-Edwards & Kraler 2009).

Overall, however, academic research into the effects of regularisations is still poor and shows a substantial contradiction between the evaluation (and criticism) of regularisation programmes and the empirical data actually available for such processes. It is this very lack of useful empirical data that prevents us from supplying satisfactory answers to the question of whether or not regularisation is an effective policy measure against irregular migration. Consequently, the alleged inefficiency of regularisation processes has become one more stereotype within the general discourse on immigration control.

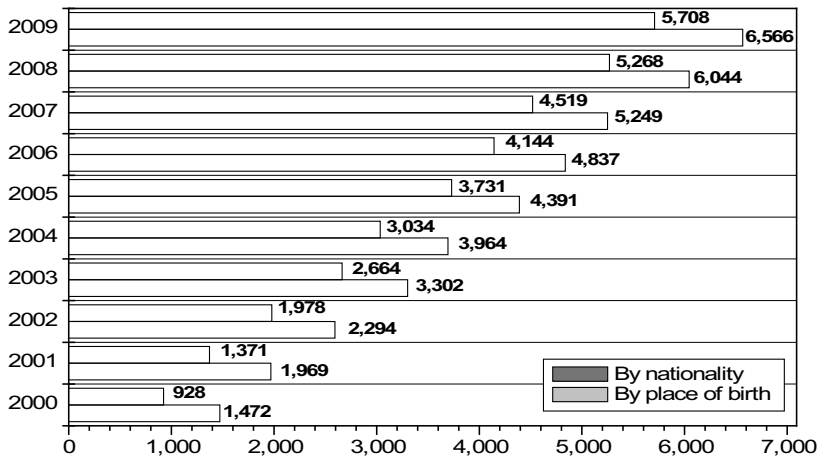
The main objective of this chapter is to analyse regularisation policies in a manner that moves beyond the current polarised debate between defenders and detractors of regularisation. I will focus on regularisation policy in Spain, paying special attention to the regularisation of 2005. The Spanish regularisation in 2005, together with the Italian regularisation process in 2002, represented one of the largest mass regularisation processes ever carried out in Europe. With nearly 700,000 applicants, this case is a useful empirical tool for analysing the efficiency of regularisation processes.

Firstly, this chapter deals with the determinants of irregularity in Spain, taking into account the absence of legal immigration channels. It then focuses on the backgrounds and outcomes of the Spanish regularisation of 2005. My analysis challenges the widespread notion that regularisations represent a 'pull factor' for irregular migration systems and points out instead the role played by a strong informal economy in attracting irregular migrants. The ultimate goal is to assess the real efficiency of regularisations in 'clearing' the social fog produced by the interaction between irregular migration and a widespread informal economy.

The Spanish migration regime and the challenge of irregular migration

International migration is the outcome of a complex mix of push and pull factors, which often operate within an inadequate regulation framework. This has proven true in Spain, previously a country of emigration. Spain's transition to a net immigration country has been more a matter of rapidity than one of volume. Immigration grew rapidly, in fact, but the volume of immigrants, at least in the 1990s, was modest compared to traditional European immigration countries in the same period. It was only at the beginning of the twenty-first century that the country experienced a spectacular upsurge, ushering in what has been called a 'prodigious decade' of immigration (Oliver 2008). Data from the Padrón Municipal de Habitantes,³ the Spanish municipal registry, show how within a very short period of time, the foreign-born came to represent 12 per cent of the total population (see Figure 9.1).

Figure 9.1 Foreign population in Spain based on municipal registration (*Padrón municipal*) ↵



Source: Spanish National Statistical Institute (INE)

Most migrants who now possess a regular residence permit were irregular at the beginning of their stay in Spain. In the 1990s, the Spanish government was not very successful at regulating immigration flows, and legislation was characterised by a certain blindness concerning the real demands of the Spanish labour market. The Asylum and Refugee Law of 1984 and the 1985 Foreigners Bill (*Ley de Extranjería*) provided the legal framework for immigration until the beginning of the twenty-first century. Both laws focused more on administrative issues of entry and residence rather than on effective regulation instruments. This is not surprising if we consider the fact that these laws were approved before immigration became an issue of public concern. Furthermore, Spanish legislators introduced an obligatory labour market check, which gave preference to natives for filling job vacancies. This decision was not only determined by a high unemployment rate in Spain, but was also one of the prices Spain had to pay – like Italy at the time – for its EU membership (Arango 2000). In fact, Spain had to adapt its migration regime to the defensive attitude of other EU members that were seriously concerned about the weakness of the new ‘border watchers’ in Southern Europe. However, weak migration regulation and insufficient programming continued to characterise the Spanish migration regime. The bureaucratic procedure of hiring migrants through nominal requests according to the General Regime (*Regimen General*) was very complex and always dependent upon labour market checks; consequently, most employers preferred the option of hiring irregular workers. Additionally, the quotas (*contingente*) introduced in 1993 were never

transformed into an effective policy regulation; they were simply used to legalise irregular migrants already residing in the country.

The 1985 Foreigners Bill was first amended in 2000 in a liberal manner by the Organic Law (*Ley Orgánica*) No. 4/2000 and then counter-reformed by Organic Law No. 8/2000, which increased sanctions against irregular migration by reducing the rights of irregular migrants and limiting family reunification. However, no efforts have been made to improve the recruitment of foreign workers. In fact, an administrative memo published in 2002 limited the legal employment of foreigners to the annual immigration quotas, eliminating *de facto* the possibility of a nominal request. The inadequacy of entry channels, together with the strong demand for foreign labour, also created a mismatch in Spain between market demand and state regulations, solidifying irregular migration as a structural component of the Spanish migration regime. However, the increase in irregular migration was not solely the outcome of such a mismatch. It was also part of a general 'equation of irregularity' (Arango 2005) in which restrictive policies are just one variable among many: such as the intensity of flows, the attractiveness of the informal economy,⁴ the geographic proximity from the country of origin to the country of destination, the effectiveness of border and internal controls and the activities of the smuggling industry. In the specific case of Spain, large entry flows were facilitated by the fact that important Latin American sending countries were exempt from visa regulations. Another crucial factor in this respect was intense tourist circulation and Spain's close geographic location to sending countries, such as Morocco. Irregular migrants were also attracted by a large informal economy, which is assumed to be approximately 22.3 per cent of Spanish GDP (Enste & Schneider 2006).

In such a context, regularisations seemed to be the most useful way to 'repair' the structural mismatches of the Spanish migration regime in which irregularity and informality were constantly feeding each other. Since 1985, Spain has carried out six regularisation programmes. Each programme was presented as an exceptional 'one-off' measure. The first took place in 1985/1986 and was followed by others in 1991, 1996, 2000, 2001 and 2005. Most were targeted towards irregular workers; however, some were extended to other migrant categories, such as relatives (1996, 2000 and 2001), asylum seekers (2000) and specific nationalities, e.g. Ecuadorians (2001). The requirements for application were not always clear. A general condition was that applicants had to prove they had been living in Spain prior to a certain date. The lack of a criminal record was another essential condition for most of these processes. In some cases, requirements for application included previous employment as a desirable aspect, but it was only the regularisation of 2005 that made residence permits dependent upon the existence of a work contract and registration by the foreign worker with the social security system. In contrast to previous

regularisations, the 2005 regularisation was part of a wider programme targeted at combating irregular employment in Spain. Therefore, it is this process that concerns us in the next part of this chapter.

The regularisation process of 2005

No government can tackle irregular migration without seriously improving its migration policies. Accordingly, the Spanish government decided to reform its immigration policy in 2004 by introducing more flexibility in recruitment and more severity in controls. Firstly, the aim of new Regulation No. 2393/2004 was to improve the effectiveness of quotas and the General Regime by introducing 'shortage lists' under the Catalogue of Hard-to-Find Occupations (Catálogo de Trabajos de Dificil Cobertura).⁵ Next, the regulation introduced entry visas for 'job searches', which were, however, restricted to the domestic sector. Finally, another important novelty was the introduction of the *arraigo* (meaning something close to 'rootedness'): individual regularisation based on either the pre-existence of a labour relationship (*arraigo laboral*) or the social integration of irregular migrants, basically in the form of family relationships (*arraigo social*).

Despite these provisions, the ambitious reform carried out by the Spanish government was unsuccessful in resolving the situation of irregular immigrants already living (and working) in the country. According to estimates by Spanish researchers, the irregular population at the beginning of 2005 numbered approximately 900,000 (Cachón 2007; Pajares 2006). Thus, the government had to announce its 'very last' regularisation in 2005, which was formulated through intense negotiations between the government, trade unions and employers' confederations. Immigrant associations were also heard. In the end, the process regularised foreigners who were able to demonstrate *de facto* economic integration. In contrast to the previous regularisations, it was the employer who had to apply for the regularisation of his or her employees. For the first time, employers had to produce work contracts valid for at least six months in order to legalise their employees.⁶ Only domestic workers with more than one employer could apply directly. Legalisation only took place if the worker had registered with the social security system and the first month's dues had been paid – which is why the 2005 regularisation has been described as a 'real' regularisation by state officials. Furthermore, applicants also had to prove that they had already been in Spain for six months prior to the start of the process, i.e. before 8 August 2004 – and the only acceptable proof was official registration with the municipal population registry. In addition, applicants had to provide a clean criminal record from their country of origin, obtainable from their embassies or consulates.

