

Locked in mobility: Negotiating legal residence in a border setting. The case of Moroccan women in Melilla, Spain

Sabina Barone

ORCID: 0000-0003-1323-3180

Abstract

This article explores how legality and mobility are at play in producing Moroccan migrant women's unauthorised residence in the city of Melilla, a Spanish enclave situated on the African continent and sharing a terrestrial border with Morocco. Visa-free mobility between Melilla and its neighbouring Moroccan province of Nador is part of everyday life of people in this region (the Rif). While many Moroccan women move in and out of the city on a daily basis, some do stay on in Melilla and settle there. However, when they try to legalise their status and apply for a formal residence permit, the Spanish officials deny their petitions pointing to their special cross-border status and invoke the requirement of mobility, instead.

I analyse the problematic enactment of the administrative practices that produce Moroccan women's unauthorised residence, which I equate to a situation of 'liminal legality'. Those practices are at odds with the stated intention of the Spanish legal framework regulating civil registries (called *padrón* in Spanish) and reveal an underpinning logic of migration control. Moreover, I adopt the framework of 'legal consciousness' to explore how Moroccan women's claim to legality evolves through their often failed attempts to obtain legal residence. This mirrors their realisation of the ambiguity of the law, as both an inclusionary and exclusionary device, and sheds light on the dynamics of subordination and tactical resistance that unauthorised migrants go through when living *under the law*.

Keywords: Legal consciousness; Liminal legality; Legal residence; Municipal registry [*padrón*]; Cross-border mobility; Migration control

Introduction

This article explores how legality and mobility are at play in producing Moroccan migrant women's unauthorised residence in the city of Melilla, a Spanish enclave situated on the African continent and sharing a terrestrial border with Morocco. A visa-free mobility between Melilla and its neighbouring Moroccan province of Nador is part of the everyday life of people in this region (the Rif). While many Moroccan women move in and out of the city on a daily basis, some do stay on in Melilla and settle there. However, when they try to legalise their status and apply for a formal residence permit, Spanish officials deny their petitions, pointing to their special cross-border status, and invoke the requirement of mobility, instead. Hence, Moroccan women and their families end up living with an unauthorised status for years, sometimes for decades.

In this context, I analyse the enactment of the administrative practices which produce Moroccan women's unauthorised residence, which I equate to a situation of 'liminal legality'.¹ Such practices are at odds with the stated intention of the Spanish legal framework regulating municipal civil registries (*padrón* in Spanish). Moreover, I explore how Moroccan women reconcile their marginal legal position with a claim to legality and how their understanding of legality evolves through their often failed attempts to obtain authorised residence. In particular, I address the questions of (a) how the condition of liminal legality is produced in the case of migrant women from the Moroccan province of Nador, in the specific border context of Melilla; (b) how Moroccan women articulate their sense of legality through the process of claiming authorised residence; and (c) what logic underlies the legal system regulating residence in Melilla.

¹ Cecilia Menjivar, 'Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States' (2006) 111(4) *American Journal of Sociology* 999.

Studying how migrants' unauthorised residence is produced in different contexts helps undo the reification of so-called irregular migrants as a homogenising and ahistorical category and the normalisation of their subordinate social position.² This has motivated researchers to carry out a 'critical phenomenology of illegality' meant to critique the 'abjection' imposed upon unauthorised migrants,³ to question the othering of migrants by which the polarity 'us' versus 'them' is taking root in our communities,⁴ or to signal the configuration of new forms of exclusion in contemporary society.⁵ I contribute to this debate by giving an account of a specific administrative process producing unauthorised status and by analysing migrant women's legal positionings through the notions of legality and of legal consciousness.⁶ This provides insight into how Moroccan women's claim to legal status transforms as they encounter, defy or surrender to the obstacles of the legalisation process. Most importantly, their claim is relevant to the bottom-up construction of a pluralist sense of legality.⁷

Moroccan women's liminal legality is rooted in the complex management of different forms of mobilities regulated through Melilla's 12-kilometer-long border. The frontier intersects daily local cross-border movements, international migratory flows from Sub-Saharan Africa and inflows of asylum seekers from Syria and other conflict-stricken

² Nicholas De Genova, 'Migrant "Illegality" and Deportability in Everyday Life' (2002) 31 Annual Review of Anthropology 419.

³ Sarah S Willen, 'Toward a Critical Phenomenology of "Illegality": State Power, Criminalization, and Abjectivity among Undocumented Migrant Workers in Tel Aviv, Israel' (2007) 45(3) International Migration 8.

⁴ Bridget Anderson, *Us and Them? The Dangerous Politics of Immigration Control* (Oxford University Press 2013).

⁵ Frank Düvell, 'Clandestine Migration in Europe' (2008) 47 Social Science Information 479.

⁶ Patricia Ewick and Susan Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press 1998). See also Patricia Ewick and Susan Silbey, 'The Structure of Legality: The Cultural Contradictions of Social Institutions' in Robert A Kagan, Martin Krygier and Kenneth Winston (eds), *Legality and Community. On the Intellectual Legacy of Philip Selznick*, (Rowman and Littlefield Publishers 2002); Erik D Fritsvold, 'Under the Law: Legal Consciousness and Radical Environmental Activism' (2009) 34(4) Law & Social Inquiry 799; Simon Halliday and Bronwen Morgan, 'I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination' (2013) 66(1) Current Legal Problems 1.

⁷ Patricia Ewick and Susan Silbey, 'The Structure of Legality: The Cultural Contradictions of Social Institutions' in Robert A Kagan, Martin Krygier and Kenneth Winston (eds), *Legality and Community. On the Intellectual Legacy of Philip Selznick*, (Rowman and Littlefield Publishers 2002).

countries. The border functions differently according to the type of movement, namely as a revolving door for Moroccan neighbours, as a filter for asylum seekers, and as an almost insurmountable fence for Sub-Saharan migrants. To the latter end, it has been progressively sealed through expensive and sophisticated infrastructures of surveillance and deterrence.⁸ Denied any possibility of legal entry, sub-Saharan migrants have unwillingly become protagonists of a self-fulfilling ‘border spectacle’ which stages the dangers of migration and the need for containment.⁹

Far from the limelight that the media devote to the control of that migratory flow, Moroccan women’s unauthorised status goes largely unnoticed. However, I argue that it constitutes another facet of the same State’s effort to contain migration by setting up a hierarchy of entitlements associated with different mobilities, a ‘regime of mobility’.¹⁰ In fact, by confining Moroccan women to a mobile status, the administrative procedures manufacture their invisibility and lack of entitlements. The local physical mobility they enjoy simultaneously excludes them and their families from access to legal residence and upward social mobility in Melilla.

This article sheds light on a social reality of Melilla which is scarcely documented, as it is made invisible by the administrative system, though commonly referred to in local social discourses. As this specific case has not been the object of comprehensive scientific study, addressing the lack of empirical data required me to do some fieldwork in Melilla. Hence, I present an analysis of first-hand data collected in Melilla through interviews with

⁸ Xavier Ferrer-Gallardo, ‘The Spanish-Moroccan Border Complex: Processes of Geopolitical, Functional and Symbolic Rebordering’ (2008) 27 *Political Geography* 301; Jørgen Carling, ‘Migration Control and Migration Fatalities at the Spanish-African Border’ (2015) 41(2) *International Migration Review* 316.

⁹ Ruben Andersson, *Illegality, INC. Clandestine Migration and the Business of Bordering Europe* (University of California Press 2014); see also De Genova (n 2).

¹⁰ Nina Glick Schiller and Noel B Salazar, ‘Regimes of Mobility Across the Globe’ (2013) 39(2) *Journal of Ethnic and Migration Studies* 183.

a selected number of Moroccan migrant women and Spanish lawyers, and through the examination of legal and administrative documents.

The structure of the paper is as follows. I begin by delineating the conceptual framework, then I describe the legislation currently regulating access to authorised residence in Melilla and provide some historic background. Subsequently, having elucidated the research methodology, I put forward my analysis of the findings. First, I focus on the complex enactment of legalisation requirements and the role of different actors who, as gatekeepers, restrict access to authorised residence. Secondly, I apply the categories of legal consciousness to explore Moroccan women's legal narratives and tactics of legalisation which are reduced to the binary positions of *before* and *under the law*. I conclude by discussing how the findings point to the existence of an imbalanced legal system and to the denial of migrants' presence in the territory as a strategy of migration control. However, I also indicate how, for some Moroccan women, their persistent stay in Melilla constitutes an exercise of everyday resistance against the current legal system and how their tenacious claim to legality is an assertion of moral legitimacy, whether or not it eventually results in a change in their legal status.

1. Legality and mobility

1.1. The polivocality of legality and legal consciousness

This article adopts a socio-constructivist and plural understanding of legality which acknowledges that formal legal systems, set up by codified normative frameworks, legal institutions and law practitioners' action, do not exhaust the social experience of what is legal.¹¹ Legality encompasses a plurality of legal stances, including contradictory claims or claims not contemplated by state law, as 'people may invoke or enact legality in ways neither approved nor acknowledged by state law'.¹² Legality refers both to laws as a structuring dimension of social reality and to individual meanings of them. As social structures, laws result from and generate a social order based on certain power relations, influencing individual actions and desires.¹³ Conversely, individual meanings of legality can mould and alter the sense of legality. The plurality of normative demands, laws' limitations and even the contradictions between laws are not detrimental to legality as they contribute to a living and evolving sense of what is legal. In fact, the conflict between the ideal of legality and its implementation expose a want of legality which legitimises its persistence in society 'as both an ideal and a social action'.¹⁴

The notion of legal consciousness was coined to capture the distinctive combination of 'individual orientations towards law and policy with the way in which legality operates as a social structure'.¹⁵ First set forth in 1998 by Ewick and Silbey, this concept has been widely appropriated ever since by the socio-legal scholarly debate and has become unavoidable. Its pre-eminence cannot be escaped despite criticisms pointing to its misuse

¹¹ Peter H Schuck, *The Limits of Law: Essays on Democratic Governance* (Westview Press 2000); Naomi Mezey, 'Out of the Ordinary: Law, Power, Culture, and the Commonplace' (2001) 26(1) *Law & Social Inquiry* 145.

¹² Ewick and Silbey 'The Structure of Legality' (n 7) 152.

¹³ Mezey (n 11) 149.

¹⁴ Ewick and Silbey 'The Structure of Legality' (n 7) 150.

