

IMISCOE Research Series

Reinhard Schweitzer

Micro-Management of Irregular Migration

Internal Borders and Public Services in
London and Barcelona

IMISCOE

OPEN ACCESS

 Springer

IMISCOE Research Series

Now accepted for Scopus! Content available on the Scopus site in spring 2021.

This series is the official book series of IMISCOE, the largest network of excellence on migration and diversity in the world. It comprises publications which present empirical and theoretical research on different aspects of international migration. The authors are all specialists, and the publications a rich source of information for researchers and others involved in international migration studies. The series is published under the editorial supervision of the IMISCOE Editorial Committee which includes leading scholars from all over Europe. The series, which contains more than eighty titles already, is internationally peer reviewed which ensures that the book published in this series continue to present excellent academic standards and scholarly quality. Most of the books are available open access.

More information about this series at <https://link.springer.com/bookseries/13502>

Reinhard Schweitzer

Micro-Management of Irregular Migration

Internal Borders and Public Services
in London and Barcelona



Springer

Reinhard Schweitzer
CIDOB
Barcelona, Spain
SCMR University of Sussex
Brighton, UK



ISSN 2364-4087 ISSN 2364-4095 (electronic)
IMISCOE Research Series
ISBN 978-3-030-91730-2 ISBN 978-3-030-91731-9 (eBook)
<https://doi.org/10.1007/978-3-030-91731-9>

© The Editor(s) (if applicable) and The Author(s) 2022. This book is an open access publication.
Open Access This book is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this book are included in the book's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the book's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publisher, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, expressed or implied, with respect to the material contained herein or for any errors or omissions that may have been made. The publisher remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

This Springer imprint is published by the registered company Springer Nature Switzerland AG
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

Acknowledgements

I know that I have been very lucky to find the opportunity, time and energy, but also the practical and emotional support I needed, to write this book.

In particular, I would like to thank my PhD supervisors Paul Statham and Mike Collyer for their always friendly advice, effective support and encouragement throughout and well beyond my doctoral studies. The University of Sussex, particularly the Sussex Centre for Migration Research (SCMR), provided a great environment for this endeavour. During my field research and academic secondment in Spain, I was very kindly hosted by the Interdisciplinary Research Group on Immigration (GRITIM) at Pompeu Fabra University in Barcelona and the Pedro Arrupe Institute of Human Rights at the University of Deusto in Bilbao. I am also very grateful to Blanca Gracés-Mascareñas and James Hampshire who examined my thesis and whose valuable feedback and suggestions provided a good starting point and initial motivation for turning it into a book.

The underlying research itself, as well as my international mobility and the training I received during that time, was financed by the European Commission, under grant agreement n° 316796 (FP7/2007–2013). Being part of the EU Initial Training Network INTEGRIM, I had a lot of opportunity to expand my intellectual horizon and professional network, and to work alongside a great bunch of researchers, many of whom are now among my dearest colleagues and friends. My work, including this book, has greatly benefitted from ongoing exchanges and collective thinking across geographical and disciplinary boundaries, much of which happened within IMISCOE. It was therefore a great honour to be awarded the second prize of the 2019 IMISCOE-Springer competitive call for book proposals, and very helpful to receive additional feedback and comments from the three anonymous reviewers.

Most importantly, however, I want to thank each and every one who participated in, or facilitated, my research in London or Barcelona. This includes those who provided me with contacts and access to crucial information as well as those who themselves agreed to spend their valuable time discussing with me about issues that

were seldom their primary concern but mine. I am grateful not only for their time but also for their trust and willingness to explain often uncomfortable situations in detail. Their first-hand experiences, perceptions, insights and interpretations constituted the single most important source of knowledge and understanding that I have gained in this whole process.

Contents

1	Introduction	1
	References	6
2	The ‘Management’ of Migration – And of the Resulting Irregularities	9
2.1	The State as the ‘Manager’ of Migration?	12
2.2	The ‘Unmanaged’: Irregular Migrants as the Exception to the Rule	17
2.2.1	Migrant Irregularity as a Gesture of State Sovereignty and a Device of Governmentality	19
2.2.2	Managing Irregular Migration Through Deportation and Regularisation	22
2.2.3	Managing Irregular Migration Through Internal Exclusion and Inclusion	26
2.3	Public Sector Organisations and Street-Level Bureaucrats as Local Mediators of Competing Functional Imperatives and Institutional Logics	29
2.4	A Framework for Systematic Analysis of the Micro-management of Irregular Migration	35
	References	39
3	Research Design, Cases and Methodology	47
3.1	The Study: Research Design and Case Selection	47
3.2	The Methodology: Data Sources, Data Collection and Data Analysis	50
3.3	Methodological and Ethical Challenges for Research in the Context of Irregularity	53
	References	55

4	Migrant Irregularity in Britain and Spain, London and Barcelona	57
4.1	State Responses to Migrant Irregularity: Deportation, Regularisation and Internal Control in the UK and Spain	58
4.1.1	Regularisation in Spain and the UK.	59
4.1.2	Deportation and Deportability in the UK and Spain	62
4.1.3	Internalised Immigration Control and Enforcement in the UK and Spain.	65
4.2	City Responses to Migrant Irregularity and Its Localised Control	68
4.2.1	The City as Sanctuary, Source of Membership and Site for Population Control	70
4.2.2	Local Administrations Helping to ‘Circumvent’ Migrant Irregularity	73
4.3	Migrant Irregularity and the British and Spanish Welfare States	79
	References.	81
5	Managing Irregularity Through the Provision of Public Healthcare	87
5.1	Between Hostility and Pragmatism: Ambivalent Legal-Political Contexts for the Provision of Public Healthcare to Irregular Migrants	88
5.2	Legal Frameworks, Formal Entitlements and Practical Barriers for Irregular Migrants’ Access to Public Healthcare in London and Barcelona.	92
5.2.1	Irregular Migrants’ Access to Primary and Emergency Healthcare	92
5.2.2	Irregular Migrants’ Access to Secondary Healthcare	97
5.3	Negotiating the Effective Limits of Access, Medical Urgency and Immigration Control: The Role(s) and Agency of Healthcare Workers	100
5.3.1	Administrators of Healthcare.	100
5.3.2	Professional Providers of Healthcare.	105
5.3.3	‘Managers’ of Irregularity Within the Healthcare System	109
5.4	Healthcare Workers as Migration Managers?	114
	References.	117

6	Managing Irregularity Through the Provision of Public Education.	121
6.1	Between Human Rights and Unwanted Integration: Ambivalent Legal-Political Contexts for the Provision of Public Education to Irregular Migrants	122
6.2	Legal Frameworks, Formal Entitlements and Practical Barriers for Irregular Migrants’ Access to Public Education Provided in London and Barcelona	127
6.2.1	Irregular Migrants’ Access to Compulsory Education and Related Services	128
6.2.2	Irregular Migrants’ Access to Post-compulsory Education and Training	133
6.3	Negotiating the Effective Limits of Access, Educational Need and Immigration Control: The Role(s) and Agency of Education Workers.	138
6.3.1	Administrators of Public Education and Related Services	138
6.3.2	Professional Providers of Public Education.	143
6.3.3	‘Managers’ of Irregularity Within the Education System	147
6.4	Education Workers as Migration Managers?	150
	References.	152
7	Managing Irregularity Through the Provision of Social Assistance	155
7.1	Public Support for Non-members: Ambivalent Legal-Political Contexts for the Provision of Social Assistance and Protection to Irregular Migrants	157
7.2	Legal Frameworks, Formal Entitlements and Practical Barriers for Irregular Migrants’ Access to Social Assistance Provided in London and Barcelona	159
7.2.1	Irregular Migrants’ Access to Basic Support.	159
7.2.2	Irregular Migrants’ Access to Substantial and Longer-Term Support	164
7.3	Negotiating the Effective Limits of Vulnerability, Deservingness and Immigration Control: The Role(s) and Agency of Social Assistance Workers	167
7.3.1	Administrators of Social Assistance and Protection	168
7.3.2	Professional Providers of Social Assistance and Protection	173
7.3.3	‘Managers’ of Irregularity Within the Social Assistance System	179
7.4	Social Assistance Workers as Migration Managers?	182
	References.	185

8 Conclusion	189
8.1 The Role of Local Contexts, Public Institutions, and Street-Level Bureaucrats in the Micro-management of Irregular Migration	190
8.1.1 Public Service Provision Between Regularisation and Deportation	190
8.1.2 Different Kinds and Categories of Street-Level Bureaucrats	193
8.1.3 The Difference Between, and Varying Degrees of, 'Having to Know' and 'Having to Tell'	197
8.1.4 Organisational Responses to Internalised Control	199
8.2 Problematising Migrant Irregularity Together with Its Control	200
References	202

Abbreviations

A&E	Accidents and Emergency (Services)
BMA	British Medical Association
CAP	Primary Health Centre (<i>Centro de Atención Primaria</i>)
CAS	Confirmation of Acceptance for Studies
CatSalut	Catalan Health Service (<i>Servei Català de la Salut</i>)
CCAR	Catalan Refugee Aid Commission (<i>‘Comissió Catalana d’Ajuda al Refugiat’</i>)
CEAR	Spanish Refugee Aid Commission (<i>‘Comisión Española de Ayuda al Refugiado’</i>)
CEB	Education Consortium of Barcelona (<i>Consorti d’Educació de Barcelona</i>)
DfE	Department for Education
DLR	Discretionary Leave to Remain
DNI	National Identification Document (<i>Documento Nacional de Identidad</i>)
DOTW	Doctors of The World (<i>Medicos del Mundo – MdM</i>)
EMN	European Migration Network
ESOL	English for Speakers of Other Languages
EU	European Union
FRA	European Union Agency for Fundamental Rights
GDP	Gross Domestic Product
GLA	Greater London Authority
GMC	General Medical Council
GP	General Practitioner
HLT	Hackney Learning Trust
ID	Identification Document
ILR	Indefinite Leave to Remain
INSS	National Institute of Social Security (<i>Instituto Nacional de Seguridad Social</i>)
IOM	International Organisation for Migration
LA	Local Authority

LEA	Local Education Authority
LTR	Leave to Remain
MRI	Migrant Rights International
MRN	Migrants' Rights Network
NGO	Non-Governmental Organisation
NHS	(UK) National Health Service
NIE	Foreigners' Personal Identity Number (<i>Número de Identidad de Extranjero</i>)
NPD	National Pupil Database
NRPF	No Recourse to Public Funds
NUT	National Union of Teachers
OHCHR	Office of the United Nations High Commissioner for Human Rights
OVM	Overseas Visitors Manager
PASUCAT	Platform for Universal Health Care in Catalonia (<i>Plataforma per una Atenció Sanitària Universal a Catalunya</i>)
PICUM	Platform for International Cooperation on Undocumented Migrants
RMI	Minimum Insertion Income (<i>Renta Mínima de Inserción</i>)
SAIER	Service Centre for Immigrants, Emigrants and Refugees (<i>Servei d'Atenció a Immigrants, Emigrants i Refugiats</i>)
SEN	Special Educational Need
SSC	Social Service Centre
TSI	Individual Health Card (<i>Tarjeta Sanitaria Individual</i>)
UK	United Kingdom
UNCESCR	United Nations Committee on Economic, Social and Cultural Rights
US	United States

List of Figures

Fig. 2.1	Potential positions of individual actors or organisational roles in relation to migrant irregularity and its control	36
Fig. 2.2	Potential institutional arrangements for the inclusion or exclusion of irregular residents and likely outcomes for the latter.....	38
Fig. 3.1	Case overview and comparative design	48
Fig. 5.1	NHS poster campaign – ‘Healthcare is not free for everyone’	91
Fig. 5.2	The positions of different categories of healthcare workers in relation to migrant irregularity and its control.....	115
Fig. 6.1	The positions of different categories of education workers in relation to migrant irregularity and its control.....	150
Fig. 7.1	The positions of different categories of social assistance workers in relation to migrant irregularity and its control	183
Fig. 8.1	The positions of different kinds of services provided in London and Barcelona, in relation to migrant irregularity and its control.....	192
Fig. 8.2	The positions of different kinds and categories of street-level bureaucrats working in London, in relation to migrant irregularity and its control.....	194
Fig. 8.3	The positions of different kinds and categories of street-level bureaucrats working in Barcelona, in relation to migrant irregularity and its control.....	195

Chapter 1

Introduction



I think that we generally tend to simplify the complexity of the whole migration process ... but then sometimes in front of the client, in your workplace, you as a person have to respond to all this complexity.

'Street-level bureaucrat', interviewed in Barcelona.

This book is about migration, migration control, and the unavoidable irregularities and everyday problems that result from their interplay. It primarily engages with the perspective of people who face some of these problems because they work in institutions like schools, hospitals or social service departments, where immigration control often overlaps with public service provision. What I wanted to understand is when, why, and how exactly these people respond to, and thereby manage, at least some of the complexity of irregular migration. Often, these micro-level responses involve difficult decisions to be taken on a case-by-case basis, whereby the individual teacher, social worker, or health centre receptionist acts not just as a person, but also as a public employee who fulfils a certain role for the welfare system. Every such decision can significantly change what it means to be living in a place without having the responsible government's permission to do so. This condition is what I refer to as migrant irregularity. Through public service provision, migrant (but also other) irregularity is not only being (re)produced but also experienced on a daily basis. The book therefore also gives voice to the people who themselves are in an 'irregular' situation. Underlying this approach is the conviction that only by taking seriously and fruitfully combining both of these perspectives can we properly explain how migration governance works and why it often not only fails to achieve its proclaimed objectives but also causes a lot of damage in failing.

One of the core objectives of migration governance is precisely to prevent migration from happening outside of the legal framework. The same legal framework, however, has long rendered irregular migration the only form of mobility that is available to many people in search for better life chances, including employment

opportunities but also the absence of violence and persecution. Already in 2008, years before the ‘long summer of migration’ and in spite of already intensified control and surveillance of the European Union’s (EU) external borders, between 1.9 and 3.8 million people were estimated to be residing ‘illegally’ within them¹ (CLANDESTINO, 2009). Most had either crossed these borders lawfully but subsequently overstayed their tourist visa or temporary residence permit; or they arrived as refugees but could not or simply did not return to their country of citizenship after being refused asylum or other right to remain. What they all have in common is a legal-administrative status that itself constitutes explicit – even though largely invisible – evidence for the failure of contemporary migration governance. The only factual evidence of irregularity consists in the lack of a stamp or sticker in their passport or the equivalent data on a chip card. This has significant implications for how, where and by whom migrant irregularity can actually be detected and potentially acted upon.

Governments often (say they) try to ‘stop’ irregular migration by preventing unlawful residents from accessing mainstream public services. The underlying rationale is to thereby not only encourage their so-called ‘voluntary’ return but also dissuade potential newcomers from risking to end up in the same irregular – and thus to be made uncomfortable – situation. In order to achieve effective exclusion from these services, at least some of the existing rules and established practices according to which they are provided to the local population need to be modified. For service users this often means having to provide additional documentary evidence of the place, length, and sometimes legality of their residence. It also means that at least some of the people working within the corresponding institutions have to check these documents, and thus be encouraged to apply the logic of immigration control in their everyday work, where it often conflicts but can also partly converge with their own administrative or professional duties and the original function of their institution. Dita Vogel (2000, p. 416) described such instances as ‘cooperation dilemmas’, whereby “the agencies which cooperate with the aliens’ authorities must sacrifice part of their other objectives”. Such cooperation comes in different forms and intensity and causes dilemmas in all kinds of institutional settings. How these dilemmas are solved says a lot about what migrant irregularity is taken to mean in any particular context; and it is often where they are not resolved that irregular migration becomes a problem.

This book systematically compares how providers and administrators of various public services in London and Barcelona deal with the everyday dilemmas of irregular migration. The two cities are embedded in very distinct national contexts. In Chap. 4 I discuss the different ways in which the issue of irregular migration is being framed and addressed in Britain and in Spain. The former has become emblematic for what Matthew Gibney (2008) called the ‘deportation turn’, and the UK government’s official strategy to “create [...] a really hostile environment for

¹Around the same time the European Commission (2009) referred to an estimated number of “about eight million illegal immigrants living in the Union”.

illegal migration”,² as Theresa May announced in 2012, has since then determined much of its policy towards unlawful residents. The Spanish approach, on the contrary, is characterised by a relatively accessible mechanism for the regularisation of irregular residents on the basis of their social and economic ties within the country, indicating a much more pragmatic attitude towards their unlawful presence. These official policy approaches not only shape the everyday meaning of migrant irregularity, but also, and accordingly, the local provision of public healthcare, education and social assistance to irregular migrants. In each of these spheres, however, immigration law thereby also intersects with intrinsic logics, existing rules and established practices of inclusion as well as exclusion.

Chapters 5, 6, and 7 look at these three fields of service provision not only as potential sites of everyday bordering and its contestation, but also as everyday workplaces, within which immigration status can be anything from hugely significant to almost irrelevant. This refines Etienne Balibar’s (2003, p. 1) famous portrayal of contemporary borders as being “dispersed a little everywhere” by highlighting their overall “patchy, makeshift, inconsistent and failure-prone character” (Burridge et al., 2017, p. 245). It also fits with the important observation that irregular migrants are always included in some spheres of social life but simultaneously excluded from many others (Castles, 1995; Cvajner & Sciortino, 2010; Ruhs & Anderson, 2010; Mezzadra, 2011; Chauvin & Garcés-Masareñas, 2012; Van Meeteren, 2014; Echeverría, 2020). Most empirical studies have analysed this fact from the perspective of formal law and policy or the people who are to be excluded. Instead, my focus lies on the people who are increasingly expected to do the excluding. By adopting the viewpoint of different welfare institutions and various of their employees, this book offers a novel perspective on the de-territorialisation of borders and internalisation of immigration control. What interests me in particular is to what extent and under which conditions individual welfare workers (can) use their agency to contest, adjust or reproduce formal structures and mechanisms of inclusion and exclusion.

My analysis is based on a rich body of original, qualitative field data collected between July 2014 and October 2015 in London and Barcelona, including almost 90 semi-structured interviews with local providers and administrators of public services, irregular residents, and mediating actors like representatives of NGOs and local authorities. More than half of these informants are what Michael Lipsky (1980) famously conceptualised as ‘street-level bureaucrats’: Local actors who implement government policy through their own interactions and everyday relations with members of the public, whereby they routinely exercise significant degrees of power, autonomy and individual discretion. As doctors, teachers, social workers or administrative personnel in local health centres, schools and social service departments they are agents of the state and fulfil important control and gatekeeping functions. Without them, the government would be unable to provide public services,

²T. May, cited in The Telegraph, 25 May 2012: <http://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html> (last accessed 15/12/2017).

but also to exercise its power over the population, as Michel Foucault (2002, p. 337) has noted: “If we speak of the power of laws, institutions, and ideologies, if we speak of structures or mechanisms of power, it is only insofar as we suppose that certain persons exercise power over others”. Since street-level bureaucrats are given significant autonomy in exercising their power over potential service users, their actions not only underpin but can also undermine the power of the law. For Maurizio Ambrosini (2017) they therefore constitute one of various categories of ‘intermediary actors’ whose involvement explains why internalised immigration control often remains rather ineffective.

Those street-level bureaucrats I personally spoke to did generally not see themselves as particularly powerful, nor personally involved in immigration control. For many of them it was not necessary and would have been difficult to systematically distinguish irregular migrants from other local residents, patients, students or clients. Others, however, were obliged to, or at least felt they should, take immigration status into account when establishing a potential service user’s eligibility or providing a service. Among the latter were also some who not only (felt they) had to detect migrant irregularity, but also inform the responsible authority in case they did. In their everyday work they thus experienced different variants of what John Park (2013) called the ‘Huckleberry Finn Problem’. He thereby referred to the ambivalent situation that ‘Huck’ Finn – the young protagonist of Mark Twain’s famous novel *The Adventures of Huckleberry Finn* – is facing when he meets Jim, the runaway slave. Huck immediately knows that he should return the slave to his rightful master (who he personally knows) or at least report him to the men he sees looking for the fugitive. For various reasons, however, he decides not to do so. Instead, he makes Jim his trusted companion on his adventurous voyage on a raft down the Mississippi river, thereby ultimately helping him to escape the force of the law. The central idea that Park’s (2013, p. 12) reading of *Huckleberry Finn* transfers from pre-Civil War Illinois, where Twain’s story begins, to our current times, is that of a law that creates

categories of people with disparate rights and opportunities, structuring not just disabilities for the people who suffer the law’s force, but also dilemmas for people who are often placed in the awkward position of triggering the law’s force when they come face to face with an ‘unlawful’ person.

The concrete question that Park (2013, p. 12) poses to his readers seems particularly pertinent for many street-level bureaucrats: “What should we do *now* when we encounter an ‘unlawful’ person?”, whereby he refers to potential encounters with migrants in irregular situations.

Departing from this question I developed a simple analytical framework for a close comparative analysis of how the people directly involved in the public provision of healthcare, education and social assistance deal with such encounters. This framework is structured along two dimensions: (i) whether or not these actors are supposed to (or feel they should) *know* the immigration status of the person in front of them, and (ii) whether or not they are supposed to (or feel they should) *tell* the relevant state authority in case they find out or suspect that the person they are

dealing with is an irregular immigrant. Answering these questions sheds light on the complex interplay between formal law and policy, the internal rules and logics operating within institutions, and the ethical or practical obligations and constraints attached to particular roles or professions like that of a doctor, head teacher, or receptionist. The aim of employing this framework is three-fold: firstly, it helps to situate these social and institutional roles in relation to migrant irregularity as well as its control. Secondly, it allows to identify instances where, and the mechanisms through which, their holders are encouraged or obliged to either *know* or *tell*. Thirdly, it provides a useful perspective to look for pockets of resistance against having to either *know* or *tell* (or both), and to find out what exactly triggers such resistance.

The micro-processes I analyse not only reflect the distinctive ways in which the British and Spanish states officially frame and address the issue of irregular migration, but also play out differently depending on the concrete institutional context and implementing actors. In each case, the responsible agents of the respective state have to consolidate a distinct (national) logic of exclusion towards irregular migrants with the highly context-dependent logics of inclusion and exclusion that normally underpin the entitlement and access of local residents, patients, students or welfare recipients. This is what I call the *micro-management of irregular migration*, which often limits but can also increase the effectiveness of internal border control. It also helps to explain why irregular migrants' claims and eligibility for public services sometimes become highly contested and politicised, while in other cases they are more or less explicitly accepted. Overall, my study contributes to a better understanding of the concrete mechanisms that either help or hinder the internalisation of immigration control within specific institutional settings and across national contexts. It thereby not only highlights the intrinsic limits of such control, but also shows that rather than a solution, internal control is often part of the problem that irregular migration poses for society. Any successful 'management' of migration must therefore always also involve careful management of migration control.

The remainder of the book is organised in the following way: Chap. 2 further develops the theoretical and conceptual foundations and presents my analytical framework in more detail. Chapter 3 briefly describes the research design and methodological approach, and Chap. 4 provides the necessary context. In the subsequent three chapters I systematically apply my conceptual and analytical frameworks to the organisational fields of healthcare (Chap. 5), education (Chap. 6) and social assistance (Chap. 7). Each of these empirical chapters closely examines the relevant laws and policies enacted at various administrative levels, as well as their local implementation. Mostly through the accounts of my respondents, I discuss the ethical or other concerns, practical difficulties and organisational conflicts that either migrant irregularity itself, or the internalisation of its control, creates for individual welfare workers and the institutions they work for. On that basis, I systematically map the various positions that different categories of workers more or less willingly assume in relation to immigration control and enforcement. The concluding Chap. 8 summarises the findings by drawing systematic comparisons across the three sectors and between the two field sites and highlights their wider implications.

References

- Ambrosini, M. (2017). Why irregular migrants arrive and remain: The role of intermediaries. *Journal of Ethnic and Migration Studies*, 43(11), 1813–1830. <https://doi.org/10.1080/1369183X.2016.1260442>
- Balibar, É. (2003). *We, the people of Europe?: Reflections on transnational citizenship*. Princeton University Press.
- Burridge, A., et al. (2017). Polymorphic borders. *Territory, Politics, Governance*, 5(3), 239–251. <https://doi.org/10.1080/21622671.2017.1297253>
- Castles, S. (1995). How nation-states respond to immigration and ethnic diversity. *Journal of Ethnic and Migration Studies*, 21(3), 293–308. <https://doi.org/10.1080/1369183X.1995.9976493>
- Chauvin, S., & Garcés-Masareñas, B. (2012). Beyond informal citizenship: The new moral economy of migrant illegality. *International Political Sociology*, 6(3), 241–259. <https://doi.org/10.1111/j.1749-5687.2012.00162.x>
- CLANDESTINO. (2009). Size and development of irregular migration to the EU – CLANDESTINO research project – Counting the uncountable: Data and trends across Europe. *Comparative policy brief – Size of irregular migration*. European Commission. Available at: <http://clandestino.eliamep.gr>
- Cvajner, M., & Sciortino, G. (2010). Theorizing irregular migration: The control of spatial mobility in differentiated societies. *European Journal of Social Theory*, 13(3), 389–404. <https://doi.org/10.1177/1368431010371764>
- Echeverría, G. (2020). *Towards a systemic theory of irregular migration: Explaining Ecuadorian irregular migration in Amsterdam and Madrid*. Springer. <https://doi.org/10.1007/978-3-030-40903-6>
- European Commission. (2009). *Communication from the commission to the European Parliament and the Council. An area of freedom, security and justice serving the citizen*. Brussels.
- Foucault, M. (2002). The subject and power. In J. D. Faubion (Ed.), *Power: Essential works of Michel Foucault 1954–1984 volume 3* (pp. 326–348). Penguin.
- Gibney, M. J. (2008). Asylum and the expansion of deportation in the United Kingdom. *Government and Opposition*, 43(2), 146–167. <https://doi.org/10.1111/j.1477-7053.2007.00249.x>
- Lipsky, M. (1980). *Street-level bureaucracy: The dilemmas of the individual in public service*. Russell Sage Foundation.
- Mezzadra, S. (2011). The gaze of autonomy: Capitalism, migration and social struggles. In V. Squire (Ed.), *The contested politics of mobility. Borderzones and irregularity* (pp. 121–142). Routledge.
- Park, J. S. W. (2013). *Illegal migrations and the huckleberry Finn problem*. Temple University Press.
- Ruhs, M., & Anderson, B. (2010). Semi-compliance and illegality in migrant labour markets: An analysis of migrants, employers and the state in the UK employers and the state in the UK. *Population, Space and Place*, 16, 195–211. <https://doi.org/10.1002/psp>
- Van Meeteren, M. (2014). *Irregular migrants in Belgium and the Netherlands: Aspirations and incorporation*. Amsterdam University Press/IMISCOE. https://doi.org/10.26530/oapen_497130
- Vogel, D. (2000). Migration control in Germany and the United States. *International Migration Review*, 34(2), 390–422.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.



Chapter 2

The ‘Management’ of Migration – And of the Resulting Irregularities



In a press release outlining its “vision for the area of freedom, security and justice” the European Commission (2009) proposed that Member States should “[e]nsure a flexible immigration policy that is in line with the needs of the job market whilst at the same time support the integration of immigrants and tackle illegal immigration”. At least two questionable assumptions underlie this vision: that a neat distinction exists between those individuals whose integration should be supported and those whose immigration must be ‘tackled’; and that both goals can be achieved without respective measures interfering with each other or the demands of an increasingly transnational economy. What the proposal conceals are the many conflicts and contradictions between the very different interests, norms and logics that underlie these as well as other important functions of the state, which also include the provision of welfare services to its population. The various policies and practices aimed at regulating the movement of people across state borders are often subsumed under the term ‘migration management’, which provides “a convenient umbrella under which very different activities can be regrouped and given an apparent coherence, thus also facilitating cooperation between actors who would otherwise have little in common” (Geiger & Pécoud, 2010, p. 3). While many different actors and various levels of government are effectively involved in the management of international migration (Hepburn & Zapata-Barrero, 2014), the overall responsibility and formal decision-making power lies with the (migrant receiving) nation-state, which in order for migration to occur, “must be willing to accept immigration and to grant rights to outsiders” (Hollifield, 2004, p. 885). This does not mean, however, that by not accepting it, governments can prevent immigration from happening; but they can render it ‘irregular’.

The making of the distinction between regular and irregular migration is an important articulation of the nation-state’s sovereign power over its territory and population. It is the basis upon which states control and limit access to their territory and can deport unwanted foreigners from within it. At the same time, state governments can also effectively unmake this distinction by establishing paths to regularisation. In practice, however, no liberal state has ever been able to prevent all illegal

entry, nor to deport or regularise all those unlawfully present. In fact, it is precisely their inability to avoid irregular migration that requires liberal states to deal with this phenomenon and thus to respond to its complexity. Part of this response is what I call the *micro-management of irregular migration*. That is, the formal or informal consolidation of a governmental logic that officially demands the exclusion of a person from the national territory where s/he is an irregular immigrant, with the various subjacent pressures for the same person's inclusion as a local resident, worker, patient, student, and so on. Much of this micro-management takes place within the institutions of the welfare state, which often struggle to meet (or otherwise deal with) irregular residents' fundamental needs and most legitimate claims. It is this rather indirect and obscure aspect of migration management that I am concerned with throughout this book.

By aiming or claiming to 'effectively manage migration', politicians arguably evoke the idea that immigration is (or at least can be brought) under their control. It is important to note, however, that the original meaning of the verb 'to manage' was not to be fully in control of something or someone but instead 'to handle or train a horse';¹ and that precisely because the *untrained* horse cannot be fully controlled, its handling used to take place in the *manège* – the etymological precursor of the term. As a place initially created to maximise the safety of both the horse and its trainer, the *manège* later also became a site of spectacle where riders display their horsemanship as well as the discipline of their horses and where circuses exhibit their spectacular or exotic performances for the entertainment of their audiences. This can be related to certain practices of migration management, which are also – even if that is not always made explicit or presented in public – the response to what effectively is a lack of control. And they too, involve the handling and sanctioning of certain irregularities and (miss-)behaviours. The more or less visible display of physical violence is thereby used as evidence of the government seemingly 'being in control'. Nicolas De Genova (2013) referred to this aspect of immigration control as the 'spectacles of migrant 'illegality'', comprising not only the 'scene of exclusion' but also 'the obscene of inclusion' of irregular migrants within the legal, social and economic structures of the societies in which they live.

At the same time, the very terminology also invites consideration of the theoretical and empirical parallels between the management of migration and that of private companies as well as public services. Both have experienced a 'managerial revolution' of their own, which in the case of the former has been described as the replacement of the 'invisible hand' of market forces by the 'visible hand of management' (Chandler, 1977).² More recently, also the public service sector in many Western European countries has seen the establishment of various administrative management positions interposing direct government oversight and control within

¹ See: <https://en.oxforddictionaries.com/definition/manage> (last accessed 15/12/2017).

² Whereas in organisation studies the term 'micro-management' usually refers to an (undesirable) excess of management in terms of its reach or detail (e.g. Alvesson & Sveningsson, 2003), here, the term indicates that in practice, irregular migration is often being managed at the micro level of individual interactions.

bureaucratic structures, and thus reflecting an increasing market orientation and vision of the citizen as a consumer of public services (Walsh, 1994; Webb, 2006; Hasenfeld & Garrow, 2012). In both cases, the managers – responsible for controlling or administering a particular set of resources, processes or practices – assume an intermediary role within a certain relationship of power: they manage and are themselves managed at the same time.

Scholars critically engaged with managerial practices within businesses and other organisations (see McKinlay & Starkey, 1998), various fields of social policy (McKee, 2009) or contemporary immigration regimes (Inda, 2006; Walters, 2015) have therefore often drawn on the ideas and concepts of Michel Foucault. What makes his work so useful as the basis for such analyses is his refined understanding of the exercise of power not as direct and absolute domination but in the form of 'governmentality', by which he means "a conduct of conducts" as well as "a management of possibilities" and thus a way "to structure the possible field of action of others" (Foucault, 2002a, p. 341). Such power relations are characterised by significant degrees of "informed consent, autonomy, voluntary action, choice, and nondirectiveness", rather than complete and unidirectional rule and authority (Mezzadra & Neilson, 2013, p. 174). Public service provision is one of many spheres where the state's sovereign power to neatly define, control, punish and exclude irregularities loses at least some of its grip, and must be complemented by more 'governmental' logics and modalities of power.