One of the major problems experienced during regularisations prior to 2005 was the overlapping of several processes, which resulted in bureaucratic congestion (Arango & Suárez 2003). The lack of adequate administration tools to carry out the process, coupled with possible cases of fraud and corruption, have often been the object of severe criticism (Levinson 2005). But in 2005, the Spanish government did its best to provide the necessary organisational structure for the regularisation process, setting up 742 information points across the country and reinforcing administrative staff with about 1,700 additional employees. The entire process was supported by a wide network of information points managed by trade unions and migrant organisations, social security offices and the Ministry of Interior's foreigners offices. The strength of such a network did not succeed in entirely avoiding the long queues in front of the offices. Still, 691,655 applications were filed between March and May 2005, as summarised in Table 9.1.

According to Table 9.1, Ecuadorians and Romanians were the largest national groups with 140,020 and 118,346 applicants, respectively, followed by Moroccans, Colombians and Bolivians. Some national groups submitted very few applications, for example, Dominicans and Peruvians. Not all communities had the same acceptance rate – applications by Pakistanis and Chinese nationals were not as successful as those by Romanians or Moroccans.

In contrast to prior regularisations, Table 9.2 shows that only one third of all applicants in 2005 were women. However, this skewed gender ratio varied by country of origin: women represented 45 per cent of applicants from Bulgaria and Romania, 51 per cent from Ukraine, 53 per cent from Ecuador and 57 per cent from Bolivia. In contrast, women from Morocco,

Table 9.1 *Final results of the 2005 Spanish regularisation* ↱

<i>Nationality</i>	<i>Total</i>	<i>Issued</i>	<i>%</i>	<i>Withdrawn</i>	<i>Not admitted</i>
Bulgaria	25,598	22,239	86.88	1,442	482
Romania	118,546	100,128	84.46	7,501	2,788
Ukraine	22,247	19,466	87.50	988	414
Morocco	86,806	68,727	79.17	6,887	2,217
Mali	7,205	6,249	86.73	271	194
Senegal	10,100	7,265	71.93	1,371	349
Ecuador	140,020	127,925	91.36	4,842	584
Colombia	56,760	50,417	88.82	2,806	361
Dominican Republic	3,994	3,212	80.42	307	124
Peru	3,605	2,950	81.83	283	87
Bolivia	47,325	39,773	84.04	2,889	1,630
Pakistan	15,782	8,602	54.51	2,292	2,315
China	13,416	8,159	60.82	2,143	1,127
Total	691,655	578,375	83.62	44,457	17,362

Source: Spanish Ministry of Labour and Immigration

Table 9.2 *Regularisation applications according to gender* ↵

<i>Nationality</i>	<i>Total</i>	<i>Women</i>	<i>Men</i>
Bulgaria	25,598	11,253	14,296
Romania	118,546	52,445	65,853
Ukraine	22,247	11,129	11,080
Morocco	86,806	12,799	73,170
Mali	7,205	71	6,970
Senegal	10,100	799	9,110
Ecuador	140,020	72,732	66,982
Colombia	56,760	29,936	26,716
Bolivia	47,325	26,467	20,735
Pakistan	15,782	240	14,829
China	13,416	4,187	8,933
Total	687,138	283,403	403,735

Source: Spanish Ministry for Labour and Immigration

Senegal and Pakistan represented only 15, 8 and 2 per cent, respectively. Such figures suggest that African (mainly Moroccan) and Asian women rely more upon family reunification as an entry channel, while the more recent flows of female migrants from Eastern Europe and Latin America come for work purposes.

The sector distribution of regularised migrants confirms the distribution pattern of foreign workers in the Spanish economy. Migrants in Spain represent a considerable portion of the country's cheap and low-skilled labour supply, taking jobs under conditions a native worker would never accept.⁷ The main sectors in this realm of employment include service work, the construction industry and agriculture. The vast majority of regularised migrants were employed in the domestic sector (31.67 per cent), agriculture (14.61 per cent), construction (20.76 per cent) and the restaurant trade (10.36 per cent). The majority of regularised women (83 per cent) was employed in the domestic sector,⁸ while construction and agriculture were male-dominated (83-94 per cent).

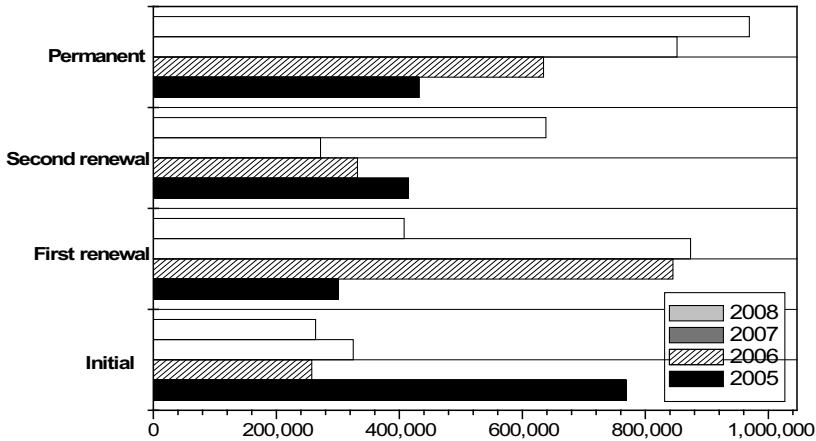
Overall, the process allowed the regularisation of 578,375 applicants, increasing the size of the legal migrant population in Spain. In fact, the number of legal, non-EU citizens registered an overall increase of 653,050 people compared to 2004. In addition, the foreign workers registered in the social security system numbered 1,757,081, an increase of 616,655 over 2004.⁹ According to information provided by the Spanish Ministry of Labour, tax incomes and social security contributions related to the regularisation process were € 92,859,672 and € 93,345,503, respectively. The result was that overall contributions to the social security system by the end of 2005 exceeded € 800 million for the first time. It seems, thus, that the 2005 regularisation affected a large proportion of the irregular migrant population living in Spain at the time. Furthermore, regularised migrants are assumed to have made a fundamental contribution to the budgetary

superavit of the Spanish state. However, such data fail to provide any evidence of the inclusion and stabilisation function of regularisation processes.

The stabilisation function of regularisations

Most research studies carried out after the regularisation process of 2005 agree that the process contributed to a reduction in the size of the irregular population. The estimates carried out in these studies are based on comparisons between the figures of non-EU citizens in the municipal register and those with a residence permit after regularisation.¹⁰ Prior to the end of the 2005 regularisation, Recaño and Domingo (2005) had already forecast a positive impact of the regularisation process on the rate of irregularity. In a subsequent study, Cebolla and González (2008) suggested that the irregularity rate decreased from 43 per cent to 22 per cent after the 2005 regularisation. However, in addition to indicating that the regularisation was successful in reducing irregularity, these estimates also show it did not succeed in eliminating it. According to Pajares (2006), about 500,000 irregular migrants were still living in Spain after 2005. Similarly, Cachón (2007) suggests that between 300,000 and 400,000 irregular migrants did not participate in the regularisation process. The apparent reason for such lack of participation was the abundance of restrictive conditions. For one, the 2005 regularisation excluded migrants who were unable to demonstrate employment based on a work contract. Furthermore, it seems that a sizeable number of migrants were unable to meet the precondition of having registered with the Municipal Registry before 8 August 2004. Finally, we should not forget that 113,280 migrants remained irregular because their applications were rejected on administrative grounds.

Even if we assume that a certain segment of immigrants was unable to participate in the process, what happened to the successful applicants? It has been widely assumed that regularisations do not contribute to the stabilisation of the foreign population, since most regularised immigrants fall back into irregularity as soon as their residence permits expire (Reyneri 1999). Labour market fluctuations and the difficulty of renewing residence permits are often cited when explaining this phenomenon, but this assumption does not appear to be true in the Spanish case. The figures for residence permits renewed one year after the regularisation process paint a different picture. According to Figure 9.2, the number of residence permits renewed for the first time more than doubled between 2005 and 2006 (increasing from 300,454 to 844,857), while initial residence permits decreased considerably. Even though we do not know the exact number of regularised immigrants who managed to renew their residence permits in the subsequent years, these figures suggest that a sizeable number were indeed renewed.