¹⁵ Erik D Fritsvold, 'Under the Law: Legal Consciousness and Radical Environmental Activism' (2009) 34(4) *Law & Social Inquiry* 799, 805.

as a merely psychological category¹⁶ or calls to examine situations of ‘legal alienation’, where legality is (at least apparently) irrelevant.¹⁷ Different modes of legal consciousness have been set forth to characterise how law operates in society both as an individual and a social practice. The influential tripartite model of ‘*before, with, or against the law*’¹⁸ was subsequently enriched through other categories. Standing *before the law* refers to the ideal of law as a guarantee of collective fairness. Laws are associated with impartiality, equality, and justice. However, such ideal law can also be distant and inaccessible to individual action, as portrayed in Kafka’s parable *Before the Law* (1915), from which the expression is taken. Playing *with the law* assumes law as a morally neutral game. If skilful and equipped with the appropriate resources, individuals can employ the laws strategically in their favour. By contrast, being *against the law* occurs when law is perceived as a set of arbitrary and disadvantageous rules which favour the powerful. Due to laws’ unpredictability, individuals are unable to play by their rules. Slow and inefficient, laws fail to be reliable tools to protect or achieve one’s interests. *Under the law* was later indicated as a fourth mode of legal consciousness to develop the position against the law. It shows an understanding of laws as intentionally and efficiently defending an illegitimate social order and obstructing change.¹⁹ Thus, considering State law as *illegitimate*, invoking a higher sense of legality and justice (*law above state law*), and *playing* all sorts of tricks *with the law* have been identified as three salient features of this dissenting mode of legal consciousness.²⁰

¹⁶ Susan Silbey, ‘After Legal Consciousness’ (2005) 1 Annual Review of Law and Social Sciences 323.

¹⁷ Marc Hertogh, ‘No Justice, No Peace! Conceptualizing Legal Alienation in the Aftermath of the Trayvon Martin Case’ in Richard Nobles and David Schiff (eds), *Law, Society and Community: Socio-Legal Essays in Honour of Roger Cotterell* (Ashgate Publishing 2014).

¹⁸ Ewick and Silbey *The Common Place of Law* (n 6).

¹⁹ Fritsvold (n 15).

²⁰ Simon Halliday and Bronwen Morgan, ‘I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination’ (2013) 66(1) Current Legal Problems 1.

Although these categories illustrate legal standpoints that are not completely new within socio-legal studies,²¹ they provide a common language and have been largely embraced by scholars for their heuristic value.²² These cultural schemas of legal consciousness may overlap and it is possible for an individual to adopt more than one simultaneously, as well as to shift them over time.²³ More importantly, they are interwoven in society where the ‘polivocality of diverse narratives’ maintains the stability of legality and the possibility of its transformation.²⁴ Hence, conflicting legal stances in everyday life, even involving individuals apparently peripheral to a legal system, as is the case with Moroccan migrant women in Melilla, contribute to the ongoing plural redefinition of legality from below.

1.2. Liminal legality

The relationship with the law influences the social position of unauthorised migrants in the host country. The socio-anthropological literature on migration and illegality has long explored the implications of unauthorised status on migrants’ lives and trajectories.²⁵ In particular, an irregular status may result not only from unauthorised entry to a country, but also from overstays, temporary or incomplete regularization processes, and partial compliance with working requirements, among others reasons.²⁶ This has

²¹ Mezey (n 11).

²² Leisy J Abrego, ‘Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First- and 1.5-Generation Immigrants’ (2011) 45(2) *Law & Society Review* 337; Agnieszka Kubal, ‘Legal Consciousness as a Form of Social Remittance? Studying Return Migrants’ *Everyday Practices of Legality in Ukraine* (2015) 3(1) *Migration Studies* 68.

²³ Mezey (n 11); Fritsvold (n 15).

²⁴ Ewick and Silbey ‘The Structure of Legality’ (n 7) 158.

²⁵ De Genova (n 2); Leisy J Abrego, ‘Legitimacy, Social Identity, and the Mobilization of Law: The Effects of Assembly Bill 540 on Undocumented Students in California’ (2008) 33(3) *Law and Social Inquiry* 709; Madeleine Reeves, ‘Clean Fake: Authenticating Documents and Persons in Migrant Moscow’ (2013) 40(3) *American Ethnologist* 508; Agnieszka Kubal, ‘Refugees or Migrant Workers? A Case Study of Undocumented Syrians in Russia - LM and Others v Russia (ECtHR 14 March 2016)’ (2016) 30 *Journal of Immigration Asylum and Nationality Law* 265.

²⁶ Frank Düvell, ‘Paths into Irregularity: The Legal and Political Construction of Irregular Migration’ (2011) 13 *European Journal of Migration and Law* 275; Joaquín Arango and Claudia Finotelli, ‘Regularisation of

challenged the clear-cut distinction of the legal-illegal binary as insufficient to illustrate migrants' shifting, plural, if not contradictory, legal conditions over a prolonged period. Hence, more fluid notions, as 'liminal'²⁷ or 'semi legality',²⁸ or pointing to the variation over time, as 'irregular migration careers',²⁹ have been proposed.

I opt for the notion of 'liminal legality' as it offers a nuanced understanding of living as unauthorised migrants beyond the legal-illegal dichotomy.³⁰ Taken from Turner's studies on *rites du passage*,³¹ it alludes to the dynamic of being at the threshold, in-between, not entirely alien to the legal system. This captures Moroccan women's lack of legal status in Melilla as they are not completely external to the city's administration. Rather, through their children's birth or health assistance certificates or through relatives who are authorised residents, they develop administrative links with local authorities. However, women's cross-border mobility is invoked by Melilla's institutions to deny that those contacts are evidence of continuous residence on the Spanish territory. Hence, Moroccan women's liminality lies in their alleged mobility.

Liminality does not extinguish the capacity for autonomous and tactical action. Research shows how the irregular administrative condition may enhance migrants'

Unauthorised Immigrants in Italy and Spain: Determinants and Effects' (2011) 57(3) Documents d'Anàlisi Geogràfica 495.

²⁷ Menjívar (n 1).

²⁸ Agnieszka Kubal, 'Conceptualising Semi-Legality in Migration Research' (2013) 47(3) Law and Society Review 555.

²⁹ Marina Cvajner and Giuseppe Sciortino, 'A Tale of Networks and Policies: Prolegomena to an Analysis of Irregular Migration Careers and their Developmental Paths' (2010) 16 Population, Space, Place 213.

³⁰ I intentionally avoid the expression illegal immigrant as it reifies a disqualified social condition. Despite all legal frameworks declare that no human being is inherently illegal, while his/her actions may be, the proliferation of this expression mirrors the increasing tendency to criminalise migrants *per se*; see Juliet P Stumpf, 'The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power' (2006) 56(2) American University Law Review 367; Justin Akers Chacón and Mike Davis, *No One is Illegal: Fighting Violence and State Repression on the U.S.-Mexico Border* (Haymarket Books 2006); Jennifer M. Chacón, 'Overcriminalizing Migration' (2012) 102 Journal of Criminal Law and Criminology 613. Other characterisations such as undocumented, *sans-papiers* or *sin papeles* (ie: without papers, meaning documentation, in French and Spanish respectively) are no less problematic insofar as migrants usually do have documents, only not the right ones, those required by the authorities of the receiving countries. I prefer the wordings unauthorised migrant, unauthorised residence and irregular administrative condition to adhere to the descriptive side, limiting as far as possible the negative overtones.

³¹ Victor Turner, *The Ritual Process: Structure and Anti-Structure* (Aldine Pub Co 1969).

awareness of their rights and their determination to challenge, either alone or as a community, the legal system in order to obtain authorized residence.³² Sometimes their autonomous action is exercised, albeit unnoticeably, in the tactical option of staying at the margins or in ‘semi-compliance’ with the law to preserve some advantages.³³ De Certeau’s distinction between strategy, as institutions’ and structures of power’s way of proceeding, and tactics, as individuals’ set of expedients to accommodate or resist power,³⁴ is key in order to detect the way people in a subordinate social condition get by, use mobility or stay to pursue their interests.³⁵ Foucault’s understanding of power as disseminated, activated and resisted in each relationship underpins this perspective.³⁶

1.3. Mobility regulations and social boundaries

In the current era of global interconnectedness the notion of mobility has undergone radical redefinitions and the State-centric understanding of migration has been questioned. The so-called ‘mobility turn’ in social sciences³⁷ reconceptualised the notion of migration beyond ‘methodological nationalism’³⁸ and celebrated the fluidity, plurality and poly-directionality of human experiences of mobility. This led to the dismissal of binary assumptions on migration in scholarly debates, especially the national-international divide

³² Jacqueline M Hagan, *Deciding to be Legal: A Maya Community in Houston* (Temple University Press 1994); Susan B Coutin, ‘From Refugees to Immigrants: The Legalization Strategies of Salvadoran Immigrants and Activists’ (1998) 32(4) *International Migration Review* 901; Susan B Coutin, *Legalizing Moves: Salvadoran Immigrants’ Struggle for U.S. Residency* (The University of Michigan Press 2000); Abrego ‘Legitimacy, Social Identity, and the Mobilization of Law’ (n 25).

³³ Martin Ruhs and Bridget Anderson, ‘Semi-Compliance and Illegality in Migrant Labour Markets: An Analysis of Migrants, Employers and the State in the UK’ (2010) 16 *Population, Space and Place* 195.

³⁴ Michel De Certeau, *The Practice of Everyday Life* (University of California Press 1984).

³⁵ Thilde Langevang and Katherine V Gough, ‘Surviving through Movement: The Mobility of Urban Youth in Ghana’ (2009) 10(7) *Social and Cultural Geography* 741; Kubal ‘Conceptualising Semi-Legality’ (n 28).

³⁶ Michel Foucault, ‘The Subject and Power’ (1982) 8(4) *Critical Inquiry* 777; Mezey (n 11).

³⁷ John Urry, *Mobilities* (Polity Press 2007).