This chapter presents the theoretical and analytical framework through which I have studied the micro-management of irregular migration. On one hand, I thereby draw on the longstanding body of literature concerned with conceptualising the role of 'the state' in migration policies and policymaking, as well as more recent academic work on migrant irregularity as the product but also mirror of these policies. On the other hand, I look at some of the theoretical and empirical work done in the field of organisation studies, which helps to explain how organisations themselves deal with multiple and often contradictory norms and institutionalised logics originating both inside and outside of a particular organisational or professional field. The two strands of literature are linked via a Foucauldian understanding of governmental power and the conceptualisation of migrant irregularity as a 'code' through which the logic of immigration control is inscribed into existing power relations within and between different organisations. This theoretical approach helps to overcome the often too simplistic understanding of 'the state' that characterises much of the migration studies literature (Gill, 2010) by disaggregating the agency involved in the 'management of migration', and accounting for the multiple interests, rationales and constraints that underlie the involvement of very different actors at various administrative levels.

2.1 The State as the 'Manager' of Migration?

I don't want to say that the state isn't important; what I want to say is that relations of power, and hence the analysis that must be made of them, necessarily extend beyond the limits of the state – in two senses. First of all, because the state, for all the omnipotence of its apparatuses, is far from being able to occupy the whole field of actual power relations; and, further, because the state can only operate on the basis of other, already existing power relations (Foucault, 2002b, p. 122).

In principle, democratic governance means that people's ideas and opinions are translated into formal legal frameworks and laws, which then – mediated through local implementation processes – determine actual policy outcomes (Deutsch, 1970). In this way the rule of law guides the actions of individuals as well as public and private institutions. Particularly with regard to policy-making in the field of immigration, which has become a highly politicised and much researched topic, academic debate has long circled around the question of why these regulatory processes often fail to achieve the desired outcomes or declared objectives (Soysal, 1994; Freeman, 1995; Sassen, 1996; Joppke, 1998; Sciortino, 2000; Castles, 2004; Lahav & Guiraudon, 2006). More specifically, scholars identified a 'gap' between the official aims of immigration policies – which increasingly reflect the rising public pressure to restrict further unwanted immigration – and their often more liberal outcome regarding not only the admission of foreigners to the country but also their access to various social and economic rights (Hollifield, 1986; Cornelius et al., 1994). Where such rights are extended to people who have not been formally admitted, the underlying conflicts are particularly pronounced.

While the claim that national governments are generally 'losing control' over unwanted immigration remains contested (cf. Brubaker, 1994) the identified 'gap' has been related to a wide range of potential causes located both within and outside the realm of receiving states. One set of explanations points to the expansion of human rights and rights-based conceptions of membership that increasingly cut across national borders and citizenship, and thereby contribute to an alleged decline of the nation-state: Yasemin Soysal's (1994) much-disputed vision of a post-national model of citizenship – based on 'universal personhood' rather than national belonging – derives its legitimacy from a 'transnational discourse of human rights' that entails certain obligations for states towards not only their own nationals but also aliens who legally reside within their borders, such as guest workers or students. For David Jacobson (1996, p. 2) this extension of 'rights across borders' has also significantly altered the legal position of migrants living 'illegally' within the borders of liberal states, which increasingly have to accept and respond to at least some of their claims. While human rights themselves "evolve from the nation-state" (p. 3), it is through them, he argues, that "[t]he state is becoming less a sovereign agent and more an institutional forum of a larger international and constitutional order based on human rights" (p. 2/3). Others have related the state's limited capacity to control immigration to the complex and powerful macro-dynamics driving migration processes, including transnational networks of information, people and communication, and the highly unequal distribution of wealth and opportunities (Sassen, 1996;

Castles, 2004). Looking at the micro-level, scholars have also highlighted migrants' own networks, counterstrategies and agency in more or less effectively avoiding and contesting state control (e.g. Broeders & Engbersen, 2007; Vasta, 2011), as well as the various formal or informal support structures, including non-governmental organisations (NGOs) and advocacy groups, operating within and across countries of origin and destination (Faist, 2014; Ambrosini, 2017).

On the other hand, the 'gap' between official policy goals and outcomes has also been related to domestic political forces in the form of either organised interests (Freeman, 1995), governments' own 'hidden agendas' (Castles, 2004), or 'self-imposed' constraints enshrined in national constitutions (Joppke, 1998; Guiraudon & Lahav, 2000). Rather than the international human rights regime imposing limits on the ability of states to reduce immigration, Christian Joppke (1998) argues that liberal states themselves accept unwanted immigration, and thus 'self-limit' their own sovereignty. His account specifically refers to legal mechanisms for family reunification and the admission of refugees, both of which are unwanted in the sense that they often do not fit the needs of national labour markets. Gary Freeman (1995, 2006), in turn, tried to explain the 'expansionary bias' of policy regimes governing the entry and stay of (regular and irregular) migrant workers. According to his model of 'client politics', the making of such policies tends to be driven by powerful interest groups who benefit from large-scale immigration (as a source of cheap and flexible labour) and whose interests prevail over those of a more restrictionist but poorly organised public that bears its rather diffuse costs (in the form of depressed wage levels and increased competition for jobs and resources).

Importantly, it is not just the making of immigration policy that is underpinned by different and often conflicting interests but so is its local-level implementation. The latter hinges on the capacity and willingness of a growing number and variety of actors across society to enforce exclusionary practices towards certain immigrants (Guiraudon & Lahav, 2000; Jordan et al., 2003). Based on a detailed mapping of the various 'actors and venues in immigration control', Gallya Lahav and Virginie Guiraudon (2006) demonstrated that specific constraints operate either at the level of policy formation, where various policy 'inputs' are filtered so that particular policy choices ('outputs') prevail, *or* the implementation stage, where these 'outputs' are translated into actual policy 'outcomes'. Also Joppke (1998, p. 267) suggested an analytical distinction between what he sees as "two separate aspects of sovereignty, [namely] formal rule-making authority and the empirical capacity to implement rules". In relation to the latter, he notes that the capacity of states "to control immigration has not diminished but increased – as every person landing at Schiphol or Sidney airports without a valid entry visa would painfully notice" (p. 270). This seems to suggest that states are more constrained in establishing the rules according to which they grant entry and residence titles (as in the case of family migrants or recognised refugees, who they have to admit), than in enforcing those rules at their external borders.

A second and cross-cutting distinction can be drawn between control policies targeting those foreigners trying to enter and those who already live within the country, i.e., between constraints to external versus internal immigration control. In

her case study of local immigration bureaucracy in Germany, Antje Ellermann (2006) shows that individual enforcement officers often face significant resistance – both from an organised public and elected municipal officials – against the deportation of local residents. Her analysis suggests that also here, the rationales and constraints underlying the making of these policies tend to be different from those shaping their implementation: Whereas “at the legislative stage, demands for ‘cracking down’ on immigrants are quickly established, policy debates are framed in pro-regulatory, rights-restricting ways, and little attention is paid to the costs of regulation”, these costs become drastically visible to the public and can easily turn into an obstacle for implementation where friends or neighbours face imminent deportation (Ellermann, 2006, p. 296). Put in De Genova’s (2013) terms, resistance arises where the ‘obscene of (everyday) inclusion’ gives way to the ‘scene of exclusion’, and where migrant ‘illegality’ suddenly becomes a human face that is not (anymore) that of a distant stranger.

One site that plays a significant role for the constant (re-)negotiation of (irregular) migrants’ inclusion and exclusion and has thus become an important venue for internalised immigration control, is the liberal welfare state (Bommes & Geddes, 2000). Stephen Castles (2004, p. 216) sees the latter as “a major factor driving the incorporation of immigrants [...] because it follows a logic of inclusion: failure to grant social rights to any group of residents leads to social divisions, and can undermine the rights of the majority”. But the welfare state is also “a stratification system in its own right” (Esping-Andersen, 1990, p. 4) and as such – and although it was invented to reduce problems of social inequality and stratification – it also modifies or (re-)produces existing inequalities. Central to these processes is what Anne L. Schneider and Helen M. Ingram (1993, p. 336) called the “social construction of target populations”. Their model identifies four different (ideal) types of target populations: “advantaged”, “contenders”, “dependents”, and “deviants” that are differentiated by their either weak or strong political power, and their (overall) positive or negative social construction. It is a way to explain why different people become the target of different kinds of policy tools (which are also justified in different ways). Following this model, irregular migrants are generally constructed as “deviants”, that is, “negatively constructed powerless groups [that] will usually be proximate targets of punishment policy” (Schneider & Ingram, 1993, p. 337). Only in exceptional cases, like that of a child or pregnant women, will they be constructed as “dependents”; that is, more positively (and thus more deserving of certain support) but still with little or no political power (and thus unable to make substantial demands on the welfare system).

At least to a degree, such categorisations become internalised not only by the target population itself (Soss, 2005), but also by the providers and administrators of public services (Willen, 2012; Cuadra & Staaf, 2014; Landolt & Goldring, 2015). As I will show, individual welfare workers often rely on official labels and sometimes reproduce the same stereotypes that also dominate public discourse and political debates, like the often proclaimed need to protect the (national) welfare system against ‘health tourists’ or ‘benefit-scrounging foreigners’. But street-level bureaucrats also regularly contest or simply modify (some) claimants’ official

categorisation. By treating some of them as “dependents” instead of “deviants”, they can effectively shift the everyday boundaries of deservingness, vulnerability and belonging. All this seems to suggest that when it comes to internal immigration control and enforcement, liberal states are more constrained in implementing than in making restrictive rules. Arguably, this has to do with the type of actors and venues involved in this kind of control, as well as the fact that those who are its target already live within, and thus in various ways form part of, the host society.

Notably, most of the explanations for receiving states' failure to effectively control and limit unwanted immigration build on some notion of inherent contradiction or inconsistency, whether between competing (or simply different) normative principles, actors and their interests, or institutional logics. According to Christina Boswell's (2007) influential conceptualisation of migration policy, states themselves are constantly torn between the fulfilment of their various 'functional imperatives', namely: (i) to promote a just distribution of resources ('fairness'), (ii) to provide 'security' for its subjects as well as (iii) the necessary conditions for the 'accumulation' of wealth, and (iv) to respect the constitutional principles and individual liberties of those affected by its jurisdiction ('institutional legitimacy'). While each of them constitutes an essential precondition for sustaining the state's "legitimacy and capacity to govern" (p. 88), they tend to have contradictory policy implications and are therefore difficult (or even impossible) to realise simultaneously. In her view, the best explanation for the observed 'gap' between (restrictionist) policy goals and (more liberal) outcomes is that "a state unable to simultaneously meet all functional requirements may have an interest in the persistence of contradictions and inefficiencies in policy" (p. 93). For Bill Jordan et al. (2003, p. 211) it is precisely because legislation often reflects a compromise between competing interests that "the dilemmas of policy-making remain, at least partly, unresolved and are transferred to the implementation stage". The last two sections of this chapter will therefore focus on how public organisations and the individuals acting within them deal with these ambiguities as they implement policy.

Another theoretical perspective that is helpful for the study of how immigration policies work within society is offered by political sociology, as suggested by Giuseppe Sciortino (2000). Instead of the state, he takes society itself as the basic unit of analysis and understands it, following Niklas Luhmann (1982b), as an entity that "has no head, no base and no center, but is articulated in a plurality of specialized subsystems that have their own set of symbolic codes, leading values, operational programs and regulative means" (Cvajner & Sciortino, 2010b, p. 392). Such perspective allows to take into account the different organisational cultures and logics, shared norms, professional identities, values and codes of conduct that guide the actions and shape the interests of professionals working in those societal subsystems that only recently are becoming part of the immigration regime (Jordan et al., 2003). It is thereby well suited to identify the various contradictions that arise where the particular logic of immigration control – based on the fundamental distinction between regular and irregular migration – intersects with, for example, the imperatives of local governments to manage housing and administer mainstream services

to local residents, or that of a doctor to treat a patient, or a social worker to meet the needs of a homeless person.

Sciortino (2000, p. 220) asked a significant question about the role and motivation of individual actors: “Has the person who hires an undocumented immigrant really also lobbied in favour of a weak enforcement of border controls?” Since the answer will often be ‘no’, it very well illustrates the need to shift the focus of analysis: from the rather abstract idea of competing ‘powerful interests’ behind the making of immigration policies to the subsequent and much more concrete re-negotiation, bending and selective transgression of the resulting rules and regulations by implementing actors. Another question could then be: What risk does the person who hires (or provides a service to) an undocumented immigrant assume in doing so; and where does this risk come from? I thereby want to point at a potential shortcoming of conceptualising migration policy based on Luhmann’s “fully horizontal perspective, where each differentiated functional context sees ‘the world’ according to its own code and treats all the other contexts as its external environments” (Sciortino, 2000, p. 221). The danger here is to automatically assume that external influences have little or no meaning and thus authority within a particular subsystem, and hence to lose sight of the actual power relations that link the various subsystems and thereby define how (and which) meanings and logics are transferred from one to another.

What is required, therefore, is a theoretical approach that recognises the functional differentiation of society without reducing the role of the state to that of a passive and neutral ‘broker’ between competing societal interests (Boswell, 2007). First of all, such approach must understand ‘the state’ itself not as a unified and monolithic entity but a fragmented aggregation of various administrative bodies that are partly driven by their own interests and functional imperatives (Gill, 2010). Such an understanding is reflected in the notion of an ‘assemblage’ of governance (Walters, 2015) or state power (Allen & Cochrane, 2010), but also in post-Foucauldian scholarship that understands ‘the state’ not as an absolute concentration of power, but rather a “site at which power condenses” (Cowan & McDermont, 2006, p. 182, cit. in Mckee, 2009, p. 476). Also Foucault’s own interpretation of power in terms of ‘governmentality’, as Didier Fassin (2011, p. 217) has noted,

does not so much focus on the power of the nation-state as on the limits of its ideal-typical representation as coherent, impartial, and effective. On the contrary, it shows its illegality and illegibility, demonstrates its partiality and ineffectiveness, but also establishes the functionality of these apparent dysfunctions.

Secondly, then, more attention needs to be paid to the power relations at work between (and within) the various interests of central and lower levels of government as well as different state and non-state agencies; and to understand, like Boswell (2007), the influence of liberal institutions not only as a function of their relative autonomy, but also the ‘resonance’ of their own interests with (some of) those of ‘the state’. What emerges are various ‘assemblages of power’, within which – as Sandro Mezzadra and Brett Neilson (2013) show – both ‘governmental’ and

'sovereign' forms of power overlap and interact with each other, rather than the former having largely replaced the latter, as Foucault's earlier work suggested.

Thirdly, it also requires a more dynamic and nuanced understanding of the varying degrees of autonomy and margins of discretion given to those individual actors who ultimately implement policy within such 'assemblages of power'. Both are determined not only internally – by the professional identity and institutional logic dominating a particular field of work (such as healthcare), but also externally – via binding regulations through which the government tries to ensure a more effective implementation of its rule regarding other policy areas (such as immigration).

Accordingly, my study focuses on the intersection of not only sovereign and governmental forms of state power but also the internal and external imperatives that trigger individual and organisational action on the ground. Even a partial convergence of internal and external logics can thereby be expected to enhance compliance with a particular set of rules, while contradictions between the two are likely to trigger resistance and thus hinder their implementation. By highlighting these processes of (re)negotiation and contestation, my approach helps to explain local policy outcomes without framing them in terms of either 'success' or 'failure'. From this perspective, receiving states appear less as the 'managers' of migratory processes as such, than of the challenges that migration – but also the control of migration – poses to their own functioning, legitimacy and sovereignty.

One increasingly important way for the state to manage the contradictory interests and imperatives triggered by immigration is what Lydia Morris (2002, p. 19) called 'civic stratification', whereby "the rights and protections afforded by the state to different 'entry' categories constitute a system of stratified rights closely associated with monitoring and control". This system – which places irregular migrants at the very bottom of the hierarchy – thereby relies on various 'dividing practices', similar to those described by Foucault (2002a, p. 326) as the 'objectivizing of the subject': "The subject is either divided inside himself or divided from others. This process objectivizes him. Examples are the mad and the sane, the sick and the healthy, the criminals and the "good boys"." As I will discuss in the following, also the control of migrant irregularity first of all requires the separation of the irregular from the regular migrant.

2.2 The 'Unmanaged': Irregular Migrants as the Exception to the Rule

Preventing illegal entry and residence is one of the key issues addressed within the migration management discourse, which thereby tends to suggest that within a perfectly managed migration system irregularity would simply cease to exist. Historically, however, migrant irregularity has always been directly linked to national frameworks of immigration regulation and restriction, and thus only became a major policy issue in the aftermath of World War I, when the

consolidation of these regimes gave rise to the emergence of what James Hollifield (2004) called the 'migration state'. Early examples of systematic immigration restrictions imposed by modern nation-states were usually directed against particular groups of foreigners, whose entry and presence were deemed undesirable based on rather specific characteristics (Düvell, 2006). Today, in contrast, immigration restrictions target all those who do *not* fulfil the ever more complex and selective requirements for legal entry, stay and employment in a particular country. In most cases, those to be excluded are thus negatively defined, so that "the contours of illegality mirror those of legality, [and] the meaning of illegality depends on that of [other] migrants' legality" (Garcés-Mascreñas, 2010, p. 80). Hence, in their endeavour to effectively manage migration, liberal states not only create specific patterns of 'legal' immigration according to their economic and political needs, but they also, though less explicitly, produce 'illegal' immigration (De Genova, 2002; Samers, 2004; Inda, 2006; Goldring et al., 2009).

On one hand, this perspective relates the empirical increase of irregular migration to the growing restrictiveness of receiving states' border control policies (de Haas et al., 2018). In Europe this has been the case since the 1970s, when the active recruitment of foreign workers was suddenly stopped and gradually replaced by a stricter policing and externalisation of borders, ever more restricted access to asylum as well as family-related migration, and highly selective regulations on temporary labour migration. On the other hand, the ever-increasing complexity and diversification of these various strands of policy also explain some of the conceptual and terminological difficulties surrounding contemporary migrant irregularity. For the purpose of this study, *irregular migrants* are defined as non-EU citizens who according to the immigration law of the country in which they reside lack the formal permission to do so. Their condition vis-à-vis the host state and its (local) institutions is thus characterised, on one hand, by their *irregular* immigration status and, on the other, by their being *local residents*. I therefore also refer to them as *irregular residents* and specifically speak of *migrant irregularity* where I want to remind the reader that the problems I describe are not caused by (the actions of) particular human beings but follow from the administrative situation that these people are in.³

Critical migration and border scholars have intensely debated the terminology to best be used when describing and analysing the meaning of irregularity (or 'illegality') as well as the processes through which it is produced and imposed on individuals (see Bauder, 2014). Unlike others, I prefer the term 'irregular' over 'undocumented' or 'illegalised' (im)migrants: Over the former because 'undocumented' literally suggests a lack of any documentation that could certify the person's identity. Almost all of the irregular migrants I met, however, did possess a passport or other ID, although many of them were reluctant to use it for any or at least any official purpose. As I will show, the difficulty for local authorities and welfare institutions is often precisely a lack of documentary evidence – of a

³Arguably, the factually correct (though rather bulky) terminology – which is often used in the Catalan context – would be *migrants in administratively irregular situations*.

person's identity, age, income, family relationship, or address – but not necessarily their irregular immigration status as such. In everyday practice, as well as analytically, it therefore makes sense to differentiate between genuinely 'undocumented' and 'irregular' migrants. Not all undocumented migrants are irregular, and relatively few irregular migrants are completely undocumented.

I completely agree, on the other hand, that there are very good reasons for academics to speak of migrants as being 'illegalised' instead of 'irregular'. For example, Harald Bauder (2014, p. 229) argues that "'irregular' still implies that migrants somehow are not 'regular'" and that it describes "the outcome of the process of illegalization and thereby conceal[s] the process itself" (see also Squire, 2011). My study, however, focuses on the effects of irregularity (not the process of its production) and, more specifically, the different ways in which it functions and is thereby re-negotiated within various social and institutional settings. What interests me is the precise sense in which a lack of immigration status renders someone 'not regular' from the perspective of, for example, the healthcare system; and thus, what exactly distinguishes the person that has been assigned this status from a 'regular' patient (or resident, student, welfare recipient, etc.).

The remainder of this section looks at migrant irregularity from various perspectives: first as a theoretical concept and device of both sovereign and governmental power (Sect. 2.2.1), then as a condition that states try to 'manage' both directly – through measures of deportation and regularisation (Sect. 2.2.2) – and indirectly – by compelling various actors and institutions to identify and exclude irregular migrants from services they provide to other local residents (Sect. 2.2.3).

2.2.1 Migrant Irregularity as a Gesture of State Sovereignty and a Device of Governmentality

Critical scholars working in the fields of migration and border studies have often questioned the strict dichotomy between 'legal' and 'illegal' migratory status. Some have suggested alternative concepts capable of describing a certain continuum of in-between statuses (Ruhs & Anderson, 2010; Kubal, 2013; Triandafyllidou & Bartolini, 2020); others emphasised the diversity of potential paths into and out of irregularity (Black et al., 2006; Cvajner & Sciortino, 2010a; Düvell, 2011; Vickstrom, 2019). A closer look at this growing body of literature allows distinguishing further dimensions of complexity that go well beyond the notion of mere *diversity*. Some scholars emphasise the *fluidity* of migrant status: not only do individuals repeatedly move between 'legality' and 'illegality' (Calavita, 2003; Vickstrom, 2012), but also the underlying legal categories tend to change over time (Couper & Santamaria, 1984; Düvell, 2006). Others highlighted a certain *stratification* or hierarchy that exists even within irregularity (Cvajner & Sciortino, 2010a; Paoletti, 2010; Chauvin & Garcés-Mascreñas, 2012), as well as the chance of

migrants becoming more or less 'illegal' through incorporation (Chauvin & Garcés-Mascreñas, 2014; Schweitzer, 2017).

Also the potential *simultaneity* of regularity and irregularity has been shown; that is, the possibility of irregular migrants being incorporated into some areas of society but at the same time excluded from others (Castles, 1995; McNevin, 2006; Ruhs & Anderson, 2010; Mezzadra, 2011; Van Meeteren, 2014; Chauvin & Garcés-Mascreñas, 2020). This can partly be explained by the fact that immigration status is immediately relevant only in some social and institutional contexts or spheres of everyday life but rather irrelevant in others (Cvajner & Sciortino, 2010b). Another important part of the explanation is that also “the law itself [...] excludes and includes at the same time”, as Sebastian Chauvin and Blanca Garcés-Mascreñas (2012, 2020, p. 36) argue. De Genova (2013) therefore even speaks of ‘inclusion through exclusion’, while Mezzadra and Neilson (2013, p. 159) employ the notion of ‘differential inclusion’ to describe how some migrants’ inclusion “can be subject to varying degrees of subordination, rule, discrimination, and segmentation”. They thus attribute a certain function and *intentionality* to migrants’ ascribed irregularity, which thereby appears as a tool to perpetuate their subordinate position within local and global labour markets.

Additional complexity comes with the fact that in many everyday encounters, status irregularity intersects with other dimensions of a person’s identity, especially their race/ethnicity, class and gender. Leslie McCall (2005, p. 1771) defines *intersectionality* as “the relationships among multiple dimensions and modalities of social relations and subject formations”. As an analytical perspective, it means more than adding different forms of relative disadvantage (or privilege) onto each other. An intersectional perspective allows careful tracing of when and how the various dimensions mutually reinforce or neutralise each other (Weber, 2001). This can bring to light the combined effect of very different kinds of inequality and forms of discrimination. It also shows that someone’s exclusion or inclusion is seldom a question of immigration status alone, but becomes intensified or attuned by other characteristics, like being a woman or having darker skin. While much of the literature on migration-related intersectionality has focussed on labour market outcomes (like wage-inequality) (e.g. Browne & Misra, 2003), it has also been shown to shape migrants’ positionality in relation to immigration enforcement. For example, the relatively ‘hidden’ nature of domestic work tends to decrease the risk of detection for those – usually women – who perform this work, though often in exchange for a higher risk of exploitation. Also here, as Irene Browne and Joya Misra (2003, p. 505) highlighted, “it is the intersection of race/ethnicity, gender, class, citizenship status, and other factors that help explain the extent of the exploitation that these workers face”.

Kara Cebulko’s (2018) comparative study of different groups of irregular residents of Massachusetts, in turn, shows how the intersection of irregularity with either racial or social class privilege benefits those irregular migrants who are lighter-skinned and/or more middle-class. In practice, this “privilege without papers” can yield “tangible educational opportunities” and reduce suspicion during encounters with state officials (ibid., see also Romero, 2008), while it does not

provide actual protection against deportation. This strand of literature thus also highlights the extent to which place and context matter for how intersectionality plays out in real life. It has been shown, for example, that “the same economic environment creates advantage for some groups of women and disadvantage for other groups of women relative to similarly situated men” (McCall, 2005, p. 1790; Valdez & Golash-Boza, 2020). Also this important fact – “that different contexts reveal different configurations of inequality” (McCall, 2005, p. 1791) – is relevant for my own comparative analysis of different spheres of service provision.⁴

Through these various and crosscutting processes of inclusion and exclusion, irregular residents become enmeshed in a range of social and power relations, which can trigger formal or informal bordering practices as well as their contestation. Their being part of a local community, sports club or parents’ association, for example, can be a source of empowerment, while working in the informal economy or even the use of public transport might increase their risk of detection and deportation (Van Meeteren, 2014; Schweitzer, 2017). Given this complexity, Mezzadra and Neilson (2013, p. 168) argue that “neither sovereign nor governmental conceptions of power are adequate to account for current border politics and struggles”. In their book *Border as Method*, they show that

[b]orders are becoming increasingly governmentalized or entangled with governmental practices that are bound to the sovereign power of nation-states and also flexibly linked to market technologies and other systems of measurement and control (2013, p. 176).

Arguably, this is particularly true for internal borders, such as those regulating the access to most public services and institutions of the welfare state. Although their original function is not immigration control, they are becoming crucial sites for the management of (irregular) migration. This is possible because immigration legislation not only renders the entry or presence of certain migrants ‘illegal’, but thereby also prescribes the range of actions that *others* can or must (not) take towards them without potentially breaking the same law themselves. Sciortino (2004, p. 37) therefore argues that the “significance of the irregular status is highly correlated to the scope of states’ controls over the interactions and exchanges taking place on their territories.” At a more general level, this also reflects Foucault’s (2002b, p. 123) suggestion to understand the state itself as ‘consisting’ in “the codification of a whole number of power relations that render its functioning possible”. Seen from this perspective, migrant ir/regularity operates as a *code* that is attributed to a person by the immigration system and that manifests itself only in the (lack of a legal) immigration status. Arguably, ir/regularity is the most fundamental code of the immigration control logic; but even so, it is neither readable nor meaningful within most other subsystems or power relations. Only through specific laws, regulations and the corresponding documentation and identification systems (Torpey, 1998, 2000; Bigo, 2011) can the meaning of migrant irregularity be transferred to,

⁴Although I have not employed an intersectional perspective in my study, I fully recognise its usefulness in this very context, and will pinpoint some instances of intersectionality as I discuss my empirical data in chapters five to seven.

or imposed upon, other spheres of social life and interaction. This is a crucial precondition for an effective internalisation of immigration control.

The person who hires an irregular migrant – to return to the example of before – can only be aware of doing so after checking the worker's passport or residence card. If s/he then decides to go ahead it is probably either because s/he wants to help the other, or because s/he knows the other will accept a lower wage. If s/he refrains from hiring after discovering the other's irregularity, then probably because of the risk of being checked and punished by the same authority that might also initiate a procedure to deport the worker. Neither of the two outcomes can be fully explained by the internal logic of the labour market (i.e., the decisions or organisational processes that normally assign a particular person to a certain job), nor the fact that the worker has no legal immigration status. Instead, whatever the outcome of this situation, it follows from the particular way in which the government in question enforces its immigration regulations upon the labour market. Generally speaking, whenever a particular logic is transferred to another sphere, its specific codes have to be 'translated', whereby their meaning can change, or new meanings be added. Here, the worker's potential exploitability and the employer's risk of having to pay a certain fine (or face a prison sentence) are the new meanings that migrant irregularity acquires when transferred from the sphere of immigration control to that of employment.

This example also shows that the meaning(s) that migrant irregularity has or acquires through translation can either be in line or contradiction with the interests and institutional logics that otherwise dominate the respective sphere or subsystem. In the case of employment, this relationship is rather straightforward: it might be lucrative but is undoubtedly against the law and thus entails a concrete risk to employ an irregular migrant. As I will show, the situation often becomes more ambiguous in the area of public service provision, where the logic of immigration control confronts powerful normative entitlements combined with intrinsic functional logics and particularly strong professional ethics. Together, they often demand at least a certain level of inclusion irrespective of immigration status. Before focusing on this issue in more detail, however, I provide an overview of the concrete policies through which states generally try to 'solve the problem' of irregular migration.

2.2.2 Managing Irregular Migration Through Deportation and Regularisation

In principle, the policy options available to a state facing sizeable (although typically uncertain) numbers of irregular migrants already living within its borders, are rather limited: On one hand, governments can (and quite often do) tacitly accept the unlawful presence of some of these foreigners. This, however, limits the extent of control they effectively and symbolically exercise over the territory and population.

Precisely in order to 'stay in control', on the other hand, states can either legalise irregular migrants' presence in the country, or physically remove them from both their territory and jurisdiction. Potential policy measures to 'eliminate' or at least reduce irregularity can thus be thought of as a continuum that ranges from *regularisation*, i.e. offering possibilities of ex post legalisation of immigration status,⁵ to *deportation*, which can broadly be defined as the expulsion of a person from state territory by threatened or actual use of force (Anderson et al., 2011). While the extension of certain rights to migrants in irregular situations lies at the inclusionary end of this spectrum, policies of so-called 'voluntary' or 'assisted' return as well as those aiming to 'discourage' irregular stay are closer to the opposite extreme.

Both regularisation and deportation are part and parcel of migration management and serve pragmatic as well as symbolic functions. Both have been described as constitutive elements of citizenship (De Genova, 2002, 2010; Walters, 2002) and nation-building (McDonald, 1969), and thus provide evidence of the persistence of state sovereignty (Gibney & Hansen, 2003; Castles & Miller, 2009). Particularly the practice of deportation plays a key role in reinforcing the legal and normative boundaries of membership and belonging to a national community (De Genova, 2010; Anderson et al., 2011). Although regularisation at least questions these boundaries by offering formal possibilities to transcend the strict dichotomy between 'legal' and 'illegal' residence status, it always only does this for certain kinds of irregular subjects, who are framed as relatively more deserving or less unwanted than others. In policy discourses, deportation is often justified as a simple necessity for maintaining the effectiveness and credibility of the immigration system (Fekete, 2005; cf. Anderson et al., 2011), while regularisation has been criticised for undermining the legal framework and is frequently seen as a consequence (or even instance) of policy failure (Levinson, 2005; cf. Finotelli & Arango, 2011). Many governments justify their reluctance to grant an 'amnesty' with the fear that it might attract further irregular immigration and thus could have a so-called 'magnet effect' (OECD Secretariat, 2000).

In spite of these drawbacks, offering opportunities for regularisation to persons who have either entered a country unlawfully, overstayed their visa, or for other reasons find themselves in irregular situations has become a widespread practice within and beyond Europe (Apap et al., 2000; OECD Secretariat, 2000; Levinson, 2005; Finotelli & Arango, 2011). Between 1973 and 2008, more than 4.3 million people were 'regularised' within the EU⁶ through a total of 68 national programmes (Kraler, 2009). Such regularisation exercises can either take the form of a *permanent procedure*, i.e. an on-going process open to an infinite number of claims, or that of *one-off procedures*, which are carried out within a fixed timeframe and often target a specific category and therefore finite number of people (Apap et al., 2000). While the former are part of the regular policy framework for the management of

⁵The terms 'regularisation', 'legalisation', 'amnesty' and (in the Spanish case) 'naturalisation' broadly describe the same set of practices (Sunderhaus, 2007; Brick, 2011).

⁶Until 1993 the European Community (EC).

migration, the latter are often based on extraordinary, or ad hoc legislation, as both Kate Brick (2011) and Albert Kraler (2009) noted.