Figure 9.2 *Type of residence permits (2005-2008)* ↵

Source: Spanish Ministry of Labour and Immigration

The data here allow us to deduce that the majority of regularised immigrants remained regular after their initial residence permit had expired, suggesting that regularisations might have stabilised a large part of irregular migrants in the short and medium term. Such a ‘stabilisation’ function of regularisations becomes even more evident if we compare the number of regular foreign residents in Spain with the numbers of regularised immigrants since 2000 (see Table 9.3).

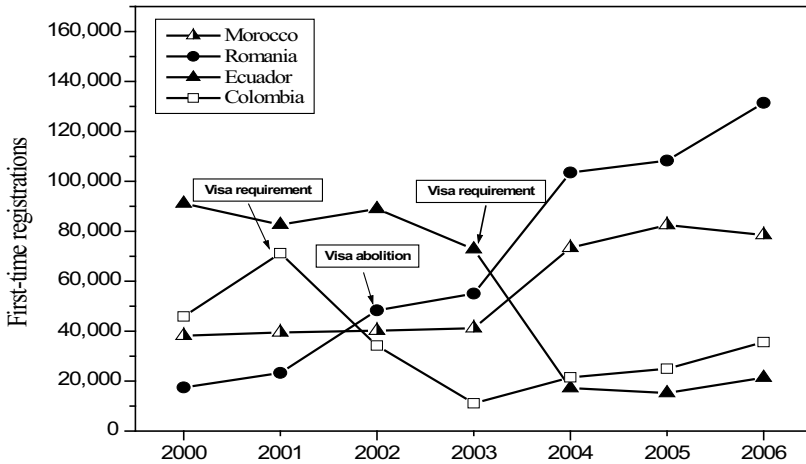
Table 9.3 *Foreign population and regularised immigrants in Spain (2000-2006)* ↵

	<i>Regularised foreigners 2000-2001-2005</i>	<i>Regular non-EU foreigners 31/12/2006</i>	<i>% of residents regularised</i>
Total	1,019,997	2,360,804	43%
Bolivia	43,197	52,587	82%
Pakistan	18,938	29,669	63%
Romania	127,586	211,325	60%
Ukraine	30,576	52,760	57%
Ecuador	199,152	376,233	52%
Bulgaria	31,469	60,174	52%
Senegal	13,965	28,560	48%
Algeria	17,748	36,499	48%
Colombia	101,474	225,504	44%
Morocco	146,610	543,721	26%
China	22,397	99,526	22%
Dominican Republic	5,936	58,126	10%
Peru	6,250	90,906	7%

Source: Spanish Ministry of Labour and Immigration (own elaboration)

Table 9.3 indicates that regularisations are likely to have permitted the legal inclusion and stabilisation of 43 per cent of the total foreign population, despite the precariousness of the residence permits issued. We can also assume that, in the long term, the 'stabilisation' effect of regularisations will be strengthened by family reunion processes.¹¹ However, Table 9.3 also shows that the rate of regularised foreigners varies according to nationality. For instance, the percentage of regularised Bolivians, Romanians, Pakistanis and, to a lesser extent, Ukrainians and Ecuadorians, is relatively high. In contrast, the percentage of regularised Moroccans, Chinese and Peruvians is much lower. These differences might be explained by considering that the most recent flows always benefit the most from regularisation processes. Migration by Moroccans, Dominicans and Peruvians commenced much earlier than immigration from Ecuador or Bolivia. At the moment, they can rely on 'regular' entry channels and are therefore less represented in the regularisation processes between 2000 and 2005. Additionally, such low figures might also be partially explained by contingent factors in the countries of origin that reduced the flows or by specific regulations that favoured legal entries.¹² However, it seems that visa regulations also played a very important role in 'selecting' flows to Spain over the years. The introduction of the visa obligation for Cuban, Peruvian and Dominican immigrants in 1992 blocked irregular flows from these countries and might explain why both communities almost disappeared from the regularisation statistics up to 2000. Similarly, the type of visa regulations could explain the high presence of Romanian and Ecuadorian immigrants in the 2005 regularisation. Figure 9.3 shows the relationship between the introduction of visa regulations and the number of immigrants who registered for the first time with a municipality (*variaciones residenciales*).

As can be seen in Figure 9.3, Romanians were the community most favoured by visa regulations – their number increased rapidly after the abolition of the visa obligation for Romanian citizens in 2002. Conversely, the annual inflows of Ecuadorians are very high up to 2003, when they drop off abruptly after the introduction of the visa obligation. Similarly, the inflows of Colombian migrants decreased after the introduction of the visa obligation in 2001. The annual inflows of Moroccans, one of the oldest and largest foreign communities in Spain, do not show relevant variations up to 2003. However, the improvement of diplomatic relations between Morocco and Spain might have favoured both the relaxation of the visa policy and the increase in new entries up to 2003-2004. The figures show how weak (or nonexistent) visa regulations at the beginning of the twenty-first century favoured enormous migration flows, especially from Latin America and later from Romania. Most of these 'new' immigrants remained in Spain irregularly until the regularisation of 2005, the outcome of which clearly reflects the 'Latin Americanisation' of the foreign population.

Figure 9.3 Evolution of first-time registrations in the Padrón (2000-2006) ↵

Source: Spanish National Statistical Institute (own elaboration)

The 'pull effect' of regularisation processes

Regularisations are often blamed for having a 'pull effect' on new irregular flows, because there is the expectation of regularisation in the near future. Of course, this is a reasonable expectation in migration regimes characterised by periodic regularisations. However, there is less evidence of the existence of a direct cause-effect relationship between regularisation and the increase in flows from a given country before or after its execution. Research carried out in Italy has highlighted the difficulty in demonstrating such an effect (Blangiardo & Tanturri 2004).¹³ In Spain, no relevant research has been carried out into this topic. Further analysis of the evolution of the annual entries of immigrants might be helpful in assessing the existence of such an effect following regularisation processes.

Table 9.4 provides a more detailed overview of the foreigners who registered for the first time after their arrival in Spain.

Registrations by Colombians increased considerably between 2000 and 2001, and then decreased. The number of Ecuadorians also remained very high until 2003, after which it decreased. On the one hand, these high numbers around the same time as the regularisations of 2000-2001 may suggest the existence of a pull effect. However, in both cases, because the introduction of a visa obligation was pending at the time, we cannot be certain that an increase in registrations was definitively related to the expectation of being regularised – either factor could have had an effect. Similarly, the increase in registrations of Bolivian citizens between 2005 and 2006 might suggest a pull effect of the 2005 regularisation. But, as

Table 9.4 *First-time registration of foreigners in the Padrón (2001-2007)* ↵

	2000	2001	2002	2003	2004	2005	2006	2007
Bulgaria	-	11,771	15,872	13,691	20,997	18,337	21,748	31,331
Romania	17,435	23,295	48,330	55,046	103,532	108,294	131,457	197,642
Ukraine	-	10,987	10,847	9,158	11,851	10,015	10,736	11,144
Morocco	38,138	39,517	40,172	41,171	73,380	82,519	78,512	84,978
Mali	-	725	844	1,391	4,803	3,278	4,300	3,378
Senegal	1,227	1,912	2,048	2,855	6,878	6,908	6,795	11,602
Ecuador	91,190	82,639	88,967	72,839	17,202	15,234	21,387	30,162
Peru	5,893	7,121	7,955	17,735	17,735	19,946	21,691	27,372
Colombia	45,868	71,220	34,235	11,121	21,502	24,945	35,621	41,725
Bolivia	3,318	4,863	10,625	18,226	44,049	44,895	77,755	51,797
China	4,745	5,231	5,692	20,296	20,296	18,406	16,882	20,394
Pakistan	1,642	1,789	1,782	9,351	9,351	12,439	8,222	10,645

Source: Spanish National Statistical Institute

with the Ecuadorian case, this increase might have been due instead to the upcoming introduction of visa obligations in April 2007. As far as Moroccans are concerned, we observe a slight increase in registrations after 2004. In this case, the ‘rumour’ of a regularisation might have increased the activity of Moroccan networks and favoured new entries by Moroccan citizens – similar to the situation in Italy prior to the regularisation of 2002 (Semi 2004). Finally, the spectacular increase in Romanians after 2002 is a generalised phenomenon that cannot be explained by the ‘rumour’ of a regularisation process, since it is visibly related to new visa provisions. However, news about an upcoming regularisation might well have represented a magnet factor for some Romanians. In fact, a recent study on migration mechanisms in the two Romanian communities of Luncavita and Feldru highlighted the existence of a pull effect of regularisation processes. Most of the community members who moved to Spain from these particular places were attracted by ongoing regularisation – supported by strong social networks and, of course, an open visa policy (Erick & Ciobanu 2009). Despite this, the experience of Luncavita and Feldru cannot be used to extrapolate the existence of a ‘pull effect’ for other Romanian communities or other national groups. The figures in Table 9.4 confirm that it is quite difficult to establish a relationship between the regularisation processes of 2000, 2001 and 2005 and new migrant inflows. Indeed, the figures actually show that the evolution of flows seems to depend much more on visa regulations than on the attractiveness of a regularisation process.

