

SOCIAL CONTROL AND JUSTICE

Crimmigration in the Age of Fear

Edited by

MARIA JOÃO GUIA, MAARTJE VAN DER WOUDE & JOANNE VAN DER LEUN

eleven
international publishing

Published, sold and distributed by Eleven International Publishing

P.O. Box 85576

2508 CG The Hague

The Netherlands

Tel.: +31 70 33 070 33

Fax: +31 70 33 070 30

e-mail: sales@budh.nl

www.elevenpub.com

Sold and distributed in USA and Canada

International Specialized Book Services

920 NE 58th Avenue, Suite 300

Portland, OR 97213-3786, USA

Tel: 1-800-944-6190 (toll-free)

Fax: +1 503 280-8832

orders@isbs.com

www.isbs.com

Eleven International Publishing is an imprint of Boom uitgevers Den Haag.

ISBN 978-94-90947-78-1

© 2013 Maria João Guia, Maartje van der Woude & Joanne van der Leun (eds.) |
Eleven International Publishing

This publication is protected by international copyright law.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publisher.

Printed in The Netherlands

CONTENTS

	SOCIAL CONTROL AND JUSTICE: CRIMMIGRATION IN THE AGE OF FEAR <i>Juliet P. Stumpf</i>	7
1	CRIMMIGRATION, SECURITISATION AND THE CRIMINAL LAW OF THE CRIMMIGRANT <i>Maria João Guia</i>	17
2	A REFLECTION ON CRIMMIGRATION IN THE NETHERLANDS <i>Joanne van der Leun & Maartje van der Woude</i>	41
3	ENTERING THE RISK SOCIETY: A CONTESTED TERRAIN FOR IMMIGRATION ENFORCEMENT <i>Robert Koulisch, Ph.D.</i>	61
4	THE CHANGING LANDSCAPE OF THE CRIMINALISATION OF MIGRATION IN EUROPE: THE PROTECTIVE FUNCTION OF EUROPEAN UNION LAW <i>Valsamis Mitsilegas</i>	87
5	DISAPPEARING RIGHTS: HOW STATES ARE ERODING MEMBERSHIP IN AMERICAN SOCIETY <i>Dr Doris Marie Provine</i>	115
6	THE IMPACT OF IMMIGRATION ENFORCEMENT OUTSOURCING ON ICE PRIORITIES <i>Michele Waslin</i>	127
7	THE SPIRIT OF CRIMMIGRATION <i>António Pedro Does</i>	143
8	CRIME AND IMMIGRATION: THE DISCOURSES OF FEAR AS A THEORETICAL APPROACH TO CRITICAL EVALUATION <i>Débora da Cunha Piacesi</i>	157
9	RECORDED CRIME COMMITTED BY MIGRANT GROUPS AND NATIVE DUTCH IN THE NETHERLANDS <i>Roel Jennissen</i>	177

10	THE FOREIGN-BORN IN THE CANADIAN FEDERAL CORRECTIONAL POPULATION <i>Derrick Thomas</i>	199
11	THE IMPACT OF SAFETY ON LEVELS OF ETHNOCENTRISM <i>Tuba Bircan</i>	231
12	THE CONTROL OF IRREGULAR MIGRANTS AND THE CRIMINAL LAW OF THE ENEMY <i>José Ángel Brandariz García</i>	255
13	CRIME AMONG IRREGULAR IMMIGRANTS AND THE INFLUENCE OF CRIMMIGRATION PROCESSES <i>Arjen Leerkes</i>	267
14	THE WIDE SCOPE OF IMMIGRATION IN THE AZORES AND ITS RELATIONSHIP WITH CRIME <i>Maria da Graça Borges Castanho</i>	289
15	IRREGULAR IMMIGRANTS AND THEIR IRISH CITIZEN CHILDREN <i>Alan Desmond</i>	303
16	THE TREATY OF PRÜM AND UNAUTHORISED MIGRATION <i>João Pedro C. Alves de Campos</i>	317
	ABOUT THE AUTHORS	333
	CINETS GROUP	339