Regularisation can be justified in various ways: Joanna Apap et al. (2000) argued that such policies are put in place either for reasons of *fait accompli*, whereby a right of residence is derived from the recognition that a person has de facto (although 'illegally') been present since a specific date; or for reasons of *protection* against certain risks that a particular person would be subjected to if not granted legal status. The way (and extent to which) these objectives are effectively translated into policy outcomes depends on the set of criteria that have to be met by immigrants in order to become eligible for regularisation.⁷ From a critical perspective, Jean McDonald (1969, p. 71) therefore argued that by “[d]istinguishing the criminal from the good, the diseased from the healthy, the lazy from the hard-working, the newly arrived from the loyal, [...] the regularization process is a nation-building practice”, which by itself contributes to the reproduction of migrant ‘illegality’ instead of reducing it. By choosing the underlying criteria and setting the thresholds the government can regulate both the scale and scope of any regularisation exercise. Drawing these distinctions, however, often requires assessments by social workers, doctors and other street-level bureaucrats who are in direct contact with potential beneficiaries. The effectiveness of regularisation thus often depends on the involvement and agency of the people who are at the centre of my study.

Policies of deportation represent the opposite, explicitly exclusionary side of the spectrum of available measures to reduce the number of unlawful residents. Traditionally seen as “the state’s ultimate and most naked form of immigration control” (Gibney & Hansen, 2003, p. 1), deportation has nowadays, as De Genova (2010, p. 34) argued, “achieved an unprecedented prominence [...] and] seems to have become a virtually global regime”. With the notable exception of foreign nationals convicted for committing a crime in the host country, the groups targeted by this regime very much resemble those who may also qualify for regularisation, including visa-overstayers, clandestine entrants, irregular workers and rejected asylum seekers.

For a broad range of reasons, however, only a relatively small fraction of all individuals who are theoretically eligible for deportation is actually deported, a fact that Mathew Gibney (2008) described as the ‘deportation gap’. On one hand, there are several practical constraints which render deportation a difficult, expensive and time-consuming measure: most importantly, it requires appropriate documentation linking the deportee to a particular ‘home’ state, as well as that state’s cooperation or at least willingness to recognise and readmit the person to its territory. By absconding or obscuring their identity or origin, individuals threatened by

⁷The comparative *Odysseus* study shows that apart from being present on the territory (*geographical* criterion), the eligibility for regularisation can also depend on *economic* (to be employed or holding a job offer), *humanitarian* (in need of protection), *health* or *family* related criteria. Moreover, criteria directly related to the *asylum process*, or based on either the applicants’ *nationality*, level of *integration* or *professional qualification* were distinguished, while in most cases applicants also had to prove a clean criminal record (Apap et al., 2000).

deportation can thus actively delay or even prevent their expulsion. On the other hand, forceful removal of certain individuals is often constrained by governments' obligations under human rights treaties, and as a coercive state practice it has increasingly come under scrutiny and critique by NGOs, migrant advocacy groups and human rights activists (Fekete, 2005; Ruedin et al., 2018). One of the main challenges that states confront, arises from individual immigrants' social integration into the host society, which over time can "form a moral basis for remaining", independent of formal entitlements (Gibney, 2008, p. 150; Paoletti, 2010; Schweitzer, 2017). Social relations such as those established within the neighbourhood, school or church community, for example, often trigger considerable resistance against deportations, which in turn tends to render them unpopular with local politicians (Ellermann, 2006; Anderson et al., 2011).

For De Genova (2002, 2010) deportation also fulfils a clearly disciplinary function, whereby it is not so much the act of deportation itself that is decisive, but rather immigrants' constant 'deportability', i.e. the sheer possibility (and uncertain likelihood) of being deported. This specific condition can again be seen as a continuum that ranges from facing immediate expulsion to being under very little threat of actually being deported ever. While it also extends to 'legal' immigrants – thereby radically reinforcing the distinction between 'native' citizens and 'aliens' (Paoletti, 2010; Anderson et al., 2011) – the actual risk of being deported is most relevant to those lacking a legal residence status or other right to remain. For them in particular, "the possibility of removal [...] casts a long, dark shadow over their daily lives, threatening at any moment to take away from them the little they have gained by residence in the host country" (Gibney, 2011, p. 43).

At the other extreme there are individuals who for whatever reason and although facing a formal deportation order cannot be deported in practice and are thus effectively 'non-deportable', as Emanuela Paoletti (2010) argued. What makes this observation particularly relevant for my study, is that for her, "[t]he complex net of rights and duties that link the state and the non-deportable opens up a more fluid conceptualisation of membership" (Paoletti, 2010, p. 13). According to her analytical framework, the intersection of irregular migrants' 'relative desirability' (within certain social spheres) with the state's limited capacity to enforce their deportation leads to various forms of quasi-membership. What she does not explicitly take into account, however, is what could then be called irregular migrants' *regularisability*; that is, their actual prospects of fulfilling all the requirements set by the state in question for ex-post legalisation. The latter often reflect the same notions of desirability and deservingness that can also render irregular migrants less deportable, like having close family or other social ties or being seen as contributing to the host community.

Although not everyone who is 'non-deportable' can be regularised, or vice versa, it is always between these two poles that migrants in irregular situations must negotiate and construct their fragile position and claims for incorporation and membership in the host country. For Garcés-Masareñas (2010) it is therefore precisely the quite often simultaneous possibility of being either regularised or deported, which defines the condition of irregularity. Seen from this perspective, regularisation and

deportation are more than two functionally opposed policy approaches through which states can reduce the number of irregular migrants living within their territory. They are also the *carrots and sticks* through which irregular residents can be disciplined even without being in direct contact with 'the state' or its immigration regime. Particularly for those living 'under the radar', taking the necessary steps towards a possible regularisation of their status might in fact increase their deportability (by becoming known to the authorities, for example); whereas successfully evading deportation long enough (and without breaking any other law) will usually better their chances to eventually qualify for regularisation (Schweitzer, 2017).

In various ways, regularisation and deportation thus play a crucial role for the micro-management of irregular migration. While it lies within the competence of the state to establish the corresponding legal frameworks, these will have significant consequences for other actors and their interactions with migrants in irregular situations. In relation to public services, irregular migrants' real and perceived deportability and prospects for regularisation will have an impact on the claims they might be able and willing to make. Inversely, the imperatives to provide them with at least certain services and thus to accommodate some of these claims in spite of their irregularity will be more pressing where they are unlikely to be deported or regularised any time soon. At the same time, lower levels of government as well as public institutions can become involved in the implementation of these policies. This can be by attesting the fulfilment of certain requirements for regularisation, such as continuous residence, school attendance or other instances of 'integration'; or by helping the immigration authorities to identify potential deportees. Both kinds of involvement indicate an increasing internalisation of immigration control, whereby national governments transfer part of their own responsibility to various non-state actors and local institutions, including those providing public services. As I will discuss in the following subsection, this gives rise to various degrees of internal exclusion, but also localised forms of inclusion towards irregular residents.

2.2.3 Managing Irregular Migration Through Internal Exclusion and Inclusion

Many Western governments increasingly address the issue of irregular migration by restricting not only the access of unlawful immigrants to the territory of the state but also that of unlawful residents to employment, housing, healthcare and other services (Bommes & Geddes, 2000; Guiraudon & Lahav, 2000; van der Leun, 2003; Lahav & Guiraudon, 2006; Broeders & Engbersen, 2007; Squire, 2011). Facing a growing permeability of its external borders, it is argued, the state "raises a protective wall of legal and documentary requirements around the key institutions of the welfare state and 'patrols' it with advanced identification and control systems" (Broeders & Engbersen, 2007, p. 1595). This shifts some of the burden of immigration enforcement to a wide range of actors beyond the level of the nation-state and

hitherto detached from its immigration authorities. They often include the local police and employers, and sometimes also banks, landlords, welfare officers or other public officials, as well as private citizens. James Walsh (2014, p. 242) describes this development as a form of 'deputization', which he generally defines as "the activation and empowerment of certain individuals to participate in preventing and controlling legal transgressions". For the purpose of this study, I define deputisation more narrowly, as involving a formal obligation to carry out certain immigration control duties. Building on Marrow's (2011) earlier conceptualisation of 'bureaucratic and civil cross-deputization', Walsh distinguishes 'deputization' from 'responsibilization' – whereby third party participation is not obliged but encouraged – as well as 'autonomization' – which is unsolicited and happens spontaneously, possibly even against the will of the authority. These various modalities of activation are thus characterised by different degrees of autonomy and voluntariness on the part of implementing actors and will help me to map the positions of different welfare workers in relation to immigration control.

Whether participation in it is obliged, encouraged or autonomous, internal immigration control always implies agency: In order for someone's (irregular) immigration status to become a barrier when trying to access a particular service or engaging in a certain activity or interaction, someone else has to exercise a specific kind of control. More and more people thereby become engaged in what John Torpey (1998) described as 'techniques of identification' based on documents like the passport, through which states codify not only the identity but also the national belonging of their subjects. In the context of public service provision, it is often the receptionist or other front-line staff who are obliged or encouraged (and sometimes themselves decide) to determine service users' immigration status together with their identity and/or concrete needs. Other welfare workers are more or less explicitly prevented or discouraged from enquiring or even considering immigration status as part of their dealings with service users, which I refer to as *shielding*.

In practice, deputisation, responsibilisation, autonomisation and shielding are not only relevant in relation to the task of finding out the immigration status of service users, but also the sharing of this information with the relevant state authority. Such information exchange can be a matter of formal obligation, encouragement or choice – or it can be explicitly prevented through what is often called a *firewall* (Carens, 2013; FRA, 2013; OHCHR, 2014). The latter can be understood as any mechanism, rule or practice "through which clear divisions between migrant policing and provisions of basic rights may be established and maintained" (Hermansson et al., 2020, p. 3). One important function of firewalls is to prevent individuals or organisations from sharing information with immigration authorities, which effectively hinders immigration enforcement. Regarding the nature of these mechanisms, Dennis Broeders and Godfried Engbersen (2007, p. 1595) noted that "[w]hether or not governments connect and combine different bodies of information will increasingly become a matter of legal constraints, as the technological constraints are quickly losing their relevance".

The internalisation and dispersal of control functions has in some cases "incorporated new actors whose own interests coincided with those of national control

agencies”, as Guiraudon and Lahav (2000, p. 177) argued. But there are also instances and sites where quite the opposite is true, in that the logic of control that underlies state efforts to reduce irregular migration conflicts with the own interests or professional duties of the new ‘deputies’. As a result, policies of internal control not only encounter resistance from local residents, civil society and activist groups, but also from professionals, civil servants and local government officials who (sometimes) “put their professional ethics above state policies” (Ellermann, 2006; Van Der Leun, 2006; Broeders & Engbersen, 2007, p. 1606). Two important grounds for criticism against internalised control are that it violates irregular migrants’ human rights and has negative effects on the communities in which they live (PICUM, 2010; Carens, 2013). The former is because such policies often involve bordering practices that (can) lead to effective exclusion of irregular residents from fundamental services like primary education or emergency healthcare. The latter reflects the fact that in spite of their irregular status, they are embedded within various social structures in both public and private domains, such as the neighbourhood in which they live or work, a church community, sports club, parent association, or their own family network. Internalised immigration control puts a disproportional burden on several ‘key social transactions’ (Cvajner & Sciortino, 2010b) and has been shown to push irregular migrants further underground, thereby increasing their reliance on informal and sometimes criminal networks or activities (Broeders & Engbersen, 2007; Crawley et al., 2011; Refugee Council, 2012). For Paoletti (2010, p. 19), “[t]he stripping from such individuals of basic rights and access to essential services can be in itself considered not only a human rights infringement but a deliberate act of exclusion from society”. While this is certainly true, the crucial question is whether the opposite is too: Does the granting of such rights or access to these services constitute a ‘deliberate act of inclusion’?

Chauvin and Garcés-Mascreñas (2020, p. 45) recently argued that irregular migrants’ partial inclusion is rather the result of certain “structural concerns [related to] public education, public health, public order, road safety, economic and urban planning, and so on [...]” which they see as “acting at a deeper level than perhaps more superficial or “ideological” justifications for inclusion such as human rights”. Hence, states grant access to unlawful residents not to include them but because they “have a greater stake in regulating the actual population than in tracing boundaries between members and non-members” (ibid., p. 43). While Chauvin and Garcés-Mascreñas thereby point at the “inclusive tendencies of governmentality” (p. 44), the governmental nature of internal control policies themselves also becomes apparent in other – more exclusionary – ways: Firstly, in that their aim is to persuade unlawful residents that they themselves actually want to leave (and thereby avoid exclusion and marginalisation); and secondly, in that the state exercises its power to exclude or include irregular migrants not directly but through their interactions with other members of the population, particularly ‘street-level bureaucrats’ (Lipsky, 1980) whose position within public institutions often involves some kind of gate-keeping function. Together with the rendering of certain individuals or groups as more or less deportable or worthy of regularisation, these forms of indirect control can be seen as part of what Foucault (2002a, p. 328) called “the political

management of society”, an endeavour that simultaneously involves multiple cross-cutting bordering practices to be employed by different actors within various organisational fields.

As a mode of analysis, in turn, governmentality allows to discover these “multiple sites of governing beyond the traditional boundaries of the state apparatus [...] highlighting how government is ubiquitous in all social relationships” (McKee, 2009, p. 469). The concrete sites where irregular residents’ access to rights and services is being negotiated – like classrooms, welfare offices or reception desks – thereby also represent what Vicki Squire (2011, p. 6) described as ‘border-zones’: “dispersed, multi-dimensional and contested sites of political struggle”. For John Bowen and his colleagues (2013, p. 3), it is in these “varied and relatively autonomous social contexts that boundaries are created or reaffirmed in ways that have the sanction of the state behind them”. Those who implement the rules and thus effectively decide whether or not, and if yes then how, to respond to the claims of formally irregular subjects need to carefully weigh the meaning of this irregularity against, for example, the imperatives that come with their profession or a particular human rights norm. The next section will theorise these negotiation processes in more detail.

2.3 Public Sector Organisations and Street-Level Bureaucrats as Local Mediators of Competing Functional Imperatives and Institutional Logics

One influential strand of literature trying to explain the discrepancy between officially declared government objectives and the actual outcomes of the policies they underpin focuses on the intermediary role of (liberal) institutions (Joppke, 1998; Guiraudon, 2003). For Boswell (2007, p. 83) these neo-institutional approaches are based on two crucial assumptions: That institutions “have sufficient independence from the political system and rival administrative agencies” and that “the actors within these institutions operate according to interests and norms that are at variance with those predominating politics or rival agencies”. At the same time, as Ingram and Schneider (2005, p. 19) remind us, it is precisely “[t]hrough institutions, [that] the social constructions of target groups become semipermanent dispositions that are rarely questioned”. All three assumptions are highly relevant for understanding the complex role that public welfare systems as well as individual actors working within them routinely play when tasked with implementing state policies against irregular migration. In order to explore this role in more detail and be able to draw systematic comparisons across different local contexts and organisational fields, I draw on theoretical concepts and empirical insights from organisation studies.

I thereby start from Nils Brunsson’s (1993, p. 489) interpretation of the possible relationships “between the ideas of constituencies and leaders on the one hand and

organizational, and societal actions on the other”: Whereas most understandings of rational decision-making assume that ideas always precede and control action, he argues that this does not necessarily have to be the case; particularly where it would lead to unresolvable conflicts at the level of policy implementation. Instead, certain necessary actions can either determine ideas or be systematically inconsistent with them. Both, I will argue, is likely to be the case where irregular migrants are to be granted some form of access to public services in spite of their unlawful presence. Brunsson’s (1989, 1993) theory thus provides a good starting point for understanding how (and why) organisations respond to contradictory external demands and pressures by accepting and internalising certain inconsistencies between what is officially declared (‘talk’), what is put into law (‘decisions’) and what is effectively done (‘actions’). While it is relatively easy for politicians to declare that foreigners without permission to stay should be unable to benefit from the provision of publicly funded services, the idea of fully excluding them – even if popular among the public – would create significant conflicts if it was to completely control organisational action within, for example, the healthcare system.

It is for such instances that Brunsson (1993) proposes two alternative theoretical relationships between ideas and actions, which he calls ‘justification’ and ‘hypocrisy’. The former means that “planned or accomplished actions are defended in order to convince people that they are the right ones” (Brunsson, 1993, p. 500). If successful, it thus adjusts the constituency’s ideas to actions, thereby restoring consistency at the expense of control (of ideas over action). For example, people may be convinced that the necessity to provide healthcare even in certain non-emergency cases can prevail over the need to limit unwanted immigration or to encourage the voluntary departure of unlawful residents. Where decision-makers find it impossible to openly justify the formal inclusion of irregular migrants, however, they have to resort to ‘hypocrisy’; that is, accepting inconsistencies between what is said, decided, and effectively done:

Actions that are difficult to justify can be compensated for by talk in the opposite direction. Decisions, too, can be part of hypocrisy; they can be contrary to actions, compensating for action rather than controlling or justifying it. Through hypocrisy, the ideas of the constituency are isolated from action (Brunsson, 1993, p. 501).

What according to Brunsson (1989, p. 38) theoretically links ‘talk’ and ‘action’ are ‘decisions’, which “are fundamental to organisations in which politics play an important part”. When it comes to the provision of public services in general and its extension to irregular migrants in particular, somebody has to decide under which circumstances to offer, deny, or require payment for any particular service. These are inherently political decisions and should thus ideally be taken by democratically legitimated decision makers, who then enact more or less explicit laws and regulations. As Mark Hall and Jacob Perrin (2015, p. 132) argued for the area of healthcare, however, “drawing administrable lines that define the limits of a shared humanitarian ethic can prove difficult”. For example, the legal framework for the provision of public healthcare has to leave enough room for individual doctors to fulfil their professional duties, such as those demanded by the Hippocratic oath. In

everyday practice, such decisions therefore often also depend on a case-by-case assessment by the individual welfare workers that either administer or provide a service to the population.

These ‘street-level bureaucrats’ are not just implementing the law but effectively become policy-makers themselves, as famously argued by Lipsky (1980, 1987). According to him, it is their particular position within certain organisations – characterised by “relatively high degrees of discretion and relative autonomy from organizational authority” – that “regularly permits them to make policy with respect to significant aspects of their interactions with citizens” (Lipsky, 1987, p. 121). These micro-level decisions can have significant impacts on individual lives and futures (of pupils, patients, benefit claimants, and so on) and are at the same time difficult to control by state or other authorities. According to Robert Goodin’s (1986, p. 223) influential analysis, “some forms of discretion are logically ineliminable from any system of rules”. The individual discretion exercised by street-level bureaucrats in their everyday work (as teachers, doctors or social workers, for example) is necessary because the issues they deal with tend to be “too complicated to reduce to programmatic formats” and “often require responses to the human dimensions of situations” (Lipsky, 1987, p. 122). Importantly, discretion is precisely what allows them to deal with the various irregularities that more or less routinely arise in their daily encounters with service users and often demand customised solutions. Whether perceived as a source of (professional) freedom and autonomy or a practical requirement for the effective (administrative) processing of cases, discretion forms part of these workers’ professional identity. As such, it tends to be defended against limitation by a government or supervisor. In situations where it is perceived as a burden, however, discretion can also be strategically denied in order to limit one’s own responsibility, as Lipsky’s (1980, p. 149) ground-breaking study has shown:

Workers seek to deny that they have influence, are free to make decisions, or offer service alternatives. Strict adherence to rules, and refusals to make exceptions when exceptions might be made, provide workers with defenses against the possibility that they might be able to act more as clients would wish.

In order to operationalise this multifaceted concept, a basic distinction can be drawn between ‘formal’ and ‘informal’ discretion, as suggested by Goodin (1986) and later Jordan et al. (2003, p. 214), who describe the former as practices that “are foreseen or at least allowed by the law, administrative provisions or internal service rules because of the incompleteness or flexible nature of policy design”; and the latter as those that “are developed through daily routines and may run against the formal, legal provisions”. This distinction becomes blurred, however, where the available resources (usually in terms of time and money) are limited and/or the formal rules for their utilisation so vague, complex, or even contradictory that “they can only be enforced or invoked selectively” (Lipsky, 1987, p. 121/2). Such instances of ‘selective enforcement’ can fall within or beyond the legal boundaries of legitimate discretionary power attached to a particular role; but they are often simply unavoidable given the practical constraints of the working environment. At least conceptually, they thus have to be distinguished from ‘deliberate non-compliance’

with certain rules and regulations by street-level bureaucrats, whether as individuals or collectively. The latter tends to be the case where they either do not share the underlying aims or preferences held by superiors or the government, or perceive the rules themselves as contrary to their professional or organisational role (Lipsky, 1987). A particularly strong professional status, such as that of a doctor, and the lack or inefficiency of sanctioning mechanisms makes non-compliance more likely. Together, these concepts describe circumstances in which street-level bureaucrats exercise some form of political agency, whether by contesting or circumventing the implementation of a particular policy or by neglecting or re-interpreting certain aspects of it. This allows them to deal with particular situations as they see appropriate from their perspective within an organisation.

In this sense, the issue of delegating immigration control can also be conceptualised as a 'principal-agent-problem', in that it raises the question of how and to what extent the government (as the 'principle') is able to enforce and monitor compliance with its rules by the 'agents' who are supposed to implement them (Torpey, 1998; Lahav & Guiraudon, 2006). The ability of those who are governed to still choose from a variety of possible actions is also what according to Foucault (2002a, p. 340) differentiates 'relationships of power' from 'relationships of violence':

A power relationship, on the other hand, can only be articulated on the basis of two elements that are indispensable if it is really to be a power relationship: that "the other" (the one over whom power is exercised) is recognised and maintained to the very end as a subject who acts; and that, faced with a relationship of power, a whole field of responses, reactions, results, and possible inventions may open up.

Both of these elements characterise the ambivalent relationship of street-level bureaucrats to the government (who 'employs' them) and the population (who they help to 'control'): As bureaucrats they have to adhere to a set of official rules, follow formal procedures and apply established criteria, all of which circumscribe their possible actions towards their clients; as professionals they are "expected to exercise discretionary judgement in their field [of expertise]" and to be able to deal with a broad range of individual cases and human circumstances (Lipsky, 1987, p. 121). As I will show, the balance between both aspects of their job depends on their position within the organisation as well as that of the organisation vis-à-vis 'the state', but also reflects whether their specific role mainly involves administrative or professionalised tasks (van der Leun, 2003, 2006).

The various 'roles' within an organisation can broadly be defined as "conceptions of appropriate goals and activities for particular individuals or specified social positions" (Scott, 2001, p. 55). In modern bureaucracies these organisational roles are separated from the person that performs them, which "has resulted in a capacity to constitute agency and identity in more segmented and piecemeal ways, according to the demands of distinct institutional realms" (Webb, 2006, p. 34). The precise way in which individual members of an organisation fulfil their ascribed role has also been shown to depend on the 'culture' of – or within – that particular organisation (Sinclair, 1993; Davies et al., 2000; Schein, 2016). According to Amanda Sinclair (1993, p. 64), organisational culture basically "consists of what people

believe about how things work in their organisations” and can explain why people sometimes “behave in ways that are not necessarily consistent with individual or pre-existing norms, but apparently induced by organisational membership”. Rather than characterising a whole organisational field (such as healthcare or social work), such a culture is thus proper to only one organisation (like a specific hospital or school). It has also been shown, however, that “different occupational or professional groups” can also develop their own ‘sub-cultures’, which are thus often “associated with different levels of power and influence within the organisation” (Davies et al., 2000, p. 113).

Another important concept and theoretical approach that gained considerable traction in the field of organisation studies is that of ‘(multiple) institutional logics’, within which individual actors and their actions are also embedded (Meyer & Rowan, 1977; Scott, 2001; Reay & Hinings, 2009; Besharov & Smith, 2013; Lindberg, 2014). They have been described as providing “a coherent set of organizing principles for a particular realm of social life” (Besharov & Smith, 2013, p. 366) and defined as “the belief systems and related practices that predominate in an organizational field” (Scott, 2001, p. 139), such as healthcare or social work. They are similar to what Bowen et al. (2013, p. 3) describe as “repertoires of ‘practical schemas’ for action”, and as such “are not reducible to a national model or ideology” but proper to certain institutional settings. While in principle organisational action within any such field is organised by only one institutional logic that is dominant at any particular time, several other logics constantly tend to coexist and compete with, and sometimes replace, the dominant one as the guiding principle – a process that also helps to explain institutional change (Scott et al., 2000; Lindberg, 2014).

Marya Besharov and Wendy Smith (2013, p. 365) argued that the concrete “implications of logic multiplicity depend on how logics are instantiated within organizations” and, more precisely, on what they call the ‘compatibility’ of a competing logic with the dominant one as well as its ‘centrality’ to the functioning of the organisation. What is crucial to my analysis is that organisations can actively reduce the risk of competing logics generating internal conflicts through structural adjustments that either make compliance with a new set of (conflicting) rules more likely, or non-compliance less visible. According to Besharov and Smith (2013, p. 376), this can be achieved by “[a]ltering the degree of logic compatibility or centrality – for example, by developing a cadre of organizational members who are less strongly attached to particular logics or by *buffering* members from the influence of those logics” (emphasis added). In contrast to this, Trish Reay and Christopher Hinings (2009, p. 645) posit that “actors guided by different logics may manage the rivalry by forming *collaborations* that maintain independence but support the accomplishment of *mutual* goals” (emphasis added).

On one hand, both of these accounts recognise the idea that in order to have an actual effect on organisational practice, institutional logics have to be ‘enacted’ or ‘performed into being’ by individual actors working within the organisation (Lindberg, 2014). On the other hand, they reflect one of the central premises of neo-institutionalism, which posits that organisations constantly strive for legitimacy and – in order to be seen as legitimate by their environment – need to effectively

fulfil their ascribed function for society (Meyer & Rowan, 1977; Scott, 2001). Some structural elements are thereby incorporated because of their resonance with certain 'institutionalised myths' that reflect what their environment sees as proper functioning and successful performance, even if in practice they do not help or even hinder the efficient realisation of the organisation's own specific goals (Meyer & Rowan, 1977). This often requires their formal structure to be 'decoupled' from organisational action, for example by delegating central activities to professionals: "decoupling enables organizations to maintain standardized, legitimating, formal structures while their activities vary in response to practical considerations" (Meyer & Rowan, 1977, p. 357).

My own empirical analysis supports the argument that from the perspective of public service provision, migrant ir/regularity represents such an 'institutionalised myth'.⁸ Based on this myth, it is often formally decided that access to public services must be contingent on legal residence status in order to not undermine the sovereignty of the state, the efficiency of its immigration regime or the sustainability of the welfare system. Almost unavoidably, some members of the organisations providing these services will thereby become responsible for exercising some form of immigration control, and thus to 'enact' a new institutional logic *within* these organisations. While probably seen as legitimate or even necessary by a majority of the population (and thus the organisations' 'regular' clients), this may for various reasons contradict service providers' individual interests, professional ethics or the particular institutional logic or organisational culture that dominates their field or place of work. Through their routine face-to-face interactions with their clients, and given the discretionary nature of their jobs, these micro-level actors often "develop private conceptions of the agency's objectives" (Lipsky, 1980, p. 144).

At the macro-level, a certain 'hypocrisy' in what politicians say and decide not only increases the scope for individual discretion but thereby also makes these inconsistencies less visible to the public: "If decisions are ambiguous it is easier to interpret them as consistent with ideas, both when the decision is made and when the action is completed" (Brunsson, 1993, p. 499). The underlying (political) conflicts are thereby not solved but delegated to the implementing agency, where they have to be managed through "the actions of micro-level actors [...] developing localized structures and systems that [enable] day-to-day work", as Reay and Hinings (2009, p. 630) have shown. Only in cases where "the rivalry between competing logics is resolved through collaboration at micro levels, macro-level actors will develop field-level structures to support the coexistence of multiple logics" (Reay & Hinings, 2009, p. 647). As my empirical data and analysis will show, such reconciliation can have inclusionary as well as exclusionary effects on irregular migrants' access to public services. In order to allow a systematic examination of

⁸This, of course, is not to say that immigration status and regimes are not 'real' in terms of their meaning and regulative force, but that they are incorporated into other organisational fields not because that makes practical sense, but because it is expected by political leaders and/or the public they represent.

these processes, the final section of this chapter incorporates the concepts and arguments established so far into a simple analytical framework.

2.4 A Framework for Systematic Analysis of the Micro-management of Irregular Migration

Immigration status is sometimes described as a ‘master status’ (Gonzales, 2015); that is, a status that overshadows all other aspects of a person’s identity. This would mean that independent from the social or institutional context and of whether a person is sick or healthy, old or young, rich or poor, a criminal or a ‘good boy’, s/he will always be defined by her immigration status and be treated accordingly. This might be true for direct encounters with the immigration system as well as other situations in which (irregular) migrants directly face ‘the state’. A much more nuanced picture emerges, however, when we look more closely and from a comparative perspective at their various encounters within other spheres or subsystems of society.⁹ According to Luhmann (1995) these subsystems have to a large degree become ‘self-referential’ as a consequence of (and requirement for) their functional differentiation and specialisation. This allows them to “tolerate indifference toward everything except very specific features of their respective environments” (Luhmann, 1982b, p. 237). For example, the educational system accepts pupils based on their age (in compliance with mandatory school attendance rules), doctors treat patients according to how serious their illness (as demanded by the Hippocratic oath), and social services assess cases according to the urgency of social needs or the degree of destitution.

The framework I present here will help to understand what exactly happens – both at the level of organisational fields and that of individual workers assuming different roles within these – where the logic of immigration control interferes with otherwise dominant institutional logics. This brings me back to Park’s (2013) essential question of what we (as ordinary citizens) “should do when we encounter an ‘unlawful’ person”. I will look for answers by embedding the question in more specific social contexts and by adopting the perspective of street-level bureaucrats, who are not only citizens but also ‘citizen-managers’. For Park, it is primarily an issue of whether or not we should report the ‘unlawful person’ we have encountered to the relevant state authorities (*‘Should I tell?’*). Given that migrant irregularity is a largely invisible marker, however, the question we will face before that is whether and how to actually find out, and thus even come to know, the immigration status of that person (*‘Should I know?’*).

⁹For example, a recent study among college students in the US suggests that in the environment of the university campus, irregularity is not as a master-status but one part of students’ intersectional identity (Valdez & Golash-Boza, 2020).

These two questions constitute the basis and simple way to operationalise my two-dimensional framework, which situates individual actors according to whether or not they might, should, or even have to, detect and/or report migrant irregularity in their everyday dealings with other people. Figure 2.1 illustrates this framework: The horizontal dimension of the diagram reflects whether or not individual actors *should know* potential service users’ immigration status in order to take it into account in their interactions with them. The vertical dimension relates to whether or not welfare workers *should tell*, i.e. share any such knowledge with immigration authorities. While both questions can simply be answered with yes or no, these answers can also be refined along an ordinal scale that ranges from deputisation (‘Yes, I have to know/tell’), via responsabilisation (‘Yes, I should know/tell’) and autonomisation (‘No, but I can know/tell if I want to’) to shielding (‘No, I must not know/tell’). What marks the difference between autonomisation and shielding is thus the lack or existence of an effective firewall.