Finally, the arrival of immigrants in small boats known as *cayucos* is often considered a direct consequence of ‘lax’ policies, such as regularisations. Table 9.5 shows a considerable increase in the number of migrants detected at the ‘blue borders’ between 2005 and 2006. Such an increase might be misinterpreted as a pull effect of regularisation on African migration. However, I assume that the increase in 2006 is due primarily to a

Table 9.5 *Maritime migration to Spain* ↵

	<i>Total migrants</i>	<i>Total vessels</i>	<i>Arrested migrants</i>		<i>Vessels</i>		<i>Arrested smugglers</i>	
			<i>Strait</i>	<i>Canary</i>	<i>Strait</i>	<i>Canary</i>	<i>Strait</i>	<i>Canary</i>
2000	15,195	807	12,785	2,410	628	179	-	-
2001	18,517	1077	14,405	4,112	800	277	-	-
2002	16,670	1,020	6,795	9,875	377	643	-	-
2003	19,176	942	9,788	9,388	567	375	-	-
2004	15,671	740	7,245	8,426	446	294	159	124
2005	11,781	567	7,066	4,715	348	219	113	27
2006	39,180	-	7,502	31,678	-	-	-	-
2007	18,057	-	5,579	12,478	-	-	-	-
2008	13,424	-	4,243	9,181	-	-	-	-

Sources: Secretary of State for Immigration and Emigration 2005 (2000-2005); Ministry of Interior reports on the fight against irregular migration (2006, 2007, 2008)

change in smugglers' strategies in that year. In 2007, the numbers of irregular migrants detected decreased again, suggesting at least some improvement in border controls. Furthermore, a pull effect should have precipitated an increase in irregular migrants in the Strait of Gibraltar, and there is no evidence of such an increase.

In sum, there is little evidence of a generalised pull effect caused directly by regularisation processes, although such an effect cannot be discarded in certain cases. The analysis presented in this chapter confirms that increases in irregular migration flows do not depend upon a simple cause-effect relationship, but rather result from a complex mix of factors where the efficiency of border controls, especially visa regulations, and the attraction of the informal economy play important roles.

Considerations regarding the informal economy

The (few) defenders of regularisation processes generally point out that regularisations allow irregular workers to emerge from the informal economy. On the other hand, the detractors point to the fact that having a residence permit does not prevent immigrants from working illegally if internal controls are weak and there is a high labour demand in the informal sector. Since the 2005 regularisation, the Spanish Social Security Institute has monitored the labour careers of all migrants regularised in 2005. According to their follow-up, 461,319 of the regularisation-related registrations were still valid in October 2006. This means that nearly 80 per cent of the regularised immigrants were still working legally at least one year after the regularisation process. On the other hand, there were 19,288 Ecuadorians, 15,698 Romanians, 15,043 Moroccans, 9,582 Colombians

and 9,582 Bulgarians already outside the social security system; however, there is no way of knowing whether or not they are now working in the informal economy in spite of being legal residents.

These losses are not distributed equally across sectors. The construction and restaurant industries lost only 1,146 and 4,197 regularised workers, respectively, who are now working in other sectors. Interestingly, a non-specified sector, which interviewed state officials identify with domestic work, lost 104,193 regularised workers to other sectors. Similar effects have also been observed in the case of agriculture. According to our interviews with COAG, an important farmers' association, only 10-20 per cent of regularised immigrants were still working in the agricultural sector at the end of 2007.¹⁴ Such a statement is in line with research results that found how sectors such as commerce and the hotel industry registered significant growth after regularisation processes, while agriculture did not (Ferri, Gomez-Plana & Martín-Montaner 2006). These results also dovetail with the findings of Spanish researchers that identify domestic and agricultural sectors as foreign workers' main jobs at entry, but which are left as soon as the immigrants have stabilised their legal residence (see Pumares 2006; Rubin, Rendall, Robinovich, Tsang, Van Oranje-Nassau & Jant 2008).

Social security data show that Spanish regularisation allowed a certain number of workers to transfer from the informal to the formal economy. This is why regularisations may represent an instrument of internal control in systems where workplace controls are traditionally weak (Sciortino 1999). However, their execution cannot affect the attractiveness of the informal economy to both irregular and regular migrants. The Romanian community, for instance, might provide a useful example in this regard. The number of Romanians registered in the foreign population statistics of the Ministry of Immigration increased to 715,750 in 2008, due to eastern enlargement. This number is considerably higher than the number of Romanians registered in the social security system (235,676) at the end of the same year. Such a mismatch might be explained by the fact that not all Romanian residents need necessarily be registered with the social security system. Unemployed immigrants or children, for instance, are not included in this group. Furthermore, the gap is likely to be related to the high circularity inherent in Romanian migration patterns – a number of Romanian migrants may still be registered in Spanish population statistics despite having returned to Romania or moving on to another European country. On the other hand, the mismatch might also portray the existence of a situation of 'semi-compliance'¹⁵ for a portion of the Romanian community that combines legal residence with irregular work.¹⁶

Undeniably, the informal economy still acts as a magnet, which benefits from the tolerant attitude of a large segment of Spanish society for which irregular employment is hardly considered a crime. Not surprisingly, the

Ministry of Labour and Immigration announced a sizeable increase in workplace controls in 2005. After improving cooperation between the central and peripheral administrations, the General Direction of Labour Inspection (part of the Spanish Ministry of Labour and Immigration) used a ‘map’ of regularisation applications to gather useful information about the territorial distribution of informal work. Consequently, over 50 per cent of inspections carried out in 2006 were concentrated on regions that had the most regularisation applications in 2005: Madrid, Catalonia and the Autonomous Community of Valencia.¹⁷ The majority of inspections was carried out in the construction and the restaurant industries, while another important economic niche for irregular migrants, the domestic sector, was omitted due to the difficulties involved in carrying out labour market checks in private households.

Observing the inspections carried out by the Spanish Ministry of Labour and Immigration in Table 9.6, we see they doubled between 2004 and 2005.

However, upon closer examination it becomes apparent that the increase in controls did not correspond to an increase in detected infractions and sanctions in 2005 and 2006. This might indicate that regularisations and the increase in controls contributed to reducing the attractiveness of the informal economy. Based on interviews carried out in 2007 with administration representatives and immigrants’ associations, I found that fear of inspections had increased in recent years.¹⁸

On the other hand, these figures could reflect errors in the choice of targets. Representatives of some large companies still complain about being the targets of state control more frequently than small businesses, and they are thus unhappy with the ‘efficiency’ of the administration’s new control strategy. The same administration complains about an increasing need for more competent and experienced work inspectors, which is difficult to meet at short notice. Recent efforts by the Spanish administration show an awareness of the importance of effective internal controls in helping reduce Spain’s attractiveness for irregular migrants.

Table 9.6 *Workplace controls in Spain (2003-2006)* ↵

	<i>Inspections</i>	<i>Registered infractions</i>	<i>Sanctions</i>	<i>Affected workers</i>
2003	30,409	10,152	60,532,871	10,152
2004	34,301	13,800	84,983,608	13,800
2005	79,481	9,535	59,307,711	9,535
2006	71,631	10,981	69,532,310	10,981
2007	60,931	11,637	76,414,008	11,637
2008*	41,985	9,631	57,731,197	9,631

Source: Spanish Ministry of Labour and Immigration

* Data refer to the period from January to September 2008

Conclusion

The aim of this chapter was to evaluate the effectiveness of regularisation processes, considering the Spanish case as a model example. As I have demonstrated, regularisations in Spain provided an *ex post* legal inclusion channel for a large part of the foreign population and have had an important stabilisation function over the years. In addition, there are no clear indications that regularisations produced a pull effect, as suggested by many of their opponents. In fact, the stabilisation function of regularisation processes contradicts the generalised assumption that regularised immigrants lose their residence permits once they must be renewed. These immigrants also provided a *posteriori* necessary foreign labour when official admission policies failed.

The organisation of the 2005 regularisation, compared to previous processes, also demonstrated that clear economic rationale and harsh participatory conditions could increase the efficiency of such processes. The central role played by employers, the requirement of a work contract and the obligation to register with the social security system contributed to rationalising the process, reducing opportunities of fraud and corruption. In turn, the 2005 regularisation enabled the transfer of a large number of foreign workers from the informal to the formal economy, which also contributed to increased cash inflows to the Spanish social security system.