THE CONTROL OF IRREGULAR MIGRANTS AND THE CRIMINAL LAW OF THE ENEMY

Notes on the exclusion and inclusion in the field
of penal policy in Spain

José Ángel Brandariz García

1 INTRODUCTION

During the first decade of the 21st century, the Spanish legal system, following a common trend in all EU states, implemented a significant set of measures to fight irregular migration. In this realm of control policies, the (administrative) expulsion (Section 57 of the Spanish Immigration Act), and the internment in detention centres for migrants (Sections 62 *et seq.* Spanish Immigration Act) became central measures. In its respective field of criminal law, the enforcement of the penal expulsion (Section 89 Penal Code) was remarkably extended during this period, and any sort of cooperation with irregular migration was severely criminalised (Section 318bis Penal Code). Despite the introduction and enforcement of this set of control measures, Spain experienced during the first decade of the century a migration flow unparalleled in the entire EU. The foreign population increased almost six fold over the decade (from a percentage

of 2.2 of the total population in 2000 to a percentage of 12.1 in 2010),¹ exceeding the rates of foreign residents of other major EU countries. Evidently, such an important phenomenon entailed a vast amount of irregular migration; indeed, irregular migration remained a constant reality throughout the period. Despite several processes of regularisation, reliable studies estimate that by end of 2010 the number of irregular migrants in Spain was almost one million people.

Given the actual enforcement of the measures of migrants' control implemented during the period, it should be analyzed whether we really see here an expression of what in continental Europe is commonly named (*Criminal*) Law of the Enemy. To that end, we need to understand, from a perspective of the Political Economy of Punishment, the meaning of the complex relationship between the alleged exclusion/inclusion dichotomies in the context of the penal policies established in Spain against irregular migrants.

2 THE CONTROL OF IRREGULAR MIGRANTS AS LAW OF THE ENEMY

A sector of the Spanish literature has pointed out that migrant control policies are based on the logic of exceptionality (Iglesias, 2008; Pérez Cepeda, 2006; Silveira Gorski, 2010). Moreover, several authors have pointed out that the administrative and criminal rules of control of these subjects are an expression of the so-called Law of the Enemy. (Cancio Meliá, 2005; Daunis Rodríguez, 2009; Pérez Cepeda, 2007; Portilla Contreras, 2007, p. 149).

These perspectives are consistent with other analyses which have gained momentum in the recent past. In this regard, we should make mention of the metaphor of the *non-person*, coined by Dal Lago (2004). Moreover, it is necessary to take account of the renewal of the analysis on the *State of exception* made by Agamben (1998), based on concepts such as *homo sacer* or *bare life*. The Italian

1 All the data related to January the 1st each year, may be seen in the following table:
Table 1: Foreign Population in Spain (2000-2011)

Year	Foreign Population (Total)	Foreign Population (Percentage of the total population)	Year-on-Year Evolution (Total amount)
2000	0.923 million	2.2%	+ 23.3%
2001	1.370 million	3.3%	+ 48.4%
2002	1.977 million	4.7%	+ 44.3%
2003	2.664 million	6.2%	+ 34.7%
2004	3.034 million	7.0%	+ 13.8%
2005	3.730 million	8.4%	+ 22.9%
2006	4.144 million	9.2%	+ 11.0%
2007	4.519 million	9.9%	+ 9.0%
2008	5.268 million	11.4%	+ 16.5%
2009	5.648 million	12.0%	+ 7.2%
2010	5.747 million	12.2%	+ 1.7%
2011	5.730 million	12.2%	- 0.3%

Source: National Statistics Institute (INE)

philosopher develops an appealing interpretation of internment centres for migrants as a contemporary expression of the concentration camp, as the place in which power and (bare) life are confronted, by suspending all legal mediation. Other authors have also developed this insight (Brighenti, 2009; Cuttitta, 2007; Žizek, 2009).

This kind of perspective invites us to explore, in a more in-depth manner, the complex rationales underlying the control of migrants and, in particular, their expressions in the field of sanctions. This should be done, however, without losing sight of the recent criticisms expressed in relation to Agambenian exceptionalism. This approach has been criticised – appropriately – for an excess of one-dimensionality in the analysis of bare life, and in the relationship between power and *homo sacer*. (Butler & Spivak, 2007; Dean, 2007; Hardt & Negri, 2009; Rahola, 2010).

From this point of view, we should pay particular attention to the several arguments made to support the conclusion that the rules concerning migrant control are an expression of the Law of the Enemy. Among them, it is necessary to mention the argument which points out that the responsibility of migrants seems to be based on ontological features, to the extent that the subject is not responsible for his behaviour, but for his own condition (Caputo, 2006). However, it needs to be highlighted that in this case, the juridical status of the migrant, which contributes towards labelling him or her as an enemy, is attributed to him or her by the state, which places the subject outside the social order (Daunis Rodríguez, 2009). In so being, this construction of the subject shows an operation of power certainly more complex than the one analyzed by Agamben's theory (Butler & Spivak, 2007).

Nonetheless, it seems particularly suitable to also analyze the existence of a Law of the Enemy from the perspective of the aims of the sanctions reserved for migrants under the regulations. Indeed, according to the theory of Jakobs (2006), one of the key elements which characterise the Law of the Enemy is the inability of communication between the state – and community – and the criminal enemy; therefore, the sanctions applied to him or her may only pursue a goal of exclusion and incapacitation.