The combination of the two dimensions results in a field of possibilities that can be divided into four sectors (A–D), each of which has four sub-sectors: Sector ‘A’ represents the positions of actors who are obliged or at least encouraged to both know and tell. Its four sub-sectors reflect whether both, only one, or none of the two tasks is a matter of (legal) obligation and thus an instance of ‘deputisation’. All

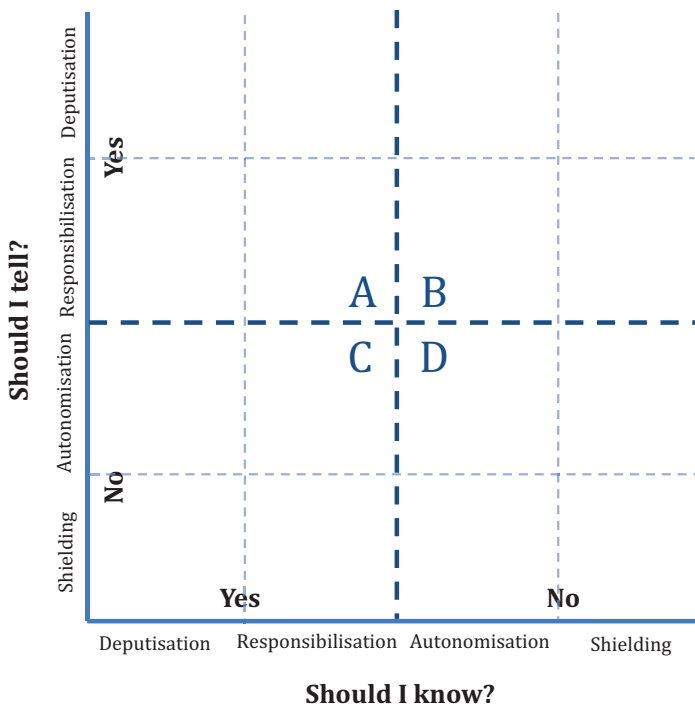


Fig. 2.1 Potential positions of individual actors or organisational roles in relation to migrant irregularity and its control

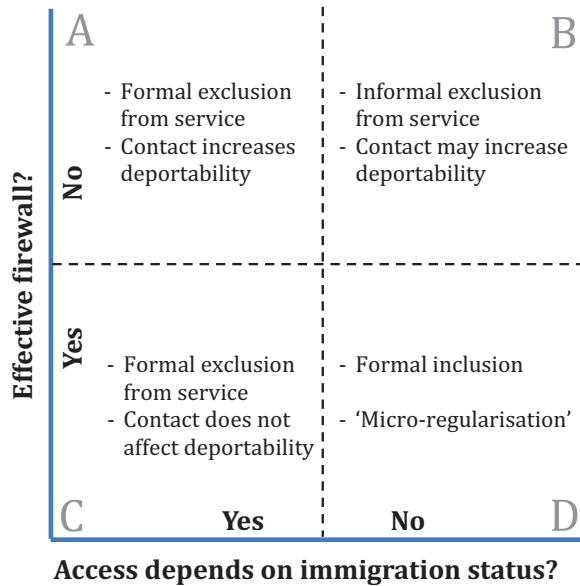
actors placed in the opposite sector 'D', on the contrary, are not obliged nor explicitly encouraged to either know or tell. Here, the sub-sectors indicate whether or not they are thereby effectively shielded by, for example, an explicit 'don't ask' and/or 'don't tell' policy. Sector 'C' encompasses roles and positions of people who are obliged or at least encouraged to systematically check immigration status but who are not expected or even explicitly forbidden to share any such information with immigration authorities. Arguably the least obvious positions are those in sector 'B', where actors are not obliged nor encouraged to check, but either legally required or encouraged to report any irregularity they nonetheless encounter or suspect.¹⁰

In Foucauldian terms, already the knowledge of someone's irregularity is likely to increase the disciplinary power that street-level bureaucrats routinely exercise over their clients. Such knowledge therefore modifies existing power relations, like that between doctor and patient, teacher and pupil (or parent), social worker and benefit claimant, administrator and applicant, and so on. Since it rests on the sheer *possibility* of being reported, this power operates even in the absence of any formal obligation, explicit encouragement, or moral expectation to report. Its concrete force can thus depend on the real or perceived likelihood that being reported would actually lead to detention or deportation, and thus on the individual as well as contextual circumstances that render a person more or less deportable. In addition, more power can be exercised over migrants who would potentially be deported to a country where they fear for their life or livelihood. At the same time, only by receiving information on somebody who is deportable is 'the state' enabled to exert its sovereign power to exclude, which in addition to other constraints is thus always contingent on having this kind of knowledge. This also means that by making use of the varying degrees of discretionary power attached to their roles, street-level bureaucrats can sometimes actively contest and resist the power of 'the state'. In instances where irregular migrants should (or could) be excluded, offering a service and thus *not* excluding them can be seen as a form of resistance, which for Foucault (2002a) is always endemic to power relations.

Importantly, the two basic questions underlying my framework can not only be answered for individual actors or particular roles within organisations but can also be transposed to the level of organisations (such as schools or hospitals) as well as organisational fields (like the healthcare or educational system). As Fig. 2.2 illustrates, these can be placed in essentially the same diagram, according to (i) whether or not access formally depends on immigration status, and (ii) whether or not a structural firewall separates them from immigration authorities. The difference to the individual level is that while organisations can be subject to either deputisation or shielding, this is not the case for responsabilisation and autonomisation, which happens at the level of individuals.

¹⁰Arguably, this would encompass local police (unless they are required to routinely check immigration status as part of their dealings with citizens), or members of the general public who are explicitly encouraged by the government to report any suspected immigration offence (as is the case in the UK).

Fig. 2.2 Potential institutional arrangements for the inclusion or exclusion of irregular residents and likely outcomes for the latter



Here again, the combination of both questions results in four sectors, each of which can be linked to a certain outcome for irregular migrants trying to access any particular service: They are excluded where access hinges on legal residence (‘A’ and ‘C’), but only where there is no firewall in place will even the attempt to access trigger immigration enforcement (‘A’). Where access is formally granted irrespective of immigration status (‘B’ and ‘D’), the lack of a firewall implies a tangible risk that still acts as a deterrent and thus leads to informal exclusion (‘B’), while the existence of a firewall permits the formal inclusion of irregular migrants, which I conceptualise as *micro-regularisation* (‘D’).

The various positions within the framework also have important implications for the overall effectiveness of internal immigration control as well as the “routine interactions among the institutional personnel and its ‘publics’ through which constraints, core beliefs, and role assignment are constantly negotiated, rearranged, and reinvented” (Bowen et al., 2013, p. 13/4). Apart from mapping the various positions that individual actors, organisations or systems that deal with irregular migrants are assigned through formal and informal rules and regulations, this framework also helps to register and compare the underlying motivations and tensions between these. On one hand, I am interested in *how* individuals or organisations are being incentivised or pushed to detect and/or report migrant irregularity. By looking for individual interests and institutional pressures or logics that tend to converge with the logic of (internal) immigration control, my analysis highlights the various forms of governmentality through which the government encourages compliance with its rule. On the other hand, the framework allows identifying different instances and forms of resistance (by individual actors, professional groups or organisations) against having to *know* or *tell*. These will be related to institutionally embedded

interests or logics that are at odds with immigration control. Such resistance can be performed at various organisational levels, through either formal or informal discretion but also deliberate non-compliance with explicit rules.

By facilitating a systematic and comparative analysis of these issues, my framework contributes to a better understanding of how immigration control works *within* society and what that means for some of the core institutions of the welfare state. For Luhmann (1982a, p. 237), not only ‘system boundaries’ but also territorial borders fulfil a crucial role for the increasing differentiation of modern societies because they too function as a “means of production of relations” (cit. in Rigo, 2011, p. 207). Foucault’s analysis of the ‘microphysics of power’, on the other hand, reflects his interest in “showing that power ‘comes from below’, that is, that global and hierarchical structures of domination within a society depend on and operate through more local, low-level, ‘capillary’ circuits of power relationships” (Gordon, 2002, p. xxiv/v). Based on the work of Foucault, Hannah Jones (2013) described the way in which street-level bureaucrats are implicated in these power relations as ‘the conduct of conduct of conduct’, whereby the government acts on the actions of others who themselves act towards others. Seen from this perspective, states do not directly regulate the quantity of migrant irregularity as such, nor the various effects it has on (irregular) migrants’ rights, opportunities and ability to make claims. Yet, by defining and constraining the actions that street-level bureaucrats as well as other citizens may legitimately take towards them, the government provides the framework for, and thereby exercises some control over what I call the micro-management of irregular migration. The following chapter provides a brief but necessary overview of the research design and methodology I employed to collect and analyse the empirical data.

References

- Allen, J., & Cochrane, A. (2010). Assemblages of state power: Topological shifts in the organization of government and politics. *Antipode*, 42(5), 1071–1089. <https://doi.org/10.1111/j.1467-8330.2010.00794.x>
- Alvesson, M., & Sveningsson, S. (2003). Good visions, bad micro-management and ugly ambiguity: Contradictions of (non-)leadership in a knowledge-intensive organization. *Organization Studies*, 24(6), 961–988. <https://doi.org/10.1177/0170840603024006007>
- Ambrosini, M. (2017). Why irregular migrants arrive and remain: The role of intermediaries. *Journal of Ethnic and Migration Studies*, 43(11), 1813–1830. <https://doi.org/10.1080/01369183X.2016.1260442>
- Anderson, B., Gibney, M. J., & Paoletti, E. (2011). Citizenship, deportation and the boundaries of belonging. *Citizenship Studies*, 15(5), 547–563. <https://doi.org/10.1080/13621025.2011.583787>
- Apap, J., De Bruycker, P., & Schmitter, C. (2000). Regularisation of illegal aliens in the European Union. Summary report of a comparative study. *European Journal of Migration and Law*, 2, 263–308. <https://doi.org/10.1525/sp.2007.54.1.23>
- Bauder, H. (2014). Why we should use the term “illegalized” refugee or immigrant: A commentary. *International Journal of Refugee Law*, 26(3), 327–332. <https://doi.org/10.1093/ijrl/euu032>

- Besharov, M. L., & Smith, W. K. (2013). Multiple institutional logics in organizations: Explaining their varied nature and implications. *Academy of Management Review*, *Academy of Management*, *39*(3), 364–381. <https://doi.org/10.5465/amr.2011.0431>
- Bigo, D. (2011). Freedom and speed in enlarged borderzones. In V. Squire (Ed.), *The contested politics of mobility. Borderzones and irregularity* (pp. 31–50). Routledge.
- Black, R., et al. (2006). Routes to illegal residence: A case study of immigration detainees in the United Kingdom. *Geoforum*, *37*(4), 552–564. <https://doi.org/10.1016/j.geoforum.2005.09.009>
- Bommes, M., & Geddes, A. (2000). Introduction: Immigration and the welfare state. In M. Bommes & A. Geddes (Eds.), *Immigration and welfare. Challenging the borders of the welfare state* (pp. 1–12). Routledge.
- Boswell, C. (2007). Theorizing migration policy: Is there a third way? *International Migration Review*, *41*(1), 75–100. <https://doi.org/10.1111/j.1747-7379.2007.00057.x>
- Bowen, J. R., et al. (2013). An institutional approach to framing Muslims in Europe. In J. R. Bowen et al. (Eds.), *European states and their Muslim citizens. The impact of institutions on perceptions and boundaries* (pp. 1–26). Cambridge University Press. <https://doi.org/10.1017/CBO9781139839174>
- Brick, K. (2011). *Regularizations in the European Union: The contentious policy tool*. Migration Policy Institute.
- Broeders, D., & Engbersen, G. (2007). The fight against illegal migration: Identification policies and immigrants' counterstrategies. *American Behavioral Scientist*, *50*, 1592–1609. <https://doi.org/10.1177/0002764207302470>
- Browne, I., & Misra, J. (2003). The intersection of gender and race in the labor market. *Annual Review of Sociology*, *29*(1), 487–513. <https://doi.org/10.1146/annurev.soc.29.010202.100016>
- Brubaker, R. (1994). Are immigration control efforts really failing? In W. A. Cornelius, P. L. Martin, & J. F. Hollifield (Eds.), *Controlling immigration: A global perspective* (pp. 227–231). Stanford University Press.
- Brunsson, N. (1989). *The Organization of Hypocrisy: Talk, decisions and actions in organizations*. Wiley.
- Brunsson, N. (1993). Ideas and actions: Justification and hypocrisy as alternatives to control. *Accounting, Organizations and Society*, *18*(6), 489–506. [https://doi.org/10.1016/0361-3682\(93\)90001-M](https://doi.org/10.1016/0361-3682(93)90001-M)
- Calavita, K. (2003). A 'reserve army of delinquents' – The criminalization and economic punishment of immigrants in Spain. *Punishment & Society-International Journal of Penology*, *5*(4), 399–413. <https://doi.org/10.1177/14624745030054002>
- Carens, J. (2013). *The ethics of immigration*. Oxford University Press.
- Castles, S. (1995). How nation-states respond to immigration and ethnic diversity. *Journal of Ethnic and Migration Studies*, *21*(3), 293–308. <https://doi.org/10.1080/1369183X.1995.9976493>
- Castles, S. (2004). Why migration policies fail. *Ethnic and Racial Studies*. Taylor & Francis Group, *27*(2), 205–227. <https://doi.org/10.1080/0141987042000177306>
- Castles, S., & Miller, M. J. (2009). *The age of migration: International population movements in the modern world* (4th ed.). Palgrave Macmillan.
- Cebulko, K. (2018). Privilege without papers: Intersecting inequalities among 1.5-generation Brazilians in Massachusetts. *Ethnicities*, *18*(2), 225–241. <https://doi.org/10.1177/1468796817752562>
- Chandler, A. D. (1977). *The visible hand: The managerial revolution in American business*. Harvard University Press.
- Chauvin, S., & Garcés-Masareñas, B. (2012). Beyond informal citizenship: The new moral economy of migrant illegality. *International Political Sociology*, *6*(3), 241–259. <https://doi.org/10.1111/j.1749-5687.2012.00162.x>
- Chauvin, S., & Garcés-Masareñas, B. (2014). Becoming less illegal: Deservingness frames and undocumented migrant incorporation. *Sociology Compass*, *8*, 422–432. <https://doi.org/10.1111/soc4.12145>

- Chauvin, S., & Garcés-Mascreñas, B. (2020). Contradictions in the moral economy of migrant irregularity. In S. Spencer & A. Triandafyllidou (Eds.), *Migrants with irregular status in Europe* (pp. 33–49). Springer. https://doi.org/10.1007/978-3-030-34324-8_3
- Cornelius, W. A., Martin, P. L., & Hollifield, J. F. (1994). Introduction: The ambivalent quest for immigration control. In W. A. Cornelius, P. L. Martin, & J. F. Hollifield (Eds.), *Controlling immigration: A global perspective* (1st ed., pp. 3–41). Stanford University Press.
- Couper, K., & Santamaria, U. (1984). An elusive concept: The changing definition of illegal immigrant in the practice of immigration control in the United Kingdom. *International Migration Review*, 18(3), 437–452.
- Crawley, H., Hemmings, J., & Price, N. (2011). *Coping with destitution. Survival and livelihood strategies of refused asylum seekers living in the UK*. Available at: <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/121667/tr-coping-with-destitution-survival-strategies-uk-040211-en.pdf;jsessionid=B1F8327BEB8B707EC2BA7D3A558CF595?sequence=1>. Accessed 11 Jan 2017.
- Cuadra, C. B., & Staaf, A. (2014). Public social services' encounters with irregular migrants in Sweden: Amid values of social work and control of migration. *European Journal of Social Work*. Routledge, 17(1), 88–103. <https://doi.org/10.1080/13691457.2012.739556>
- Cvajner, M., & Sciortino, G. (2010a). A tale of networks and policies: Prolegomena to an analysis of irregular migration careers and their development paths. *Population, Space and Place*, 16(September 2009), 213–225. <https://doi.org/10.1002/psp>
- Cvajner, M., & Sciortino, G. (2010b). Theorizing irregular migration: The control of spatial mobility in differentiated societies. *European Journal of Social Theory*, 13(3), 389–404. <https://doi.org/10.1177/1368431010371764>
- Davies, H. T. O., Nutley, S. M., & Mannion, R. (2000). Organisational culture and quality of health care. *Quality in Health Care*, 9(2), 111 LP–111119. <https://doi.org/10.1136/ghc.9.2.111>
- De Genova, N. (2002). Migrant “illegality” and deportability in everyday life. *Annual Review of Anthropology*, 31(1), 419–447. <https://doi.org/10.1146/annurev.anthro.31.040402.085432>
- De Genova, N. (2010). The deportation regime. Sovereignty, space, and the freedom of movement. In N. De Genova & N. Peutz (Eds.), *The deportation regime. Sovereignty, space and the freedom of movement* (pp. 33–65). Duke University Press.
- De Genova, N. (2013). Spectacles of migrant “illegality”: The scene of exclusion, the obscene of inclusion. *Ethnic and Racial Studies*, 36(7), 1180–1198. <https://doi.org/10.1080/01419870.2013.783710>
- de Haas, H., Natter, K., & Vezzoli, S. (2018). Growing restrictiveness or changing selection? The nature and evolution of migration policies. *International Migration Review*. SAGE Publications, 52(2), 324–367. <https://doi.org/10.1111/imre.12288>
- Deutsch, K. (1970). *Politics and government: How people decide their fate*. Huffington Mifflin.
- Düvell, F. (2006). Irregular migration: A global, historical and economic perspective. In F. Düvell (Ed.), *Illegal immigration in Europe* (pp. 14–39). Palgrave Macmillan.
- Düvell, F. (2011). Paths into irregularity: The legal and political construction of irregular migration. *European Journal of Migration and Law*, 13(3), 275–295. <https://doi.org/10.1163/157181611X587856>
- Ellermann, A. (2006). Street-level democracy: How immigration bureaucrats manage public opposition. *West European Politics*, 29(2), 293–309. <https://doi.org/10.1080/01402380500512627>
- Esping-Andersen, G. (1990). *The three worlds of welfare capitalism*. Princeton University Press.
- European Commission. (2009). *European Commission outlines its vision for the area of freedom, security and justice in the next five years*. Brussels. Available at: http://europa.eu/rapid/press-release_IP-09-894_en.htm?locale=en
- Faist, T. (2014). Brokerage in cross-border mobility: Social mechanisms and the (re)production of social inequalities. *Social Inclusion*, 2(4), 38. <https://doi.org/10.17645/si.v2i4.29>
- Fassin, D. (2011). Policing borders, producing boundaries: The governmentality of immigration in dark times. *Annual Review of Anthropology*, 40(1), 213–226. <https://doi.org/10.1146/annurev-anthro-081309-145847>

- Fekete, L. (2005). The deportation machine: Europe, asylum and human rights. *Race & Class*, 47(1), 64–78. <https://doi.org/10.1177/0306396805055083>
- Finotelli, C., & Arango, J. (2011). Regularisation of unauthorised immigrants in Italy and Spain: Determinants and effects. *Documents d'anàlisi geogràfica*, 57(3), 0495–0515. Available at: <http://ddd.uab.cat/record/85205>. Accessed 29 Apr 2016
- Foucault, M. (2002a). The subject and power. In J. D. Faubion (Ed.), *Power: Essential works of Michel Foucault 1954–1984 volume 3* (pp. 326–348). Penguin.
- Foucault, M. (2002b). Truth and power. In J. D. Faubion (Ed.), *Power: Essential works of Michel Foucault 1954–1984 volume 3* (pp. 111–133). Penguin.
- FRA. (2013). *Apprehension of migrants in an irregular situation – Fundamental rights considerations*.
- Freeman, G. P. (1995). Modes of immigration politics in liberal democratic states. *International Migration Review*, 29(4), 881–902. <https://doi.org/10.2307/2547729>
- Freeman, G. P. (2006). National models, policy types, and the politics of immigration in liberal democracies. *West European Politics*, 29(February 2015), 227–247. <https://doi.org/10.1080/01402380500512585>
- Garcés-Mascareñas, B. (2010). Legal production of illegality in a comparative perspective. The cases of Malaysia and Spain. *Asia Europe Journal*, 8(1), 77–89. <https://doi.org/10.1007/s10308-010-0249-8>
- Geiger, M., & Pécout, A. (2010). The politics of international migration management. In M. Geiger & A. Pécout (Eds.), *The politics of international migration management* (pp. 1–20). Palgrave Macmillan.
- Gibney, M. J. (2008). Asylum and the expansion of deportation in the United Kingdom. *Government and Opposition*, 43(2), 146–167. <https://doi.org/10.1111/j.1477-7053.2007.00249.x>
- Gibney, M. J. (2011). The rights of non-citizens to membership. In C. Sawyer & B. K. Blitz (Eds.), *Statelessness in the European Union. Displaced, undocumented, unwanted* (pp. 41–68). Cambridge University Press.
- Gibney, M. J., & Hansen, R. (2003). *Deportation and the liberal state: The forcible return of asylum seekers and unlawful migrants in Canada, Germany and the United Kingdom, New Issues in Refugee Research*.
- Gill, N. (2010). New state-theoretic approaches to asylum and refugee geographies. *Progress in Human Geography*, 34(5), 626–645. <https://doi.org/10.1177/0309132509354629>
- Goldring, L., Berinstein, C., & Bernhard, J. K. (2009). Institutionalizing precarious migratory status in Canada. *Citizenship Studies*, 13(3), 239–265. <https://doi.org/10.1080/13621020902850643>
- Gonzales, R. G. (2015). *Lives in Limbo: Undocumented and coming of age in America*. University of California Press.
- Goodin, R. E. (1986). Welfare, rights and discretion. *Oxford Journal of Legal Studies*. Oxford University Press, 6(2), 232–261. Available at: <http://www.jstor.org/stable/764205>
- Gordon, C. (2002). Introduction. In *Power: Essential works of Michel Foucault 1954–1984 volume 3* (pp. xi–xli).
- Guiraudon, V. (2003). The constitution of a European immigration policy domain: A political sociology approach. *Journal of European Public Policy*, 10(2), 263–282. <https://doi.org/10.1080/1350176032000059035>
- Guiraudon, V., & Lahav, G. (2000). A reappraisal of the state sovereignty debate: The case of migration control. *Comparative Political Studies*, 33(2), 163–195. <https://doi.org/10.1177/0010414000033002001>
- Hall, M. A., & Perrin, J. (2015). Irregular migrant access to care: Mapping public policy rationales. *Public Health Ethics*, 8(2), 130–138. <https://doi.org/10.1093/phe/phv016>
- Hasenfeld, Y., & Garrow, E. E. (2012). Nonprofit human-service organizations, social rights, and advocacy in a neoliberal welfare state. *Social Service Review*, 86(2), 295–322. <https://doi.org/10.1086/666391>
- Hepburn, E., & Zapata-Barrero, R. (Eds.). (2014). *The politics of immigration in multi-level states*. Palgrave Macmillan UK. <https://doi.org/10.1057/9781137358530>

- Hermansson, L., et al. (2020). Firewalls: A necessary tool to enable social rights for undocumented migrants in social work. *International Social Work*. <https://doi.org/10.1177/0020872820924454>
- Hollifield, J. F. (1986). Immigration policy in France and Germany: Outputs versus outcomes. *The Annals of the American Academy of Political and Social Science*, 485, 113–128. Available at: <http://www.jstor.org/stable/1045445>
- Hollifield, J. F. (2004). The emerging migration state. *International Migration Review*, 38(3), 885–912. <https://doi.org/10.1111/j.1747-7379.2004.tb00223.x>
- Inda, J. X. (2006). *Targeting immigrants. Government, technology, and ethics*. Blackwell Publishing.
- Ingram, H. M., & Schneider, A. L. (2005). Public policy and the social construction of deservedness. In A. L. Schneider & H. M. Ingram (Eds.), *Deserving and entitled: Social constructions and public policy* (pp. 1–28). State University of New York Press.
- Jacobson, D. (1996). *Rights across borders: Immigration and the decline of citizenship*. The John Hopkins University Press.
- Jones, H. (2013). *Negotiating cohesion, inequality and change: Uncomfortable positions in local government*. The Policy Press.
- Joppke, C. (1998). Why liberal states accept unwanted immigration. *World Politics*, 50(2), 266–293. <https://doi.org/10.2307/25054038>
- Jordan, B., Str ath, B., & Triandafyllidou, A. (2003). Contextualising immigration policy implementation in Europe. *Journal of Ethnic and Migration Studies*. Taylor & Francis Ltd, 29(2), 195–224. <https://doi.org/10.1080/1369183032000079594>
- Kraler, A. (2009). *Regularisation: A misguided option or part and parcel of a comprehensive policy response to irregular migration?*
- Kubal, A. (2013). Conceptualizing semi-legality in migration research. *Law and Society Review*, 47(3), 555–587. <https://doi.org/10.1111/lasr.12031>
- Lahav, G., & Guiraudon, V. (2006). Actors and venues in immigration control: Closing the gap between political demands and policy outcomes. *West European Politics*, 29(2), 201–223. <https://doi.org/10.1080/01402380500512551>
- Landolt, P., & Goldring, L. (2015). Assembling noncitizenship through the work of conditionality. *Citizenship Studies*, 19(8), 853–869. <https://doi.org/10.1080/13621025.2015.1110280>
- Levinson, A. (2005). *The regularisation of unauthorized migrants: Literature survey and country case studies*.
- Lindberg, K. (2014). Performing multiple logics in practice. *Scandinavian Journal of Management*, 30(4), 485–497. <https://doi.org/10.1016/j.scaman.2013.12.007>
- Lipsky, M. (1980). *Street-level bureaucracy: The dilemmas of the individual in public service*. Russell Sage Foundation.
- Lipsky, M. (1987). Street-level bureaucrats as policy makers. In D. L. Yarwood (Ed.), *Public administration, politics, and the people: Selected readings for managers, employees, and citizens* (pp. 121–127). Longman.
- Luhmann, N. (1982a). Territorial borders as system boundaries. In R. Strassoldo & G. Delli Zotti (Eds.), *Cooperation and conflict in border areas* (pp. 235–244). F. Angeli.
- Luhmann, N. (1982b). *The differentiation of society*. Columbia University Press.
- Luhmann, N. (1995). *Social systems*. Stanford University Press.
- Marrow, H. B. (2011). *When we all become the immigration police, Latino decisions*. Available at: <http://www.latinodecisions.com/blog/2011/12/19/when-we-all-become-the-immigration-police/>. Accessed 6 May 2016.
- McCall, L. (2005). The complexity of intersectionality. *Signs: Journal of Women in Culture and Society*, 30(3), 1771–1800. <https://doi.org/10.1086/426800>
- McDonald, J. (1969). Migrant illegality, nation building, and the politics of regularization in Canada. *Refuge: Canada's Journal on Refugees*, 26(2), 65–77. <https://doi.org/10.25071/1920-7336.32079>
- McKee, K. (2009). Post-Foucauldian governmentality: What does it offer critical social policy analysis? *Critical Social Policy*, 29(3), 465–486. <https://doi.org/10.1177/0261018309105180>

- McKinlay, A., & Starkey, K. (1998). *Foucault, management and organization theory: From pan-opticon to technologies of self*. SAGE Publications.
- McNevin, A. (2006). Political belonging in a neoliberal era: The struggle of the sans-papiers. *Citizenship Studies*, 10(2), 135–151. <https://doi.org/10.1080/13621020600633051>
- Meyer, J. W., & Rowan, B. (1977). Institutionalized organizations: Formal structure as myth and ceremony. *American Journal of Sociology*, 83(2), 340. <https://doi.org/10.1086/226550>
- Mezzadra, S. (2011). The gaze of autonomy: Capitalism, migration and social struggles. In V. Squire (Ed.), *The contested politics of mobility. Borderzones and irregularity* (pp. 121–142). Routledge.
- Mezzadra, S., & Neilson, B. (2013). *Border as method, or, the multiplication of labor*. Duke University Press.
- Morris, L. (2002). *Managing migration: Civic stratification and migrants' rights*. Routledge.
- OHCHR. (2014). *The economic, social and cultural rights of migrants in an irregular situation*. New York/Geneva.
- Paoletti, E. (2010). *Deportation, non-deportability and ideas of membership* (Refugee Studies Centre Working Paper Series 65).
- Park, J. S. W. (2013). *Illegal migrations and the huckleberry Finn problem*. Temple University Press.
- PICUM. (2010). *PICUM's main concerns about the Fundamental Rights of undocumented migrants in Europe*. Brussels. Available at: <http://picum.org/picum.org/uploads/publication/AnnualConcerns2010EN.pdf>. Accessed 4 May 2016.
- Reay, T., & Hinings, C. R. (2009). Managing the rivalry of competing institutional logics. *Organization Studies*, 30(6), 629–652. <https://doi.org/10.1177/0170840609104803>
- Refugee Council. (2012). *Between a rock and a hard place: The dilemma facing refused asylum seekers*.
- Rigo, E. (2011). Citizenship despite borders. Challenges to the territorial order of Europe. In V. Squire (Ed.), *The contested politics of mobility. Borderzones and irregularity* (pp. 199–215). Routledge.
- Romero, M. (2008). The inclusion of citizenship status in intersectionality: What immigration raids tells us about mixed-status families, the state and assimilation. *International Journal of Sociology of the Family*, 34(2), 131–152. Available at: <http://www.jstor.org/stable/10.2307/23070749>
- Ruedin, D., Rosenberger, S., & Merhaut, N. (2018). Tracing anti-deportation protests: A longitudinal comparison of Austria, Germany and Switzerland. In S. Rosenberger, V. Stern, & N. Merhaut (Eds.), *Protest movements in asylum and deportation* (pp. 89–115). Springer. https://doi.org/10.1007/978-3-319-74696-8_5
- Ruhs, M., & Anderson, B. (2010). Semi-compliance and illegality in migrant labour markets: An analysis of migrants, employers and the state in the UK employers and the state in the UK. *Population, Space and Place*, 16, 195–211. <https://doi.org/10.1002/psp>
- Samers, M. (2004) An emerging geopolitics of “illegal” immigration in the European Union. *European Journal of Migration and Law*. Brill, 6(1), 27–45. <https://doi.org/10.1163/1571816041518750>
- Sassen, S. (1996). *Losing control?: Sovereignty in an age of globalization*. Columbia University Press.
- Schein, E. H. (2016). *Organizational culture and leadership* (5th ed.). Wiley.
- Schneider, A. L., & Ingram, H. M. (1993). Social construction of target populations: Implications for politics and policy. *American Political Science Review*, 87(2), 334–347. <https://doi.org/10.2307/2939044>
- Schweitzer, R. (2017). Integration against the state: Irregular migrants' agency between deportation and regularisation in the United Kingdom. *Politics*, 37(3), 317–331. <https://doi.org/10.1177/0263395716677759>
- Sciortino, G. (2000). Toward a political sociology of entry policies: Conceptual problems and theoretical proposals. *Journal of Ethnic and Migration Studies*. Taylor & Francis Group, 26(2), 213–228. <https://doi.org/10.1080/13691830050022776>

- Sciortino, G. (2004). Between phantoms and necessary evils. Some critical points in the study of irregular migrations to Western Europe. *IMIS Beiträge*, 24, 17–44.
- Scott, W. R. (2001). *Institutions and organizations*. SAGE Publications.
- Scott, W. R., et al. (2000). *Institutional change and healthcare organizations: From professional dominance to managed care*. University of Chicago Press.
- Secretariat, O. E. C. D. (2000). Some lessons from recent regularisation programmes. In *Combating the illegal employment of foreign workers* (pp. 53–70). OECD.
- Sinclair, A. (1993). Approaches to organisational culture and ethics. *Journal of Business Ethics*, 12(1), 63–73. <https://doi.org/10.1007/BF01845788>
- Soss, J. (2005). Making clients and citizens: Welfare policy as a source of status, belief, and action. In A. L. Schneider & H. M. Ingram (Eds.), *Deserving and entitled: Social constructions and public policy* (pp. 291–328). State University of New York Press.
- Soysal, Y. N. (1994). *Limits of citizenship. Migrants and postnational membership in Europe*. University of Chicago Press.
- Squire, V. (2011). The contested politics of mobility. Politicizing mobility, mobilizing politics. In V. Squire (Ed.), *The contested politics of mobility. Borderzones and irregularity* (pp. 1–25). Routledge.
- Sunderhaus, S. (2007). Regularization programs for undocumented migrants. *Migration Letters*, 4(1), 65–76.
- Torpey, J. (1998). Coming and going: On the state monopolization of the legitimate “means of movement”. *Sociological Theory*, 16(3), 239–259. <https://doi.org/10.1111/0735-2751.00055>
- Torpey, J. (2000). *The invention of the passport: Surveillance, citizenship and the state*. Cambridge University Press.
- Triandafyllidou, A., & Bartolini, L. (2020). Understanding irregularity. In S. Spencer & A. Triandafyllidou (Eds.), *Migrants with irregular status in Europe. Evolving conceptual and policy challenges* (pp. 11–31). Springer. https://doi.org/10.1007/978-3-030-34324-8_2
- Valdez, Z., & Golash-Boza, T. (2020). Master status or intersectional identity? Undocumented students’ sense of belonging on a college campus. *Identities*, 27(4), 481–499. <https://doi.org/10.1080/1070289X.2018.1534452>
- van der Leun, J. (2003). *Looking for loopholes*. Amsterdam University Press. <https://doi.org/10.2307/j.ctt46n2vd>
- Van Der Leun, J. (2006). Excluding illegal migrants in The Netherlands: Between national policies and local implementation. *West European Politics*, 29(2), 310–326. <https://doi.org/10.1080/01402380500512650>
- Van Meeteren, M. (2014). *Irregular migrants in Belgium and the Netherlands: Aspirations and incorporation*. Amsterdam University Press/IMISCOE. https://doi.org/10.26530/open_497130
- Vasta, E. (2011). Immigrants and the paper market: Borrowing, renting and buying identities. *Ethnic and Racial Studies*, 34(2), 187–206. <https://doi.org/10.1080/01419870.2010.509443>
- Vickstrom, E. (2012). Pathways into and out of irregular status among Senegalese migrants in Europe. *International Migration Review*. <https://doi.org/10.1073/pnas.0703993104>
- Vickstrom, E. R. (2019). *Pathways and consequences of legal irregularity. Senegalese migrants in France, Italy and Spain*. Springer International Publishing (IMISCOE Research Series). <https://doi.org/10.1007/978-3-030-12088-7>
- Walsh, K. (1994). Marketing and public sector management. *European Journal of Marketing*. MCB UP Ltd, 28(3), 63–71. <https://doi.org/10.1108/03090569410057308>
- Walsh, J. P. (2014). Watchful citizens: Immigration control, surveillance and societal participation. *Social & Legal Studies*, 23(2), 237–259. <https://doi.org/10.1177/0964663913519286>
- Walters, W. (2002). Deportation, expulsion, and the international police of aliens. *Citizenship Studies*, 6(3), 265–292. <https://doi.org/10.1080/1362102022000011612>
- Walters, W. (2015). Reflections on migration and governmentality movements. *Journal für kritische Migrations- und Grenzregimeforschung*, 1(1), 1–25.
- Webb, J. (2006). *Organisations, identities and the self*. Palgrave Macmillan.