Overall, it would appear that regularisations in Spain have had a positive effect on the foreign population. The Spanish case shows that regularisations, far from being chaotic and randomly selected policies, may represent a suitable solution for nation-states to regain control of the presence of irregular migrants in their territories. Similarly, regularisations can also contribute to avoiding the negative social and economic consequences of irregularity in the long term. In the past two decades, regularisations have thus become a key tool for readjusting the balance between states striving for transparency, on the one hand, and immigrants trying to hide from such efforts by producing foggy social structures, on the other. However, the regulation of immigration cannot depend solely upon the efficiency of periodic regularisation processes that ‘repair’ the mismatch between the market and the state – they must be implemented in tandem with efficient control systems and recruitment programmes. Nation-states should, consequently, increase their capacity to act directly upon the variables of the ‘equation of irregularity’ (Arango 2005) in order to avoid the need for periodic mass regularisation processes.

In recent years, the Spanish government has taken important steps towards establishing an efficient control system. Regulation No. 2393/2004 introduced more resourceful recruitment tools, such as ‘shortage lists’, and streamlined the use of quotas. Legislative reform was further supported by a general improvement in border controls and labour market controls that

combat the most important magnet for irregular migration – the informal economy. At the same time, however, the government has recognised the fact that it has little chance of achieving zero irregular migration. As a result, the regulation definitively institutionalises ex post forms of transparency-building, for example, by introducing an ongoing regularisation pattern, such as the *arraigo*, which ‘corrects’ irregularity on an individual basis.¹⁹ In short, the Spanish experience shows that regularisations are neither a panacea against irregular migration nor an inefficient policy tool. They are positive measures if carried out efficiently and, most of all, if accompanied by reforms aimed at hampering the development of irregular migration systems in the long term. Such measures must include the subsequent and intensive enforcement of labour market inspections, which can also tackle the new forms of labour market ‘semi-compliance’ that have become more frequent since enlargement of the EU to the east.

Notes

- 1 I am grateful to Joaquín Arango for his helpful comments on this chapter.
- 2 Although Southern European countries have regularised the largest number of immigrants in Europe, recent research has highlighted the fact that regularisations and ex post control measures are not just a feature of Southern Europe. Northern European countries, for instance, have carried out special regularisation processes for ‘old’ cases of asylum seekers and refugees (Barbagli, Colombo & Sciortino 2004; De Bruycker, Apap & Schmitter 2000).
- 3 Data in the Padrón encompass both regular and irregular migrants. To register in it, immigrants merely have to present a valid identity document. In this way, they can obtain access to the national health system and to schooling for their children, regardless of their residency status.
- 4 In particular, several migration researchers have highlighted the importance of the informal economy as a magnet for irregular migration (see Reyneri 1998 *inter alia*).
- 5 According to such a recruitment procedure, representatives of the regional administrations, together with trade unions and employer associations, must publish a list every three months specifying jobs for which there are usually no available candidates. If an employer is looking to fill a vacancy listed in the catalogue, he or she does not need to obtain negative certification, but can immediately begin the recruitment procedure.
- 6 The requirement was reduced to three months for the agricultural sector.
- 7 These numbers refer to applications presented by 7 May 2005 at 9 PM and are therefore slightly different from the figures given in Table 9.1.
- 8 According to the National Survey on Active Population (Encuesta Nacional de Población Activa, EPA) of 2005, 37.8 per cent of migrants were employed in low-skilled jobs. We recall here that the EPA does not differentiate between regular and irregular migrants, therefore representing a useful instrument to roughly evaluate the economic integration of these two groups.
- 9 In the domestic sector, migrants supply the in kind services often unavailable in conservative welfare regimes. In this way, a cheap foreign labour force turns into the functional equivalent of welfare state provision, as observed in other countries –

- for example, Italy (Sciortino 2004). For a more detailed analysis on irregular workers in the domestic sector, see Näre (this volume).
- 10 Data for 2004 and 2005 are provided by the Spanish Ministry of Labour and Immigration (<http://extranjeros.mtin.es/es/InformacionEstadistica/Anuarios>).
- 11 The difference between both figures is considered a reasonable – albeit vague – estimate of irregular migrants resident in Spain. However, it is difficult to estimate the number of irregular migrants, and indeed, the estimates often provided by Spanish media usually show a certain degree of ignorance about the disadvantages of this statistical source. Firstly, most estimates consider only the absolute number of foreign residents without considering that EU citizens cannot be irregular, per se, and should therefore be excluded from all irregularity estimates. Furthermore, such estimates should also take into account categories such as asylum seeker or foreign student, which are omitted from the figures of legal residents. Finally, estimates often do not take into account immigrants who have applied for the renewal of an expired residence permit. Even with all these difficulties, most Spanish researchers argue that the Padrón still constitutes the basis for achieving optimum clarity on such an opaque phenomenon as the extent of irregularity.
- 12 This is also consistent with the results of studies on other Southern European countries (e.g. Italy), which demonstrate that regularisations made a positive contribution towards the inclusion of a large proportion of the foreign population (Carfagna 2002; Finotelli 2009).
- 13 For example, Peruvians were included in the group of privileged aliens due to a dual nationality convention between Spain and Peru. This exempted labour migrants from Peru from the labour market check and reduced the attractiveness of irregular migration for this community.
- 14 The results of Blangiardo and Tanturri (2004) were limited to the region of Lombardy. Other scholars also refer to a possible relationship between the Italian regularisation of 2002 and the activity of migrants' networks (see Ciafaloni 2004; Pastore 2004b; Semi 2006; Cvajner & Sciortino 2010).
- 15 The exploratory interviews with representatives of the farmers' association COAG were carried out in conjunction with a research project that sought to evaluate the effects of the Spanish regularisation of 2005.
- 16 According to Ruhs and Anderson (2006: 2), 'semi-compliance indicates a situation where a migrant is legally resident but working in violation of some of the conditions attached to the migrant's immigrant status'.
- 17 For a more detailed analysis of Romanian migration systems, see Anghel (this volume).
- 18 Information is provided by the General Direction of Labour Inspection.
- 19 These exploratory interviews were carried out with representatives from VIPs, one of the largest Spanish restaurant chains, and Acciona, one of the largest Spanish companies dealing with the management of infrastructures and renewable energy. I also interviewed Ecuadorian immigrant association Ruminahui and the vice-director of the General Direction of Labour Market Inspection of the Spanish Ministry of Labour and Immigration.
- 20 The numbers of permits issued for *arraigo* increased from about 7,000 to 62,000 in 2009. However, the numbers of residence permits issued to migrants who reported an irregular work relationship based on the *arraigo laboral*, are still very low compared to those of the *arraigo social*. The permits issued for *arraigo laboral* were 223 in 2006 and 696 in 2007, and those issued for *arraigo social*, 6,619 in 2006 and 27,618 in 2007.

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10 In lieu of a conclusion: Steps towards a conceptual framework for the study of irregular migration

Michael Bommers and Giuseppe Sciortino

This book highlights the importance of irregular migration as an empirical phenomenon, embedded in a complex matrix of social processes and mechanisms involving both sending and receiving countries and the spaces in between. These chapters, and the IMISCOE conferences and seminars where previous drafts were presented and discussed, were designed to help foster an adequate debate on how such phenomena can be analysed and explained. The studies presented here were designed and realised independently by the individual authors. Nonetheless, during the preparatory conferences and the editorial phase, we were surprised by the consistency with which certain issues and items appeared repeatedly. Although it would be too much to claim that this book signals the emergence of a cumulative research programme, it is fair to maintain that the findings published here demonstrate that one such programme is possible and feasible. We have no reason to resign ourselves to the current poor understanding of irregular migration.

To improve social science research in any field, the availability of data is a necessary but insufficient condition. In addition, we always require adequate conceptual frameworks that are able to guide our work, highlight connections, circumscribe what we still need to know and aid our sluggish imagination. In these concluding pages, we would like to elaborate a number of conceptual issues that we consider crucial to the development of the field. These reflections were stimulated not only by the empirical research published in this book, but also by other important recent studies. We have endeavoured to survey some of the themes that emerged in the course of our editorial project and to establish how they can be highlighted, interrelated and utilised for further investigations. Although we acknowledge that these conceptual issues may not entirely reflect each individual author's theoretical preferences, we believe that our reasoning, for which we accept full responsibility, is at least compatible and consistent with the findings presented (to the best of our understanding). Providing an outline of a conceptual framework is never a matter of being right or wrong. Nor is the main objective behind theoretical reflection to worship a theoretical

tradition or a given conceptual stance. Instead, it is to stimulate the search for alternatives, triggering healthy theoretical competition in the study of irregular migration.