It is precisely from this standpoint that the thesis of the Law of the Enemy in relation to the field of migrant control may be challenged. However, the challenge is not apparent at all. Indeed, the sanctions established for migrants, such as (administrative and criminal) expulsion, internment or imprisonment followed by expulsion have incapacitation as their primary goal (Navarro Cardoso, 2006; Pérez Cepeda, 2006; Santoro, 2004; Portilla Contreras, 2007). In fact, what we may see in these sanctions, and especially in expulsion, is a paradigmatic expression of exclusion in contemporary criminal law, even more than imprisonment (Resta, 2006). Therefore, these sanctions can be analyzed as a way of treating of what is understood as human surplus; in other words, those

subjects who are not socially useful, and who – in contrast to citizens – can be placed in a realm outside the social body.

3 CHALLENGING THE *LAW OF THE ENEMY* THEORY

3.1 *Selective incapacitation*

In order to interpret the functions of the policy of immigration control, and particularly the rationale which underlies (administrative and criminal) expulsion, it is crucial to understand that what we face in this point is just merely selective incapacitation (De Giorgi, 2000). It cannot be understood otherwise, since the experience of recent decades in Spain, and elsewhere in Europe, shows that, frequently, internment is not enforced, and (administrative and criminal) expulsion is not executed, even when it is enforced (Calavita, 2003).

In the Spanish case, this situation is less apparent in the case of internment, in which selectivity is crucially determined by logistical reasons. Yet, to the extent that expulsions are commonly not carried out, internment has not tended to work as a pre-trial/pre-decision measure in this decade, but actually as a sanction (Martínez Escamilla, 2009).

Nonetheless, the selective working of the sanction measures for migrants is apparent in the case of expulsion, as shown in the available data. As far as penal expulsion is concerned, even if the data show some growth over the past decade, it does remain an institution of very limited enforcement.

In effect, in contradiction to the regulation of expulsion as an almost compulsory measure for irregular migrants sentenced to prison, its enforcement has been fairly marginal all throughout the last decade. For ease of reference, in recent years the expulsions actually enforced have just reached 5-6% of the prison sentences applied to non-EU migrants.²

The trend in relation to the effective execution of penal deportations seems to have changed in recent years. While its enforcement by the courts continues

2 The data is shown in the following table:

Table 2: Prison sentences and (criminal) expulsion measures enforced against non-EU migrants (2007-2010)

Year	Prison sentences	Criminal expulsion measures	Percentage of expulsions in relation to prison sentences
2007	25,663	1,393	5.4%
2008	27,915	1,919	6.8%
2009	30,073	1,953	6.5%
2010	28,928	1,951	6.7%

Source: INE (National Statistical Institute, Spain)

to be limited, its effective execution has increased as a result of the creation of the Brigade for the expulsion of foreign criminals (BEDEX) within the National police. In this way, the latest available data show that even expulsions enforced years ago are now being executed. Consequently, criminal expulsions have increased notably in recent years.³ Nonetheless, the situation in the case of administrative expulsion is still more striking. While the data in this field are subject to official confidentiality (Calavita, 2003), some figures are known. First, the number of administrative expulsions remained fairly stable during the first half of the decade, but fell remarkably in the second half. Second, the number of executed administrative expulsions is insignificant in relation to any estimate of the numbers of the population of irregular migrants (Pajares, 2010; Romero, 2010). Moreover, what is most striking in this field is that executed expulsions never go far beyond 1/3 of those actually enforced (Monclús Masó, 2008; Terradillos Basoco, 2007), even less in relation to certain nationalities. Yet, this is not a Spanish exception, but a situation common to many EU countries (Palidda, 2008; Van Kalmthout, Hofstee-Van der Meulen & Dünkkel, 2007).

In short, these data show that the exclusionary rationale of the expulsion sanction actually works in a sharply selective way; selectivity manifested especially at the moment of sentencing in criminal expulsions, and at the moment of execution in administrative expulsions.