³⁸ Andreas Wimmer and Nina Glick Schiller, ‘Methodological Nationalism, the Social Sciences, and the Study of Migration: An Essay in Historical Epistemology’ (2003) 37(7) *International Migration Review* 576.

and the immobility-mobility dichotomy,³⁹ preferring instead to inscribe migration within a continuum of (im)mobile human experiences.⁴⁰

Yet, while this perspective better captures the complexities of (im)mobility as social phenomenon, the normative dimension of mobility and the persisting centrality of the State in defining authorised mobility cannot be overlooked. Mobility regulations did not fade away with globalisation. Processes of ‘hierarchisation, (...) exploitation, social closure or opportunity hoarding’⁴¹ taking place at global and local levels affect mobility and should be accounted for. Migration research needs to examine State-centred regulations and the construction of ‘different intersecting regimes of mobility that normalise the movements of some travellers while criminalising and entrapping the ventures of others’.⁴²

‘The law is one very important site in which mobilities are “produced”’.⁴³ This has problematic exclusionary effects. By including some in and banishing others from the entitlement to mobility, migration policies devise asymmetries of (im)mobilities, enforcing ‘unwilling immobilities’ and converting mobility into a scarce commodity and a key social stratifying factor.⁴⁴ Nowadays, access to international geographic mobility is essential to upward social mobility. At the same time, legal regulations of mobility introduce criteria of social acceptability that reshape the sense of community⁴⁵ and construct new social

³⁹ Lisa Malkki, ‘National Geographic. The Rooting of Peoples and the Territorialization of National Identity among Scholars and Refugees’ (1992) 7(1) *Cultural Anthropology* 24.

⁴⁰ Jørge Carling, ‘Migration in the Age of Involuntary Immobility: Theoretical Reflections and Cape Verdean Experiences’ (2002) 28(1) *Journal of Ethnic and Migration Studies* 5; Nicholas Van Hear, ‘Reconsidering Migration and Class’ (2014) 48 *International Migration Review* 100.

⁴¹ Thomas Faist, ‘The Mobility Turn: A New Paradigm for the Social Sciences?’ (2013) 36(11) *Ethnic and Racial Studies* 1637, 1643.

⁴² Glick Schiller and Salazar (n 10) 189.

⁴³ Tim Cresswell, ‘The Right to Mobility: The Production of Mobility in the Courtroom’ (2006) 38(4) *Antipode* 735, 735.

⁴⁴ Carling ‘Migration in the Age of Involuntary Immobility’ (n 40).

⁴⁵ Bridget Anderson, Matthew J Gibney and Emanuela Paoletti, ‘Citizenship, Deportation and the Boundaries of Belonging’ (2011) 15 *Citizenship Studies* 547.

boundaries, or ‘symbolic borders’,⁴⁶ in the host country. This brings about a notion of citizenship underpinned by the ‘logic of othering’,⁴⁷ which often alienates migrants as ‘uncivilised’ others.⁴⁸

Hence, legality and mobility are entangled in multiple ways, namely legality defines ways of being-in-society along the continuum of legal-liminal-illegal stay and it articulates hierarchical context-specific systems of (im)mobility embedded in broader power imbalances.

2. Modes of residence and mobility: Melilla’s exceptionality and the Spanish legal framework

Melilla showcases a specific regime of mobility. Spanish laws, bi-national Spanish-Moroccan agreements and the EU legislation intertwine to define diverse entitlements to mobility, but – as we shall see – also conjure Moroccan women’s ‘unwilling mobility’ which confines them to a liminal legality.

Inscription in the local registry has been a contentious issue in Melilla’s local history. This is exemplified by the social protests sparked in 1985 by the Immigration Act declaring undocumented Muslim residents, then estimated at over 17,000 (25% of the city’s official population), to be foreigners and requiring them to apply for residence. The call to ‘Legalise Melilla’⁴⁹ and the massive march of 23 November 1985⁵⁰ brought to the

⁴⁶ Didier Fassin, ‘Frontières Extérieures, Frontières Intérieures’ in Didier Fassin (ed), *Les Nouvelles Frontières de la Société Française* (La Découverte 2010); Didier Fassin, ‘Policing Borders, Producing Boundaries. The Governmentality of Immigration in Dark Times’ (2011) 40 *Annual Review of Anthropology* 213.

⁴⁷ Cresswell (n 43).

⁴⁸ Anderson *Us and Them?* (n 4); Bridget Anderson, ‘Exclusion, Failure, and the Politics of Citizenship’ (2014) 1 Ryerson University Working Paper Series 1.

⁴⁹ Aomar M Duddu, ‘Legalizar Melilla’(Legalise Melilla), *El País* (Madrid, 11 May 1985) <http://elpais.com/diario/1985/05/11/espana/484610406_850215.html> accessed 28 November 2018.

national limelight the claim for a redefinition of Spanish national identity⁵¹ and arbitrary practices of birth and residence registration.⁵² This led to a two-year process of tense negotiations that resulted in an amendment to the Immigration Act and a widespread regularisation process.

Going back in history, the presence of undocumented population in Melilla can be traced to the double nature of its role in the region as military outpost and commercial node. Originally one of a number of military garrisons (*presidios*) set up after the Reconquista (1492), the city benefitted from a strategic position across many commercial routes in the Rif region.⁵³ Melilla was later a base for Spanish colonial expansionism and enjoyed a temporary politico-institutional relevance during the Spanish protectorate (1912-1956). Through these historic vicissitudes, the borderline and local settlements were displaced. Native Berber/Amazigh populations moved or were forcibly relocated across a shifting and porous border and by early 1900 established themselves in Melilla. This became embedded in a 'borderland', an area engendered 'horizontally' through economic and cultural connexions to the surrounding hinterland.⁵⁴

Spain's EU membership altered the equilibrium of this social interconnectedness. The borderline, until then more a virtual than a physical reality within a peripheral border zone for Spain, became Europe's southern frontier and was increasingly securitised to curb

⁵⁰ Enrique Chueca, 'Miles de Musulmanes se Manifiestan en Melilla Contra la Ley de Extranjería' (Thousands of Muslims Protest Against the Immigration Act in Melilla) *El País* (Madrid, 24 November 1985) <http://elpais.com/diario/1985/11/24/espana/501634813_850215.html> accessed 28 November 2018.

⁵¹ Fernando Belmonte Montalbán, *La Ley de Extranjería de 1985 y la Transformación del Espacio Público en la Ciudad de Melilla* (The 1985 Immigration Act and the Transformation of Public Space in Melilla) (Edición Instituto de las Culturas de Melilla 2010); Aitana Guia, 'The Fight for Citizenship and Inclusion in a Borderland City: Melilla, 1985-1988' in Aitana Guia, *The Muslim Struggle for Civil Rights in Spain: Promoting Democracy through Migrant Engagement, 1985-2010* (Sussex Academic Press 2014).

⁵² José Barrionuevo, *2001 Días en Interior* (2001 Days at the Home Office) (S.A. Ediciones 1997).

⁵³ Henk Driessen, *On the Spanish–Moroccan Frontier: A Study in Ritual, Power and Ethnicity* (Berg 1992); Laia Soto Bermant, 'Consuming Europe: The Moral Significance of Mobility and Exchange at the Spanish–Moroccan Border of Melilla' (2014) 19(1) *The Journal of North African Studies* 110.

⁵⁴ Guia (n 51) 12.

international migration.⁵⁵ Spanish authorities had to reconcile migration control in accordance with European directives with Melilla's economic interests as trading hub. To this end, Spain's ratification of the Schengen Agreement added an *ad-hoc* clause, the Declaration on Ceuta and Melilla, which recognised a special regime of mutual visa exemption for both enclaves.⁵⁶ Residents of Melilla and of its neighbouring Moroccan province of Nador are allowed unrestricted local mobility for the purpose of individual small-scale trade (denominated 'atypical commerce') or of cross-border work. Moreover, Ceuta and Melilla were kept out of the European Customs Union in order to maintain special fiscal exemptions that benefit their local cross-border trade and economy. This generates an intense human flow of aprox. 30,000 daily crossings, revenues estimated between 40 and 50 million Euros annually and a vast informal economy.⁵⁷

Such unrestricted local mobility is an advantage coveted by Moroccans of other provinces. However, its character remains asymmetrical. In fact, while Melillan residents enjoy unlimited cross-border mobility, overnight stay in Melilla is denied to residents of Nador. As a consequence, while their entry in Melilla is authorised, their stay in the Spanish city puts them in an irregular administrative condition. Deportation of residents of Nador from Melilla is rarely carried out by Spanish authorities, as it is made largely ineffective by the fluid cross-border transit.

Melilla's regime of transfrontier mobility coexists with residence regulation. The Spanish legislation recognises residence *de facto*, corresponding to matter-of-fact presence

⁵⁵ Ferrer-Gallardo (n 8); Francisco J Calderón Vázquez, 'Boundaries in Time and Space: Spanish Minor Sovereign Territories' (2014) 26(51) *Frontera Norte* 113; Andersson (n 9).

⁵⁶ España. Instrumento de ratificación del Acuerdo de Adhesión del Reino de España al Convenio de aplicación del Acuerdo de Schengen de 14 de junio de 1985 entre los Gobiernos de los Estados de la Unión Económica Benelux, de la República Federal de Alemania y de la República Francesa, relativo a la supresión gradual de los controles en las fronteras comunes, firmado en Schengen el 19 de junio de 1990, al cual se adhirió la República Italiana por el Acuerdo firmado en París el 27 de noviembre de 1990, hecho el 25 de junio de 1991. Boletín Oficial del Estado, 5 de abril 1994, n 81, pp 10390-10422. Referencia: BOE-A-1994-7586.

⁵⁷ Soto Bermant 'Consuming Europe' (n 53).

in the territory, and residence *de jure*, which refers to legal or authorised residence.⁵⁸ The former should be recorded in the municipal registry (*padrón*) by each individual, independently of his/her legal condition in the country, for statistical purposes.⁵⁹ Municipal registration is thus the best source to estimate irregular migrants' presence in the country. Moreover, it is also an instrument of social integration insofar as it allows access to basic social rights (education, health assistance, social benefits for housing, etc.) and it constitutes a precondition for different regularization pathways (based on the acquisition of seniority rights, or *arraigo*).⁶⁰

Some Town Halls (eg: Vic in 2011, Sestao y Sanlúcar in 2014) have been reluctant to comply with the registration of unauthorised migrants as this paves the way for their future regularisation.⁶¹ However, the intervention of Central Authorities, accompanied by protests from legal scholars and Civil Society organisations, usually results in the swift reinstatement of compliance with the national regulation.⁶² Yet, this is rarely the case in

⁵⁸ España. Ley 7/1985, de 2 de abril, Reguladora de las Bases del Régimen Local. Boletín Oficial del Estado, 3 de abril de 1985, n 80, pp 8945-8964. Referencia: BOE-A-1985-5392;

España. Real Decreto 1690/1986, de 11 de julio, por el que se aprueba el Reglamento de Población y Demarcación Territorial de las Entidades Locales. Boletín Oficial del Estado, 14 de agosto de 1986, n 194, pp 28645-28652. Referencia: BOE-A-1986-21944;

España. Ley 4/1996, de 10 de enero, por la que se modifica la Ley 7/1985, de 2 de abril, Reguladora de las Bases del Regimen Local, en relación con el Padrón municipal. Boletín Oficial del Estado, 12 de enero de 1996, n 11, pp 813-815. Referencia: BOE-A-1996-753.