Irregularity as a structural feature of contemporary world society

The starting point of all the studies published here is that irregular migration is not an abnormal social pathology, nor the temporary outcome of 'failed' policies. On the contrary, it is a structural feature of modern society, deeply rooted in the structural conditions of world society (Luhmann 1995; Stichweh 2000). It may be added, against nostalgia, that irregular migration is not a new phenomenon, but an endemic feature of post-war European labour mobility (Churches Committee on Migrant Workers 1974; Díaz 2004; Rinauro 2009). Taking current global interdependencies into account, it is evident that globalisation is responsible for promoting an ever-increasing density of social and cultural connections across the world's various regions. At the same time, they contribute an ever-increasing set of restrictions to the very same human mobility they trigger.

There has been a dramatic rise in global inequality over the last two hundred years. This has been particularly perceptible since the 1970s (Maddison 2001). One main consequence of the combination of economic development with increasing regional inequality is the territorial clustering of life opportunities: within the territory of some states, 'just being there' is becoming an increasingly important precondition for obtaining access to a wide range of social and economic resources. International migration refers precisely to the effort made by individuals to achieve inclusion and participation in the various social systems – and with them, access to the relevant social and economic resources – by means of geographical and border-crossing mobility. Irregular migrants do not differ from legal migrants in terms of their migratory goals and aims: they seek to realise chances of inclusion in a new society, i.e. labour markets, education, the family or health, by means of geographical mobility.

Moreover, global economic development has contributed to establishing a pervasive infrastructure and spreading a largely unified consumer culture. The very same forces have facilitated the development of a wide set of social networks, embedding long-distance ties, and have greatly increased the range of households dependent on the market economy (Massey, Arango, Hugo, Kouaouci, Pellegrino & Taylor 1998). All these factors are associated with an increased propensity for social mobility and with the development of a culture of emigration, identifying spatial mobility as a legitimate (and increasingly expected) means of social mobility. If the contemporary world were like the economists' dream – a single large self-

sustaining and self-regulating market – the development of the world economy would be accompanied by enormous migratory flows. This, however, is not the case. Although the scale of the migrant population is impressive, the most striking feature of the current global population order is that migrants represent a minuscule proportion of humankind. In fact, one of the main puzzles of migration studies is actually the *immobility* of populations (Hammar, Brochman, Tamas & Faist 1997). To understand such immobility, it is crucial to take into account the fact that the world is not only made of markets, but also of states (Arango 2000; Massey 1999; Meyers 2001; Zolberg 1993). In recent centuries, nation-states have effectively monopolised the legitimate means of spatial mobility across the world (Torpey 1998). Moreover, the economically most developed regions are also governed by liberal democratic welfare states, which are accountable to the expectations of their citizens and must distribute a wide variety of goods and services according to a logic of solidarity based on closed membership. Consequently, while the processes generating motives and characteristics of international migration are transnational in scope, the treatment of its externalities is entrusted to regionalised political systems (Bommes 1999). The expansion of open economies, their uprooting and mobilising effects and the spread of transnational social networks produce consequences that must be tackled within the framework of bounded polities (Hoerder 2002). Zolberg (1999: 83) provides a clear description of the outcome of this situation.

Although considerable attention has been devoted to variation among the contemporary immigration policies of capitalist democracies, the most striking fact about them is that, if one imagines a hypothetical continuum ranging from open to closed borders, they are all clustered very narrowly around the closed pole.

At the root of the contemporary migration system is a structural mismatch between the huge demand for entry to the most developed regions and the comparatively small supply of opportunities to enter these areas legally. It can consequently be described as a social system – a structured nexus of interdependencies – where there is an embedded tension within the cultural and social goals prescribed by an increasingly shared global culture and the means available to pursue these goals. In other words, although more individuals and households strive for social mobility through geographical mobility, an increasing scarcity of the institutionalised means is available to pursue such goals.

This is precisely a situation of ‘structural anomie’, as highlighted long ago by Merton (1949) in his classic study of social deviance. Merton argued that researchers should remember that an emphasis on social structures as regulators of individual behaviour does not imply that social

structures are not also involved in determining the circumstances in which the violation of established social norms is ‘normal’ – that is, predictable in terms of their contradictory device. He argued that both conformity and various types of deviance should be seen as adaptive strategies to deal with the structural mismatch between prescribed goals and institutionalised means in a society prizing economic success and social mobility as attainable by *all* its members.¹ If we apply Merton’s framework to the current world migratory situation, we can conclude that irregular migration is actually a specific form of innovative behaviour. It represents a creative solution to the structural mismatches inherent in modern society – i.e. the demand for labour and the available supply of workers or the demand for social mobility and the supply of opportunities for advancement. It is a strategy that implies breaking away from the use of institutionally prescribed (but obstructed) means in order to keep a communal faith and commitment to the culturally and socially prescribed goals increasingly shared in sending and receiving areas. Irregular migrants are far from being an expression of a revolutionary ‘multitude’ (Hardt & Negri 2000). Nor are they an unassimilable mass hostile to the core values and goals of contemporary (Western) societies (Huntington 2004). On the contrary, irregular migration, and the high risk and costly experiences it precipitates, are deeply embedded in the structure and core values of modern world society and are a – only seemingly paradoxical – measure of its success.²

Irregularity as a status

In order to define irregular migration as a structural feature of contemporary society, a number of concepts must first be clarified. Contrary to widespread linguistic usage, there are no irregular (or illegal) migrants, but only individuals who have – in a specific space and for a specific time – an irregular (or illegal) status. Irregularity defines neither the whole of migratory flows nor a quality of an individual. The adjective ‘irregular’ does indeed describe the migration flow as a whole, but only with regard to its interactions with states’ actions, which may deeply affect the course and structure of a migratory process (Cvajner & Sciortino 2010b). In fact, irregular migration is a case where Paul of Tarsus was absolutely correct: *where there is no law, neither is there violation* (Romans 4.15).

With a single stroke of a pen, states can turn hundreds of thousands of irregular migrants into legal foreign residents, as has happened frequently in the recent past when amnesties were declared. As documented in many chapters of this book, eastern enlargement of the European Union was also such a ‘regularisation programme’, on an unprecedented scale. The opposite, of course, can also occur, as was the case in several European countries where immigrant Jews suffered from racial laws and numerous sans

papiers were excluded from semi-legal residence in France as a result of the immigration reform of the 1980s. Consequently, irregularity is first and foremost a legal status that defines the relationship between the individual and a state (De Genova 2002).

The interaction between migrants and state policies should not, however, be thought of as a clear-cut polarity between ‘lawful’ and ‘unlawful’ residents. In legal terms, such a binary code is well defined and increasingly similar across liberal democratic countries (Plender 1998). In its everyday workings, however, similar formal policies can produce very different outcomes when applied to different contexts and categories. And even within each country, the purity of a binary code results in a complex stratification of statuses, each having different consequences. There are many layers of political definition to membership and entitlement, each of which has its own deviances. Regardless of legislators’ and lawyers’ intentions, these layers never overlap perfectly. To assess the social meaning of similar norms across various contexts, it is important to bear in mind four general factors that sharply differentiate experiences in specific locales.

The first is the number and type of social transactions where the legitimate residence of relevant parties may be significant. It may be very low in the case of everyday interaction and for many types of consumer activity, but fairly widespread with regard to accessing utilities and certain markets, such as the housing and labour markets. It may prove prohibitive in the case of political rights and access to means of legitimate geographical mobility. In many cases, legally resident foreigners may actually be treated as irregular, both in political discourse and everyday practice. In fact, social expectations that foreigners with certain characteristics may be *considered* irregular often have greater consequences on their lives than their certified legal identity. For this reason, it is important to distinguish between a social and a legal category of regularity or irregularity.

The second factor addresses the capacity to detect irregular migrants, which is largely contingent upon the general capacity of individual states to monitor and constrain social transactions over their territories. As a consequence, being irregular in a country that has no policy of compulsory identification is different from being irregular in a country that requires proof of identification for a wide range of transactions. Being irregular in a country where state officials frequently carry out identity checks differs from being irregular in places where this is rare.

A third general factor is the degree to which states exercise self-restraint in repressing irregular migration. All democratic states embrace in some fashion what scholars call ‘embedded liberalism’, a set of norms – both international and domestic – that limits the range of actions they may pursue (Hollifield 2000), even if its strength may vary considerably. The frequency and severity of judicial reviews of governmental decisions may make a considerable difference to the irregular population. Moreover,

embedded liberalism restrains states from not only assuming certain norms, but also from adopting certain practices. No Western European state, for example, has ever set up a website through which anonymous users can report foreigners suspected of being irregular, as was the case in Japan, which was achieved without significant controversy.

Finally, the analysis of policies designed to regulate the irregular population must take into account the effective capacity of states to implement their policies. Claiming the right to monitor specific social transactions is not equivalent to being able to do so. Modern Western states are characterised by a high variance in the efficiency of their administrative infrastructure, the ability to sustain action over a period of time and their capacity to overcome resistance and inertia. In this volume, the Dutch situation analysed by Broeders and Engbersen is obviously quite different from that of Naples, as described by Näre. This explains why it is often possible to find large irregular populations in states where a large set of transactions is supposedly monitored and the sanctions for irregular residence are, in formal terms, quite high.