Weber, L. (2001). *Understanding race, class, gender, and sexuality: A conceptual framework*. McGraw-Hill.

Willen, S. S. (2012). Migration, “illegality,” and health: Mapping embodied vulnerability and debating health-related deservingness. *Social Science and Medicine*, 74(6), 805–811. <https://doi.org/10.1016/j.socscimed.2011.10.041>

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter’s Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter’s Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.



Chapter 3

Research Design, Cases and Methodology



The moral dilemmas, legal contradictions, and social problems resulting from the interplay between migration and migration control are felt and managed by a wide range of actors across various administrative levels and institutional contexts. I have chosen a flexible approach that allows my analysis to shift between these different levels while keeping the overall research design as simple and ‘elegant’ as possible (Hakim, 2000). It is a combination of in-depth case study and systematic comparison. This allows me to not only contrast the formal entitlements and effective access of irregular migrants to various public services provided in different places, but also highlight how certain contextual features of each field site shape the roles that public institutions and individual street-level bureaucrats play when local service provision overlaps with immigration control. By looking at how individual actors experience, interpret, implement or contest the underlying policies I gain a better understanding of what this overlap means in practice. This chapter gives a brief overview of the units, levels and dimensions of my analysis, the variety of data sources and research methods I have used, as well as some of the ethical concerns and methodological difficulties I thereby encountered.

3.1 The Study: Research Design and Case Selection

I compare three different spheres, or sectors, of public service provision (healthcare, education and social assistance) across two locations (London and Barcelona) that are each embedded in specific regional (England and Catalonia) and national (the UK and Spain) contexts. Accordingly, the investigation covers a total of six cases, as represented in Fig. 3.1, which also provides an overview of the empirical chapters to follow:

I have selected Britain and Spain primarily because they represent very dissimilar national contexts for the integration of irregular migrants and their access to public services. A secondary reason was my familiarity with the broader policy

	Healthcare	Education	Social Assistance
UK > England > London	Case 1	Case 3	Case 5
Spain > Catalonia > Barcelona	Case 2	Case 4	Case 6
Chapter 4	Chapter 5	Chapter 6	Chapter 7

Fig. 3.1 Case overview and comparative design

frameworks and fluency in the languages of both countries. They differ significantly in terms of their geographical location, constitutional structure of the state, the size of their informal economies, as well as their immigration histories and current legal-political contexts for the broader management of migration. Most importantly, as I discuss in Chap. 4, Britain and Spain follow very different approaches to reduce the number of people residing unlawfully within their territories: the former based on explicitly hostile policies, the latter relatively accommodating towards irregular residents and many of their claims. The respective policy frameworks reflect different problem perceptions and significantly determine the institutionalisation of migration control at the local level, creating distinct conditions for the micro-management of irregular migration.

While the two selected countries thus represent rather dissimilar contexts for the provision of public services to irregular residents, the selected cities have several things in common. Both London and Barcelona are located within parts of the country that are economically dominant and grow faster (demographically and economically) than the national average. They are home to some of the largest and oldest immigrant communities present in each country, and (unlike other cities and regions) continue to experience a further expansion and particularly rapid diversification of their foreign populations. They are also estimated to harbour particularly high concentrations of irregular foreign workers and residents (Pajares et al., 2004; Gordon et al., 2009). Within both cities my fieldwork concentrated on, but was not strictly limited to, districts where the effects of past and current immigration are (perceived as) particularly strong, namely the London Boroughs of Hackney and Lewisham; and the districts of Ciutat Vella and Sant Martí in Barcelona. I deliberately chose Barcelona instead of Madrid, which may seem the more obvious comparator to London. Barcelona is Spain's second-largest city and in comparison to other European municipalities particularly outspoken about the need to provide services to its irregular migrant population (Spencer, 2020, p. 199). It is also the capital of Catalonia, which has for many years been one of the country's most autonomous regions and strongest opponents to central government power and policies.¹ Looking

¹While the 2017 'referendum' about Catalan independence and the accompanying political conflict is not about the rights and treatment of irregular migrants or immigration in general, it is indicative of the deep-seated antagonism between the Spanish government and the 'Generalitat de Catalunya'; whereas the city-region of Madrid is governed by the same party (Partido Popular) that also forms the central government since 2011.

at Barcelona thus more explicitly highlights the significant influence of not only local but also regional administrations when it comes to providing public services to irregular migrants (Price & Spencer, 2014; Spencer, 2018). At the same time, it helps me to demonstrate that my research design and analytical framework can be operationalised across multiple levels of government and allow comparisons to be drawn between cases embedded in rather distinctive administrative structures.

The second comparative dimension is between different public services: health-care, education and social assistance. Each of them is provided to the local population through a specific set of institutions which operate within a certain legal framework and fulfil a particular function for society. Many of these institutions are becoming more and more involved in processes of everyday bordering and more and more of their employees help implementing immigration policy. Depending on the sector, however, the logic of immigration control thereby intersects with different combinations of institutional logics, functional imperatives and professional norms. What is important for the structure of my analysis is that the various ‘street-level bureaucrats’ who are involved in these ongoing negotiations occupy similar kinds of organisational roles within their respective sectors and institutions. While some roles (like that of a university lecturer or doctor) are typical for one particular sector or organisation, others are more generic and can be found in many different institutional settings (like receptionists or accountants). In order to facilitate systematic comparative analysis across the three sectors, I differentiate between three broader role-categories: *administrators*, *professionals*, and what I call the *managers of irregularity*. The first category includes workers who mostly carry out clerical duties, like receptionists, accountants and other administrative staff; whereas the second one comprises professional roles and responsibilities, such as those performed by doctors and nurses, teachers or social workers. The third category includes those actors who more specifically manage migrant irregularity within the respective organisation. As I will show in the empirical chapters, the various actors within each of these role-categories tend to perform similar gatekeeping functions, have equivalent degrees of power and discretion, and are comparable in terms of their proximity to immigration control or enforcement.

This approach allows a nuanced understanding of the relationships between certain structural or contextual features that characterise each case (including laws and regulations, the institutional setup, informal guidelines, or political rhetoric) and the perceptions, decisions and behaviours of individual actors, which in turn significantly determine policy outcomes. At the institutional level, comparisons can be drawn between actors occupying different organisational roles within the same sectors or institutions, as well as between the same organisational roles in different sectors and institutions. Looking at these issues in two different national and local settings thereby helps to distinguish the contextual particularities of each sector from those that are specific to each environment.

3.2 The Methodology: Data Sources, Data Collection and Data Analysis

Irregular migration and residence are intrinsically characterised by a lack of official data and reliable statistical evidence (Singer, 1999; Black, 2003; Düvell et al., 2010). My study therefore mostly relies on original, qualitative field data that I collected in London (from July 2014 until the end of February 2015) and Barcelona (between the beginning of March and mid-October 2015). The core of this data comes from 86 semi-structured interviews with a range of local actors more or less directly involved in negotiating the provision of public services to irregular residents and thereby also the implementation and effectiveness of internal control measures. They include representatives of civil society, members of the local administration, street-level bureaucrats with various professional backgrounds, as well as irregular migrants themselves.

In London I conducted 33 interviews with a total of 35 ‘non-migrant’ respondents.² Half of them were representatives of relevant civil society organisations, including charities, advocacy groups, migrant associations and church communities. The other half were professionals and administrative staff working in the fields of healthcare (5), education (6) and social assistance (4), as well as representatives of the Greater London Authority (GLA) and different local Councils (3). I also interviewed twelve migrants in irregular situations – six males, six females; aged between 20 and 50 – who had migrated from various non-EU countries and been living in London for between 1.5 and 20 years, experiencing different kinds and degrees of irregularity. At the time of the interview none of them had a formal right to reside in the UK but some had previously held a residence permit while others were awaiting the outcome of outstanding applications. In Barcelona, I conducted 32 interviews with a total of 35 ‘non-migrant’ informants and nine interviews with migrants in irregular situations. The latter included six males and four females, aged between 19 and 42, who had arrived between 1987 and 2013. Of the ‘non-migrant’ respondents, eleven were civil society representatives (mostly NGO workers); five were members of the local and one of the regional administration, the rest were professionals and administrative staff working in public healthcare (7), education (6) and social assistance (5).

In both cities, interviews typically lasted around 45 min (all of them between 30 min and 2 h) and those with equivalent respondents followed the same rough structure. Also my strategy for selecting and approaching potential respondents was largely the same: First I contacted relevant NGOs, advocacy groups and other civil society organisations (mostly by email) and usually managed to arrange a formal interview within a couple of days, sometimes weeks. These interviews mainly served to better understand the context and to identify the major difficulties and

²Some of these had a migrant background but that was of no particular relevance for my study or the information they provided; two of these interviews were conducted with two respondents at the same time.

barriers in relation to irregular migrants' access to various public services. Questions were adapted on a case-by-case basis to fit the particular area of work or field of expertise of each organisation. Since this access strategy proved rather ineffective in the case of institutions like hospitals, health centres, schools (in particular), social service departments or other Council offices, I had to approach these in person and often rely on personal referrals from civil society and other intermediary actors. It often took several weeks and a lot of persistence to identify suitable respondents and obtain their participation.

The resulting interviews with street-level bureaucrats focussed on three aspects: (i) their perception of the meaning and relevance of (irregular) immigration status and the treatment and rights of irregular migrants within their respective institutional domain; (ii) the extent to which they felt implicated in implementing specific policies of internal control or immigration legislation more generally; and (iii) potential contradictions or convergence of the primary function of their organisation or their own role and responsibilities with immigration-related duties, rules and regulations. Meetings and interviews with local politicians and representatives of the local administration were arranged by email and mainly examined the role of the city or district authority with regards to public service provision in general and in relation to irregular residents; the localised effects of immigration policy, and particularly their concerns about internal control measures.

Contact with irregular migrants themselves was mostly made or at least facilitated via a number of dedicated NGOs and migrant associations, but also with the help of friends and other personal contacts. These interviews mainly focused on when, where, and under which conditions they perceived their ascribed irregularity as a particular barrier or risk factor; and more specifically, how it affected their position vis-à-vis the local authority and public welfare institutions. I thereby generally focused on their (irregular) residence in the city, rather than why they had decided to migrate and how they entered the country. The non-representative samples of (irregular) migrant respondents only comprised people who were not in detention nor facing immediate deportation at the time of the interview, and who had been living within the respective city for more than a year (typically between two and five years, but in some cases for decades). While in some cases their presence in the country was officially known to the immigration authority,³ others had never been in contact with any state authority and were thus living 'under the radar' of the immigration regime.

With some of my respondents I have maintained contact (via social media, email or telephone), which allowed me to conduct several follow-up interviews and additional informal conversations during subsequent visits to both cities. This helped me to complete my understanding of their accounts and increase the overall consistency of the data and information obtained. Throughout the interview process I tried to

³In the UK context, this was either because they had made an unsuccessful asylum claim and subsequently 'absconded' or had an on-going application for a non-asylum-related right to remain; whereas several of my respondents in Barcelona had received a deportation order that was simply not enforced.

triangulate the data obtained from the different sets of respondents, in order to make sense of and corroborate their various accounts (see Ellermann, 2006). This exposed several (if minor) inconsistencies between some of the accounts of welfare bureaucrats and professionals and the migrants' own experiences; and between representatives of the local authority and those of third sector organisations.

Wherever possible, and only given the interviewee's explicit consent, interviews were voice-recorded and fully transcribed.⁴ All but two interviews in Barcelona were conducted, transcribed and coded in Spanish, and only those segments I quoted subsequently translated into English. The analysis of close to 1.000 pages of interview transcripts was done with the help of the software *NVivo* and involved several rounds of thematic coding. Both my analytical framework and the structure of the empirical chapters arose in the course of this coding process, which took two and a half months to complete. A series of more and more systematic coding queries based on my research questions helped me to identify and make sense of relevant patterns and relationships that emerged from the data (Bazeley, 2007). Throughout the subsequent empirical chapters I draw extensively on original interview data in order to illustrate the processes and mechanisms that help or hinder the internalisation of immigration control in various settings and from the perspective of different actors.⁵

Apart from interviews I also collected other kinds of information and contextual data: A review of the existing academic literature, policy documents, legal provisions and relevant reports from government as well as non-governmental sources helped me to comprehend and start to compare the overall scope, predominant forms and causes of migrant irregularity in each context, and the way both national governments portray and have reacted to the presence of irregular migrants. Media reports and press statements gave me an idea of the dominant political discourses surrounding the issue of irregular migrants' access to public services. In addition, I gained crucial insights and understanding through non-participant and participant observation in a variety of social and institutional settings. On one hand, I spent a lot of time in places where mainstream public services are provided (like hospitals), or relevant information about where and how to access them (or potential service alternatives) can be obtained, including official contact points, local community centres or migrant advice agencies. This led to many informal conversations with receptionists and other members of staff, migrants in more or less precarious situations and the people who accompanied them to these sites, as well as other service users. Several interviews resulted from these by-chance encounters. On the other hand, I was a regular volunteer (once a week) at a local migrant advice and support centre in London, and an active member of a migrant collective and advocacy group in Barcelona. This proved very helpful in terms of facilitating access and

⁴Only three interviewees (one in London, two in Barcelona) preferred not to be voice-recorded.

⁵Interview quotes are identified by a unique code (e.g. 'lonA03') that contains information about where the interview was conducted (lon/bcn) and whether respondents were 'non-migrant' ('A') or migrant participants ('B'), followed by a consecutive number. Quotes from informal conversations are labelled with a code containing 'C' instead of 'A' or 'B'.

establishing trust with potential research participants (Staring, 2009; Gonzales, 2011; Hasselberg, 2012), including not only irregular migrants themselves but also their support networks, legal advisors and other members of the local community. The conversations and connections that arose from these longer-term personal engagements thus often constituted the start of ‘referral chains’ that would eventually lead to crucial information, further contacts or interviews with migrant as well as ‘non-migrant’ informants.

3.3 Methodological and Ethical Challenges for Research in the Context of Irregularity

One of the initial assumptions behind this book is that irregularity represents a barrier and creates more or less imminent risks or challenges not only for the people who are rendered ‘irregular’, but also those who must (or choose to) interact with the former. The same irregularity thus also poses a problem for any research that draws on the perceptions, experiences, and interactions of both kinds of respondents. Even though my focus is on the perspective of street-level bureaucrats, answering some of my research questions also required insights and information that could only be gained through face-to-face interviews with irregular residents themselves. Mainly due to the precarious nature of their relationship to the state in which they live, irregular migrants clearly constitute a ‘hard-to-reach’ or ‘hidden’ population (Singer, 1999; Atkinson & Flint, 2001; Gonzales, 2011). An obvious challenge thus consisted in locating, identifying and gaining access to potential interviewees and to establish a relationship of trust with this particular group of informants. In addition, people who live in “a dependent or unequal relationship” (ESRC, 2010, p. 8) or in situations characterised by a general lack of choice and self-determination (Bilger & Van Liempt, 2009) must be regarded as ‘vulnerable’. Irregular immigration status thus clearly renders a person vulnerable and in-depth research into their lives and interactions will almost certainly touch upon particularly sensitive topics like their ‘illegal’ entry or employment and might reveal their involvement in related criminalised practices such as the falsification of documents. This gives the researcher a fundamental responsibility to carefully balance the potential social benefits of the research project against any potential harms for those directly involved in the investigation (Düvell et al., 2010).

My research proposal underwent full ethical review by the University of Sussex’ Social Sciences Research Ethics Committee, which required me to specify appropriate strategies for identifying and approaching vulnerable informants, to conduct all interviews in places that were confidential, safe and familiar to them, and to make sure that any personal data obtained was stored securely (see Cornelius, 1982). While all interviewees were anonymised, non-migrant participants are identified by either the organisation they work for or their particular function within it. The identities of migrant participants were additionally protected by not even

recording their real/full names, and by changing any recognisable locations or other details which might allow their personal identification (Singer, 1999; ESRC, 2010). Their particular vulnerability also had implications for the process of obtaining informed consent: While every potential respondent received a copy of the information sheet and had the opportunity to ask additional questions regarding the project, I asked only my non-migrant participants to sign a written consent form ahead of the interview. In the case of migrants in irregular situations I instead obtained their verbal consent after making sure that they had read and understood the information provided. As experiences from previous studies have shown, written consent could risk to undermine (or be perceived as undermining) the anonymity of vulnerable interviewees and create additional suspicion (Finch & Cherti, 2011).

Suspicion can also arise in relation to potential informants who are not in an irregular situation themselves, but (try to) help, work with, or otherwise encounter people who are. My experience with public welfare workers has shown very clearly that such encounters often cause serious doubts or even anxiety about the limits of legitimate commitment and possible engagement. The question of ‘*am I acting against the law* by helping a person who I know (or suspect) has no residence permit?’ was quite pervasive throughout many of my interviews – and became central to my analysis. In such cases I always made clear that I was trying to understand my respondents’ role and thus to put myself into their position within a certain institutional context. Interviews and conversations often started from the specific difficulties that (potential) irregularity creates for them. In posing my questions I always treated them as representatives of a certain professional group, since what I wanted to get at were not their personal views and opinions, but their perspective as a teacher, social worker or health centre receptionist. Making this clear from the outset often facilitated their agreement to participate and seemed to enhance their confidence.

At the same time, the widespread uncertainty among potential research participants in combination with the relative ease of refusal – by denying any knowledge and previous experience or contact with irregular migrants – also creates an undeniable selection bias. On one hand, those respondents who agreed to be interviewed probably tended to be more aware of and/or concerned about irregular migration and its control than some of their colleagues – which arguably helps the investigation. On the other hand, and given the quite explicitly critical orientation of my research, it might have attracted participants who are themselves more critical towards their government and its policies. This might have distorted the overall picture in terms of their collective views and perceptions, but not the basic mechanisms and difficulties underlying their behaviour. The latter kind of bias might have been reinforced by the fact that also several of my ‘non-migrant’ respondents were contacted via referral chains leading back to my participation in migrant support organisations and advocacy groups. In general, it must of course be kept in mind that in any case, “a narrative may not simply be the story of a life but rather a conscious or unconscious strategy for self-representation and legitimisation of projects for the future” (Bilger & Van Liempt, 2009, p. 135). This is true for both the accounts of migrants and of street-level bureaucrats.

Ultimately, care must also be taken in relation to possible misuse of the research findings once they are published. For Bilger and Van Liempt (2009, p. 131), the

researcher’s “power over the distribution of knowledge” i.e. the power to decide on how findings will be used and disseminated, further aggravates the already unequal relationship between researcher and researched. This power imbalance reaches far beyond the end of the research process, since significant harm to both participants’ privacy and their broader interests can also arise at a later stage. I have made, and am still making, every effort to prevent such harm.

References

- Atkinson, R., & Flint, J. (2001). Accessing hidden and hard-to-reach populations: Snowball research strategies, social research UPDATE. *Social Research Update*, 33.
- Bazeley, P. (2007). *Qualitative data analysis with NVivo*. SAGE.
- Bilger, V., & Van Liempt, I. (2009). Methodological and ethical dilemmas in research among smuggled migrants. In I. Van Liempt & V. Bilger (Eds.), *The ethics of migration research methodology. Dealing with vulnerable immigrants* (pp. 118–137). Sussex Academic Press.
- Black, R. (2003). Breaking the convention: Researching the “illegal” migration of refugees to Europe. *Antipode*, 35(1), 34–54. <https://doi.org/10.1111/1467-8330.00301>
- Cornelius, W. A. (1982). Interviewing undocumented immigrants: Methodological reflections based on fieldwork in Mexico and the U.S. *International Migration Review*, 16(2), 378–411.
- Düvell, F., Triandafyllidou, A., & Vollmer, B. (2010). Ethical issues in irregular migration research in Europe. *Population, Space and Place*, 16(3), 227–239. <https://doi.org/10.1002/psp.590>
- Ellermann, A. (2006). Street-level democracy: How immigration bureaucrats manage public opposition. *West European Politics*, 29(2), 293–309. <https://doi.org/10.1080/01402380500512627>
- ESRC. (2010). *ESRC Framework for Research Ethics (FRE) 2010* (pp. 1–51).
- Finch, T., & Cherti, M. (2011). No easy options – Irregular immigration in the UK, IPPR report.
- Gonzales, R. G. (2011). Learning to be illegal: Undocumented youth and shifting legal contexts in the transition to adulthood. *American Sociological Review*, 76(4), 602–619. <https://doi.org/10.1177/0003122411411901>
- Gordon, I., et al. (2009). *Economic impact on the London and UK economy of an earned regularisation of irregular migrants to the UK*. Greater London Authority.
- Hakim, C. (2000). *Research design: Successful designs for social and economic research* (2nd ed.). Routledge.
- Hasselberg, I. (2012). *An ethnography of deportation from Britain*. University of Sussex.
- Pajares, M., et al. (2004). *Inmigración irregular en Cataluña: análisis y propuestas*. Barcelona.
- Price, J., & Spencer, S. (2014). *City-level responses to migrant families with restricted access to welfare benefits*. Oxford. Available at: https://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/Report_City_level_responses.pdf
- Singer, M. (1999). Studying hidden populations. In J. Schensul et al. (Eds.), *Mapping, social networks, spatial data and hidden populations* (pp. 125–191). AltaMira Press.
- Spencer, S. (2018). Multi-level governance of an intractable policy problem: Migrants with irregular status in Europe. *Journal of Ethnic and Migration Studies*, 44(12), 2034–2052. <https://doi.org/10.1080/1369183X.2017.1341708>
- Spencer, S. (2020). Cities breaking the mould? Municipal inclusion of irregular migrants in Europe. In S. Spencer & A. Triandafyllidou (Eds.), *Migrants with irregular status in Europe. Evolving conceptual and policy challenges* (pp. 187–205). Springer. https://doi.org/10.1007/978-3-030-34324-8_10
- Staring, R. (2009). Different methods to research irregular migration. In I. Van Liempt & V. Bilger (Eds.), *The ethics of migration research methodology. Dealing with vulnerable immigrants* (pp. 83–97). Sussex Academic Press.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.



Chapter 4

Migrant Irregularity in Britain and Spain, London and Barcelona



The management of international migration requires governmental action at various administrative levels and its interconnected layers of regulation all contribute – in more or less straightforward ways – to the illegalisation of some migrants’ movement and presence. The EU defines ‘illegal stay’ as “the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions [...] for entry, stay or residence in that Member State”.¹ It is thus primarily a matter of each national government to establish these conditions and thereby determine the scope of irregularity. While migrant irregularity is thus produced by national and increasingly also supra-national immigration legislation, it becomes particularly apparent and sometimes problematic at the level of municipalities, where it can intervene in many kinds of social interaction. The local level is also where many of the policies aiming to reduce irregular migration and residence are being implemented, whereby the national and regional context and concrete institutional framework significantly shape this implementation. According to Jordan and his colleagues (2003, p. 211), the latter is always “pre-determined to a certain extent by the prior stage of policy formulation and is a continuation of the social and political environment in which policy decisions were taken”. Hence, also the discursive level is highly relevant and also in this sense there are clear differences between the two contexts I have looked at. For example, politicians, the mainstream media, and policy documents in the UK quite often refer to irregular migrants and their mobility or residence in the country as ‘illegal’, thereby reinforcing the idea that their presence, claims and actions are fully illegitimate, if not criminal. In Spain, official documents and statements mostly use the term ‘irregular’ and often specifically attribute the irregularity to a particular administrative situation rather

¹ Directive 2008/115/EC of the European Parliament and of the Council, of December 2008, on common standards and procedures in Member States for returning illegally staying third-country nationals, Brussels, OJ L 348 of 24.12.2008. For a recent overview of EU legislation regarding irregular migrants see Delvino (2020).

than the person in that situation.² Similarly, foreigners whose permission to reside in the UK has expired are officially categorised as ‘visa overstayers’, which clearly depicts their condition as the result of their own wrongdoing. In the Spanish context, the technically equivalent situation of foreign residents who failed to renew their residence permit is officially called ‘*irregularidad sobrevenida*’, meaning an irregularity that has ‘overcome’ or ‘happened to’ them.

How the issues of irregular migration and migrant irregularity are framed and addressed in public and political discourses ultimately reflects not only the legal and policy frameworks in place, but also the political will and capacity of a government to either regularise or deport irregular migrants (Leerkes & Van Houte, 2020). In this respect, as I will show in the following, the two countries exemplify the stark contrast between northern and southern EU Member States in terms of their responses to irregular migration (Broeders & Engbersen, 2007). Spain, on one hand, has often served as the prime example for the so-called “cheap model” of managing (im)migration by accepting sizeable proportions of unauthorised entry and stay in combination with repeated, large-scale regularisation programmes (Arango & Finotelli, 2009; González-Enríquez, 2009a). The UK, on the other hand, has become emblematic for what Gibney (2008) called the ‘deportation turn’, which emphasises the explicitly exclusionary thrust of its immigration regime (Fekete, 2005; Paoletti, 2010; Anderson et al., 2011).

In Chap. 2 I have suggested that migrant ir/regularity functions as a code that more or less effectively extends the reach of immigration law into many spheres of everyday life and social policy; and that although a person’s immigration status has no immediate relevance for public welfare institutions themselves, they are often expected to incorporate immigration checks into their own structure and operations. In the following sections I will develop this line of argument further by looking at how exactly migrant irregularity is framed and institutionalised at the national, local and welfare state level of the two environments I am comparing.

4.1 State Responses to Migrant Irregularity: Deportation, Regularisation and Internal Control in the UK and Spain

Irregularity is primarily the result of an active and sometimes intentional legal-political construction by state authorities rather than the consequence of individual migrants’ actions in neglect or violation of immigration restrictions (Calavita, 1998; De Genova, 2002; Goldring et al., 2009; Düvell, 2011). I have already argued that in order to reduce the number of irregular migrants living within their borders, states can legalise their presence, physically remove them from the territory, or exclude

²Many people I spoke to in Barcelona – in interviews but also everyday conversations – used the very bulky expression ‘migrants in administratively irregular situations’ (*‘inmigrantes en situació administrativa irregular’*).

them from social and economic relations and fundamental services. Here I briefly discuss the role that each of these policy elements plays within the British and Spanish immigration regimes.

4.1.1 Regularisation in Spain and the UK

In the Spanish context, like in many other countries, ad-hoc regularisations have for several decades provided the main way out of irregularity and thus a major pathway to ‘legal’ settlement (González-Enríquez, 2009b). Since the first regularisation program was carried out in 1985–1986, Spanish authorities have regularised the status of around 1.2 million immigrants through similar programs enacted in 1991, 1996, 2000, 2001 and 2005, each of which was presented as an exceptional one-off measure (Finotelli & Arango, 2011). In addition, an on-going regularisation procedure was established in 2000 and since 2006 effectively replaced the previous policy of periodic mass regularisation. This so-called *Settlement Program* offers foreign nationals in irregular situations the possibility to legalise their status if they have lived in the country for 3 years and can prove either a parental relationship with a Spanish citizen (*arraigo familiar*) or other ‘social rootedness’ (*arraigo social*) (Sabater & Domingo, 2012). According to official statistics, more than 30.000 residence permits were issued on that basis every year between 2015 and 2018, around 6.000 of them in Barcelona alone.³ What characterises all these measures is that they essentially target irregular migrants in their capacity as workers. In order to be eligible they have to prove not only their prior residence in the country as well as a clean criminal record, but in most cases also their previous and/or on-going employment (Finotelli & Arango, 2011). This explicit labour market orientation became most apparent in the case of the largest (and so far, last) extraordinary regularisation exercise of 2005. Applications had to be made by the employers, confirming an on-going work relationship and job offer for at least 6 more months (Sandell, 2005). Similarly, applicants for regularisation under the *Settlement Program* (except those with parental ties) have to prove that they have been offered a work contract for at least 1 year. By ensuring that the Spanish labour market will absorb all those who qualify for regularisation, these policies thus help to reduce informal employment practices, which have traditionally played a significant role within the Spanish economy. They thereby fill the gaps between fluctuating demands of agriculture, hospitality and other business sectors for low-skilled and flexible labour and the insufficient entry channels for foreign workers provided by the Spanish immigration regime (Sabater & Domingo, 2012).

This possibility of regularisation thus plays a fundamental role within the ‘pragmatic’ Spanish approach to managing (labour) migration, as the following account

³ See: Portal de Inmigracion, Flujo de autorizaciones de residencia concedidas a extranjeros, <http://extranjeros.inclusion.gob.es/ES/Estadisticas/operaciones/flujos-autorizacion/index.html> (last accessed 15/07/2020).

of the director of the *Department for Immigration and Interculturality of the Barcelona City Council* clearly illustrates:

The arrival of people is linked to economic cycles: if the economy is going well people come, when the economy goes bad, as it has been in recent years, not so many people come. In 2005, 50,000 people arrived in Barcelona alone, in one year. [...] And now that the unemployment rate is very high, not many people arrive and some even leave and go back. [...] So the law of ‘rootedness’ [*arraigo social*] is a good thing; I think it’s good because it’s a mechanism to ‘puncture’ irregularity, right? Because otherwise a whole balloon is blown up, so we puncture it through our ‘integration’ reports, which we do here [in his department]. In the year 2009/2010 we produced 12,000 reports, now we are doing 5,000. It has dropped a lot (bcnA28).

He thereby refers to the important fact that apart from fulfilling economic requirements, applicants for regularisation also have to prove their prior local residence and ‘rootedness’ in a particular place. The latter is done on the basis of an assessment and official ‘integration report’ compiled by the municipality. I will come back to this issue in Sect. 4.2, since it very well exemplifies the level of competence and routine involvement of lower levels of government, including municipalities, in the management of migrant irregularity.

While under conditions of economic growth this mechanism of on-going regularisation has proved fairly effective and was accessible to large numbers of migrants, the financial and economic crisis suddenly rendered it much more difficult to access. Almost all migrants, city officials and NGO workers I interviewed in Barcelona confirmed that finding a job (offer) that fulfils the legal requirements (full-time, one-year contract) is now by far the biggest barrier to regularisation. “It’s like requiring them to speak 14 languages” one city official noted (bcnA07). As a result, irregular migrants increasingly depend on the goodwill of their (often co-ethnic) employers, as well as friends or acquaintances willing to ostensibly ‘employ’ them as domestic workers, for example. As a representative of a migrant workers’ association told me, this situation also created an underground market for fake employment offers:

Nowadays there are people, for example Pakistanis and also some Spaniards, who sell this, and normally for a work contract you pay 9000€. But they pay only six months of social security, so of these 9000 it will be like 1800, more or less, that they pay in social security. [...] And they don’t pay any salary; that’s how they can earn almost 7000€. And this now happens often, and the government knows it too (bcnA11).