Criminal expulsions data for 2010 may be seen in the following table:
Table 3: Criminal expulsion measures enforced in 2010 (by continent)

Continent	Prison sentences	Criminal expulsion measures	Percentage of expulsions in relation to prison sentences
Non-EU Europe	1,327	83	6.2%
America	12,595	559	4.4%
Africa	13,594	1,156	8.5%
Asia	1,178	106	9.0 %
Australasia	234	47	20.0 %

Source: INE (National Statistical Institute, Spain)

3 The data of (administrative and criminal) expulsions actually executed in the last decade may be seen in the following table:

Table 4: Executed expulsions (total and year-on-year evolution)

Year	Total expulsions	Year-on-year evolution	Administrative expulsions	Criminal expulsions
2002	12,159		--	--
2003	14,104	+ 15.9 %	--	--
2004	11,014	- 21.9 %	--	--
2005	11,002	- 0.1 %	--	--
2006	11,567	+ 5.1 %	--	--
2007	9,467	- 18.1 %	--	--
2008	10,616	+ 12.1 %	5,052	5,564
2009	13,278	+ 25%	5,687	7,591
2010	11,454	- 13.7%	3,258	8,196
2011	11,358	- 0.8%	2,244	9,114

Source: Spanish Home Office

3.2 EXPLAINING THE SELECTIVITY OF INCAPACITATION

There are several motives that may explain this remarkable selectivity or, in other words, the apparent failure of the expulsion policy. As far as criminal expulsion is concerned, we should mention the generalised exclusion of the scope of its application to drug trafficking offences (García España, 2007). However, even taking this motive into account, the aforementioned data allow us to conclude that Spanish courts have been rather reluctant to enforce the sanction, even despite the fact that it is almost compulsory (Monclús Masó, 2008).

However, the selectivity in this domain requires a more detailed explanation. In doing this, factual reasons should firstly be mentioned. In this regard, we must take account of the difficulties of identification, due to lack of documentation or concealment of identity (García España, 2007; Silveira Gorski, 2010). It is precisely to avoid these problems that the Schengen Information System (SIS II), as well as the Visa Information System (VIS) and Eurodac, have collected the data of millions of migrants and asylum-seekers (Guild, 2009; Piazza, 2008). Among the factual reasons, we could also include the lack of cooperation in the identification of the country of origin (Melossi, 2003). This circumstance, and the reluctance of the states of origin to accept deportations, cannot be disassociated from the political problems created for the governments of these countries by the acceptance of expulsions, due to their widespread social rejection (Romero, 2008). Migrations are certainly useful for these countries since they reduce social tensions and unemployment rates and, by the same token, they increase foreign exchange remittances (Cuttitta, 2008).

Second, legal reasons should be included amongst the reasons for the shortcomings of the system of internment/prison-expulsion, basically embodied in the traditional lack of readmission agreements with countries of origin (Monclús Masó, 2008). This circumstance explains why migration policies of several EU states have focused on new and/or more extended agreements of readmission in the last five years. This has been also the case of Spain from the first Africa Plan (2006-2008), since development aid, technical assistance, quotas for regular migration and – to a certain extent – political and trade relations, have been conditional on the conclusion of agreements in the field of the fight against irregular immigration and the acceptance of deportations (Fernández Bessa & Manavella Suárez, 2010; Romero, 2008).

Third, the practical unsustainability of the model aimed at making internment, prison and expulsion the only sanctions for the offences committed by irregular migrants is also due to logistical and financial reasons. Indeed, the high costs of internment/imprisonment and expulsion prevent their compulsory enforcement and execution, as established by the law (Díaz y García-Conlledo, 2007; García España, 2007).

Since all these reasons, particularly those of a financial nature, are of great importance, it is likely that they are not able to comprehensively explain the prominent gap between policy design and practical reality in this domain. After all, we must remember that immigration control is a key public policy in Spain and other EU countries. Therefore, in order to understand this situation, and the actual entity of the exclusionary goals of this control system, an additional remark is needed. Thus, the interpretation of the situation should work as – metaphorically speaking – a certain *hermeneutic of suspicion*, which inquires into the meaning underlying the actual enforcement and execution of the sanctions of expulsion and internment. From this point of view, it could be claimed that what gives meaning to the analyzed dysfunction is the lack of willingness of the several field agents to strengthen the control of migrants, because this could lead to the risk of dramatically reducing migratory flows which have been performing economic and social functions of extraordinary prominence (Brighenti, 2009; Rodríguez, 2003; Romero, 2010).

Some of these functions are substantially political, such as the legitimisation of state institutions, the enhancement of social cohesion, or the strengthening of alleged national identities. However, the seeking of these goals – as an expression of a neo-conservative criminal policy – has been offset by the pursuit of other socio-economic aims, which recommended softening control policies. Hence, the practical reality of control policies of migrants, in which apparent shortcomings in the enforcement and execution of exclusionary measures were manifested, has been fairly consistent with a neo-liberal and managerial criminal policy. Such policy recommends, in line with Law and Economics theories (Foucault, 2008; De Giorgi, 2000), prosecuting and punishing only to the extent that this continues to lead to greater benefits than costs. This seems to be precisely the case in the field of migrant control. A managerial criminal policy limits the severity of sanctioning, continuously at odds with the sovereign aims of border control.