In other words, the scope and impact of legal status cannot be derived directly from the normative description of such a relationship. The state's attempt to define *who* is the irregular migrant takes place within a variety of constraints, produced by both the externalities of other societal subsystems and the internal structure of the state's organisation. In modern society, there are structural limits to the process of converting an individual's specific status into a total identity. The legal status of foreigners is usually just one among many, and the legally asserted relevance of the irregular status for many social transactions is often challenged and, even more frequently, quietly defied. Fascinating as it may appear to critical theorists, the assumption that irregular migrants may be described as *homo sacer* (Agamben 1998) is utterly devoid of any empirical relevance. An immigrant's legal status is significant, indeed relevant, only when and if – and to the degree which – the legal reality is a constraint to actors' relationships and actions (Coutin 2000). Many of the ethnographic studies compiled here serve as a striking reminder of an old sociological truth: modern society does not provide societal inclusion on the basis of a totalising social status, but rather a bundle of differentiated conditions for participation in a variety of social contexts structured by different modes of inclusion.

In the work of differentiated societies, the combination of these factors and constraints produces a hierarchy of irregular statuses, with each stratum defined by a different degree of normative or factual protection from the monitoring and repressive capacity of states. This hierarchy becomes even more complex when the difference between residence and employment regulations are taken into account. The studies published here suggest the usefulness of viewing irregularity not as an 'on-off' condition, but

rather as a bundle of statuses variously significant in different contexts (Ruhs & Anderson 2006). On the one hand, many foreign migrants may have a stable regular residence status, but may be irregular concerning employment. The irregular migrants described in the chapters by Anghel and Brinkmeier, for example, have since become citizens of EU member states and may still participate in great numbers in irregular labour markets. It could even be the case that one of the long-term consequences of eastern enlargement will be a colonisation of certain economic niches by legal foreign residents working irregularly, effectively crowding out workers who are irregular also in terms of their presence on the territory (Cvajner & Sciortino 2009). In this case, one of the migratory consequences of enlargement may be the growing significance, as argued by Balch and Scott, of semi-compliance being a key element of contemporary irregular migration. But the argument does not apply to only citizens of the new member states. A large number of 'irregular migrants' is actually not clandestine at all, having entered with duly issued tourist visas (Finotelli 2007). Many forms of circular migration, despite violating employment laws, duly respect the time limit set for the presence on the territory of the receiving state (Morawska 2001; Morokvasic 1994). On the other hand, as when the use of fake identities is involved, irregularly resident workers may be regular workers, duly listed in company books and paying tax and compulsory insurance. In addition to fake identities, the intricacies of labour legislation and international subcontracting may further explain why this discrepancy may also be widespread. Other individuals still may be irregular with regard to accessing certain welfare provisions or some specific circumstance in their everyday lives, while being perfectly regular in terms of employment. The relationship of many foreign workers in Europe with the state is largely characterised by neither a completely legal nor illegal status, so that the distinction itself, though seemingly indispensable, becomes increasingly blurred and occasionally contested (Jandl, Hollomey, Gendera, Stepien & Bilger 2007).

It should also not be forgotten that irregularity is a very dynamic condition. Indeed, many – perhaps most – of the individuals addressed in the studies in this volume are likely to have changed status over the years, through a variety of collective and individual processes of legal mobility. In the course of the same period, new arrivals have taken their place and others have shifted into irregularity, through the loss of their previously legal status. Although Western European states have invested a considerable amount of effort into closing legal and administrative loopholes in recent decades, as documented by Broeders and Engbersen, the sheer intricacies of modern administration still ensures that the bundle of implemented norms is far from being monolithic. A certain amount of turbulence and uncertainty that renders it difficult, if not impossible, to identify and

prosecute irregular migrants is thereby created by the very same structures that endeavour to do just that.

Defining a person as an irregular resident is, by definition, an attempt at exclusion. Such exclusionary definition by a state, however, does not imply that this act may not create specific conditions for inclusion in other social spheres. The logic of the market, for example, routinely translates legal irregularity into a variation in prices. As documented in all of the studies in this volume, irregular migrants participate systematically in many sectors of European labour markets, enabling them to draw a salary and be regarded as a reliable asset within the workforce. As Gendera, Näre and Wilmes show in their studies, the presence of irregular migrant workers may even turn out to be a hidden pillar of European welfare states, particularly if they are of the Esping-Andersen's conservative type (Sciortino 2004). Markets convert exclusion from the formal labour market, and the associated social rights, into an opportunity for informal (albeit often exploited) inclusion. The same phenomena may be observed in studies, such as that presented by Finotelli, of the aftermath of regularisation programmes or of those concerning the social impact of eastern enlargement on the condition of irregular workers. They show how changes in legal status imply rapid changes in protection by the police, though not necessarily changes in other spheres of social life. Access to a legal resident status sometimes lacks significance and may even be a problem from the point of view of employers. Here, irregular status is only one of the factors that affect the actual conditions of migrants, and it is sometimes not even one of the most important ones.

Consequently, the most interesting feature of irregular migration is the evidence it provides about the condition of being fully excluded from the political system and yet still having the ability to participate in a wide range of social interactions. Despite significant practical difficulties, irregular migrants can earn a salary, find accommodation, fall in love (and sometimes reproduce and raise children), establish personal relationships, buy household appliances and even represent themselves in the public space (Cvajner 2008). And, as Wilmes' chapter shows, they may also do so thanks to the existence of a philanthropic infrastructure often supported or largely tolerated by public authorities (see also Alt 2003; Anderson 1997; Schönwälder, Vogel & Sciortino 2004).

Acknowledging this reality does not mean denying the classic view that political power and positive law are fundamental institutions of modern societies that provide basic preconditions for the functioning of social transactions. Leading a life based on a systematic evasion of political decisions and legal identities is indeed quite difficult. This is borne out by the fact that only a minority of migrants tries to remain irregular for many years. This, however, does not usually discourage migration, only settlement: many migratory projects assess opportunities in terms of a much

shorter time span. Moreover, irregular migration does not exclude a limited, but rather a considerable, number of individuals from being able to develop survival strategies. While assuming the existence of political power and legal action in their environment, these strategies are based on avoiding recognition. Long before Foucault, it had been stressed that the modern state is based on an exchange between control and recognition: those who enter the administrative apparatus accept a certain degree of control over their actions as a method of obtaining the benefit of a certified identity – one that is entrusted with interests deemed legitimate and rights deemed unconditional (Brighenti 2007). The sociological interest in irregular migration is motivated by the chance to explore the other side of this exchange, as in a natural experiment, where the avoidance of controls is pursued through the renunciation of political recognition and legal protection.

Survival strategies and ‘foggy social structures’

To understand irregular migration, it is important to have an adequate understanding of the social conditions that enable irregular migrants to live, earn a living and establish a certain level of adaptation in the receiving context. Irregular migrants are *immigrants*, relatively settled individuals pursuing a variety of objectives in a territorial context where they have arrived. Often, their irregular status implies that the spell of uninterrupted residence in the receiving context is either extremely condensed (as in circular migration) or, on the contrary, oriented to protracted informal settlement while ‘waiting for papers’. To understand the dynamics of irregular migration, we need to know more about how irregular migrants participate in the receiving context.

One of the most debilitating weaknesses of current research into irregular migration in Europe is its tendency to focus nearly exclusively on the process of border trespassing. Largely driven by the priorities of funding agencies, most empirical research has studied the process of irregular entry, often conflated with the misleading labels of ‘smuggling and trafficking’ (Black 2003; Kempadoo & Doezema 1998; Salt & Stein 1997). It has consequently paid only scant attention to the ways in which irregular migrants, once having entered a country, adapt to the new context and manage their presence within the territory. Given the currently limited differentiation of research from policy concerns – and given the EU’s policy obsession with its external borders – such a situation is not surprising. It may also be stressed that this tradition of empirical research into illegal border-crossings has acquired merit over the years. It has documented in detail the creativity of the irregular migration infrastructure and its relationship to larger migratory systems. And it has dispelled the myth of mafia-like

smuggling rings, with the stereotype of smugglers as a hierarchical, organisationally integrated crime cartel, which is empirically implausible and theoretically unconvincing (De Haas 2007; İçduygu & Toktas 2002; Jandl 2007; Van Liempt 2007; Pastore, Monzini & Sciortino 2006).

Still, if taken in isolation, the emphasis on irregular border-crossings risks causing serious confusion. Empirically, as many of the authors in this volume assert, it should not be overlooked that most irregular migrants do not step over EU borders or risk their lives in dangerous sea voyages. The bulk of irregular migration has always emerged through the use of tourist visas or visa exemptions (Anghel 2008; Finotelli & Sciortino 2006; Morawska 2001). Most of the current irregular population entered the very gates of Fortress Europe legally.³ Moreover, it is politically appealing to consider the phenomenon of irregular migration as a consequence of the relaxed enforcement of border controls. But it is also empirically misleading and conceptually weak. It downplays the structural preconditions, embedded in the very same fabric of the *receiving* country, that facilitate the establishment of a large irregular population and that sustain the continuity of new arrivals.