Several of my interviewees also mentioned that after coming to power in December 2011, the conservative government of Mariano Rajoy considered phasing out or at least tightening access to regularisation via ‘*arraigo social*’ but never presented any concrete proposal (bcnA18, bcnA22).

Also the British government is well aware of the negative effects of irregularity in terms of both the expansion of informal employment and the exploitative working conditions it often implies. Already in 2002 the *House of Lords Committee on the European Union* recognised that “[s]ome form of regularisation is unavoidable if a growing underclass of people in an irregular situation, who are vulnerable to exploitation, is not to be created” (cit. in Levinson, 2005, p. 31). However, various UK governments have on several occasions officially rejected the idea of a

large-scale amnesty or visible mechanism of regularisation (Papademetriou & Somerville, 2008). The policy director of the *Migrants' Rights Network*, a London-based advocacy organisation, explained me why:

What they have a strong allergic reaction to is any policy measure that would suggest they are soft on irregular migration, and the biggest concern is about the pull factors. [...] Because the main way that people become undocumented in the UK is by overstaying their visas, the government still isn't confident enough that they wouldn't continue to do that in the future. So, they don't want to go there (lonA02).

This does not mean, however, that the country has no experience with regularisation at all. Demetrios Papademetriou and Will Somerville (2008) estimated that between 1997 and 2008 a total of 60,000–100,000 persons have been granted some form of legal status through regularisation in the UK. In some cases, such measures were introduced following changes within the wider immigration regime; for example, when the immigration reform of 1971 suddenly extended the concept of 'illegal entry' to also include Commonwealth citizens (Levinson, 2005; Lenoel, 2009). More recently, regularisation mostly aimed at clearing the huge backlogs that started to accumulate within the British asylum system since the mid-1990s, by focusing on asylum seekers whose claims had been pending for an 'unreasonable' amount of time. In 1998, facing a backlog of over 100,000 asylum cases, a special policy was introduced to grant Indefinite Leave to Remain (ILR) to most asylum applicants whose case decisions were outstanding since 1993, while for claims received between 1993 and 1995, family and community ties as well as previous employment were taken into account⁴ (Papademetriou & Somerville, 2008; Lenoel, 2009). In 2003, a similar policy targeted asylum-seeking families with at least one dependent child under the age of 18, who had claimed asylum before October 2000.

While humanitarian concerns have obviously played a role in the context of asylum backlogs, this very logic became most apparent in the case of a one-off regularisation programme for domestic workers carried out in 1998–1999. Following the revision of the *Overseas Domestic Workers Concession* in July 1998, this regularisation offered an exceptional 12-month leave to domestic workers (mostly women) who had ended up in an irregular situation after having left their original employer as a result of abuse or exploitation⁵ (Levinson, 2005; Lenoel, 2009).

Apart from these rather small-scale one-off regularisations, the British immigration regime also relies on permanent mechanisms of regularisation, whereby eligibility is defined much more narrowly than in Spain. Drawing on the *European Convention of Establishment*, ratified by the UK in 1969, migrants who have continuously lived in the country for 20 years,⁶ regardless of their immigration status, can make an application for Leave to Remain (LTR) under the so-called

⁴These rules were applied to close to 21,500 asylum cases in 1999 and 2000 (Papademetriou & Somerville, 2008).

⁵Before 1998, the Domestic Workers' Concession legally tied foreign domestic workers to their initial employer, so that resigning or changing employer automatically revoked their residence permit and left them irregular.

⁶In July 2012, this period was extended from previously 14–20 years.

'long residence rule' (Levinson, 2005; Lenoel, 2009). Similarly, families with children under the age of 18 who had lived in the UK continuously for 7 years are also eligible for LTR (*ibid.*). Both categories include large numbers of rejected asylum seekers who cannot be removed because of on-going conflict in their country of origin or other practical or humanitarian constraints. For many of them the comparatively high cost of applying for regularisation – around 600£ compared to about 35€ under the Spanish *Settlement Program* – represented an additional barrier.

Another significant difference between the two national contexts is the relationship between irregular residents' (unlawful) employment and their prospects of legalising their stay. Since July 2016, working in the UK illegally constitutes a criminal offence and is generally perceived as an additional risk of apprehension and deportation, as the following accounts of two migrants I interviewed in London indicate:

When they refused my application [for LTR], they said that it's because [...] I had been working illegally, so they refused the application. So, I stopped working, from that time I didn't work anymore (lonB12).

I know people that have been deported. [...] Some went to work, and they got them where they were working; and some put in an application, but they denied them... they refused them and told them to go back to their country, just like they did to me. And when they didn't go, they traced their address... and went to their house early in the morning, and they picked them from the house and sent them home. That's what I know (lonB11).

The crippling fear of detection and deportation thus usually outweighs the very remote prospects of qualifying for regularisation in the UK. As an NGO worker and migrant rights activist noted in an interview, irregular residents are generally being discouraged from even trying to find a legal way to regularise their situation:

So, no one has got any incentive to regularise their status, or to claim asylum if they need to, or to keep in touch with the authorities... all these kinds of models that have worked in other countries, like engagement case-work models rather than using detention, which show more engagement with people's immigration cases and actually led to high numbers of people going home, *choosing to go home*. So [...] forcing people away from any kind of formal system doesn't actually help the government's own priorities and is very damaging for community life (lonA01).

Instead of regularisation, the British approach to reduce the number of irregular residents primarily relies on deportation, which represents the opposite, exclusionary end of the spectrum of available policy measures.

4.1.2 Deportation and Deportability in the UK and Spain

The power of the British government to deport unwanted foreigners started to grow significantly during the 1960s and 70s, along with increasing restrictions placed on non-European immigration. The steady growth in removals since the end of the 1980s thereby coincided with a sharp increase of asylum applications, and rejected

asylum seekers made up a significant share of overall removals carried out by the Home Office: according to official statistics, in the decade between 1993 and 2003, the number of persons removed following negative asylum decisions rose from 1820 to 13,500 (Gibney, 2008, p. 149), after which it continuously declined to reach just over 5000 by 2014, and 3200 in 2016. Overall, the number of removals and so-called ‘voluntary departures’ of individuals facing a removal order increased from around 30,000 in 1997 to a peak of 68,000 in 2008 (Anderson et al., 2011). Between 2010 and 2015 their number remained fairly constant at around 60,000 per year, according to Home Office statistics.⁷ Importantly, between 70% and 75% of these were removals of people apprehended within the country, rather than those returned at the port of entry.

This development was accompanied by an unprecedented politicisation of the issue of deportation as an indispensable means to regain control over unwanted immigration. In 2008, for example, then immigration minister Liam Byrne officially promised to “remove an immigration offender every 8 minutes” (Daily Mail, 2008, cit. in Anderson et al., 2011, p. 550). Also in practice, the British state progressively extended and improved its deportation capacity by introducing policy innovations that “have been highly successful in enabling officials to bypass legal and social constraints to boost the rate of removals” (Gibney, 2008, p. 158/9). These include measures to speed up the asylum procedure itself, the increased use of (potentially indefinite⁸) detention to prevent potential deportees from absconding, and severe cuts to legal aid for people trying to challenge their deportation. Together with measures of internal immigration control, which I will outline in the next subsection, detention and (the fear of) deportation are essential elements of the UK government’s approach of creating a ‘hostile environment’ for irregular migrants.

In Spain, on the other hand, detention and deportation play a comparatively smaller role within the public and political discourse on unwanted immigration and the official policy approach towards irregular residents. In fact, for a short period of time in 2000, Spanish immigration legislation explicitly ruled out deportation as a legitimate answer to migrant irregularity, by stipulating that unlawful residence alone does not justify expulsion (Calavita, 2003). Even though the formal possibility to deport a foreigner ‘just’ for breaching immigration rules was re-instated only several months later, a report by the *Spanish Commission for Refugees* (CEAR) and *Migrant Rights International* (MRI) has shown that the jurisprudence of Spanish courts has continued to follow the principle whereas “the sanction that should be applied to an irregular migratory status is a fine, and not deportation” (CEAR and MRI, 2010, p. 31). Spain is also one of very few EU Member States where irregular entry constitutes an administrative misdemeanour but is not considered a crime, while UK legislation treats both unlawful entry and residence as criminal offences punishable with imprisonment (FRA, 2014).

⁷ See: <https://data.gov.uk/dataset/immigration-statistics-removals> (last accessed 08/12/2017).

⁸ Notably, the UK is the only country in Europe that does not establish a maximum time limit for immigration detention (MRN, 2014).

At the same time, however, the EU *Returns Directive* requires all Member States to issue a return decision to any third-country national who they know is in an irregular situation, unless they formally regularise his or her stay. In practice, apprehension by the Spanish police or immigration authority might trigger a formal expulsion procedure, but this can usually be avoided by paying a fine of around 500€. Not paying the fine and/or being apprehended multiple times, however, not only increases the risk of deportation but can also become a barrier to eventual regularisation, as several of my interviewees including lawyers and NGO workers told me (bcnA01, bcnA19, bcnA23). As Garcés-Mascareñas (2010, p. 85) noted in relation to the Spanish case, “[t]he aim of deportation policies is not so much to reduce illegal immigration as to delimit a symbolic precinct of illegality”.

As a result, and although the overall number of people deported from Spain has risen during the first half of the 2000s, the ‘deportation gap’ has generally remained very large: In the years prior to 2000, around 15,000 deportation orders were issued per year, but fewer than 5000 deportations actually carried out (Calavita, 2003, p. 407). In 2009, according to Eurostat data, of more than 100,000 irregular migrants ordered to leave the country only 29,000 actually left (EMN, 2011, p. 43). After reaching a peak of almost 56,000 in 2007, the overall number of deportations from Spain continuously decreased to just over 20,000 in 2015, according to official government statistics.⁹ In addition, and in contrast to the British context, the deportations that are carried out by Spanish authorities largely focus on would-be ‘illegal’ entrants apprehended in the border areas (López Sala, 2013), whereas only around 40% of actual deportees are foreigners who already resided on the territory. Official statistics also show that deportation efforts primarily target those who apart from living and working in the country ‘illegally’ also committed a criminal offence. In 2012, for example, these so-called ‘qualified expulsions’ made up 87% of all deportations from within the country. In the same year, so-called ‘foreign national offenders’ made up just over 11% of all removals and ‘voluntary departures’ from within the UK.¹⁰

The perceptions and personal experiences of many people I informally spoke to or interviewed in Barcelona reflect the underlying legal ambiguities, as do the following accounts of a representative of the *Cepaim Foundation* (1) and a young migrant from Gambia (2):

(1) There are many people who are caught without papers, and they take them to the police station, they identify them, but as long as they do nothing illegal... well, [they] remain here. Why? Because there is no money to [deport] everyone, it’s an economic question. And imagine how much police would be needed if everyone was to be kicked out (bcnA31).

(2) I know a person [...] whom they always send the letter that says they don’t want him here [an expulsion order], but he is still here. But they send him letters that he is being

⁹ See: <http://www.interior.gob.es/en/prensa/balances-e-informes/> (last accessed 08/12/2017).

¹⁰ Own calculations based on annually published official government statistics (Spain: ‘Balance lucha contra la inmigración irregular’; UK: Home Office statistics on removals of foreign national offenders, see: <http://data.gov.uk/dataset/immigration-statistics-removals> (25/11/2013)).

expelled... that he has to leave the country... that they cannot give him a residence permit or anything, [...] *but they themselves don't get him and send him home* (bcnB02).

For Arjen Leerkes and Marieke Van Houte (2020, p. 12) Spain is a prime example for what they call a 'thin' post-arrival immigration enforcement regime, which is characterised by both: little interest and low capacity of the respective government to actually enforce its immigration rules. Importantly, states thereby not only rely on accompanying measures of in-country immigration control and surveillance, but often also on legal and practical barriers that increase unlawful residents' exclusion from public services.

4.1.3 Internalised Immigration Control and Enforcement in the UK and Spain

In October 2013, then home secretary Theresa May publicly defended the British government's 'hostile environment' approach by claiming that

it can't be fair for people who have no right to be here in the UK to continue to exist as everybody else does with bank accounts, with driving licences and with access to rented accommodation. [...] What we don't want is a situation where people think that they can come here and overstay because they're able to access everything they need.¹¹

Accordingly, the three main objectives of the 2014 Immigration Act were "to make it (i) easier to identify illegal immigrants [...], (ii) easier to remove and deport illegal immigrants [...] and] (iii) more difficult for illegal immigrants to live in the UK" (Home Office, 2013). The latter in particular should be achieved by introducing an obligation for private landlords and certain National Health Service (NHS) staff to check the immigration status of their tenants and patients, a prohibition on banks opening accounts for irregular migrants and new powers to check driving licence applicants' immigration status and revoke the licences of those who have overstayed. The clear aim of these policies is to combat irregular migration through the curtailment of social rights and the control and sanctioning of unlawful residents' social and economic relations with others (Cvajner & Sciortino, 2010; Walsh, 2014). In combination with increasing restrictions and control placed on their access to basic welfare services as well as stiffer sanctions imposed on anyone willing to employ them, these measures make irregular migrants' everyday lives, housing and working conditions even more precarious, and push them even further 'underground' (Broeders & Engbersen, 2007). Almost all of my migrant respondents in London had experienced (or at least heard of) immigration raids in public spaces, private homes or workplaces that often led to deportations. The account of a

¹¹T. May, speaking on BBC Radio 4's 'Today' programme, cited in The Guardian, 10 October 2013: <http://www.theguardian.com/politics/2013/oct/10/immigration-bill-theresa-may-hostile-environment> (last accessed 15/12/2017).

40-year-old woman from Nigeria who had been living in London since 2006 after she overstayed a 6-months visitor visa is just one example:

I had worked for ages there, but because I don't have papers I had to stop. [...] I used my [real] name there... but when... I think it was this administration that started checking the papers, and so they see that my National Insurance Number is not... that I am not legally allowed to work, so I had to stop. But I even... I was so lucky because some of my colleagues were arrested, one was even deported, [...] but I wasn't at work that day, so they didn't arrest me (lonB09).

Not being able to work nor to rent accommodation or access basic services increases not only their dependence on friends and family members but also their exploitability by unscrupulous employers, landlords and criminal networks, as a migrant rights advocate noted:

All that is going to have a very detrimental impact, both the housing and the healthcare issues are going to push undocumented migrants into a far more vulnerable position, where instead of engaging with responsible landlords or registered [doctors], people will find themselves looking for accommodation from criminal landlords who don't care what the law is and will make them pay inflated prices for poor accommodation and potentially exploit them in other ways as well; and when it comes to healthcare, potentially be forced to seek healthcare from unqualified people within the community who can make some money out of them. I mean, it's much easier to get a bit of cash borrowed from someone to pay for something than it is to *engage with a system that doesn't want you to be there* (lonA02).

It has also been shown that the increasing criminalisation of various dealings with persons whose presence in the country is unlawful does not only blur the line between support and exploitation (Engbersen et al., 2006), but also generates uncertainty among public servants and furthers discrimination against non-European (looking) immigrants and even citizens (MRN, 2015; Spencer & Hughes, 2015).

While the UK government, like many of its European counterparts, quite openly declared a “war against illegal immigration” (Green & Grewcock, 2002), the Spanish approach has been much more pragmatic. When I asked my respondents in Barcelona, how they would describe the ‘Spanish alternative’ or equivalent to the ‘hostile environment’ approach, many of them said that the central government would essentially avoid dealing with the issue in the first place. One city official called it the ‘ostrich strategy’, referring to the folktale according to which *ostriches* bury their heads in the sand to avoid danger or pretend it does not exist. While some central government policies such as the healthcare reform of 2012 contributed to the internalisation of immigration control (see Chap. 5), the majority of my interviewees first of all stressed the general absence of immigration control and enforcement from most public spaces and institutions within the city:

The burden of border control is on the part of the [national] police, and it's the police who have to find a way to exercise this control. But the rest of the administration, and especially at the municipal and [regional] levels, doesn't participate in this ‘dirty’ job, let's say. It's not that you go to social services and when you leave the centre, they pick up the phone and notify the police [...]. *On the contrary, I think that social and educational services try to help the person get regularised as soon as possible* (Lawyer and Human Rights advocate, bcnA23).

Five, six, seven years ago, you could see random checks on the street [...] and you would find police at the subway exits identifying people who they supposed to be [irregular] immigrants. That doesn't happen in recent years, there is no such pressure on the street. And I believe that it is because in recent years net migration to Spain has been negative, [...] there are many people who have also been returning to their countries. So, I imagine that it's also because of this that there is no such pressure. *When the migratory balance was positive, there was more need to control* (Project Coordinator of an association called EICA, bcnA06).

A recurring theme was the fact that the economic crisis seems to have much more 'effectively' reduced the attractiveness of Spain as a country of destination and irregular residence, than the explicit efforts of the UK government to achieve precisely that. In addition, respondents in Barcelona pointed to the lack of detention and deportation capacities as well as the (opposite) possibility of regularisation, when trying to explain the absence of internalised control. The vice-president of the *Barcelona Municipal Immigration Council*, a local advisory body representing all migrant communities, put it this way:

The system doesn't work like this because the police don't look for people without papers. [...] Why would they be looking for someone without papers...? It would obviously be impossible to manage so many people without papers, and there would be so many... where do you put them? What do you do if the detention centre here [the only one in Catalonia] has a capacity of 200? So obviously they just turn a blind eye on the topic and *the undocumented are left there and wait until the three years pass so they can get their papers* (bcnA01).

Ultimately, several of the people I spoke to also tried to explain the absence or ineffectiveness of internal control measures with reference to either the country's relatively recent experience of totalitarianism; or the (related) deep-seated aversion of many Catalan people against the Spanish state, which has recently been fuelled by the central government's refusal to even acknowledge their wish for independence. The following quotes of a lawyer (1) and a doctor (2) exemplify these arguments:

(1) [You have to] think that the police we have, especially the *Guardia Civil* [state police], still has that air of Francoism, of the dictatorship, and that is difficult to take away. The people don't trust the police very much either, [...they] don't like the police very much [...]. And the people... think that this is [a matter] of the police and that the police should take care of it, but the rest of us are not going to be cops. [...] The mind-set is like this (bcnA23).

(2) Here in Catalonia, we have laws that are imposed by Spain, and others that are Catalan [laws], and you know that if in a country there are laws made by certain people, [the population] has to agree a little bit with the worldview of these people. If a law is imposed on you from outside, and you have a different vision, then *you easily disregard it*. But when it's your country and you make your own laws, you will always agree a little bit more. Catalonia is an interesting case for this reason (bcnA14).

Whatever the best explanation, it can certainly be argued that at the time of my investigation, third-country nationals living and working irregularly in Barcelona are significantly less likely to be targeted by immigration enforcement or face

deportation, while their chances of eventually qualifying for regularisation are considerably higher than for those who live in London. As I will suggest in the next section, this has important implications for how their situation is perceived and addressed by local authorities.

4.2 City Responses to Migrant Irregularity and Its Localised Control

They live in the city; and that's the discrepancy: [...] whatever state law says, in the end these people live in some place. They don't live in non-places. And some place is the city, right? And so, it's the city that faces these legal contradictions (bcnA18).

This statement by the director of Barcelona's *Department of Immigration and Interculturality* points to the well-established fact that cities and their institutions are sites where irregular migrants' claims, but also their social, economic and cultural contributions often become most visible (e.g. Spencer, 2018). Migrant irregularity itself – and the associated lack of rights and opportunities to participate and access services – thereby carries different meanings and warrants different responses on the part of local (as opposed to national) authorities. Numerous studies suggest that local authorities generally address the issue of irregular residence in a more pragmatic way and highlighted the rather inclusionary effects of local policy (Wilmes, 2011; Leerkes et al., 2012; Marrow, 2012; McDonald, 2012; de Graauw, 2014; Price & Spencer, 2014; Gebhardt, 2015; de Graauw & Vermeulen, 2016; Lundberg & Strange, 2016). Arguably, this pragmatism has a lot to do with the fact that since irregularity is made and can only be unmade through state legislation, cities have to deal with its immediate effects without themselves having the means to address the source of the problem, as various of my interviewees in both cities noted. The following accounts of Barcelona's *Commissioner for Immigration and Social Action* (1) and a Council worker I interviewed in London (2) reflect this feeling of impotence:

(1) I understand that a state does not want to greatly facilitate the legalisation of people coming from abroad because of the 'magnet effect' [*'efecto llamada'*], but to have a person living here [illegally] and not expelling him/her [...] is to say 'hey, city of Barcelona, or Madrid, or Seville: here you have a person that we don't recognise, and who we don't expel, but who is not allowed to work'. [...] Well, *what are we supposed to do with this person?* (bcnA07)

(2) The problem we have as a [local] authority is that *we are not the Home Office*. We are not responsible for whether we grant you a visa, what conditions we attach, or what action we take to enforce that; we don't decide that you have a right to stay or have to go, or how long it takes to do any of those things. We don't decide any of that. *The problem is we bear all the costs of that decision*, and that separation between responsibility and control is hugely difficult (lonA30).

This situation is similar to those that Sarah Spencer (2020, p. 190, following Schön & Rein, 1994) describes as instances of ‘de-coupling’ in multilevel governance, which are characterised by “a level of shared responsibility for an issue but a lack of shared framing of the problem”. In fact, another important issue is the lack of shared competence for solving the problem in a sustainable way, which will inevitably involve reforms of national immigration legislation.

The two quotes also reflect the fact that because local authorities (LAs) bear many of the direct and indirect costs of social exclusion, they generally tend to be more immediately concerned with maintaining community cohesion and the inclusiveness of public institutions. Controlling or reducing the number of unwanted immigrants by curtailing their rights and access to basic services might thus be a priority for the state but not the city, as a representative of *Caritas* in Barcelona suggested:

The closer an administration is to the population, the more it feels responsible for the welfare of its citizens; because of course if I am deciding from Madrid... how much do I care in the end if there are 10 families [living] in the street in Barcelona or Terraza or any town of Catalonia? But if you are the local administration your responsibility is that small nucleus – not all of Spain! – works; and that there is social cohesion, and a good sense of community. So obviously you will worry a lot about these people being on the street and [make sure] that their children go to school and have the resources they need, because *obviously your goal [...] as a public service, is that things work, and for them to work requires the inclusion of everyone*, regular and irregular, of course (bcnA03).

It is this proximity that makes cities generally more attentive to the potentially disintegrative effects of localised immigration control and enforcement measures. While the municipality of Barcelona repeatedly and very explicitly highlights this concern (e.g. Ajuntament de Barcelona, 2017), it was also mentioned by many of the people I interviewed in London, including another Council worker (1) and a local politician (2):

(1) If you do things like stopping people from getting any medical treatment at all you cause health and safety problems and public health problems, so we are not actually for that. We also, as local authorities, get annoyed if the Home Office, you know, kind of *chases the people within our communities* when we are already giving them information on cases which we are already engaged with or providing financial support to. So, you know, the blanket kind of scare tactics we don't like so much (lonA15).

(2) I am here to represent anyone in my ward and at a public meeting we had with the high-street traders, people raised the issue of the amount and frequency of raids by the Immigration Enforcement Service, and it's... *there is no way I can support any illegal activity*, but equally when local residents and local traders, who are completely... all their activities are legal, when *they* are raising issues with me as a local Councillor [... then] obviously I am concerned to hear that, and I am actively investigating whether there have been any abuses or heavy-handedness or anything oppressive (lonA33).

The Councilman's statement clearly reveals that he understands his responsibility to potentially take action against such practices as a duty he exclusively owes to ‘legal’ residents of the area, but not those who are the actual target of these raids. This, in turn, is in line with the general attitude of the Greater London Authority

(GLA), which as a largely strategic body¹² has no official policy on irregular migration: A senior advisor of former mayor Boris Johnson told me in an informal conversation that given the lack of administrative competences in the field of immigration,

we do nothing explicit about irregular migrants, but *we also don't explicitly exclude them from what we do*. [Our policy initiatives] often target the most vulnerable populations... and irregular migrants are obviously [among these] ... but we would never address them directly (lonC04).

All this suggests that in spite of their limited role and competence in the field of (irregular) migration, local governments have legitimate reasons for trying to contest or even undermine at least some of the exclusionary effects of national immigration law. At the same time, municipal legislation and welfare measures have been shown to sometimes reinforce, rather than challenge, the exclusion of unwanted immigrants (Varsanyi, 2008; Spencer, 2020). Especially in the face of budgetary pressure, as I show in Chap. 7, LAs tend to see the task of providing even basic welfare services to irregular residents as a burden rather than a responsibility they have, which not only helps them to justify but can also encourage them to implement certain exceptions from otherwise inclusive provisions. What further facilitates such involvement is the fact that the planning and providing of fundamental services always requires and often entails a certain degree of control over the population that they are to be provided to.

4.2.1 The City as Sanctuary, Source of Membership and Site for Population Control

Some cities, mostly in North America, present themselves as ‘places of sanctuary’ and take a much more open stand and sometimes even concrete steps against local enforcement action by central government agencies targeting ‘their’ irregular residents (Varsanyi, 2007; McDonald, 2012; de Graauw, 2014; Bauder, 2017). One of the fundamental ideas behind the *Sanctuary Cities Movement* in the US and Canada is precisely that of a clear separation between immigration enforcement and public service provision, often by committing local police forces and other parts of the city administration to an explicit ‘*Don't Ask, Don't Tell*’ policy (Bauder, 2017). In the terminology and framework that I introduced in Sect. 2.4, this means that city employees are generally *shielded* not only from having to know or check the immigration status of service users, but also from sharing any such information with relevant state authorities.

¹²Other than the municipal government of Barcelona, the GLA's primary aim and function is to facilitate and convene discussions and meetings among the relevant stakeholders and bodies, whereas the actual planning and delivery of municipal services is the responsibility of each Borough.

Equivalent commitments by local governments in the UK and Spain have been significantly less ambitious in both of these respects, as they have mostly focussed on creating a welcoming atmosphere towards newly arrived refugees and asylum seekers. Unlike its precursor in the US, the *City of Sanctuary Movement* in the UK, which started in Sheffield in 2005, does not aim to protect unlawful residents against deportation nor to openly challenge the national immigration regime by refusing cooperation with enforcement agencies (Darling, 2010; Squire & Bagelman, 2012; Bauder, 2017). Similarly, the *Refugee Cities* initiative, which was initiated in September 2015 by Barcelona's leftist mayor Ada Colau, is mostly about inter-city support and exchange of knowledge and best practices regarding the reception and accommodation of asylum seekers.¹³ The initiative has been criticised by local NGOs and advocacy groups for not addressing the situation and specific claims of irregular residents who already established their lives in the city. While these rather symbolic but nonetheless official commitments of city administrations can significantly disrupt the negative portrayal of migrants and refugees in the national media and political discourse (Squire, 2011), they hardly challenge, let alone change, exclusionary state policies and practices (Bagelman, 2013). That said, the city of Barcelona has published a series of policy documents that explicitly advocate for the rights of its irregular residents and outline concrete measures to improve their living conditions and access to local services (e.g., Ajuntament de Barcelona, 2017). Already in 2015 and backed by a majority of the members of the Catalan parliament, the city government also officially demanded the region's only detention centre (located in the outskirts of Barcelona) to be closed, and has even initiated legal steps to achieve this aim (França, 2015; Carranco, 2017). While this fundamental challenge has remained unsuccessful given the limited competences Spanish municipalities have in this regard, a recent urge by the mayors of Barcelona and Valencia contributed to at least a temporary release of all detainees in the context of the Covid-19 crisis (Navarro Castelló, 2020).

Another, although less immediate aim of the *Sanctuary Cities Movement* is to extend a sense of belonging or even effective membership to formally unlawful residents. What underlies this idea is an understanding of the city as "a social and political space that is productive of active forms of citizenship", as argued by McDonald (2012, p. 129), among many others. By giving unlawful residents access to municipal services or simply allowing them to move within the city without fear of deportation, 'sanctuary policies' enable migrants in irregular situations to participate in urban life and enact themselves as "members of the urban community" (Bauder, 2017, p. 181). The crucial question of whether bodily presence or *de facto* residence within a community can or should constitute the basis for rights and membership has long been at the centre of academic debates around the notion of 'urban citizenship' (Hammar, 1994; Bauböck, 2003; Varsanyi, 2006; Nyers, 2010; Darling, 2017). Both in London and Barcelona, I thus often asked or alluded to this

¹³ Not to be confused with the *International Cities of Refuge Network (ICORN)*, of which Barcelona is a member since 2006 and that aims even more narrowly at offering a safe haven and work environment for politically persecuted writers.

question during my interviews with city representatives as well as people who work in local institutions. According to the *Commissioner for Immigration and Social Action* of the municipality of Barcelona at the time, it was an obvious social fact that migrants in irregular situations are nonetheless ‘citizens’ of Barcelona:

All the people who live in the city live in the city, and take the subway and go to the hospital, and take their children to school. So... *we have them living in the city every day* and using the same things as those who have been in the city for three or more generations. And that’s why I say: the state does not consider them *his* but *as a city we have no choice but to consider them ours*, because that’s what they are (bcnA07).

While such pragmatic interpretations of belonging were surprisingly common among my interviewees in Barcelona, most of their counterparts in London were much more careful and ambiguous in answering such questions. The following extracts from interviews with two local councillors show how closely the question of membership is related to whether or not a foreigner contributes to the national economy and welfare system, which ultimately requires a formal and legal status:

I think there is a national issue over [what to do] when people are here and want to contribute to the economy and pay tax, how we let them do that, because actually they want to be... they have come here to work. I am very relaxed about that, and partly my view would be... a lot more liberal on it. But I actually would be very strict on the idea of people getting benefits from the country they haven’t contributed to, while I am delighted with the idea of people wanting to come to Britain and work. London especially is just a fantastic city, but the idea of coming here to get something for free makes me angry (lonA21).

If you are here illegally, you won’t be contributing in any way, but you will be... causing a drain on the resources that everybody else has to make a contribution towards. And if we don’t know... I think even national governments have struggled to account for people coming in and out of the country, so locally, if we talk about London and the London Boroughs, it’s problematic to [*have*] *an unknown number of people not contributing and making use of resources* (lonA33).

In spite of their different understandings of (local) membership, however, most respondents in both cities were very aware that the actual problem is not the people that come, but the condition under which they subsequently reside in the city.

Importantly, the condition of irregularity thereby not only makes it impossible for some newcomers to formally ‘contribute’, but also for the administration to account for these residents and their needs. According to Broeders and Engbersen (2007, p. 1595), “[i]rregular migrants, who are anxious to stay out of sight, pose a fundamental problem for bureaucracies that are mapping the population for the purpose of administration and control”. This is particularly true for local government, which is often responsible not only for providing fundamental services including housing and longer-term spatial planning, but also the maintenance of public order and safety via local policing and crime control. Jonathan Darling (2017, p. 185) therefore argued that “through enabling undocumented migrants to access services and support, cities can be seen to ‘manage’ an undocumented population”, while at the same time “interpreting, reshaping and creating modes of enforcement” (ibid., p. 184). Although formal status determination happens at the national level, particularly “the realm of service provision is a location in which migrant illegality

can be reproduced and/or circumvented” (McDonald, 2012, p. 134). In fact, as Spencer (2020, p. 197) recently argued based on examples from various European countries, municipal measures are often complementary to, rather than conflicting with national policy and interests. In the following, however, I focus on how local administrations can facilitate the circumvention of migrant irregularity within local institutions, and thereby play a crucial role for its *micro-management*.

4.2.2 *Local Administrations Helping to ‘Circumvent’ Migrant Irregularity*

One crucial difference between the two environments I compare is that irregular migrants living in Spain are – like any other resident – required to officially register their residence in one of more than 8.000 Spanish municipalities. Inscription in the municipal register (*‘padrón’*) gives access to most of the services provided locally, from public libraries and sports centres to healthcare and education facilities. The only documentary requirements are a valid identification document and official proof of address. Recognising the difficulties that irregular migrants (as well as other marginalised groups) often face in providing a permanent address, some municipalities, including that of Barcelona, also offer the possibility to register ‘without fixed abode’.¹⁴ The reason for this is simple, as the director of the *Department for Immigration and Interculturality* explained to me:

The Municipality has an interest in knowing if a person exists or doesn’t exist and those that do, have to be registered and accounted for... in order to know who they are, where they live, etc. [...] So what we have is a policy of active registration: [...] we actively facilitate that people register in the city as soon as possible. [...] It is very easy, and the requirements are very simple; and there are two important benefits: Firstly, those who register cease to be invisible but become visible; they are someone; they become a resident. The moment someone registers [...] s/he legally acquires the status of a [city] resident [‘ciudadano’], like you and me and everyone who is registered; and secondly, registration gives access to basic services, including all the municipal services (bcnA28).