The first – and most obvious – key utility of the migratory phenomenon, irrespective of its regularity, is the demographic one (Aparicio Wilhelmi, 2010; Romero, 2010). The fall of the birth rate in Spain during the last decades of the 20th century brought about a severe slowdown in population growth and the consequent population aging, prompting concerns, at least as regards the future sustainability of the welfare system (González, Conde-Ruiz & Boldrin, 2009; Pajares, 2010; Pajares, 2010). Regarding this situation, the contribution of migration flows has been extraordinary. Indeed, the majority (4.785 million people) of the significant growth experienced by the resident population in Spain in the 2000-2010 decade (6.451 million people, equal to 15.9%) was accounted for by foreign nationals. This growth was even greater than the one that happened during the period of the second half of the 20th century known as the *baby boom*. The relevance of migration flows in Spain is not exhausted in terms of demographic utility. The functionality of the Spanish migratory experience of the past decade has also been extraordinary in terms of economic growth, a fall in

unemployment and balancing the public budget, at least before the recession started in the second half of 2008.

First, the economic growth experienced in Spain during the turn of the century was due, to a remarkable extent, to the arrival of major contingents of migrants – regular and irregular alike. In fact, it has been estimated that 38 per cent of the increase in GDP between 2000 and 2006 may be attributable to this arrival (Conde-Ruiz, García & Navarro, 2008). Moreover, in the absence of such migratory flow, Spanish per capita income would have declined markedly during the period (Servicio de Estudios de Caixa Catalunya, 2006).

Second, the significant arrival of migrants did not lead to an increase in unemployment, but to a sharp decrease (from 15.2% in 1999 to 8.3 % in 2006), despite the prominent growth of the labour force (more than 5 million between 1999 and 2006) (Colectivo Ioé, 2008), and despite the fact that the employment-to-population rate of migrants is clearly higher than that of the Spaniards (Pajares, 2010). The arrival of migrants contributed to a drop in the unemployment rate because it provided the kind of workforce flexibility needed to produce economic growth and to increase the labour demand (Romero, 2010). This flexibility took the form of a very high rate of temporary jobs, wages far below those of Spanish workers, longer working hours, greater geographical mobility, the reinforcement of the productive sectors with labour shortages, and lower labour unrest – due to the vulnerability of the migrants (Calavita, 2003; Pajares, 2010). Furthermore, as regards flexibility and the rise of the labour demand, we should also mention the prominent presence of migrants in the different segments of the informal economy (Pajares, 2010).

Third, the migratory flows led to a public budget surplus during the period, since they produced more revenues than expenses (Colectivo Ioé, 2008). The reason for this is twofold. On the one hand, as a result of high levels of irregularity and precariousness, migrants received fewer benefits linked to employment status (unemployment, disability, retirement). On the other hand, as a result of the youth of its demographic structure, but also of the irregularity, migrants used public health services to a lesser extent than Spaniards.

All this demonstrates a context that is more complex than the one shaped by the theory which considers that migrants constitute a 'reserve army of labour' (Terradillos Basoco, 2006). Indeed, the intensive arrival of migrants, their effective insertion in terms of employment and, to a certain extent, the actually existing border policies, may only be understood from the perspective of the transformation of the Spanish economic system in line with the post-Fordist model (Boyer & Durand, 1998; Gorz, 1998). This model requires the availability of a flexible workforce; that is precisely why migrants become essential (Calavita, 2005; Rodríguez, 2003; Sassen, 2007). In short, there has been neither a mere substitution of Spanish workforce by the migrant workforce, nor a responsibility of the newcomers for the degradation of labour conditions, but a deep and

comprehensive transformation of the production system which allowed for the massive economic insertion of migrants (Aparicio Wilhelmi, 2010).

In the case of migrants, this economic insertion worked in line with the new *workfare* regime, which set up an ethnic segmentation of the labour market, as medium or high value-added activities tending to be reserved for the Spanish workforce (Calavita, 2005, Rodríguez, 2003). Spaniards are far better represented in sectors with better wages and working conditions, such as industry, public administration, education, health, or financial and real estate services. On the other hand, the representation of migrants is higher in services with lower quality jobs, such as domestic services, retail sales, catering or construction (Colectivo Ioé, 2008). As a result, the concentration of migrant workers in the lowest categories produced a clear upward mobility of Spanish workers (Pajares, 2010; Romero, 2010).

From this analytical perspective, Spanish migration policy, including its features in terms of control, may be read as an outstanding apparatus of subjection, aimed first and foremost at the coercive subjugation of the migrant population to a barely attractive employment regime.