⁵⁹ The two forms of residence, *de facto* and *de jure*, are accredited through two different documents: a certificate (in paper) (called *certificado de empadronamiento*) issued by the municipal registry (*padrón*) and a (plastic) residence permit card (*tarjeta de residencia*) issued by the Ministry of Interior, respectively.

⁶⁰ In this article I focus on one of the three pathways to legal residence that are legally possible in Spain, namely, claiming seniority rights (*arraigo social*) acquired through social integration (see n 72). It is the pathway which most frequently applies to unauthorised migrants, as in the case of the Moroccan women interviewed. The other two pathways to legal residence are family-related and labour-related seniority rights (respectively: *arraigo familiar* and *arraigo laboral*).

⁶¹ Eva Clota, 'Vic se Niega a Empadronar a los Inmigrantes "Sin Papeles"' (Vic Denies Registration to Undocumented Immigrants) *El País* (Madrid, 8 January 2010) <http://elpais.com/diario/2010/01/08/catalunya/1262916440_850215.html> accessed 1 December 2018; Fernando Garea and Elena G Sevillano, 'El Caso de Vic Abre el Debate sobre el Empadronamiento de "Sin Papeles"' (The Case of Vic Opens the Debate on the Registration of Undocumented Immigrants) *El País* (Madrid, 15 January 2010) <http://elpais.com/diario/2010/01/15/espana/1263510003_850215.html> accessed 28 November 2018.

⁶² Cáritas Española, 'Circular Inmigración n. 1 – 2010. Más Allá del Debate sobre el Empadronamiento' (Migration Circular n. 1 – 2010. Beyond the Debate on Municipal Registry) (2010) *Cáritas Española* <<https://eapnas.files.wordpress.com/2010/02/circular-de-caritas-sobre-el-empadronamiento.pdf>> accessed 1

Ceuta and Melilla, despite interventions by the Spanish Ombudsman against the practice of adding requirements not set by law as a precondition for enlisting in the local registries.⁶³ The unwillingness of the Melillan authorities to record the Moroccan population on its territory is manifested also in the difficulties of documenting unaccompanied Moroccan minors in the city's care⁶⁴ and of providing access to basic education to unregistered Moroccan children even if born in Melilla,⁶⁵ to mention just a few examples.

Hence, Melilla's exceptionality not only lies in its geographic border position and the *ad-hoc* legal regulation of its cross-border mobility, but also in the informality of its administrative practices which makes it a place of liminal legality within the national administration. All of this sets the background for the cases analysed below.

December 2018; Ángeles Solanes Corella, 'Inmigración y Responsabilidad Municipal' (Immigration and Municipal Responsibility) (2010) 158 *Documentación Social* 191.

⁶³ Defensor del Pueblo (Spanish Ombudsman), 'Empadronamiento de Residente en el Centro de Estancia Temporal de Inmigrantes (CETI) de Ceuta. Sugerencia' (Registration to Municipal Registry of a Resident of the Center of Temporal Stay for Immigrants (CETI) of Ceuta. Recommendation) *Defensor del Pueblo* (Madrid, 13 Mayo 2016) <<https://www.defensordelpueblo.es/resoluciones/no-empadronan-a-residente-en-el-ceti-de-ceuta-sin-observarse-el-procedimiento/>> accessed 28 November 2018; Defensor del Pueblo, 'Condiciones del Empadronamiento de un Menor Marroquí. Sugerencia' (Requirements to Enrolment to the Municipal Registry of a Moroccan Minor. Recommendation) *Defensor del Pueblo* (Madrid, 6 September 2016) <<https://www.defensordelpueblo.es/resoluciones/el-empadronamiento-de-un-menor-marroqui-no-depende-de-la-kafala-ni-de-si-reside-legalmente-en-espana/>> accessed 28 November 2018; Defensor del Pueblo, 'Empadronamiento de Extranjeros' (Enrolment of Foreigners to the Municipal Registries) *El blog del Defensor del Pueblo* (Madrid, 14 February 2017) <<https://www.defensordelpueblo.es/dpblog/migraciones/empadronamiento-de-los-extranjeros-el-blog-del-defensor-del-pueblo/>> accessed 1 December 2018.

⁶⁴ Almudena Escorial, Liliana Marcos and Catalina Perazzo (2016) 'Infancias invisibles' (Invisible Childhood) *Save the Children Spain* (Madrid, June 2016) <<https://www.savethechildren.es/sites/default/files/imce/docs/infancias-invisibles-ninos-migrantes-refugiados-trata-save-the-children.pdf>> accessed 28 November 2018; Defensor del Pueblo (Spanish Ombudsman), 'Informe Nacional 2017' (2017 National Report) *Defensor del Pueblo* (Madrid, March 2018) <<https://www.defensordelpueblo.es/informe-anual/informe-anual-2017/>> accessed 25 November 2018.

⁶⁵ Ignacio Cembrero, 'Karima No Tiene Escuela' (Karima Has No School) *El País* (Madrid, 29 November 2009) <http://elpais.com/diario/2009/11/29/sociedad/1259449202_850215.html> accessed 1 December 2018; Defensor del Pueblo (Spanish Ombudsman), 'Fernández Marugán Visita Melilla y Ceuta para Conocer de Primera Mano la Realidad de Estas Dos Ciudades' (Spanish Ombudsman Visits Melilla and Ceuta to Know the Realities of Those Two Cities First-Hand) *Defensor del Pueblo* (Madrid, 11 July 2018) <<https://www.defensordelpueblo.es/noticias/visita-melilla-ceuta/>> accessed 25 November 2018.

3. Methodology

This article examines a reality of liminal legality which is kept hidden precisely by the practice that I intend to analyse, namely, the Melillan authorities' management of the municipal registry. Even though this situation is sometimes mentioned in newspapers, scientific documentation is scarce. To address the gap in empirical data, I carried out fieldwork in Melilla during March-April 2017 in order to gain first-hand information. Access and background knowledge was facilitated by previous stays (in April 2015 and from June to September 2016).

Following De Genova,⁶⁶ my analysis focuses on contextual social processes which produce unauthorised migration, not on irregular migrants as an abstract collective group. Hence, I do not consider Moroccan migrant women *per se*, but insofar as they are affected by certain administrative enactments. In this sense, choosing a specific demographic allows for a sharpened – if necessarily limited – focus on an object of study, liminal legality in Melilla, which would otherwise be too broad.

I carried out documentary research and I visited a Town Hall office to find information on acquiring a residence permit. I consulted four Spanish lawyers to get their opinion on Melilla's administrative complexities, which also gave me a sense of the plausibility of women's reported experiences with the administration. I interviewed seven Moroccan women living as unauthorised residents and the adult son of one of them, actively implicated in his mother's legalisation process.

The Moroccan women interviewed were aged 35-45 and had been residing in Melilla for periods of between nine and 30 years. Only one woman had legal residence, two had enjoyed it for a limited time and were in the process of re-obtaining it after a

⁶⁶ De Genova (n 2).

favourable court ruling, whereas the remaining four had never had it. All had been engaged in legal processes to acquire it for at least five years. Only the woman with legal residence had a regular job, whereas the others were all employed in the informal sector as sellers in local markets, domestic or office workers without stable or sufficient remuneration. None of them became established in Melilla on her own. Their trajectories exemplify how transnationalism and cross-border family ties are ingrained in kinship in the Rif region.⁶⁷

Participants were contacted through a process of snowball sampling via different key-informants.⁶⁸ I intentionally diversified key-informants and contacted different networks and local organisations so as to allow for participants' social diversity.⁶⁹ Fundamental ethical principles as to voluntary participation, informed consent and confidentiality were adopted, along with basic procedures of codification and anonymity.⁷⁰

⁶⁷ Jorge Eguren, 'La Comunidad Transnacional Rifeña' (The Transnational Rif Community) (2004) *Migración y Desarrollo* 49; Irina Casado i Aijón, 'Cuidadoras y Enfermos en el Espacio Transnacional de la Familia. Migraciones Temporales por Salud entre los Imazighen Rifeños' (Caregivers and Patients in the Transnational Space of the Family. Temporary Migrations for Healthcare Among Rif Imazighen People) in *Migraciones Internacionales en España: Movilidad Humana y Diversidad Social* (International Migration in Spain: Human Mobility and Social Diversity) (Bilbao, 11-13 April 2012) VII Congress, Universidad del País Vasco - Euskal Herriko Unibertsitatea; Jorge Eguren, 'Procesos de la Identidad Étnica de las Mujeres Bereberes Rifeñas de Origen Marroquí Español en los Espacios Transnacionales' (Processes of Ethnic Identity of Berber Women of Spanish Moroccan Origin in the Transnational Spaces) in Matilde Fernández Montes (ed), *Negociaciones Identitarias en Contextos Migratorios* (Identity Negotiations in Migration Contexts) (Common Ground 2013).

⁶⁸ Norman K Denzin and Yvonna S Lincoln (eds), *Handbook of Qualitative Research* (Sage 2000).

⁶⁹ Jean-Pierre Olivier de Sardan, *La Rigueur du Qualitatif. Les Contraintes Empiriques de l'Interpretation Socio-Anthropologique* (Bruylant Academia 2008); Kubal 'Conceptualising Semi-Legality' (n 28).

⁷⁰ The main limitation of this research lies in the reduced data extraction and analysis due to its original format as an MSc dissertation. As a consequence, the results are not statistically representative, but are qualitatively significant insofar as they shed light into the administrative processes and the legal cultures surrounding a specific form of liminal legality in a distinct border context.

4. Erasing traces: When the administration produces mobility

4.1. A vicious circle: The overlap between two administrative forms of territorial presence

They pass the ball around: in order to register you need residence or a visa, but to get residence you need to be registered... It's a game.