The underlying logic is thus similar to what provoked city governments in the US to issue municipal ID cards for their irregular residents. While the latter can thereby obtain ‘local bureaucratic membership’, as De Graauw (2014) has argued, the same policy also has important benefits for individual street-level bureaucrats:

To city officials, the municipal ID card was a legitimate administrative tool *they could use* to [...] facilitate the workings of the local bureaucracy, not to shift membership boundaries or reconstitute the formal citizenship for undocumented immigrants who reside in their cities (de Graauw, 2014, p. 324).

¹⁴In the case of Barcelona, either social services or the Red Cross can thereby confirm the person’s ‘habitual residence’ in a certain district of the city.

That such tools can be necessary for city workers to effectively serve a local population that is significantly being shaped by immigration also becomes clear from the following account of a social worker I interviewed in Barcelona:

I don't know, for me the whole issue of immigration is a dilemma. I don't know if a country... what capacity we have to welcome how many people, under which conditions, at the expense of... what it will mean for the quality of life of those who are already living here. These are very big dilemmas. And *I don't have the answer*. But what I'm sure about is that if a person is already here you cannot look the other way [...]. And I firmly believe that what gives you rights is being a *citizen*, and that means *to be living here* (bcnA21).

Her account not only reproduces the understanding of local 'citizenship' as the legitimate basis for certain rights, but also suggests that local registration can be a way to prevent these 'dilemmas' from getting in the way of street-level bureaucrats doing their job. Like municipal ID cards, it thus makes it easier for city officials and irregular migrants alike to confront and deal with each other, although neither of the two measures changes the position of irregular migrants vis-à-vis the nation-state. As the following quote of an irregular resident of Barcelona shows, they thus still have to carefully weigh the benefits of registration against the potential risks it might imply:

The City Council is also the authority, it's part of the government; and if they have all your information, they can do whatever they want with it. That's why there are people who are afraid to register at City Hall. But I don't know, I'm not afraid to do it because here in Spain everyone who is here needs to do the registration. That's why it's necessary to register with your *normal* [true] identity, and they will ask you for a photocopy of the passport or whatever allows them to know who you are (bcnB09).

He was aware that municipal registration helps to *normalise* his situation but could also quite easily become an effective tool of internal immigration control if municipalities would (be required to) pass this information to the immigration authority. Several of the local authority and NGO representatives I interviewed noted that this possibility has in fact been discussed in the past (for example, when Spanish immigration law was reformed in 2009), but partly due to the strong opposition from municipalities remained strictly limited to cases of individuals who represent an imminent threat to the public (bcnA03, bcnA06, bcnA18, bcnA23). The local administration thus not only incentivises irregular residents to register, but also protects the identity of those who do so, from being (ab)used for the purpose of immigration control.

In addition to this, municipal registration is also how irregular migrants can prove the required 3 years of residence in the country when they apply for regularisation on the basis of their 'rootedness' ('*arraigo*'). Only in exceptional cases will the national immigration authority accept other evidence of uninterrupted local presence, as an NGO worker told me: "For example if it's a child who [...] has gone to school, or an elderly person who has gone to the doctor regularly [...] these kinds of things... could save you" (bcnA03). This also highlights how important it can be for migrants in irregular situations to accumulate more but also less official proofs of their presence and contacts with the authority and welfare state, as Chauvin and Garcés-Mascreñas (2012) argued. In the following chapters on healthcare,

education and social assistance I will show that also in the British context officially registered interactions with local institutions can sometimes strengthen irregular residents' claims for membership.

What the UK lacks, however, is a mainstream system of municipal registration. In order to register with a library, doctor or school, or access another service provided locally, applicants thus have to provide other – including less official – documents proving their residence within a particular area. Commonly accepted 'proofs of address' include Council Tax letters, utility bills, bank statements, or letters from a mobile phone or Internet provider. One of my interviewees who had previously worked for a local Council mentioned that local service providers increasingly encounter (or suspect) the use of counterfeit documents of this sort (lonA20). A simple *Google*-search lists several webpages where so-called 'imitations' are openly sold for 25–30£ each and irrespective of the client's immigration status.¹⁵ In relation to this, several people I interviewed in London schools noted that also legal residents have been found or suspected to 'fake' their address in order to increase their children's chances for a place in a particular school, which are usually allocated (among other things) on the basis of residential proximity (lonA26, lonA28).

Also another important task of local governments in the UK – the registration of all births (as well as deaths) – is officially performed without regard to immigration status: Local registry offices do not systematically pass potential knowledge of irregularity to the immigration authority, nor do they have to check immigration status, as the registrar of a London Borough was eager to assure me in an informal conversation: "The immigration status has nothing to do with us or the registration process. We have a duty to register *all* births that happen in [the Borough], and that's what we do" (lonC03). Such instances might qualify as what the *Sanctuary City Movement* in Toronto called 'regularization from below' (McDonald, 2012), i.e. an effort to include irregular migrants at the local level (Bauder, 2017). While this can challenge the common meaning attributed to migrant irregularity, it certainly does not reduce the number of irregular residents.

In Spain, on the other hand, local as well as regional authorities also play a direct role in the process of individual regularisation; the former by gathering evidence and compiling a report that confirms the social 'rootedness' of individuals living within their area.¹⁶ Based on these 'integration reports', the regional government – in this case the *Generalitat de Catalunya* – approves that the applicant has made sufficient efforts to be part of society and thus 'earned' his or her right to be regularised. In the following interview extract, two bureaucrats working in the relevant department of the municipality of Barcelona discuss this devolved competence:

¹⁵ See for example: <http://www.replaceyourdocs.co.uk/> (last accessed 7/06/2017).

¹⁶ These reports ('*informes de arraigo*') usually confirm applicants' (at least basic) knowledge of Spanish and Catalan, their participation in language classes, job trainings and involvement in local associations.

[Bureaucrat 1] In the area of immigration we only have competence in relation to the ‘integration reports’, and *there are very clear rules so it’s not really [the municipality’s] decision either...*

[Bureaucrat 2] ... it’s a proposal. It is a proposal and then it’s the *Generalitat* who says yes or no. It’s true that the vast majority of times they corroborate our proposals, so if the municipality says yes, they say yes, normally [...]

[Bureaucrat 1] Yes, but in principle the proposal is made on the basis of things that are clearly defined by the regulations. *The law says very clearly which things can be considered and which cannot.* For someone, for example, who doesn’t understand Catalan or Spanish, and didn’t do any course [...] we are not going to make a favourable proposal (bcnA18).

As extension of this formal yet rather limited responsibility, the municipality of Barcelona also issues similar documents to be taken into account by national authorities and courts when deciding about the proportionality of detention or deportation, thereby actively helping its residents to avoid these threats (Ajuntament de Barcelona, 2017, p. 37). In addition, the city proactively provides immigration specific training for its employees (ibid.) as well direct support for migrants wanting to regularise their stay in the city, as the director of the same department specifically emphasised:

We have a dedicated [municipal] service that is called *SAIER*¹⁷ and *what we do [there] is basically to regularise people.* There are dozens of lawyers and others doing paperwork [...] to help people with their legal status – following the Spanish law, eh! We don’t invent [these rules] ourselves... no. We take Spanish law, and we help people to get their papers. Why? Well, because if you have papers you will find a job and pay taxes and start to... give something back to society. *It’s the most profitable we can do.* [...] So one of the ideas we have here in the city – and in practice it’s like that in the end – is that *today’s irregular [resident] is tomorrow’s regular [resident]*. Therefore, the sooner we work on their integration the better (bcnA28).

In various occasions, the municipality of Barcelona has also taken more radical steps to actively facilitate the legalisation of long-term irregular residents. For example, in 2015 City Hall provided 270.000€ to support the creation of a co-operative of workers who collect recyclable materials,¹⁸ with the explicit aim of creating jobs for irregular migrants who had previously been evicted from an informal settlement in the outskirts of the city (Fernández Guerrero, 2015). The initiative thereby provided a long-term solution – even though only for a very small fraction of the city’s irregular population (initially 15 persons) – by helping them to overcome the major barrier of finding a job offer in order to regularise their situation (bcnA31, bcnA07).

Also in the British context, support for regularisation has mostly come – even though much less explicitly – from the local level. In his former role as the mayor of London, Boris Johnson has repeatedly expressed his support for a so-called ‘amnesty’, including a concrete proposal made by the *Strangers into Citizens Campaign* in 2006 (Squire, 2011). One of his senior policy advisors told me in an informal conversation that while “some time ago” the mayor had spoken quite

¹⁷ ‘Service Centre For Immigrants, Emigrants And Refugees’, see: <http://www.bcn.cat/novaciudadania/arees/en/saier/saier.html> (last accessed 15/12/2017).

¹⁸ The *cooperativa ALENCOP*, see: <http://alencop.coop/> (last accessed 15/12/2017).

openly in support of regularisation, he later changed direction and “certainly wouldn’t do so now”, which was shortly before the mayoral elections in May 2016 (lonC04, also lonA15). Much like city officials in Barcelona, my informant also noted that the only thing that the GLA “can do” in this regard is to “promote some of the rules that are put in place by national legislation” (lonC04). As an example, she mentioned a project to support migrant families in precarious legal situations but with a child that might qualify for British Citizenship to make the corresponding application to the Home Office. Another example would be the GLA’s explicit information campaign regarding *all* migrants’ access to free primary healthcare irrespective of their status (see Chap. 5). The same informant also mentioned a recent initiative in the area of (adult) education that did not explicitly include irregular migrants as a target group, but “somehow made sure that they didn’t check the participants’ immigration status” (lonC04).

The way these policies are implemented suggests that the immense politicisation of unwanted immigration to Britain has not spared the municipal level, as also a local (Labour) Councillor explicitly noted:

I am not sure whether... even if locally we would have the flexibility to do anything differently... *maybe we wouldn't want to*. I think it would either be a brave or reckless Council – depending on your political view – that would go ahead and try to make conditions easier for irregular migrants. You see immigration is now [...] the number one issue... ahead of the economy as people’s number one issue of concern (lonA21).

Also the aforementioned complaints by high-street traders about excessive immigration raids disrupting their business do reflect public concerns that have to do with immigration, but without identifying the migrants as the problem. The same Councillor who mentioned this issue also described internal immigration enforcement more generally as problematic, and particularly from the perspective of local policing, which lies within his political responsibility:

The fact is that all the agencies – including the [...] local police, the London-wide Metropolitan police, and the local administration here in [the Borough] – need to engender the trust and confidence of our local residents and the wider community. And the real point is: in dealing with illegal immigration, but also in dealing with terrorism and serious and organised crime, and even dealing with anti-social behaviour in our neighbourhoods, *we actually need the local community to have confidence in us*, and to feel able to... provide us with information, intelligence and evidence. So that is what we have to bear in mind whatever operation we embark on (lonA33).

Several of the NGO representatives I interviewed also pointed at existing evidence of under-reporting of serious crimes – including domestic and sexual violence, human trafficking and slavery-like conditions – among (irregular) migrant communities. One of them emphasised that “the police usually try to do quite proactive work about that, trying to make sure that these things do get reported [...] but the kind of language coming from the Home Office completely undermines that all” (lonA01). Similarly, any direct involvement or cooperation with the immigration enforcement agency can easily undermine other functions of the local administration, as a Council housing officer pointed out to me:

We do a lot of operations where we raid properties in the private rental sector and we often find people who are... what you are calling...[irregular]. And actually, on some occasions

we have worked with the UK Borders Agency to... you know, to try and pick people up through that. But actually, sometimes the difficulty for us as the Council is that if you do things like that, you are focusing on the victims of what is going on rather than the perpetrator, which is the landlord. So actually, *we are now trying to re-calibrate the work that we are doing*. [...] *We have stopped inviting them along, mainly because it changed the whole nature of what we were doing*, that was the difficulty. So, what we do [now] is if we find people then we talk to... we work closely with the immigration office around it, but [these raids] are not designed to find illegal immigrants, they were designed to find landlords who are exploiting these people (lonA30).

Given both the lack of an effective firewall and the limited space for negotiating more inclusive solutions, it is not surprising that LAs in the UK leave much of this work to the Third Sector. Several NGO representatives told me that their core funding comes from the local Council and often without explicit rules attached as to who can benefit (or not) from the services they provide. The response of a local Councillor who I confronted with this issue, confirms this:

Those groups must be pleased because they have more flexibility, and *that might be intentional*. [...] As a Council] maybe you don't want to put something in there that says, 'this money can only go to certain people'. *It's probably better to leave it a bit open-ended* so that these organisations have that flexibility, because then *they* can respond to general need, rather than us saying... Because actually *if we had to put something down it would probably be more restrictive* to people who are irregular immigrants (lonA21).

Also in the Spanish context, where LAs *can* directly provide services to irregular residents, certain internal boundaries that follow from national immigration law do significantly limit the scope and effectiveness of inclusionary local practices, as a member of the Barcelona city government expressed:

As a City Council we are forced to apply projects and proposals that can at best alleviate their vulnerable situation through social assistance. But this is real nonsense, a contradiction. Because these people... *we cannot permanently provide social assistance to a person who is young [...] and wants to work*. So the basic problem that we encounter is this: that beyond social assistance measures we have no instruments; or we have very few, only those established by immigration law, and the problem is that it's so restrictive that *we have almost no margin to act* (bcnA07).

This brings me back to McDonald's (2012, p. 129) observation that "when services are made accessible to people with precarious status, [...] internal borders can be circumvented, and migrant illegality can be 'unmade'". Turning this argument on its head, the examples I have provided here suggest that internal borders and the irregularity that triggers them sometimes *need to be* circumvented or 'unmade' in order for local public service provision to be effective. These partial and temporary circumventions thereby disrupt the internal control of migrant irregularity, but at the same time constitute a crucial precondition for its successful *micro-management*. The balance between (state) control and (local) management depends not only on the context and kind of service to be provided, but also the dominant logic that underpins public welfare provision more generally. Before zooming into the different spheres of this provision, I therefore briefly compare some of the rationales that have traditionally underpinned the British and Spanish welfare states.

4.3 Migrant Irregularity and the British and Spanish Welfare States

It has been argued that one function of public welfare is to “bind[...] people effectively to the state” (Halfmann, 2000, p. 36). While it seems obvious that unlawful residents should precisely not be effectively bound to the state, their exclusion from welfare services is not always straightforward and depends significantly on the principles underlying their provision. Ever since Gøsta Esping-Andersen’s (1990) differentiation between a *liberal*, a *conservative-corporatist* and a *social-democratic* ‘world of welfare’, much of the welfare state literature has tried to define distinctive clusters, kinds, or models of welfare systems (Ferrera, 1996; Bonoli, 1997; Korpi & Palme, 1998; for an overview see: Arts & Gelissen, 2002). Others have examined the interactions of such welfare models with different immigration and incorporation regimes, as well as their inclusionary or exclusionary outcomes in relation to various categories of immigrants (Sainsbury, 2006, 2012; Hemerijck et al., 2013).

At the same time, also the migration literature increasingly recognises the selective limitation of immigrants’ access to social services and benefits as a common form of internalised immigration control and restriction (Hollifield, 2000; Morris, 2002; Söhn, 2013; Ataç & Rosenberger, 2019). Such limitations frequently occur in the context of a broader welfare retrenchment although they are not necessarily imposed by national governments but often enacted or (re-)negotiated at the regional or municipal level (Bommes & Sciortino, 2011; Price & Spencer, 2014). Given the multi-level nature of welfare governance and the empirical fact that contemporary welfare regimes almost always combine elements of more than one ‘regime type’ (Arts & Gelissen, 2002), my comparative analysis does not simply presuppose two overall distinctive models characterising the British (‘Liberal’) and Spanish (‘Mediterranean’) welfare regime. Rather, it follows the functional distinction between two broader logics that underlie public welfare in general and the provision of social protection and care services in particular: the ‘*Beveridgean*’ welfare logic on one hand, and the ‘*Bismarckian*’ approach on the other (Esping-Andersen, 1990; Hemerijck et al., 2013): The former aims at providing a minimal but ‘universal’ safety net through targeted social assistance measures that cover the whole population – though only in situations of exceptional hardship – and are funded through general taxes. Eligibility, while in principle related to citizenship status, is primarily based on individual need and thus has to be established on a case-by-case basis through systematic or ad-hoc *means testing*. In contrast to that, the *Bismarckian* approach predominantly relies on employment-related contributions to a social insurance scheme and thereby links individual entitlement much more closely to the claimant’s occupational position and sometimes also family status. Full access to these comparatively generous provisions is gained only on the premise of full-time and long-term participation in the formal labour market.

The crucial relevance that this distinction has for my analysis is that the two welfare logics – needs-based/means-tested *vs.* employment/contribution-based – have different implications for irregular residents as well as local service providers confronted with their claims. For Esping-Andersen (1990, p. 22), one of the major

differences between the two principles is that “[i]n social-assistance dominated welfare states, rights are not so much attached to work performance as to demonstrable need”. This, in turn, determines the mechanism through which such systems more or less automatically exclude irregular migrants: Even where eligibility is not a direct function of immigration status per se, someone’s irregularity still invalidates his or her work performance but can also make it more difficult or even impossible to demonstrate a specific need. In the case of welfare provisions that follow the *Bismarckian* logic – like state pensions or traditional unemployment benefits – the (automatic) exclusion of irregular migrants is a *direct* corollary of their exclusion from formal employment. As I will discuss in Chap. 7, this also means that welfare bureaucrats themselves do not have to determine a claimant’s irregularity in order to effectuate his or her exclusion. The *Beveridgean* logic, on the other hand, underpins those forms of social assistance – like free school meals (see Chap. 6) – that have been designed to mitigate social inequality by addressing specific risk-factors and are therefore *means-tested*; that is, triggered by an assessment of the claimant’s insufficient financial means.¹⁹ They are thus, at least in principle, not directly linked to formal employment or membership status, but often to household income. In this case, it is only where such assessment presupposes the claimant’s income and/or fiscal status to be officially recognised by the state – usually through an income or tax declaration – that migrant irregularity becomes an automatic barrier, whether that is specifically intended or not.

Over the last decades, both the British and Spanish welfare systems have undergone profound reforms and restructuring. This involved a significant and multidimensional “recalibration of inclusion and exclusion” towards various categories of people, both citizens and non-citizens, as Anton Hemerijck and his colleagues (2013, p. 7) have argued from a comparative perspective. In Britain, so their assessment, this has led to a situation where “for those who remain for whatever reasons outside the reach of employment, activation measures and tax credits, poverty and relative deprivation are imminent threats” (Hemerijck et al., 2013, p. 18; see also Bradshaw, 2015; Butler, 2016). Likewise, the comparatively under-developed and porous public welfare system of Spain – with its traditionally strong reliance on Third Sector organisations (particularly the Catholic Church) and the family as the ultimate social safety net – also leaves various sectors of society with no or insufficient protection against social and economic marginalisation (Rodríguez-Cabrero, 2009; Guillén & León, 2011; Rodríguez-Cabrero et al., 2015). This became particularly apparent in the wake of the latest economic crisis and even more pronounced by the ensuing fiscal consolidation measures (Secretería de Estado de Servicios Sociales e Igualdad, 2012). An earlier shift (since the mid 1990s) towards tax-funded social assistance measures (of the *Beveridgean* type) had significantly increased the reliance of the Spanish welfare regime on taxes, particularly for what Hemerijck et al. (2013, p. 35) have called the “financing of ‘outsider’ social

¹⁹Although such measures are most characteristic for Esping-Andersen’s (1990) ‘liberal’ welfare regime, they also play an increasingly substantial role within ‘Mediterranean’, and particularly the Spanish welfare state (Guillén & León, 2011).

protection”. Later welfare recalibrations, like the national healthcare reform of 2012, therefore rather aimed at excluding various kinds of ‘outsiders’. Apart from (irregular) migrants, this also affected ‘natives’ who were either long-term unemployed, had never entered the labour market or worked in the country’s large informal economy (Hemerijck et al., 2013).

A comparative study estimated that even before the crisis, between 1999 and 2007, Spain’s informal economy accounted for 22.5% of total GDP, compared to 12.5% in the case of Britain (Schneider et al., 2010). This not only lowers overall tax revenues and thus heightens budgetary pressures, but it also complicates the very implementation of *means-tested* welfare provision (Stephens et al., 2010). According to the vice president of the *Barcelona Municipal Immigration Council*, the problem of undeclared income is often being conflated with that of migrant irregularity although it equally applies to ‘native’ citizens in irregular employment:

All the people who work informally [*‘en negro’*] do not declare the money they earn, but of course people here say: ‘Ah, these immigrants work informally because they don’t have papers, and then when they go to [social services] they say they have no income and so they give them support’ (bcnA01).

This again suggests that the underlying problem is not that irregular migrants are living in the city ‘as everybody else does’, nor that they usually work and sometimes use public services; but that because of their ascribed irregularity many of these relations *have to* happen outside the corresponding rules. Instead of their employment being effectively governed by existing labour market regulations and their use of services being based on the same principles that apply to the rest of the population, these and many other exchanges and everyday encounters become subject to immigration control. Seen from this perspective, raising an additional “protective wall of legal and documentary requirements around the key institutions of the welfare state” (Broeders & Engbersen, 2007, p. 1595) cannot solve the problem of irregular migration but might even aggravate some of its symptoms. More importantly, as I will show in the following three chapters, this ‘protective wall’ tends to not only surround the key institutions of the welfare state but increasingly runs right through them and thereby critically interferes with some of their most important functions.

References

- Ajuntament de Barcelona. (2017). *Mesura de govern per afavorir l’accés a la regularitat i prevenir la irregularitat sobrevinguda*. Available at: <https://bcnroc.ajuntament.barcelona.cat/jspui/handle/11703/102541>
- Anderson, B., Gibney, M. J., & Paoletti, E. (2011). Citizenship, deportation and the boundaries of belonging. *Citizenship Studies*, 15(5), 547–563. <https://doi.org/10.1080/13621025.2011.583787>
- Arango, J., & Finotelli, C. (2009). Chapter 4: Spain. In M. Baldwin-Edwards & A. Kraler (Eds.), *REGINE regularisations in Europe. Study on practices in the area of regularisation of illegally*

- staying third-country nationals in the member states of the EU. Appendix a: Country studies* (pp. 83–93).
- Arts, W., & Gelissen, J. (2002). Three worlds of welfare capitalism or more? A state-of-the-art report. *Journal of European Social Policy Copyright*. SAGE Publications, 12(122), 958–9287.
- Ataç, I., & Rosenberger, S. (2019). Social policies as a tool of migration control. *Journal of Immigrant & Refugee Studies*. Routledge, 17(1), 1–10. <https://doi.org/10.1080/1556294.8.2018.1539802>
- Bagelman, J. (2013). Sanctuary: A politics of ease? *Alternatives: Global, Local, Political*, 38(1), 49–62. <https://doi.org/10.1177/0304375412469314>
- Bauböck, R. (2003). Reinventing urban citizenship. *Citizenship Studies*, 7(2), 139–160. <https://doi.org/10.1080/1362102032000065946>
- Bauder, H. (2017). Sanctuary cities: Policies and practices in international perspective. *International Migration*, 55(2), 174–187. <https://doi.org/10.1111/imig.12308>
- Bommes, M., & Sciortino, G. (2011). *Foggy social structures: Irregular migration, European labour markets and the welfare state*. Edited by IMISCOE. Amsterdam University Press.
- Bonoli, G. (1997). Classifying welfare states: A two-dimension approach. *Journal of Social Policy*. Cambridge University Press, 26(3), 351–372.
- Bradshaw, J. (2015). *The erosion of the UK safety net, discover society*. Available at: <http://discover.society.org/2015/01/03/the-erosion-of-the-uk-safety-net/>. Accessed 16 Jan 2017.
- Broeders, D., & Engbersen, G. (2007). The fight against illegal migration: Identification policies and immigrants' counterstrategies. *American Behavioral Scientist*, 50, 1592–1609. <https://doi.org/10.1177/0002764207302470>
- Butler, P. (2016). Poorer renters at risk from homelessness as benefit shortfall grows. *The Guardian*. Available at: <https://www.theguardian.com/society/2016/aug/24/poor-uk-private-rent-homelessness-risk-housing-benefit-shortfall-2020>. Accessed 28 Jan 2017.
- Calavita, K. (1998). Immigration, law, and marginalization in a global economy: Notes from Spain. *Law and Society Review*, 32(3), 529. <https://doi.org/10.2307/827756>
- Calavita, K. (2003). A 'reserve army of delinquents' – The criminalization and economic punishment of immigrants in Spain. *Punishment & Society-International Journal of Penology*, 5(4), 399–413. <https://doi.org/10.1177/14624745030054002>
- Carranco, R. (2017). Colau llevará el cierre del CIE a la Audiencia Nacional. *El País*. Available at: http://ccaa.elpais.com/ccaa/2017/03/29/catalunya/1490782857_107029.html
- CEAR and MRI. (2010). *Migration control policies and the human rights of migrants in Spain. Jurisprudence and remedies for litigation*. Available at: <http://www.osiwa.org/attachment/15/justice-cear-eng.pdf>
- Chauvin, S., & Garcés-Mascareñas, B. (2012). Beyond informal citizenship: The new moral economy of migrant illegality. *International Political Sociology*, 6(3), 241–259. <https://doi.org/10.1111/j.1749-5687.2012.00162.x>
- Cvajner, M., & Sciortino, G. (2010). Theorizing irregular migration: The control of spatial mobility in differentiated societies. *European Journal of Social Theory*, 13(3), 389–404. <https://doi.org/10.1177/1368431010371764>
- Darling, J. (2010). A city of sanctuary: The relational re-imagining of Sheffield's asylum politics. *Transactions of the Institute of British Geographers*. Blackwell Publishing Ltd, 35(1), 125–140. <https://doi.org/10.1111/j.1475-5661.2009.00371.x>
- Darling, J. (2017). Forced migration and the city. *Progress in Human Geography*, 41(2), 178–198. <https://doi.org/10.1177/0309132516629004>
- De Genova, N. (2002). Migrant “illegality” and deportability in everyday life. *Annual Review of Anthropology*, 31(1), 419–447. <https://doi.org/10.1146/annurev.anthro.31.040402.085432>
- de Graauw, E. (2014). Municipal ID cards for undocumented immigrants: Local bureaucratic membership in a federal system. *Politics and Society*, 42(3), 309–330. <https://doi.org/10.1177/0032329214543256>

- de Graauw, E., & Vermeulen, F. (2016). Cities and the politics of immigrant integration: A comparison of Berlin, Amsterdam, New York City, and San Francisco. *Journal of Ethnic and Migration Studies*, 42(6). <https://doi.org/10.1080/1369183X.2015.1126089>
- Delvino, N. (2020). European Union and national responses to migrants with irregular status: Is the fortress slowly crumbling? In S. Spencer & A. Triandafyllidou (Eds.), *Migrants with irregular status in Europe. Evolving conceptual and policy challenges* (pp. 73–97). Springer. https://doi.org/10.1007/978-3-030-34324-8_5
- Düvell, F. (2011). Paths into irregularity: The legal and political construction of irregular migration. *European Journal of Migration and Law*, 13(3), 275–295. <https://doi.org/10.1163/157181611X587856>
- EMN. (2011). *Practical measures to reduce irregular immigration – Spain*. Available at: <http://extranjeros.meys.es>. Accessed 22 May 2017.
- Engbersen, G., San, M. van, & Leerkes, A. (2006). A room with a view: Irregular immigrants in the legal capital of the world. *Ethnography*. SAGE Publications, London, Thousand Oaks, CA and New Delhi, 7(2), 209–242. <https://doi.org/10.1177/1466138106067057>
- Esping-Andersen, G. (1990). *The three worlds of welfare capitalism*. Princeton University Press.
- Fekete, L. (2005). The deportation machine: Europe, asylum and human rights. *Race & Class*, 47(1), 64–78. <https://doi.org/10.1177/0306396805055083>
- Fernández Guerrero, D. (2015). Una cooperativa para recoger chatarra Empieza a funcionar la recogida de residuos montada por 15 inmigrantes subsaharianos. *El País*. Available at: http://ccaa.elpais.com/ccaa/2015/06/29/catalunya/1435608671_209874.html
- Ferrera, M. (1996). The “southern model” of welfare in social Europe. *Journal of European Social Policy*. Sage Publications, Sage CA: Thousand Oaks, CA, 6(1), 17–37. <https://doi.org/10.1177/095892879600600102>
- Finotelli, C., & Arango, J. (2011). Regularisation of unauthorised immigrants in Italy and Spain: Determinants and effects. *Documents d’anàlisi geogràfica*, 57(3), 0495–0515. Available at: <http://ddd.uab.cat/record/85205>. Accessed 29 Apr 2016
- FRA. (2014). *Criminalisation of migrants in an irregular situation and of persons engaging with them*.
- França, J. (2015). El Parlament de Catalunya insta al Gobierno a cerrar los Centros de Internamiento de Extranjeros. *El Diario*. Available at: http://www.eldiario.es/catalunya/Parlamento-Catalunya-Gobierno-Internamiento-Extranjeros_0_404910371.html. Accessed 14 June 2017.
- Garcés-Masareñas, B. (2010). Legal production of illegality in a comparative perspective. The cases of Malaysia and Spain. *Asia Europe Journal*, 8(1), 77–89. <https://doi.org/10.1007/s10308-010-0249-8>
- Gebhardt, D. (2015). *Cities and immigrant citizenship in Barcelona and Munich* (GRITIM Working Paper Series). Barcelona.
- Gibney, M. J. (2008). Asylum and the expansion of deportation in the United Kingdom. *Government and Opposition*, 43(2), 146–167. <https://doi.org/10.1111/j.1477-7053.2007.00249.x>
- Goldring, L., Berinstein, C., & Bernhard, J. K. (2009). Institutionalizing precarious migratory status in Canada. *Citizenship Studies*, 13(3), 239–265. <https://doi.org/10.1080/13621020902850643>
- González-Enríquez, C. (2009a). Spain, the cheap model. Irregularity and regularisation as immigration management policies. *European Journal of Migration and Law*. Brill, 11(2), 139–157. <https://doi.org/10.1163/157181609X440004>
- González-Enríquez, C. (2009b). *Undocumented migration. Counting the uncountable. Data and trends across Europe. Country report Spain*. Available at: http://clandestino.eliamep.gr/wp-content/uploads/2009/10/clandestino_report_spain_final_2.pdf. Accessed 22 May 2017.
- Green, P., & Grewcock, M. (2002). The war against illegal immigration: State crime and the construction of a European identity. *Current Issues in Criminal Justice*, 14(1), 87–101.
- Guillén, A. M., & León, M. (2011). Introduction. In A. M. Guillén & M. León (Eds.), *The Spanish welfare state in European context* (pp. 1–16). Ashgate.
- Halfmann, J. (2000). Welfare state and territory. In M. Bommers & A. Geddes (Eds.), *Immigration and welfare: Challenging the borders of the welfare state* (pp. 34–50). Routledge.