4 CONCLUSION: ON EXCLUSION AND SUBORDINATE INCLUSION

In sum, this socio-economic analysis highlights the real complexity of the current migration policies and, in particular, of its disciplinary components. While the sovereign and neo-conservative model of border control promoted exclusionary policies, its practical application showed a more heterogeneous context. Thus, while sanctions as (administrative and criminal) expulsion, internment or imprisonment are aimed at incapacitation, the thorough rationale of the migrant control policy is certainly more complex. It includes elements of deterrence of a specific group (the migrants), and even aims of normalisation.

In effect, as various scholars have pointed out in the recent past, the migrant control policy does not speak only of exclusion, and even less of the flat model of the Agambenian *homo sacer* (Mezzadra & Neilson, 2008; Rahola, 2010), but – above all – of differential and subordinate inclusion (Calavita, 2003; Mezzadra & Neilson, 2008; Rahola, 2010; Romero, 2010).

Consequently, the claim of a solely exclusive immigration control policy is a flawed insight. The border actually works according to logic of selective filtering (Brighenti, 2009; Huysmans, 2006; Mezzadra & Neilson, 2008). Hence, migration policies are not aimed at putting an end to irregular migratory flows, but at managing them (Mezzadra, 2005; Romero, 2010); facilitating the mass utilisation of the migrant workforce in conditions of utmost flexibility, according to the requirements of an increasingly post-Fordist production system.

In short, there are good reasons to state that Spanish statutes concerning immigration control constitute an expression of the (criminal and administrative) Law of the Enemy, given the exceptional forms that deal with migrants' offences, the exclusive orientation of the sanctions and the shaping of a subjective pattern which, at least to a certain extent, can be labelled as *non-person*.

However, the qualification of all this as an expression of the Law of the Enemy is, no doubt, insufficient. A more comprehensive analysis of migration policies and migrant control devices shows a less one-dimensional context. The overall sense of these policies and tools incorporates elements of normalisation, subjugating migrants to a condition of remarkable economic, social, cultural and political subordination. From that perspective, where normalisation operates primarily in the economic realm, a claim may be made, in Foucaultian terms, for the (neo)-disciplinary character of these control policies (Mezzadra, 2005; Palidda, 2008; Rodríguez, 2003). However, unlike disciplinary logic, the normalisation here does not operate as a form of reintegration of each individual. Far from it: the expulsion, internment or imprisonment of migrants is not aimed at the disciplining of the particular subject, but at the normalisation of the whole migrant population (Calavita, 2003; Cuttitta, 2007; Romero, 2010), in order to subjugate them to the conditions of subordinate inclusion. In this sense, recalling the Foucaultian distinction between disciplinary devices and bio-political power (Foucault, 1978), it may be stated that in the field of control and sanction of migrants what we may see, rather than an expression of the *Law of the enemy*, is a wide bio-political apparatus for the government of migrants' lives, as a risk population group (Pérez Cepeda, 2007; Portilla Contreras, 2007; Dean, 2007; De Giorgi, 2002; Foucault, 2007; Rose, 1999; Valverde, 2008).

REFERENCES

- Agamben, G. (1998). *Homo Sacer: Sovereign power and bare life*. (D. Heller-Roazen, Trans. from Italian). Stanford: Stanford Univ. Press.
- Aparicio Wilhelmi, M. (2010). Desde los márgenes. Diversidad cultural, democracia e inclusión social. In S. Palidda, J.A. Brandariz García, A. Iglesias Skulj & J.A. Ramos Vázquez (Eds.), *Criminalización racista de los migrantes en Europa*. Granada: Comares, pp. 57-78.
- Boyer, R., & Durand, J. P. (1998). *L'Après-Fordisme*. Paris: Syros.
- Brighenti, A.M. (2009). *Territori migranti. Spazio e controllo della mobilità globale*. Verona: Ombre Corte.
- Butler, J., & Spivak, G.C. (2007). *Who sings the nation-state?* London: Seagull Books.
- Calavita, K. (2003). A 'reserve army of delinquents'. The criminalization and economic punishment of immigrants in Spain. *Punishment & Society*, 5, 4.
- Calavita, K. (2005). *Immigrants at the Margins*. Cambridge: Cambridge Univ. Press.
- Cancio Meliá, M. (2005). La expulsión de ciudadanos extranjeros sin residencia legal (art. 89 CP). In VV.AA. *Homenaje al Profesor Dr. Gonzalo Rodríguez Mourullo*. Pamplona: Thomson-Civitas, pp. 183-215.
- Caputo, A. (2006). Introduzione. Verso un diritto penale del nemico? *Questione Giustizia*, 4.
- Colectivo Ioé (2008). *Inmigrantes, nuevos ciudadanos. ¿Hacia una España plural e intercultural?* Madrid: Funcas.