Jamila

From the outset, Moroccan women inquiring about legal residence in Melilla are faced with the puzzle of how to break the loop produced by two overlapping administrative procedures. Despite Spanish legislation clearly stating the difference between residence *de facto* (*empadronamiento*) and residence *de jure* (*residencia*), the actual modus operandi of the administration intertwines the two. On the one hand, by adding the requirement of legal residence for inscription in the municipal registry (*padrón*), Melillan authorities restrict access to it, as criticised by the Spanish Ombudsman.⁷¹ On the other hand, exclusion from the local registry denies women the most common pathway to legal residence, which is by claiming seniority or social integration rights (*arraigo social*) after three consecutive years of enrolment in the local registry.⁷² Hence, the overlapping requirements impede them from completing either of the two processes.

As a result, Moroccan women who try to meet the requirements of local registry end up involved in the even more demanding process for obtaining legal residence, and vice versa. No matter what first step inside the regulatory machinery is taken, the women interviewed found themselves implicated simultaneously in two fronts of the administrative battle and alternately refer to one or the other in their narratives.

⁷¹ Defensor del Pueblo 'Empadronamiento de Extranjeros' (n 63).

⁷² Seniority rights or social integration rights (*arraigo social*, literally: social rootedness): it is one of the prerequisites to obtain legal residence. After three years of uninterrupted registration in a municipal registry (certifying residence *de facto*) a migrant person who is without authorised residence can claim seniority rights and apply to legal residence in Spain (*residencia*).

4.2. Proving immobility against mobility: A Sisyphean endeavour

All my life here and they tell me I don't meet the requirement of three years of residence.

Amina

Without inscription in the municipal registry, which would be the most straightforward way to prove their *de facto* presence in Melilla, women's legalising moves⁷³ revolve around producing alternative evidence to corroborate their continuous stay (*presencia continuada*) in the Spanish city. To this end, they have to generate a plethora of administrative documents to demonstrate permanent presence through social integration, stable dwelling and economic self-sufficiency.⁷⁴

Always studying, attending courses... I have all [the certificates]. The ones from association xx, the ones from association yy, this one, that one... Proof, proof, proof! I had a pile like this of proof, like this! Of papers... Because I get involved in everything: wherever there is a course, I go; wherever there is a meeting, I show up! I always ask for the certificate, the diploma. I ask, ask, ask... Papers, papers, papers... I had so much proof!!

Amina

Proving active participation in Melilla's community life and social bonds in the city is a way of claiming seniority rights. This motivates the women interviewed to meticulously collect diplomas and certificates of attendance at all sorts of courses and meetings: from Spanish language to vocational training, from volunteering to first aid workshops. Over the years, my informants have amassed certificates as if the sheer volume of evidence may induce a change in the administration's assessment of their residence

⁷³ Coutin, *Legalizing Moves* (n 32).

⁷⁴ When applying for legal residence, Moroccan migrants usually cannot claim seniority rights (see n 72) by referring to the municipal registry (*padrón*) because they are denied registration in it. As an alternative, they attempt to claim seniority rights by proving their continuous stay in Melilla through stable housing and social integration. The latter is certified by means of a report on social integration (*informe de arraigo social*), written by a social worker, which annexes women's certificates of attendance to courses and events as evidence of belonging to the local community of Melilla. The third requirement (ie: economic self-sufficiency) is not examined in this article, as the focus of the analysis is on the mobile-immobile nexus and the access to municipal registry.

application. The documents end up taking on a phantasmagorical character in the eyes of undocumented women: they are seen not only as instruments for regularization, but almost as assets in themselves. Such ‘fetishism of the papers’ shows women’s dependence on a bureaucratic process whose intricacies they do not completely grasp.⁷⁵

The certificates are attached to the reports on social integration (*informe de arraigo social*) written by social workers for each residence application. However, the way in which those reports are drafted disregards these proofs of social belonging, as reports invariably end with an unfavourable assessment due to women’s lack of local registration. This was the case with all reports I personally reviewed and all those that the interviewees mentioned. Given these unfavourable reports, all the women interviewed have seen their residency applications unfailingly denied. Therefore, an administrative tool that, in principle, could correct the women’s lack of a record in the municipal registry, by recognizing their social integration, ends up denying the second on the basis of the first. In this way, local registration is ratified as the only criterion for access to legal residence. The possibility of approval is foreclosed from the outset. It is another closed loop in the vicious circle indicated in the previous section.

For some of the lawyers consulted, this method of drafting reports on social integration constitutes a procedural flaw. They are crafted as tautological documents, since they ratify an exclusion that is already established on the basis of the municipal register. As such, those reports could be challenged legally. However, none of my informants’ lawyers have filed such a lawsuit. This points to the deficiencies of the legal options available to women in an irregular administrative condition.

⁷⁵ Liliana Suárez Navaz, ‘Ciudadanía e Inmigración: ¿Un Oxímoron?’ (Citizenship and Immigration: An Oxymoron?) (2006) 4 Puntos de Vista 29; Matthew S Hull, *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan* (Oxford University Press 2016).

Moreover, in trials appealing the denial of legal residence, certificates and diplomas may be used to justify interpretations that are contrary to women's intentions:

At the end of the trial, the judgment says that although some of the courses finish at 10 pm, that is not enough proof that I live in Melilla. Because in principle there is still time to cross the border and return to Morocco to sleep. Indeed... In principle. But the reality is that at that time I return to my [anonymised relative's] flat in Melilla.

Jamila

This type of hypothetical reasoning, in which more credit is given to a counterfactual conjecture than to finding out what a person actually does in her specific case, is arguably the most striking example of the omnipresent suspicion against women's immobility. It shows the determination of the administration to question the authenticity of the evidence of continuous stay that the women present.

Housing is another main administrative battlefield. Due to their unauthorised condition and to the widespread informal economy of Melilla, Moroccan migrants usually rent through verbal agreements or through relatives or friends. Hence, the women interviewed were unable to submit a rental contract, monthly rental receipts, or even simple maintenance bills to prove their permanent dwelling in the city. In addition, even if the above requirements were met, the Melillan authorities may refuse enrolment in the local registry if the accommodation is not judged salubrious enough (according to criteria of so-called habitability, ie: space, light...) allegedly in order to discourage overcrowded housing. This has been criticized by legal scholars and Civil Society organisations as a restriction contrary to the legal purpose of the municipal registry.⁷⁶ Legal guidelines clearly indicate local authorities' duty to record any situation of housing to the extent that

⁷⁶ Cáritas Española (n 62); Solanes Corella (n 62).

it corresponds to reality.⁷⁷ As a result of this unlawful criterion, a residence that meets the prerequisites for registration has become a highly-sought after asset in Melilla's informal housing market. For an extra payment of up to 2,000€, some landlords will rent a room that qualifies the tenant to enlist in the municipal registry.

Alternative ways of generating traces of constant presence in Melilla are just as hard to obtain. From banks to insurance providers, offices usually refuse to record the address of Moroccan women's actual accommodation in Melilla. Thus, they all cooperate in constructing women's invisibility as habitual city-dwellers. A woman related how, when opening a bank account, she requested it registered to her address in the city. Yet, the bank adopted the address indicated in her Moroccan passport. A year later, during the proceedings of a trial appealing the denial of her residence, the Spanish judge invoked the Moroccan address of her bank account as proof of her non-permanence in Melilla. 'No wonder', she thought, 'how can it have my address in Melilla, if they refused to register it?' (Jamila). Therefore, Moroccan women engage an unrelenting Sisyphean administrative endeavour against a bureaucratic machinery that reproduces their mobility as a self-fulfilling prophesy.

⁷⁷ España. Resolución de 21 de julio de 1997, de la Subsecretaría, por la que se dispone la publicación de la Resolución de 4 de julio de la Presidenta del Instituto Nacional de Estadística y del Director general de Cooperación Territorial, por la que se dictan instrucciones técnicas a los Ayuntamientos sobre actualización del Padrón municipal. Boletín Oficial del Estado, 25 de julio de 1997, n 177, pp 22875-22887. Referencia: BOE-A-1997-16679, art 3-5;

España. Resolución de 16 de marzo de 2015, de la Subsecretaría, por la que se publica la Resolución de 30 de enero de 2015, de la Presidencia del Instituto Nacional de Estadística y de la Dirección General de Coordinación de Competencias con las Comunidades Autónomas y las Entidades Locales, sobre instrucciones técnicas a los Ayuntamientos sobre gestión del Padrón municipal. Boletín Oficial del Estado, 24 de marzo de 2015, n 71, pp 25378-25416. Referencia: BOE-A-2015-3109

4.3. Gatekeepers

Moroccan women's administrative wanderings in pursuit of authorised residence unfold through multiple visits to offices of both public and commercial entities. These are settings of asymmetrical power relations⁷⁸ and a source of distress for my informants. Moreover, many of the interactions women recount can be seen as instances of gatekeeping⁷⁹ illustrating how institutional representatives' understanding and performance of their role may contribute to enabling or hindering candidates' access to limited socio-economic resources.⁸⁰ Hence, public officers' insufficient or tautological explanations further complicate Moroccan women's compliance with the requirements. Employees of banks or health insurance companies' refusal to record women's actual addresses in Melilla close off a way to prove their *de facto* presence. Incidentally, this highlights how migration control is being delegated to private actors, an increasingly widespread phenomenon.⁸¹

In such hierarchical relationships, evaluations of the users' social acceptability are also at play. The following quote shows how some public officers went beyond mere compliance with the rules and staged a personal confrontation loaded with racial contempt:

In the local registry office [they told me] “Moor [*Mora*], we are going to report you!” And so on and so forth, and “You are from Morocco!!” “No, I’m Melillan, I am an irregularised Melillan, an irregularised Melillan! The only thing I’m asking is to regularise my situation”. And they: “No way!” (...) I would leave there crying.

Amina

⁷⁸ Luisa Martín Rojo, ‘El Análisis Crítico del Discurso. Fronteras y Exclusión Social en los Discursos Racistas’ (Critical Discourse Analysis. Borders and Social Exclusion in Racists Discourse) in Lupicinio Íñiguez Rueda (ed), *Análisis del Discurso: Manual para las Ciencias Sociales* (Discourse Analysis: Handbook for Social Sciences) (Editorial UOC 2003).

⁷⁹ Frederick Erickson and Jeffrey Schultz, *The Counsellor as Gatekeeper. Social Interaction in Interviews* (Academic Press 1982).

⁸⁰ Eva Codó, *Immigration and Bureaucratic Control. Language Practices in Public Administration* (Mouton de Gruyter 2008).

⁸¹ Tendayi Bloom, ‘The Business of Migration Control: Delegating Migration Control Functions to Private Actors’ (2015) 6 *Global Policy* 151.