To develop an adequate understanding of irregular migration systems, we need to know more about the social precondition for unauthorised settlement in the receiving countries. We should learn to analyse the social structures that emerge from irregular migration and settlement processes as products of social innovation in Merton's sense. Significant irregular flows of migrants will never develop into a fully transparent, Bentham-like society (Van der Leun 2003; Slimane 1995). We propose that these social structures should be interpreted as 'foggy social structures', an inter-related, complex phenomenon embedded within the recesses of the imagined 'transparent society'. The notion of 'foggy social structures', one of the main background concepts in the studies by Broeders and Engbersen and by Wilmes, was developed in the course of numerous debates related to this project as a – literal – coming to terms with the consequences of the emergence of a mosaic of irregular populations who are able to adapt to local conditions by devising specific survival strategies and relying on extended informal structures.

Irregular migrants produce 'social fog' as they evade control and identification by hiding from the state in their modes of working and living. The extent to which they are required to do this varies from country to country, depending on the risk of detection: but the logic seems to be similar. The creation of irregular lifestyles, taking into account exclusions from important resources, necessitates the development of alternative social connections, including those required for labour relations, renting a flat and access to health care. These types of arrangements are built around the empirical possibilities of utilising spaces and resources in a way that neutralises, to a certain degree, the system of certified identities, creating a *recognisable*

regime of low visibility and establishing temporary social orders that may operate as functional equivalents to administration and law.

We call these key elements of the current migratory situation *foggy social structures* to highlight their ambiguities and contradictions. Foggy social structures are based on the systematic attempt to escape the likelihood of detection by creating conditions that lend themselves to, or create, a camouflaged existence. The case of irregular employment is a good example of this process. The goal of most irregular immigrants is to realise the condition to generate an income and to secure the minimal conditions for biological and social survival. Their very presence within the social fabric of receiving countries is proof that a significant proportion of irregular migrants succeed in achieving such an aim. The EU and its member states, driven by the effort to maintain territorial sovereignty and their welfare regimes, attempt to intervene in these aims, making them more difficult and costly and reducing migrants' chances of settlement. But these sovereignty claims and welfare regimes, precisely, have become a substantial precondition for irregular migration: those who enter informal relations within labour markets to avoid taxes, social security contributions and labour regulations internally escape from the 'transparent welfare society' (in EU phrasing: the region of 'security, freedom and justice'). Informal or shadow economies represent the primary targets for irregular migrants, both of which have experienced a remarkable growth. They build an alliance to hide their transactions from the state and its effort to produce transparency by means of observation and knowledge production. An endemic side effect is precisely the production of foggy social structures and informal spaces, functionally operating through the avoidance, camouflage and destruction of transparency.⁴

These social structures function when they regulate a social space characterised by low visibility that does not, however, become completely invisible. In this way, migrants minimise their visibility to the control mechanisms of the state, but maintain sufficient visibility to enable social recognition. The humanitarian emphasis on the lack of rights of irregular residents as a matter of being 'invisible' has the limit of conflating various kinds of political and social recognition in a single monolith. The metaphor of fog appears to be helpful because it does not assume that irregular migrants are 'invisible', completely hidden from any form of state knowledge. As stated in the previous pages, only a very limited section of the irregular foreign population in the EU is made up of individuals who have completely avoided any interaction with state structures in their border-crossing and settlement. We refer instead to a set of social structures that are able to provide social realities where the use of certified identities is contingent upon premises different from those intended by state authorities. Specific street corners or neighbourhoods might be known to a pool of prospective employers as the place to find temporary workers – at the same time, they

are difficult for officials and labour inspectors to recognise as illegal. Employer referrals might be able to provide information about competent plumbers or reliable care workers while tactfully avoiding any mention of their legal status. Sections of parks or railway waiting rooms might be known as good places to meet co-nationals and establish social links, with a public profile that is anonymous and of a sufficiently mixed crowd, both being factors that discourage police raids. Special cards issued by charitable clinics might enable them to follow their patients' health and keep track of their medical records without reference to their legal identity. Police officers may learn to distinguish between 'deportable' and 'undeportable' irregular workers, and plan their raids accordingly. All of these examples, along with the many others discussed in this volume, are evidence of the role played by foggy social structures in the establishment and maintenance of irregular migration flows.

In many respects, the possibility of irregular migration is not simply a consequence of the sociological impossibility of a fully transparent society, but rather a real consequence of the imagination of a fully transparent society. The extension and concentration of the effort to secure transparency certainly varies from country to country, but in any social setting, there are always spaces where the consequences of institutionalised identification can be evaded. We should, however, learn to understand irregular migration and settlement processes, and their effects, as a systematic outcome of the political version of the 'knowledge-based society' – i.e. the claim to manage transparent society based on a combination of rights and duties with full knowledge and systematic control.

The survival strategies of irregular migrants are based on both the systematic use of social space created by the differentiation of society and by the creative adaptation of other social resources that compensate for the lack of inclusion in the political system. In the studies presented here, the authors have focused their attention on how irregular migrants enter the social fabric of the receiving country, how they establish their own structural presence and appropriate both positive and negative features of their situation as potential resources. They have also demonstrated how irregular migratory flows interact with specific features of the receiving society, from the structure of its shadow or informal economy to the dynamics of its housing market, from the differences in the traditions of policing and monitoring to the varying powers of churches and philanthropic agencies. Irregular migration is strictly intertwined with the arenas and structures of informality in receiving societies (Samers 2004, 2003). In fact, irregular migration flows rely on the existence of a variety of informal institutions in the receiving society (Engbersen 2001; Engbersen, Van San & Leerkes 2006; Van Meeteren, Engbersen & Van San 2009). While these institutions usually exist prior to the development of migration flows, the active

presence of irregular migrants modifies their extension, feature and structural relevance (Jordan & Düvell 2002; Reyneri 1998).

Acknowledgement of the significance of foggy social structures should not be interpreted as praise for them. As documented in this book, irregular migrants very often live in a world of uncertainty, speculation and mistrust. The level of risk endured by many irregular migrants is staggering. The frequency and severity of abuse they suffer can be inconceivable. It also seems likely that the humanitarian risks of irregular migration are becoming more diffuse and severe with the increased tightening of immigration controls (Gryzmala-Kazłowska 2005). Without a doubt, being forced to rely only on foggy social structures often leads to ghostly biographies. What is argued here, rather, is that the process of irregular migration is far from being a sequence of chaotic steps and random decisions. It is actually a very structured condition – the survival of irregular migrants demands much more social capital and more entrepreneurial skills than observers may appreciate from the outside (Cvajner & Sciortino 2010a). Initially, many of the features of irregular migrants' survival strategies may seem difficult to understand. Evidence presented here, however, shows that there is a method to what some see as the madness. This book sheds light on the processes that occur to nurture and support places, processes and sequences of social interaction in which irregular migrants may participate and be included, as an alternative to, and protected from, the system of institutional identities. What we term 'foggy social structures' form the connection between irregular migration and broader processes of informality within any social fabric. Studying irregular migration may consequently turn out to be strategic research material for our adequate understanding of not only international migration, but also the social organisation of Western European societies.

Notes

- 1 Merton assumes that modern society can be described by its structural mismatches. As an example, he refers to the education system, which repeatedly disproves the expectation that 'anybody' can succeed. Instead, the education system has evolved into one of the main social systems for the reproduction of social inequalities. Stichweh (2007) refers to this as one of the structural anomalies of world society.
- 2 In a similar vein, Hoffmann-Nowotny (1981, 1973) was referring to Merton when he argued that international migration can generally be interpreted as the transfer of structural tensions resulting from the mismatch of increasingly generalised cultural goals and the institutionalised means to attain these goals in the countries of origin.
- 3 It may be even stressed that, in the mundane reality of state practices, the real concern is more with irregular *immigration* than with irregular migration. While the policies usually place great emphasis on border controls, the often lenient treatment of transit migration directed to other countries is convincing proof that the real policy goal is to prevent the settlement of unwanted migrants.

- 4 Modes of transparency-building, i.e. state control, should not be misinterpreted merely as restrictions; they are also, at times, enabling conditions: the successfully unlocked opportunity to bypass control opens up opportunities for employment and income, which irregular migrants seize, based on their individual and social resources and capacities (Bommes 2006). Migrants are not just victims, but also actors with a degree of social agency. The extent to which irregular migration and the lifestyles of migrants are influenced by state control can be perceived as being both potentially restrictive and enabling.

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