- Conde-Ruiz, J.I., García, J.R. & Navarro, M. (2008). Inmigración y crecimiento regional en España (Working Paper). Fedea-Banco Popular.
- Cuttitta, P. (2007). *Segnali di confine*. Milano: Mimesis.
- Cuttitta, P. (2008). Los acuerdos de 'cooperación' y el nuevo régimen fronterizo euroafricano. In VV.AA., *Frontera Sur. Nuevas políticas de gestión y externalización del control de la inmigración en Europa*. Barcelona: Virus, pp. 83-108.
- Dal Lago, A. (2004). *Non-persone. L'esclusione dei migranti in una società globale*. Milano: Feltrinelli.
- Dauris Rodríguez, A. (2009). *El derecho penal como herramienta de la política migratoria*. Granada: Comares.
- Dean, M. (2007). *Governing Societies*. Maidenhead: Open Univ. Press.
- De Giorgi, A. (2000). *Zero Tolleranza*. Roma: Derive Approdi.
- De Giorgi, A. (2002). *Il governo dell'eccedenza. Postfordismo e controllo della moltitudine*. Verona: Ombre Corte.
- Díaz y García Conlledo, M. (Ed.). (2007). *Protección y expulsión de extranjeros en Derecho penal*. Las Rozas: La Ley.
- Fernández Bessa, C. & Manavella. Suárez, A. (2010). Controles migratorios en las fronteras euro-mediterráneas: un análisis crítico desde la perspectiva de los derechos humanos. In Fernández Bessa, C. et al. (Eds.), *Contornos bélicos del Estado securitario. Control de la vida y procesos de exclusión social*. Barcelona: Anthropos, pp. 175-203.
- Foucault, M. (1978). *The History of Sexuality*. Vol 1: The Will to Knowledge. (R. Hurley, Trans. from French). London: Penguin.
- Foucault, M. (2007). *Security, Territory, Population*. (G. Burchell, Trans. from French). Basingstoke: Palgrave MacMillan.
- Foucault, M. (2008). *The Birth of Biopolitics*. (G. Burchell, Trans. from French). Basingstoke: Palgrave MacMillan.
- García España, E. (2007). Extranjeros presos y reinserción: un reto del siglo XXI. In Cerezo Domínguez, A.I. & García España, E. (Eds.), *La prisión en España: Una perspectiva criminológica*. Granada: Comares, pp. 101-134.
- González, C.I., Conde-Ruiz, J.I. & Boldrin, M. (2009), Immigration and Social Security in Spain (Working Paper). FEDEA-Banco Popular.
- Gorz, A. (1998). *Misericordias del presente, riqueza de lo posible*. (C. Sardoy, Trans. from French). Buenos Aires: Paidós.
- Guild, E. (2009). *Security and Migration in the 21st Century*. Cambridge: Polity.
- Hardt, M. & Negri, A. (2009). *Commonwealth*. Cambridge: Harvard University Press.
- Huysmans, J. (2006). *The Politics of Insecurity: Fear, Migration and Asylum in the EU*. Abingdon: Routledge.
- Iglesias Río, M.A. (2008). Algunas reflexiones sobre la extranjería, Derecho penal y derechos fundamentales. In Muñoz Conde, F. (Ed.), *Problemas actuales del Derecho penal y de la Criminología*. Valencia: Tirant lo Blanch, pp. 623-660.
- Iglesias Skulj, A. (2011). *El cambio en el estatuto de la Ley penal y en los mecanismos de control: flujos migratorios y gubernamentalidad neoliberal*. Granada: Comares.
- Jakobs, G. (2006). *La pena estatal: sentido y finalidad*. (M. Cancio Meliá & B. Feijóo Sánchez, Trans. from German). Madrid: Civitas.
- Martínez Escamilla, M. (2009). Para que el Derecho no se detenga a las puertas de los CIE. Análisis del régimen jurídico del internamiento de extranjeros (Working Paper).
- Melossi, D. (2003). 'In a peaceful life': Migration and the crime of modernity in Europe/Italy. *Punishment & Society*. 5, 4.
- Mezzadra, S. (2005). *Derecho de fuga: Migraciones, ciudadanía y globalización*. (M. Santucho, Trans. from Italian). Madrid: Traficantes de Sueños.
- Mezzadra, S. & Neilson, B. (2008). Border as Method, or, the Multiplication of Labor. *Transversal*, 06.