The epithet 'moor' refers to a contemptuous narrative towards Muslims still persistent in folk traditions, everyday discourses and social conflicts in Spain.⁸² This interaction manifests the dynamics related to the management of stigma⁸³ and the arbitrariness in the implementation of the norm according to the social discredit attributed to individuals. In this case, the public officers asserted their authority as guardians not only of the administrative sphere, but also of the separation (and subordination) between different national-religious identities.

Lawyers play a more complex and ambiguous role as gatekeepers. Sought after as allies to provide orientation among legal complexities, they may end up reproducing them and prolonging Moroccan women's paperwork. Through documentary analysis I could corroborated women's accounts of how lawyers' strategy often consisted merely in assembling the clients' paperwork, submitting documents (even negative reports on social integration,) and repeating the procedure after each denial. My informants' acquiescence to the reiteration of the same strategy is striking, and possibly due to their lack of sufficient understanding to question it. This points to their subordinate position *under the law*⁸⁴ embodied by the lawyer. Such dependence is reinforced through the payment of lawyers' honorariums in consecutive instalments. These are significant for women whose work is confined to the informal labour sector. Thus, through the combined effect of needing legal advice and accumulating debt, for some of my informants their lawyer becomes an indispensable intermediary, whom they cannot leave, despite being dissatisfied with his/her methods.

⁸² Tomás Calvo Bueza, 'El Conflicto Estructural en El Ejido: "A la Caza del Moro"' (The Structural Conflict in El Ejido: "Hunting the Moors") (2000) 16 *Sociedad y Utopía* 39; Rasha Ahmed Ismail, 'Fronteras Asesinas e Identidades Culpables: "Moros" y "Negros" en la Literatura Española del Nuevo Milenio' (Murderous Borders and Guilty Identities: "Moors" and "Blacks" in the Spanish Literature of the New Millennium) (2010) 21 *Anaquel de Estudios Árabes* 235; *Guia* (n 51).

⁸³ Erwin Goffman, *Stigma: Notes on the Management of Spoiled Identity* (Prentice-Hall 1963).

⁸⁴ Fritsvold (n 15).

This lawyer's discourse is revealing:

It's like a snake biting its own tail. (...) Many times, at a trial, I say: "Your Honour, why is there the possibility of [obtaining legal residence through] social integration in Melilla, if we know that it will never be granted. If the foreign office never grants it to them because they do not fulfil the [requirement] of local registration, and then we go to trial and you also do not grant it, what good is it?" (...) [Getting recognition of] social integration is very, very complicated, because they understand it as a pull-factor. (...) As there is no visa control at the border, then all Morocco would come: [people could] enter here, come, register, ta-ta-ta, ta-ta-ta, and generate a series of supporting documents, but do not really live here. That's what the judges say. (...) I see it as more of a political issue, that's why they are all involved, judges and others, because they want to set certain limits and they do it selectively, and they say: "Let's filter. So, we are not going to give it [residence] to this one, nor to this one, nor to this one, and well, to this one... yes". (...) So, it's complicated. Complicated, because you fight against this, but you know that actually they are partly right.

Lawyer

This lawyer attributes the function of gatekeepers to the judges, while he distances himself from it, though not completely. Although, on the one hand, he criticizes the administrative procedures' vicious circles and appeals to the Court in search of a solution, on the other hand, he partially legitimates the judges' selective granting of residence, resorting to the narrative of the potential invasion from neighbouring Morocco. In this view, the geographic proximity and the porosity of the border justifies restricting access to the local registry. It is indeed striking how a legal professional represents judges' performance as such an arbitrary exercise, similar to a random assignment. By so doing, he illustrates the pragmatic subordination of the idea of legal fairness to the priority of border control.

In conclusion, contradictory requirements, Moroccan women's difficulties in meeting them due to their unauthorised status, and private and public officers' role as gatekeepers conspire to frame the women interviewed as mobile and not *de facto* resident, thus crafting their liminal legal position and revealing the exclusionary logic of the local administrative system.

5. Between idealisation and disenchantment: Moroccan women's claims to legality

In this section I explore Moroccan women's legal consciousness while they evade, engage with or endure the procedures regulating local registry and legal residence in Melilla. As legal consciousness refers both to individual orientations and cultural schemas towards legality,⁸⁵ the following analysis illuminates contextual dynamics of the local legal system.

5.1. When liminal legality is no longer sustainable

My husband arrived here when he was ten. My youngest son was born here and we've been living here for 18 years. However, we never inquired about residence for fear of being expelled.

Nawal

My informants' trajectories have in common a prolonged period in which maintaining the status of unauthorised resident was a way to endure a legal system perceived as unfavourable. Finding themselves *under the law* (law as unfair),⁸⁶ the women and their family had resorted to a tactic of voluntary invisibility for fear of being singled out and getting into trouble with the law. This reveals the interiorised subjection to a law perceived as remote and alien. Hence, 'legal alienation',⁸⁷ distancing and turning away from laws, and accepting a liminal legal position⁸⁸ allow accommodation to the impossibility of fitting in.

⁸⁵ Ewik and Silbey *The Common Place of Law* (n 6).

⁸⁶ Fritsvold (n 15).

⁸⁷ Hertogh (n 17).

⁸⁸ Menjivar (n 1).

Such a condition however is never an ideal choice. Circumventing the law is an exhausting task and entails so many limitations that it eventually becomes unsustainable. All women referred to a turning point, a set of critical circumstances that made them realise that living as an unauthorised resident was no longer sustainable. After acquiring an illness that requires constant treatment, one woman declares:

Living here illegally is very hard. (...) I am living here, but I am not entitled to go to the doctor, to buy medicines with subsidised prices. And for these reasons I have come to want residence [status].

Jamila

Intergenerational concerns for the long-term implications of lack of legal residence beset other women:

Each year I tell myself: “I’m going to get it for my children”. But each year is worse, each year the requirements just get harder, and it continues like this. (...) And my son is older, he’s almost 17 and tells me: “Mum, when are we going to get those papers?” (...) “Look, mum, at the condition we’re in, what sort of example [are we setting], we don’t have anything!” “My son, we have a home, we have everything...” “But the paper, mum!” (...) But once he leaves, I sit down and cry.

Latifah

I ask nothing for myself, but for my children. (...) The youngest does not want to speak Arabic. Last year he failed the course. This year the professor showed me his bad grades in Arabic. If he fails again this year and the next as well, he will be expelled from school. What will he do if he is left in the streets?

Nawal

Born in Melilla, Latifah’s son will not be able to access further education or job opportunities in the Spanish enclave without legal residence. Nawal’s alarm points to the low quality and segregated education of unregistered Moroccan minors in Melilla, at the

so-called Moroccan residence.⁸⁹ The bad scores in Arabic, the language her son is required to use in this institute, may push him out of the only educational structure he is allowed to attend in Melilla as a non-resident. The prospect of him being left out of education at a young age is unbearable for a mother who has otherwise accepted living at the margins of legality for two decades.

The interviews show how younger generations play an active role in challenging their parents' tactic of liminality. For them, being undocumented implies additional inconveniences, as they are entangled in the tension between the desire to fit in in the society where they grew up and the social disapproval associated with being irregular residents. Significantly, the last two quotes (namely, by referring to being undocumented as setting a bad example and by refusing to speak a language which signals one's otherness) reveal those sons' desire to conform with mainstream society, as a mechanism to overcome social condemnation. This confirms fear and stigma as different intergenerational responses to undocumented status.⁹⁰ The burden of a 'spoiled identity'⁹¹ eventually motivates youth to challenge their parents to break with invisibility and obtain authorised residence in Melilla.

⁸⁹ The so-called Moroccan residence is an educational institution managed directly by Morocco in Spanish territory without a bilateral agreement formally establishing shared criteria of educational quality and curricular correspondence. As Moroccan children without municipal registry in Melilla are not granted the right to education in the Spanish enclave, they can only attend this institution whose legal status, let alone the quality of the educational services it provides, are questionable; see Cembrero (n 65).

⁹⁰ Abrego 'Legal Consciousness of Undocumented Latinos' (n 22).

⁹¹ Goffman (n 83).

5.2. Aspirations of legality: Reasserting themselves before the law

Acquiring authorised residence does not result only from the legal procedures, but also from the individual aspiration to ‘become legal’⁹² which implies a personal repositioning towards legality.

I told myself: “That’s it!” (...) From now on I will not stop until I get my papers. I will get them myself and on my own. So, I started searching on Google. And I looked for the law, the law, the law, the law; the article, the regulation, the law; the article, the regulation, the law; the article, the regulation, the law; and so on. I wanted to find the most suitable law for me. (...) I am going to adhere to that regulation because it is the one that’s most favourable to me. (...) I have this right, why don’t they give it to me? This is precisely the right I need.

Amina

This woman relates her decision to obtain legal residence to a somewhat enthusiastic discovery of a realm of fairness that can accommodate her claim. The complexity of actual laws, with their fixed structures in articles and translation into regulations, is indeed bewildering to her. However, she is keen on delving into this new world with the aim of finding the suitable legal key to enable her to access her desired status. She perceives laws as potentially beneficial tools that can legitimate her demands. Yet, the search also makes her realise the difference between formal entitlement and actual fulfilment of it. While she discovers her legal right, she cannot help wondering why she has not previously enjoyed it. Despite the perception that the pathway to legality is intricate, she defiantly decides that she cannot rely on anyone but herself in order to secure her access to it.

Similarly, other women frame their aspirations to legal status in terms of being admitted to the exercise of entitlements, as adhering to a formal ideal of legal fairness. This

⁹² Hagan (n 32).

is accompanied by a critique of the condition of 'illegality'⁹³ and a reassertion of one's social image:

I am applying for legal residence because I want to live here legally, to have rights like everybody else. Also, I came here to offer my skills, to be productive, not to be a profiteer as others [Moroccans] are.

Jamila

What's wrong with that? Just like you, just like everybody, I am trying to give my children a better life. Yes, I wish I had the papers, but I did nothing wrong.

Latifah

In both cases, asserting one's legitimacy happens by distancing oneself from, but implicitly validating, arguments that circulate in Melilla to justify the exclusion from legal status. Women refute for themselves the widespread narrative of invasion which accuses neighbouring Moroccans of being profiteers of the social benefits available in Melilla. To this end, one points to her entrepreneurial and productive attitude, the other appeals to the higher moral integrity of being responsible for her children's upbringing. This shows how deeply entangled both women are with negative portrayals of Moroccan migrants. Apparently, for my informants it is easier to justify their aspirations of legality on the grounds of their being an exception to these dominant narratives, rather than by overcoming them.

⁹³ Martina Giuffrè and Caterina Cingolani, 'Questioning Illegality in Everyday Life' (2013) 22(3) Griffith Law Review 729.

5.3. 'Becoming legal in a legal way': Claiming a higher legality while resisting under the law

Many people are telling me: "Why are you wasting your time? You could obtain residence and even nationality with a marriage, whether a false one or a real one" And things like that. But I cannot do it. Getting married is getting married for me, it's not a game. (...) So, I wanted to obtain residence in a legal way. Because it's just the way I am, I don't know... [smiles]. I wanted to fight until the end, until obtaining my rights. I didn't want to give up. I can pursue it up to the tribunal in Brussels. (...) [sigh] People of principle suffer a lot.

Jamila

Seeking a residence permit leads women to engage with the formalism of law. They end up being stuck in the administrative loops. After years of reiterated denials and of unsuccessful appeals, the law appears to Jamila to be an unfair game. Legal requirements have proven insurmountable obstacles, unless subterfuges are adopted. She criticises herself for her initial naive reliance on law ('I was illiterate about law'). Yet, she reiterates her unwillingness to resort to deceptions. By so doing, she puts herself on the side of legality, while the actual law is perceived as betraying it. Her disenchantment with the actual legal system pervades her entire narrative. This is structured around a dualism between the reality of the law, with its pointless and exclusionary formalism, and an ideal of fairness she keeps adhering to.

Within Jamila's binary vision, her lawyer – whom she describes as a 'bloodsucker' – is the embodiment of non-compliance with the ideal of legality. Similar views are reported by other informants. During the interview she shows evidence of how his neglect resulted in mismanagement of the administrative processes, delays and lost opportunities of appeals, all of which further complicated her case.

I would confront him all the time and we would argue. I even considered leaving him, but after so much time and money wasted... But now I realise it: how foolish I was!

Jamila

Still, Jamila is engaged in yet another judicial process to ‘become legal in a legal way’. By refusing to resort to informality, she aligns herself to a higher sense of legality, to ‘a law above state law’,⁹⁴ which gives legitimacy to her struggle and will eventually do justice for her. This ideal of fairness counterbalances her frustration and becomes a sign of personal distinction. Hence, her self-image shifts from that of the naive legal illiterate to that of the stubborn claimant, who is willing to go through all levels of judicial appeals. The European Court of Human Rights (‘the tribunals in Brussels’ as she calls it) is evoked as the ultimate resource for her legal idealism.

However, the pathway of resistance is plagued with uncertainty. At times, diminishing the importance of legal residence becomes a complementary tactic to counterbalance frustration. Thus, a woman relativises her quest for legal residence within the broader religious perspective of the intrinsic value of living, a position analogous to ‘legal fatalism’:⁹⁵

What I do is I don’t think much about it [legal residence]. If I get it, fine, if I don’t, I carry on with my life. It’s not the end of the world. It is not preventing me from entering paradise. (...) Patience. That is what I have to maintain, patience.

Jamila

Another woman inscribes her legal struggle within the framework of the inevitable sacrifices life entails:

There are days when I have a feeling... One day, yes! One day there will be a solution. “That’s it, son, don’t worry, one day everything will be sorted

⁹⁴ Halliday and Morgan (n 20).

⁹⁵ Halliday and Morgan (n 20).

out.” “Mum, it seems you’re dreaming...” “Everybody dreams, my son! Everybody, everyone. No one comes to this world and finds that all is ready. Everybody suffers a bit in his life”.

Latifah

Interestingly, in the emotional overtones of this dreamlike premonition, the woman swiftly evokes her son who voices his scepticism and dismisses her hope as an ephemeral dream. This inner dialogue is not only a reproduction of similar conversations the two probably undertake, but clearly highlights how resisting under the law entails an oscillation between the two poles of hopeful idealisation of legality and disillusionment.

The son of one of the informants expresses his frustration and deplores the everyday experience of inequality nurtured by a system perceived as arbitrary:

Once they get the residence, some people change; they change rather radically (...) They think they are above you, that you are someone of little value. In fact, nothing has changed! All you got was a little piece of plastic, that’s it (...) It’s just a scrap of plastic (...) Once I get it, am I going to look down on others? We are all human.

Khalil (one informant’s son)

This is a bitter contestation of the social hierarchy established around possession of the residence permit. The denial of his aspiration to obtain legal recognition prevents this young man from fitting in in the environment where he grew up. As a reaction, he rhetorically reverses his subordinate position. The aura of social superiority surrounding legal residence is reduced to the mundane materiality of bureaucracy. The residence card is demystified as a ‘piece of plastic’.⁹⁶ Beyond the arbitrariness of an unfair law, he invokes universal human dignity as a higher source of legality.

⁹⁶ See n 59.

5.4. 'Forget about getting it legally': Playing tricks under the law

After years of fruitless efforts, some women no longer view informal tactics as morally problematic, but as a way to engage the law on the same terms and turn it in their favour. As the law has lost the aura of legitimacy, subterfuges become admissible resources to undo the unfairness of the legal system. In the case examined, tricks are not clearly envisaged as a tactic from the outset, but materialize through a set of circumstances over the course of the legal struggle. As one woman explains:

At the beginning I was puzzled. I was not looking for a shortcut, so when someone suggested that I do [a subterfuge] to get the residence, I didn't know what to think. I had only one day to decide. I thought about it during the whole day. So, I realised that it was possibly the only way to offer a future to my children. I have had enough of all those papers [certificates].

Sajida

Yet, the subterfuge she used only helped her to obtain a temporary residence which she then could not renew for lack of a regular job contract. Only many years later, after a subsequent severe personal injury which was recognised in court, was she finally granted a permanent residence permit. Hence, through circumstances beyond her control, a legal avenue had finally broken the vicious circle between denial of municipal registry and legal residence. To her, this confirms the idea that only by engaging with the law in all possible ways is it possible to obtain what one deserves.

For another woman, five years of consecutive residence applications, along with various appeals to court and reiterated correspondence with the Ombudsman, were still not enough to obtain legal residence. Despite the multiple social linkages she developed through two decades of life in Melilla, the reports on social integration would only point to her lack of municipal registry. By then, she says, she had gathered so many certificates, she could fill a couple of shelves in a big cabinet. The legal gateway appeared inexorably

closed. Meanwhile, through a set of coincidences, she got involved in a leisure activity (which I will not specify to protect anonymity) that helped her develop an unexpected public profile. Suddenly endowed with a social capital she had never thought possible, she recognised it was a lever to break away from her irregular legal situation. She activated contacts to obtain an ally inside the administrative system and this tactic proved successful. She was finally granted a residence permit that she has been able to renew ever since, by presenting regular job contracts. Looking back, she cannot but express a certain cynicism at the way the administration actually works:

I already threw all [the certificates] away!! [laughing] ‘Cause, why bother with more papers, when in the end, it turns out that all those papers are useless, all those rights are useless. To the trash bin! (...) I got the residence through a hookup, and you can forget about trying to get it legally! (...) All the papers I accumulated at home did not help me at all. Why bother with all those papers, why bother with all those laws, if it’s all about who you know... (...) The one who has a godfather is baptized, the one who does not, isn’t.

Amina

There is some irony in a Muslim woman using a proverb embedded in Spanish Catholicism to express her perception of widespread corruption in Melilla. Being proficiently bilingual and rooted in the cultures of both sides of the borderline allows her to perform such ‘code switching’.⁹⁷ Yet, in her eyes, this poignant recognition of the dysfunctionality of the legal system, which mirrors the culture of patronage common across the Mediterranean,⁹⁸ does not amount to a justification of it. Resorting to a personal connection was a pragmatic capitulation to an unfair system otherwise beyond reach, but it left her with a bitter awareness of the pointlessness of legal stipulations.

⁹⁷ Miri Song, *Choosing Ethnic Identity* (Polity 2003) 106.

⁹⁸ Michael Kenny, ‘Patterns of Patronage in Spain’ (1960) 33(1) *Anthropological Quarterly* 14; António Robles-Egea and José M Aceituno-Montes, ‘The Defects of Democracy: Clientelism and Corruption in Andalusia’ (2012) 37 *Pôle Sud* 51.

To conclude, the categories of legal consciousness allow elucidation of Moroccan women's shifting positions towards legality. When different life circumstances make their marginal legal situation untenable, my informants challenge their position *under the law* by claiming equality *before the law*. However, once they try to comply with the formality of the law, they are trapped in its contradictory administrative requirements and plunge into a spiral of paperwork. The bureaucratic quagmire stands in the way of their aspirations of legality. Disillusioned with the legal system, some women reaffirm their legal aspirations by claiming legitimacy through a higher standard of legality (*law above state law*). Others resort to informal manoeuvres, allowed by the dysfunctional formalism of the administration, to *play with* the laws and achieve individual exceptions to the existing rules. Both tactics are thus functional to the *de facto* legal system in place in Melilla and corroborate women's subordinate position *under the law*.⁹⁹

⁹⁹ Fritsvold (n 15); Halliday and Morgan (n 20).

6. Invisible immobility between State control and personal legal tactics

The previous analysis shows that Moroccan women's irregularity in Melilla is produced by contravening the prescription on the local registry in force in the rest of the Spanish territory. Thanks to the recognition of *de facto* residence, the Spanish legislation offers irregular migrants a pathway to legalisation that is relatively accessible, especially in comparison to the majority of European countries. However, in Melilla the two different administrative forms of residence, *de facto* and *de jure*, are conflated and inscription in the municipal registry is denied. This converts the regularisation process into a vicious circle where Moroccan women are engaged in a Sisyphean administrative endeavour to prove their actual and continuous stay in the city against local authorities' assumption that they are non-resident cross-border migrants. Trapped between the impossibility of proving their presence in the territory and the local administration's will to assume their mobility, Moroccan women find themselves locked in mobility.