- Monclús Masó, M. (2008). *La gestión penal de la inmigración*. Buenos Aires: Del Puerto.
- Mosconi, G. (2010). La seguridad de la inseguridad. Retóricas y giros de la legislación italiana. In S. Palidda, J.A. Brandariz García, A. Iglesias Skulj & J.A. Ramos Vázquez (Eds.), *Criminalización racista de los migrantes en Europa*. Granada: Comares, pp. 321-344.
- Navarro Cardoso, F. (2006). Expulsión 'penal' de extranjeros: una simbiosis de Derecho penal 'simbólico' y Derecho penal del 'enemigo'. *Revista de Derecho Penal y Criminología*, 17.
- Oficina económica del Presidente (2006). *Inmigración y economía española: 1996-2006* (Working Paper).
- Pajares, M. (2010). *Inmigración y mercado de trabajo. Informe 2010*. Madrid: Ministerio de Trabajo e Inmigración.
- Palidda, S. (2008). *Mobilità umane*. Milano: Raffaello Cortina.
- Pérez Cepeda, A.I. (2006). El Código Penal de la seguridad: una involución en la Política criminal de signo reaccionario. In Bernuz Beneitez, M.J. & Pérez Cepeda, A.I. (Eds.), *La tensión entre libertad y seguridad. Una aproximación sociojurídica*. Logroño: Univ. La Rioja, pp. 223-244.
- Pérez Cepeda, A.I. (2007). *La seguridad como fundamento de la deriva del Derecho Penal postmoderno*. Madrid: Iustel.
- Piazza, P. (2008). La biométrie: usages policiers et fantasmes technologiques. In Muchielli, L. (Ed.), *La frénésie sécuritaire*. Paris: La Découverte, pp. 125-136.
- Portilla Contreras, G. (2007). *El Derecho Penal entre el cosmopolitismo universalista y el relativismo pos-modernista*. Valencia: Tirant lo Blanch.
- Rahola, F. (2010). La máquina de captura. In S. Palidda, J.A. Brandariz García, A. Iglesias Skulj & J.A. Ramos Vázquez (Eds.), *Criminalización racista de los migrantes en Europa*. Granada: Comares, pp. 95-108.
- Resta, F. (2006). Enemigos y criminales: Las lógicas del control. In Cancio Meliá, M., & Gómez-Jara Díez, C. (Eds.), *Derecho penal del enemigo*. Vol. 2. Madrid/Montevidéo: Edisofer/BdeF, pp. 735-780.
- Rodríguez, E. (2003). *El gobierno imposible*. Madrid: Traficantes de Sueños.
- Romero, E. (2008). El Plan África, la política migratoria española de 'nueva generación' y la guerra contra los pobres. In VV.AA., *Frontera Sur. Nuevas políticas de gestión y externalización del control de la inmigración en Europa*. Barcelona: Virus, pp. 159-179.
- Romero, E. (2010). *Un deseo apasionado de trabajo más barato y servicial. Migraciones, fronteras y capitalismo*. Oviedo: Cambalache.
- Rose, N. (1999). *Powers of Freedom*. Cambridge: Cambridge University Press.
- Santoró, E. (2004). *Carcere e società liberale* (2nd edn). Torino: Giappichelli.
- Sassen, S. (2007). *A Sociology of Globalization*. New York: W.W. Norton.
- Servicio de Estudios de Caixa Catalunya (2006). Informe semestral I/2006. Economía española y contexto internacional (Working Paper).
- Silveira Gorski, H.C. (2010). Estados expulsores y semipersonas en la Unión Europea. In Fernández Bessa, C. et al. (Eds.), *Contornos bélicos del Estado securitario. Control de la vida y procesos de exclusión social*. Barcelona: Anthropos, pp. 133-159.
- Terradillos Basoco, J.M. (2006). La criminalidad de los migrantes. Aproximación criminológica. *Revista galega de seguridade pública*, 8.
- Terradillos Basoco, J.M. (2007). Inmigración, mafias y sistema penal. La estructura y la pátina. In P. Faraldo Cabana, L.M. Puente Aba & E. Souto García (Eds.). *Derecho Penal de excepción*. Valencia: Tirant lo Blanch, pp. 263-288.
- Valverde, M. (2008). *Beyond Discipline and Punish: Foucault's Challenge to Criminology*. *Carceral Notebooks*, 4.
- Van Kalmthout, A., Hofstee-Van der Meulen, F. & Dünkel, F. (2007). Comparative overview, Conclusions and Recommendations. In A.M. Van Kalmthout, F. Hofstee-Van der Meulen & F. Dünkel (Eds.), *Foreigners in European Prisons*. Volume I. Nijmegen: Wolf Legal Publishers, pp. 7-88.
- Žižek, S. (2009). *First as tragedy, then as farce*. London: Verso.