I argue that this exceptional, if not flawed, enactment of the legislation shows how the logic of migration control underpins administrative and legal practices to counterbalance the porosity of the border. Practical unfeasibility and the profitability of cross-border trade make the total control of cross-border flows impossible and this, in turn, feeds the fear of invasion. The apocalyptic scenario of 'all Morocco wants to come here', is invoked explicitly and implicitly by officers, lawyers, and even Moroccan women themselves. In particular, the belief that social entitlements are a pull-factor (*efecto llamada*) of migration¹⁰⁰ justifies purposely disavowing the *de facto* presence of Moroccan residents in order to avoid the legal obligations it would entail. This intention is echoed by

¹⁰⁰ Paqui T Sánchez, 'Ventura Pide a los Partidos y ONG Críticos con la Gestión de los MENA que Reclamen su Repatriación ante la ONU' (Ventura Asks Parties and NGOs Critical of the Management of Unaccompanied Foreigner Minors to Claim their Repatriation to the UN] *Melilla Hoy* (Melilla, 17 October 2016) <<http://www.melillahoy.es/noticia/78326/inmigracion/ventura-pide-a-los-partidos-y-ong-criticos-con-la-gestion-de-los-mena-que-reclamen-su-repatriacion-ante-la-onu.html>> accessed 28 November 2018.

the legal reasoning of those lawyers and judges who engage in hypothetical counterfactual thinking rather than ascertaining migrant women's actual residence. It is not yet possible to assess the long-term implications that the practice of denying, rather than assessing, reality might have on the legitimacy of the legal system.

State authorities' deliberate ignoring of some sectors of the population is not a phenomenon unique to Melilla. As States use documentation to make individuals 'legible' to their eyes,¹⁰¹ they can also use it to strategically engineer populations' invisibility. Passports are a good example of how, by assuming the monopoly of the means of mobility, States have induced individuals to loyally embrace them in exchange for belonging and the entitlement to mobility.¹⁰² Passports and residence permits ratify inclusion, while withdrawing or denying them creates undesirable populations. In this way, the invisibility of unauthorised migrants is not only a possible undesired side-effect of migration policy gaps,¹⁰³ but can also result from an intentional strategy of social control.¹⁰⁴ Allowing administrative grey zones generates 'spaces of nonexistence'¹⁰⁵ where 'impossible subjects'¹⁰⁶ are maintained at the margins of society even though they are actually in it.

My informants' experiences also illustrate how legal status establishes deep social differentiations. The lack of authorised residence generates social boundaries and unequal relationships that encumber ordinary interactions and disrupt belonging, as one of the

¹⁰¹ James C Scott, *Seeing Like a State: How Certain Schemes to Improve Human Condition Have Failed* (Yale University Press 1998).

¹⁰² John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge University Press 2000).

¹⁰³ Mathias Czaika and Hein De Haas, 'The Effectiveness of Immigration Policies' (2013) 39(3) *Population and Development Review* 487.

¹⁰⁴ Daniel Kanstroom, 'Deportation, Social Control, and Punishment: Some Thoughts about Why Hard Laws Make Bad Cases' (2000) 113(8) *Harvard Law Review* 1890.

¹⁰⁵ Coutin, *Legalizing Moves* (n 32).

¹⁰⁶ Mae M Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton University Press 2004).

informants laments and as corroborated by the scholarly literature.¹⁰⁷ Thus, in Melilla tight restrictions on obtaining legal residence bring about social divides that can be likened to an internal ‘symbolic border’,¹⁰⁸ complementary to the external and geographic one, made constantly visible by a hypertrophic apparatus of control.¹⁰⁹ Though it has not been my focus here, I must mention that this social demarcation is also constructed through a racialized, demeaning representation of Moroccans, as underlined by studies on Ceuta and Melilla.¹¹⁰ Social boundaries generated by migration policies can hardly avoid implicit racial categorisations.¹¹¹

The 'polivocality' of legality is essential to enable its persistence and legitimacy.¹¹² My analysis shows how in Melilla such plurality does not exist when it comes to Moroccan women's access to authorised residence. The enacted patterns of legality are limited to the formal principle of the impartiality *before the law* and the reality of its unfair and arbitrary implementation (*under the law*). As a matter-of-fact, the formality of the law invoked by public officers and lawyers is unattainable. Hence, it becomes bureaucratic machinery that can barely be accessed by legal means, but only through informality (eg: ruse, contacts, etc.). In a legal environment characterised by the binary of two seemingly opposed, but in fact complementary logics of formality and informality, women who only adhere to the first one are left out of legality. Without the articulation of a plurality of legal

¹⁰⁷ Shahram Khosravi, ‘The “Illegal” Traveller: An Auto-Ethnography of Borders’ (2007) 15(3) *Social Anthropology/Anthropologie Sociale* 321; Abrego ‘Legal Consciousness of Undocumented Latinos’ (n 22); Roberto G Gonzales, ‘Learning to be Illegal: Undocumented Youth and Shifting Legal Contexts in the Transition to Adulthood’ (2011) 76(4) *American Sociological Review* 602; Nando Sigona, ‘“I have Too Much Baggage”: The Impacts of Legal Status on the Social Worlds of Irregular Migrants’ (2012) 20(1) *Social Anthropology* 50; Madeleine Reeves, ‘Living from the Nerves: Deportability, Indeterminacy, and the “Feel of Law” in Migrant Moscow’ (2015) 59(4) *Social Analysis* 119.

¹⁰⁸ Fassin ‘Frontières Extérieures, Frontières Intérieures’ (n 46).

¹⁰⁹ Andersson (n 9).

¹¹⁰ David Moffette, ‘Muslim Ceutíes, Migrants, and Porteadores: Race, Security, and Tolerance at the Spanish-Moroccan Border’ (2013) 38(4) *The Canadian Journal of Sociology / Cahiers Canadiens de Sociologie* 601; Laia Soto Bermant, ‘A Tale of Two Cities: The Production of Difference in a Mediterranean Border Enclave’ (2015) 23(4) *Social Anthropology/Anthropologie Sociale* 450.

¹¹¹ Anderson *Us and Them?* (n 4).

¹¹² Ewick and Silbey ‘The Structure of Legality’ (n 7) 162.

understandings and practices, legality becomes an unbalanced and arbitrary social structure.

In such a context, Moroccan women's shifting positions towards legality give insight into the dynamics of legal consciousness under conditions of liminal legality. Overall, through their prolonged struggle for residence, women's trajectories show the prevalence of the modes of *before* and *under the law*.¹¹³ Women's desire for authorised residence is formulated by adhering to the ideal of equality *before the law* and by claiming a moral legitimacy against the social discredit associated to their condition. Yet, once they are trapped in the intricacies of the administrative system, its exclusionary formalism becomes slowly evident to them. Realising that legality is elusive *under* the actual implementation of the law, they become disenchanted. Hence, some feel entitled to *play with the law* and resort to tricks, while others renew their hope in a *higher principle of fairness* to sustain their aspirations to legality. Both positions confirm Moroccan women's permanence *under the law*.

While subjected to a limbo status, women can also tactically¹¹⁴ resist and wait for new favourable circumstances. This hints at the complexity of migrants' experience associated with the unclear time-frame of obtaining documentation.¹¹⁵ Even though waiting can be the wearisome experience of an impasse, it does not imply passivity.¹¹⁶ Indeed, many informants appropriated invisibility to actively protect and protract their stay and eventually build a stronger case for their regularisation, hence subverting the marginality inflicted on them. For some, the tenacious presence in Melilla is an exercise of

¹¹³ Ewick and Silbey 'The Structure of Legality' (n 7); Fritsvold (n 15).

¹¹⁴ De Certeau (n 34).

¹¹⁵ Caroline Kobelinsky, *L'Accueil des Demandeurs d'Asile. Une Ethnographie de l'Attente* (Editions du Cygne 2010); Deirdre Conlon, 'Waiting: Feminist Perspectives on the Spacings/Timings of Migrant (Im)Mobility' (2011) 18(3) *Gender, Place and Culture* 353.

¹¹⁶ Shahram Khosravi, 'Waiting' in Bridget Anderson and Michael Keith (eds), *Migration: A COMPAS Anthology* (COMPAS, 2014) <<http://compasanthology.co.uk/waiting/>> accessed 28 November 2018.

daily defiance of the administrative system and the basis of a moral claim against it. This demand for legality contributes to the slow bottom-up social construction of it. Even though a change to the current regulation is not in sight in Melilla, its arbitrariness increases ‘the likelihood of structural transformation’¹¹⁷ by provoking the creative action of the people it harms.

Conclusions

This article critically analysed how a specific form of unauthorised residence is produced and maintained in the Spanish border city of Melilla, by examining the case of Moroccan women from the neighbouring Moroccan province of Nador. The underlying intention has been that of ‘denaturalising migrants’ “illegality” and showing it to be ‘an effect of the practical materiality of the law’¹¹⁸ in a specific border context.

I qualified Moroccan women’s experience of ‘liminal legality’¹¹⁹ as locked in mobility, since it is Melillan authorities’ denial of women’s immobility (ie: their continuous stay on Spanish territory) that confines them to an irregular condition. I showed that by restricting registration of foreign citizens’ *de facto* presence in the municipal registry, the administrative practices enacted in Melilla contravene the national legislation regulating municipal registries. This creates a problematic administrative exceptionality that is not openly acknowledged by Spanish authorities which reiterate that Melilla is Spain (not a Spanish outpost) and functions accordingly. In fact, local authorities’ wilful blindness to the presence of sectors of population on its territory brings to light how curbing cross-border migration prevails over conformity with national norms. The result is

¹¹⁷ Ewick and Silbey ‘The Structure of Legality’ (n 7) 162; See also: Patricia Ewick and Susan Silbey ‘Narrating Social Structure: Stories of Resistance to Legal authority’ (2003) 108(6) AJS 1328.

¹¹⁸ De Genova (n 2) 324.

¹¹⁹ Menjívar (n 1).

an unbalanced legal implementation which breaches individual entitlements and creates periodic tensions at national administrative level, as the Spanish Ombudsmen's recurrent pronouncements show.

Finally, through the analytic categories of legal consciousness, I exposed the dynamics of both subordination and tactical resistance that unauthorised migrants go through when living *under the law*. This mirrors their realisation of the ambiguity of the law as both an inclusionary and exclusionary device. As a result, their legalisation tactics develop through alternative paths of playing with the dysfunctional formalism of the law or being trapped by it, enduring its yoke with disenchantment while holding to the ideal of a fair legality. Still, it can be argued that through their continuous stay, Moroccan women defy the administrative system and tactically wait for the possibility of a legal solution to appear. Hence, by maintaining a moral claim to legal residence they contribute to the daily construction of legality¹²⁰ and dispute the power of a local administration that keeps them locked in mobility.

¹²⁰ Mezey (n 11); Ewick and Silbey 'Narrating Social Structure' (n 117).