- Hammar, T. (1994). Legal time of residence and the status of immigrants. In R. Bauböck (Ed.), *From aliens to citizens: Redefining the status of immigrants in Europe* (pp. 187–197). Avebury.
- Hemerijck, A. C., et al. (2013). *Changing European welfare states and the evolution of migrant incorporation regimes: Background paper reviewing welfare state structures and reform dynamics in a comparative*. Available at: http://www.compas.ox.ac.uk/media/PR-2013-IMPACIM_Background_Welfare_States.pdf. Accessed 16 Jan 2017.
- Hollifield, J. F. (2000). Immigration and the politics of rights: The French case in comparative perspective. In M. Bommès & A. Geddes (Eds.), *Immigration and welfare: Challenging the borders of the welfare state* (pp. 109–133). Routledge.
- Home Office. (2013). *Immigration bill factsheet: Overview of the bill*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249251/Overview_Immigration_Bill_Factsheet.pdf. Accessed 5 Apr 2017.
- Jordan, B., Stráth, B., & Triandafyllidou, A. (2003). Contextualising immigration policy implementation in Europe. *Journal of Ethnic and Migration Studies*. Taylor & Francis Ltd, 29(2), 195–224. <https://doi.org/10.1080/1369183032000079594>
- Korpi, W., & Palme, J. (1998). The paradox of redistribution and strategies of equality: Welfare state institutions, inequality, and poverty in the Western countries. *American Sociological Review*, 63(5), 661. <https://doi.org/10.2307/2657333>
- Leerkes, A., & Van Houte, M. (2020). Beyond the deportation regime: Differential state interests and capacities in dealing with (non-) deportability in Europe. *Citizenship Studies*. Routledge, 24(3), 319–338. <https://doi.org/10.1080/13621025.2020.1718349>
- Leerkes, A., Varsanyi, M., & Engbersen, G. (2012). Local limits to migration control: Practices of selective migration policing in a restrictive national policy context. *Police Quarterly*, 15(4), 446–475. <https://doi.org/10.1177/1098611112453719>
- Lenoel, A. (2009). Chapter 6: United Kingdom. In M. Baldwin-Edwards & A. Kraler (Eds.), *REGINE regularisations in Europe. Study on practices in the area of regularisation of illegally staying third-country nationals in the member states of the EU. Appendix A: Country studies* (pp. 102–123).
- Levinson, A. (2005). *The regularisation of unauthorized migrants: Literature survey and country case studies*.
- López Sala, A. (2013). Managing uncertainty: Immigration policies in Spain during economic recession (2008–2011). *Migraciones Internacionales*, 7(2), 39–70.
- Lundberg, A., & Strange, M. (2016). Struggles over human rights in local government – The case of access to education for undocumented youth in Malmö, Sweden. *Critical Policy Studies*, 1–20. <https://doi.org/10.1080/19460171.2016.1142456>
- Marrow, H. B. (2012). The power of local autonomy: Expanding health care to unauthorized immigrants in San Francisco. *Ethnic and Racial Studies*. Taylor & Francis Group, 35(1), 72–87. <https://doi.org/10.1080/01419870.2011.594168>
- McDonald, J. (2012). Building a sanctuary city municipal migrant rights in the city of Toronto. In P. Nyers & K. Rygiel (Eds.), *Citizenship, migrant activism and the politics of movement* (pp. 129–145). Taylor & Francis.
- Morris, L. (2002). *Managing migration: Civic stratification and migrants' rights*. Routledge.
- MRN. (2014). *Migrants Rights Network response APPG on Refugees and APPG on Migration joint inquiry into Detention*. Available at: http://www.migrantsrights.org.uk/wp-content/uploads/publications/MRN_response_to_Detention_Inquiry_2014_1.pdf. Accessed 22 May 2017.
- MRN. (2015). *Briefing on the proposed immigration bill 2015–16*. Migrants' Rights Network. Available at: http://www.migrantsrights.org.uk/files/publications/MRN_Immigration_Bill_Briefing_2015-v2.pdf. Accessed 5 Apr 2017.
- Navarro Castelló, C. (2020). València y Barcelona contra los CIE: Ribó y Colau remiten una carta a Marlaska para exigir su cierre. *El Diario*. Available at: https://www.eldiario.es/comunitat-valenciana/valencia-barcelona-cier-colau-marlaska_1_6059139.html. Accessed 13 Aug 2020.
- Nyers, P. (2010). No one is illegal between city and nation. *Studies in Social Justice*, 4(2), 127–143.

- Paoletti, E. (2010). *Deportation, non-deportability and ideas of membership* (Refugee Studies Centre Working Paper Series 65).
- Papademetriou, D. G., & Somerville, W. (2008). *Earned amnesty: Bringing illegal workers out of the shadows*. London. Available at: <http://www.centreforum.org/assets/pubs/regularisation-web.pdf>. Accessed 2 May 2016.
- Price, J., & Spencer, S. (2014). *City-level responses to migrant families with restricted access to welfare benefits*. Oxford. Available at: https://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/Report_City_level_responses.pdf
- Rodríguez-Cabrero, G. (2009). *Assessment of minimum income schemes in Spain*.
- Rodríguez-Cabrero, G., et al. (2015). *ESPN thematic report on social investment: Spain*. Brussels.
- Sabater, A., & Domingo, A. (2012). A new immigration regularization policy: The settlement program in Spain. *International Migration Review*, 46(1), 191–220. <https://doi.org/10.1111/j.1747-7379.2012.00884.x>
- Sainsbury, D. (2006). Immigrants' social rights in comparative perspective: Welfare regimes, forms in immigration and immigration policy regimes. *Journal of European Social Policy*, 16(3), 229–244. <https://doi.org/10.1177/0958928706065594>
- Sainsbury, D. (2012). *Welfare states and immigrant rights: The politics of inclusion and exclusion*. Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199654772.003.0002>
- Sandell, R. (2005). *Spain's quest for regular immigration*. 64/2005.
- Schneider, F., Buehn, A., & Montenegro, C. E. (2010). *Shadow economies all over the world: New estimates for 162 countries from 1999 to 2007*. 5356. Available at: <http://documents.worldbank.org/curated/en/311991468037132740/pdf/WPS5356.pdf>
- Secretería de Estado de Servicios Sociales e Igualdad. (2012). *National Action Plan on social inclusion for the Kingdom of Spain 2013–2016*. Madrid.
- Söhn, J. (2013). Unequal welcome and unequal life chances: How the state shapes integration opportunities of immigrants. *European Journal of Sociology*. Cambridge University Press, 54(2), 295–326. <https://doi.org/10.1017/S0003975613000155>
- Spencer, S. (2018). Multi-level governance of an intractable policy problem: Migrants with irregular status in Europe. *Journal of Ethnic and Migration Studies*, 44(12), 2034–2052. <https://doi.org/10.1080/1369183X.2017.1341708>
- Spencer, S. (2020). Cities breaking the mould? Municipal inclusion of irregular migrants in Europe. In S. Spencer & A. Triandafyllidou (Eds.), *Migrants with irregular status in Europe. Evolving conceptual and policy challenges* (pp. 187–205). Springer. https://doi.org/10.1007/978-3-030-34324-8_10
- Spencer, S., & Hughes, V. (2015). *Outside and in: Legal entitlements to health care and education for migrants with irregular status in Europe*.
- Squire, V. (2011). From community cohesion to mobile solidarities: The city of sanctuary network and the strangers into citizens campaign. *Political Studies*, 59(2), 290–307. <https://doi.org/10.1111/j.1467-9248.2010.00865.x>
- Squire, V., & Bagelman, J. (2012). Taking not waiting: Space, temporality and politics in the City of Sanctuary movement. In P. Nyers & K. Rygiel (Eds.), *Citizenship, migrant activism and the politics of movement. Refugee action* (pp. 146–164). Routledge. <https://doi.org/10.4324/9780203125113>
- Stephens, M., et al. (2010). *Study on housing exclusion: Welfare policies, labour market and housing provision*. Brussels. Available at: https://pureapps2.hw.ac.uk/portal/files/4727289/housing_exclusion_1_.pdf
- Varsanyi, M. W. (2006). Interrogating “urban citizenship” vis-à-vis undocumented migration. *Citizenship Studies*, 10(2), 229–249. <https://doi.org/10.1080/13621020600633168>
- Varsanyi, M. W. (2007). Documenting undocumented migrants: The Matriculas Consulares as neoliberal local membership. *Geopolitics*, 12(2), 299–319. <https://doi.org/10.1080/14650040601169014>

- Varsanyi, M. W. (2008). Immigration policing through the backdoor: City ordinances, the “right to the City,” and the exclusion of undocumented day laborers. *Urban Geography*, 29(1), 29–52. <https://doi.org/10.2747/0272-3638.29.1.29>
- Walsh, J. P. (2014). Watchful citizens: Immigration control, surveillance and societal participation. *Social & Legal Studies*, 23(2), 237–259. <https://doi.org/10.1177/0964663913519286>
- Wilmes, M. (2011). Irregular migration and foggy organisational structures: Implications of a German city study. In M. Bommers & G. Sciortino (Eds.), *Foggy social structures: Irregular migration, European labour markets and the welfare state* (pp. 117–140). Amsterdam University Press.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter’s Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter’s Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.



Chapter 5

Managing Irregularity Through the Provision of Public Healthcare



Good health is the basis for every human being's autonomy, self-fulfilment and dignity, which is why access to healthcare is generally underpinned by strong individual entitlements and protected through international human rights treaties as well as national constitutions (da Lomba, 2011; MdM, 2014; OHCHR, 2014). The corresponding duty to provide healthcare services to the population has been described as one of the core functions of the welfare state and an important "aspect of modern citizenship" (Aasen et al., 2014, p. 162). Put in Boswell's (2007) terms, healthcare provision thus constitutes one of the 'functional imperatives of the state', whether it is regarded as the fulfilment of a basic and equal right (and thus an issue of *fairness*) or a necessary measure against potential threats to public health (and thus a question of *security*).

Any concrete entitlement to access a particular nation-state's healthcare system, however, is underpinned by both a human *and* a membership right (da Lomba, 2011; Hall & Perrin, 2015). In many migrant-receiving countries the regulation of healthcare access has thus become increasingly linked to the issue of immigration and its control. By restricting the access of (certain) foreigners on the basis of their immigration status, governments seek to not only prevent so-called 'health tourism'¹ but also to render a country less attractive as a potential destination for irregular migrants and other unwanted newcomers. Almost unavoidably, such measures also exclude those irregular migrants from effective health screening and treatment who already form part of the resident population, which is problematic from a public health perspective. By the same logic, also the potential inclusion of irregular migrants is not a purely humanitarian issue but reflects their at least partial recognition as *de facto* members of society. From this perspective, their accessing of such services not only constitutes an 'act of citizenship' (Isin, 2008), but also an act of 'integration' (Schweitzer, 2017). Formal entitlements to even basic care and

¹ 'Health tourism' refers to people who enter another country with the *primary intention* of receiving a particular treatment that is unavailable or more expensive in their own country of residence.

services can create a sense of inclusion, belonging or even a right to remain in the country of unlawful residence, while serious health issues or the attested need for a particular treatment can strengthen legal claims for regularisation and effectively impede or delay deportation (PICUM, 2009; Kraler, 2011).

This and the subsequent two chapters (dealing with the provision of public education and social assistance) will follow the same structure: After a brief discussion of the underlying contradictions and some of their concrete manifestations in the Spanish and British contexts, I outline the respective legal and policy frameworks within which these various services are provided locally. In a second step, I examine if and how the institutional roles and individual responsibilities assigned to different kinds of actors coincide or conflict with the logic of immigration control. Finally, I employ the analytical framework I developed at the end of Chap. 2 in order to summarise and visualise the findings for each sphere of service provision.

5.1 Between Hostility and Pragmatism: Ambivalent Legal-Political Contexts for the Provision of Public Healthcare to Irregular Migrants

Both in the UK and in Spain healthcare is delivered within predominantly tax-based national health systems. These were originally founded – in 1948 and 1986, respectively – on the principles of universal coverage and free and equal access (Aasen et al., 2014), but have recently undergone significant reforms and restructuring (Department of Health, 2010; Legido-Quigley et al., 2013; MdM, 2014). While mainly aiming at increasing overall cost efficiency, these reforms also linked access rules to immigration status and thus allow for, or even require, a more effective internal control of migrant irregularity.

In Spain, the national health reform of 2012² categorically excluded irregular migrants – with the exception of emergencies, minor children and pregnant women – from free public health care by invalidating the health cards (*‘Tarjeta Sanitaria Individual’*, TSI) to which they had been entitled automatically and irrespective of their immigration status once registered as local residents (MdM, 2014). In March 2015, however, the Spanish minister of health announced in an interview that the central government was planning to restore the right of migrants in irregular situations to access primary healthcare services provided within the national health system. This move had become necessary, so the minister, for a number of “practical reasons” such as to “avoid saturating the emergency services” that these persons otherwise tend to fall back on (N.d., 2015). While thus recognising a certain necessity to provide them with some form of access, however, the central government did not foresee irregular migrants’ formal re-inclusion into the mainstream system. In fact, the minister was “completely against” making them holders of the TSI,

²Enacted through *Royal Decree 16/2012, of 20 April, on urgent measures to ensure the sustainability of the national health system and improve the quality and safety of its provisions.*

which “would give them a right that in Europe does not exist in any other country”. Instead, they should be given a special type of health card that is valid only within a limited timeframe and specific locality (Rejón, 2015). The restrictive state law remained in force until June 2018, when the Spanish government ultimately re-instated healthcare provision for all migrants, including those in irregular situations (Vosyliute & Joki, 2018).

Irregular migrants living in the UK, on the other hand, are in principle entitled to access free primary healthcare provided by local family doctors (‘General Practitioners’, GPs) within the British National Health Service (NHS). Like all other ‘Overseas Visitors’,³ however, they are to be charged the full cost of accessing any secondary (i.e. hospital) care (Department of Health, 2013a, b). This charging regime, first introduced in 2004, has been further extended by the 2014 Immigration Act, which brought significant changes regarding migrants’ access to healthcare (Home Office, 2013). One of its main objectives was that “those persons who are here unlawfully should not remain and should have no entitlement to benefits or public services” (Department of Health, 2013b, p. 27). This declared policy goal clearly reflects the UK governments’ official strategy of creating, “here in Britain, a really hostile environment for illegal migration”, as was first announced by then home secretary Theresa May (cit. in Kirkup & Winnett, 2012) in May 2012. During the same period, however, there have also been some inclusionary developments in UK, including the extension of healthcare access for irregular migrants in need of HIV/Aids treatment (in 2012) as well as those who can prove to be victims of domestic or sexual violence (in 2015) (Delvino, 2020, p. 89). In November 2013, during a parliamentary debate on the proposed immigration bill and its potential effects on migrants’ access to healthcare, then immigration minister Mark Harper also emphasised that the government

[...] will not do anything that will worsen public health. Of course, it is important for those who are in the United Kingdom, even if they are not here legally, to have access to public health treatment, because it has an impact not just on them, but on the rest of the community.⁴

The ministers’ statements, both in Britain and Spain, reflect the inherent contradictions between the pressure to restrict the access to these often scarce public resources to ‘legitimate’ members of the community and the need for pragmatic solutions with respect to those who do reside within a given locality but without the national government’s formal consent. In both countries the restrictive reforms have been accompanied by intense debates and critique from health professionals and civil society organisations. Critics frequently highlighted that universal health coverage not only helps preventing the spread of communicable diseases but also plays a critical role for the detection of other societal ills, such as domestic violence

³The official category used for all foreigners who are not ‘ordinarily resident’ in the UK, including those holding tourist or visitors’ visa, as well as those residing in the country without authorisation.

⁴House of Commons Public Bill Committee: Immigration Bill Deb, 12 November 2013, c310: <http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131112/am/131112s01.htm#13111257000035> (last accessed 15/12/2017).

and abuse (semFYC, 2012; MdM, 2014). From an economic perspective, it has been argued that early and preventive treatment is cheaper than long intensive care, which often becomes necessary as a result of excluding patients from regular screening and primary care (Aspinall, 2014; Steele et al., 2014; Wind-Cowie & Wood, 2014; FRA, 2015).

While in both countries the formal responsibility for the provision of healthcare is partly devolved to the regional level, it was only in Spain that the national government's move to restrict the access of irregular migrants has been effectively prevented through legislation enacted by several regional governments. Although it explicitly aimed at a better coordination and overall consistency of service provision, the reform of 2012 thus provoked very different responses across the country, whereby resistance was particularly strong in the Autonomous Communities of Andalucía, Asturias, the Basque Country and Catalonia (DOTW, 2013). Only 4 months after the entry into force of the state law, the government of Catalonia established its own administrative norms according to which irregular migrants explicitly continue to have access to free healthcare provided through the Catalan public health service *CatSalut*. This conflict is reflected both in political rhetoric and everyday practice and has contributed to a climate of misinformation and confusion among healthcare professionals (MdM, 2014) but also migrants themselves. The following quote from an interview with a Moroccan citizen who spent most of his life in Barcelona but unlike the rest of his family never regularised his situation, reflects this uncertainty:

I have heard that *CatSalut* said that it would not invalidate irregular migrants' health cards; ...that the Ministry of Health said that they would invalidate them, but Catalonia said no: that it would not implement that. But as I said: right now, I wouldn't be able to tell you. Maybe if I go [my card] wouldn't work, I don't know... (bcnB04).

Also several other respondents explicitly referred to the apparent disagreement between different levels of government when trying to explain the complex and somewhat contradictory rules and procedures of access. A representative of the *Catalan Refugee Aid Commission* ('*Comissió Catalana d'Ajuda al Refugiat*', CCAR) put it this way:

Well, that's where you see the clash: it's the central government that wants to limit the services and attention to immigrants in irregular situations, whereas I think at the [lower] levels – for example in the municipality of Barcelona – they are more aware [of the social consequences] (bcnA04).

Also in the UK context, the Greater London Authority (GLA) – which has no formal competence in the area of health – has occasionally taken a more pragmatic position than the national government. A senior advisor to former mayor Boris Johnson told me in an informal conversation that when talking about health issues internally, such as the need to raise awareness about Tuberculosis, “we obviously don't exclude irregular migrants, but we also don't explicitly include them” (lonC04). Already in January 2012, as part of the *Mayor's Integration Strategy*, the GLA had published a pamphlet available in 20 languages to make migrants and asylum seekers aware of their entitlement to register with a GP. A representative of

the London-based *Migrants' Rights Network* (MRN), which collaborated with the Mayor's Office on this issue, recalls that

there was a big concern among the London authorities, [in spite of] what the national government was saying, [...] that *not enough* migrants, including undocumented migrants, were going to see a GP or where in touch with the health authorities when they should be, especially pregnant women. So, they were taking some steps to actually encourage people to access the health system (lonA02).

The leaflet particularly emphasises that applicants are not legally required “to prove their identity or immigration status to register with a practice” and that GPs cannot refuse registration on discriminatory grounds. The campaign was a reaction to the frequent misinterpretation of existing norms regarding (particularly irregular) migrants’ access to NHS services, and has been heavily criticised by right-wing pressure groups for further encouraging ‘health-tourism’ (Johnson, 2012). Around the same time, and more in line with this criticism, an official poster campaign in NHS facilities specifically reminded those “visiting the UK, or not living here on a lawful and settled basis” that they “may have to pay” for their healthcare. As shown in Fig. 5.1, some of the posters clearly emphasised that access to public healthcare is closely linked to immigration (status) and that NHS staff can play a role in controlling both. From the perspective of irregular migrants, such information is likely to further increase uncertainty or even fear of being detected and apprehended as a result of accessing these services.

These examples suggest that not only (irregular) migrants themselves but also the public employees who administer or provide healthcare services to the population



Fig. 5.1 NHS poster campaign – ‘Healthcare is not free for everyone’

are exposed to contradictory signals and information regarding the relevance that a patient's immigration status should have for them. In the remainder of this chapter, I will focus on the roles and perspectives of different kinds of healthcare workers as well as the legal and institutional structures in which their actions and decisions are – more or less firmly – embedded. What interests me in particular are the different ways and varying degrees to which they thereby become implicated in immigration control.

5.2 Legal Frameworks, Formal Entitlements and Practical Barriers for Irregular Migrants' Access to Public Healthcare in London and Barcelona

For analytical purposes it makes sense to differentiate between primary and secondary care even though in practice, they are closely linked through internal referral systems and one cannot fulfil its function without the other. Since access to the latter usually implies much higher costs to the healthcare system it tends to be subjected to tighter access rules and stricter controls, which is why I discuss them separately.

5.2.1 Irregular Migrants' Access to Primary and Emergency Healthcare

According to the respective legal frameworks, third-country nationals residing unlawfully in either London or Barcelona are formally entitled to access free primary healthcare services provided at local health centres, as well as Accident and Emergency care (A&E). In both contexts, the right to receive primary care is based on the recognition of a patient's residence within a particular area, which he or she has to prove by providing more or less specific documentation. In Spain this is generally done through the obligatory inscription in the municipal register, which constitutes the primary requirement for all residents to benefit from any public service provided at the local level (see Sect. 4.2). A senior official of *CatSalut* put it this way:

The issue of [municipal] registration is a way, I think, also to formalise the residence; it is to say: 'You are entitled to the provision of health services *because* you form part of the population of this territory' (bcnA17).

In contrast to other parts of Spain, irregular migrants who have been registered in Catalonia for at least 3 months⁵ and earn less than the official minimum income (*‘Renta Mínima de Inserción’*, RMI) can apply for a health card, which gives access (for 1 year, after which it can be renewed) to free primary care, any urgent treatment, as well as health programmes ‘in the interest of public health’ such as HIV/Aids screening and most vaccinations. In principle, applications are made directly at the local health centre (*‘Centro de Atención Primaria’*, CAP), where applicants have to produce a document obtained from the National Institute of Social Security (INSS) certifying that they are not covered under the national system, an official confirmation of their municipal registration, and a copy of their valid passport or other ID (Ajuntament de Barcelona, 2013). Only where insufficient documentation inhibits this formal procedure, applications have to be processed through NGOs like the *Red Cross*.

In the UK in contrast, where no general system of residential registration is in place, anybody who wants to register with a GP has to provide other ‘proof of address’, usually a utility bill or bank statement in the name of the applicant (see Sect. 4.2). While all GP practices are obliged to provide emergency and immediately necessary treatment to any person within the practice area, they can exercise some degree of discretion about whether or not to register a person; or to treat them privately, that is, as self-paying patients (da Lomba, 2011). Importantly, and other than in Catalonia, there is no specific legislation regulating the provision of primary care to ‘overseas visitors’ and no required minimum period of residence, so that even persons staying in the country for less than 3 months might be included in the regular patients list or be registered as ‘temporary residents’ (Department of Health, 2012). GPs can only refuse a patient on reasonable, non-discriminatory grounds – for example because they live outside the catchment area⁶ – or if their list is full (Aspinall, 2014; Wind-Cowie & Wood, 2014). Even regarding the widespread practice of requiring a personal ID at registration, the *British Medical Association* (BMA, 2013) advises practice staff that “[o]verseas visitors have no formal obligation to prove their identity or immigration status to register with a practice”. In spite of this, as *Doctors of the World* (DOTW, 2013) have denounced, over two thirds of London’s Primary Care Trusts have issued guidance that is incompatible with GPs’ legal obligations; for example, by advising them to only register people who live in the UK lawfully and for more than 6 months. While according to the law this ‘ordinary residence’ criterion only applies to secondary care provision, it is sometimes (falsely) extended to primary care, as the account of one GPI interviewed in South-East London reveals:

⁵Notably, this temporal limitation is being justified as a necessary measure against (mostly European) ‘health-tourism’, rather than preventing irregular residents from accessing these services.

⁶Since 5 January 2015, GP practices in England are also free to register new patients who live outside their practice boundary area, which means that they don’t necessarily *have to* ask for proof of address, see: <http://www.nhs.uk/nhsengland/aboutnhservices/doctors/pages/patient-choice-gp-practices.aspx> (last accessed 15/12/2017).

It's true that we have a very good system that is free at the point of delivery, but you still have to have an NHS number. That means that you would need to be a resident in the UK for at least 6 months in a year. [...] If, for example, you are visiting for a short time, you do have to pay even to see a GP. [...] So... I mean, sometimes we do try and help as much as possible, [...] but it depends, of course. It's different from one doctor to another, from one surgery to another, even in primary care (lonA25).

The Department of Health (2012, p. 9) already acknowledged that in contradiction to current regulations “some [GP] practices have deregistered or failed to register people they believe to be ‘ineligible’ in some way due to their immigration status”. As a result of the inconsistencies between formal entitlements and everyday practice, even migrants who try to register with the support of specialised NGOs are often ambiguously refused. A study based on evidence and experiences gathered by *Doctors of the World* concludes that “[t]he biggest barrier to GP registration is the inability to provide paperwork”, in most cases a valid ID and/or proof of address (DOTW, 2016, p. 9). According to the organisation’s programme director for the UK, these are

barriers that are put in place *by the system*, which are sometimes deliberate and sometimes not deliberate. [...] As an undocumented migrant it is very likely that you won't have a valid passport or utility bills in your name and lots of practices are very rigid in terms of how they apply these rules, [so] the system doesn't recognise that people may not be able to provide those proofs and that is actually a true barrier to care, which means they cannot access any healthcare (lonA03).

In practice, many migrants in irregular (or legally ambiguous) situations thus remain effectively excluded even from the most basic provisions. Such informal exclusion can be the result of administrative barriers, a lack of awareness of their entitlement, or fear of being reported and thus potentially detained or deported as a result of approaching a public health service (OHCHR, 2014). Especially the latter seems to be a bigger issue in London than Barcelona, and particularly among those migrants who never had a residence permit and are not in contact with any support organisation that would provide them with the necessary information. This was the situation of a young man from Albania who I interviewed in South-London, where he had been living for almost 2 years:

It's difficult man. It's really difficult because if you have any problems, [...] like if you get sick or something like that, you don't have any place to go, you don't have anyone to care about you. It's difficult. [...] I never even tried [to register with a GP] because I know how it works here, you know. They will ask you for an ID and I don't have... I mean I have, but only my Albanian ID and that is *not valid for this country* (lonB03).

He was clearly unaware of the fact that even though his Albanian passport is not valid as proof of legal residence in the country, it is still a valid form of identification within all those institutional settings where entitlements and access are not linked to immigration status. Another Albanian citizen who had spent almost 15 years living and working in the UK also told me that he usually relies on self-diagnosis or private healthcare providers, even though he feels he should be entitled to access public services since he is *paying into the system*:

I do work hard, and I pay my taxes to the government and all that, but I don't have the right to go to the doctor. I don't have a GP, so normally I go to private health[care]... which as you probably know costs thousands! [...] So far, I have been trying to find things online, [...] if I don't feel well, I read things online, trying to find out what's wrong with me and just go and get the medication from a pharmacy or somewhere... And if I really have to go to a doctor, I have to do it privately. For example, I had to have them remove my tooth, last year, which cost me 1500 pounds. [...] You just go, and they treat you. They swipe the [credit] card, and if you have money in your bank, they treat you well [laughs]

[Interviewer] ...but they don't ask anything else?

No, they don't ask anything. Only 250 pounds; that's only for the appointment, only! And then they charged me 1.225 for removing the tooth, which took them less than an hour, right? But I had to do it, because I was in pain.

[Interviewer] So you have never even tried to register with a GP?

No, because you can't register with a normal GP. I haven't even tried that myself, because if you do, you get asked questions and all that, and someone [from the Home Office] might be there as well, and so... it ends up there. Even though I am paying taxes, yeah? (lonB08).

Such accounts explain why almost 90% of over 1.500 patients who were received during 2012 at an independent health clinic run by *Doctors of the World* in East-London were not registered with a GP (DOTW, 2013). A representative of the organisation told me that when they

ask people for the reasons why they haven't been to the [regular] health service [...], like one in five say *they think they will be arrested if they go and see a doctor*; and we see people with symptoms that are potentially serious or infectious diseases, who are not presenting to health services for precisely that reason (lonA03).

Given the significantly less 'hostile' environment that irregular migrants generally face in Spain and particularly in Catalonia, as I argued in Chap. 4, it is no surprise that fear of apprehension represents much less of a barrier in Barcelona. A qualitative study carried out by the city's *Public Health Agency* (Agència de Salut Pública de Barcelona, 2011), found no significant difference in terms of the self-reported experiences of trying to access healthcare between migrants in regular and irregular situations. The *Platform for Universal Health Care in Catalonia* (PASUCAT, 2014), an umbrella group of health professionals and NGOs dedicated to documenting the "often arbitrary application of the new health regulations in Catalonia", found 72 cases of arbitrary exclusion of migrants over a period of 2 years. More than half (54%) of them were lawful residents, which equally suggests that irregularity as such does not constitute a significant barrier. All the irregular migrants I interviewed and most of those I informally spoke to in Barcelona had eventually managed to get a health card, although many of them have been assisted or at least received guidance by local NGOs. Interestingly, the only interviewee who told me that he and his family "had a lot of trouble getting integrated into the system" was a 28-year-old US-citizen who also mentioned that he usually has no difficulty "passing as an American tourist" (bcnB03). In this case, the intersection of immigration status with racial privilege, which I briefly discussed in Sect. 2.2, works in a contradictory way: While it does protect my interviewee from being stopped by the police (see also Romero, 2008; Cebulko, 2018), it effectively

weakens his position vis-à-vis the healthcare system, for which he appears as a ‘health tourist’ (from a wealthy country) and as such, as undeserving of public support.

The relatively complex procedure established by the Catalan government requires all applicants to approach various public institutions in order to activate their formal entitlements. This premises not only substantial knowledge of the registration process, official language and institutional setting, but also a significant degree of trust in ‘the system’, which migrants in irregular situations all too often lack. The following account of the same interviewee illustrates that in spite of his relatively privileged position – as a white Westerner with a fairly stable job and university degree in translation – the irregularity of his stay renders such encounters with ‘the state’ a potentially risky endeavour and often requires careful differentiation between various kinds and levels of authority:

Overall, I trust the offices of the municipality, [but] I am really nervous about going to Social Security. But I have to in order to do some of the stuff that I am going to do, like in order to get health coverage I think I have to go to Social Security and get a letter saying that I don’t have the right to Social Security [laughs] [...] It’s sort of like, if I were working somewhere illegally, those are the people that would come and inspect me and then report me, you know. And so, sort of going willingly and saying to them ‘Hi, I don’t have any right to be here, please give me a right to use your [healthcare]’ [laughs] ... it’s so contradictory! So that makes me nervous, but people do it. *That’s what you are supposed to do*. So, if that’s what you are supposed to do, I’ll do it, but it makes me nervous (bcnB03).

The fact that at least he knew what he was *supposed to do* reflects one of the major differences between the two environments I am comparing: While in both contexts access rules to free primary healthcare formally include (or at least do not exclude) irregular migrants, only in Catalonia is this entitlement reflected by an explicit legal framework and a specific administrative procedure. Both require and reflect a political decision through which politicians formally justify the inclusion of these local residents as necessary. This arguably also reduces the pressure on individual providers and administrators of care, as the following accounts of a receptionist (1) and a family doctor (2) of a CAP in *Ciutat Vella* suggest:

(1) It is simpler for us [to register a person with regular papers] because it is very automatic and easier to introduce them [into the system]. But well, now that we have this type of health card [for persons in irregular situations] – which we didn’t have before – also in their case, once they fulfil the requirements, we automatically put them on, we assign them a doctor, give them appointments, and so on (bcnA13).

(2) Look, for me they simply appear on the list of patients that I am going to see on that day, whether in a regular consultation or as an urgent case [...] So this patient, who in principle is in an irregular situation, appears on my list, and I don’t question anything (bcnA12).

In the UK in contrast, irregular migrants accessing NHS care always constitute “an exception to the rule that makes eligibility contingent on lawful residence” (da Lomba, 2011, p. 363). In the words of two London-based health advocates (1, 2) and a GP I interviewed in Hackney (3), this means that.

(1) there isn’t a system here that you have to go through and get a certificate from somewhere which you then take to the hospital. So, either you are in, and anybody *can* be in, or

you are not in. But there is confusion about who is in and who is not in, and that's the difficulty (lonA08).

(2) It is not widely understood or accepted that undocumented migrants should have access to these services, even though in law there is nothing that says that they shouldn't. There is not a positive acceptance that this is our position and so that means that quite frequently health staff mistakenly turns people away because *they think they are not eligible* (lonA03).

(3) I get the feeling that undocumented migrants [...] do not have the backing of the law. *The law is made vague* so that it's very difficult for them to weave their way through it (lonA11).

As I will show in the following sections of this chapter, the legal but also moral-political ambiguities that always underlie the provision of healthcare to irregular migrants create difficulties not just for service users but also the very institutions and individual professionals providing or administering these services. Some of the differences in how these dilemmas are dealt with in London and Barcelona, respectively, become more pronounced when extending this comparison to the level of secondary healthcare.

5.2.2 *Irregular Migrants' Access to Secondary Healthcare*

According to the legal framework established in Catalonia in 2012, migrants in irregular situations were initially only given normalised access to secondary care after a continuous residence of 1 year. In case they requested or needed any hospital treatment before fulfilling this requirement, it had to be authorised on a case-by-case basis by a special commission within *CatSalut*, which had specifically been set up in order to deal with this situation. While *Medicos del Mundo* (MdM, 2014) criticised the absence of transparent criteria to be applied by the commission in determining each individual case, several of my respondents working within *CatSalut* perceived the whole procedure as mainly creating additional work as well as unnecessary delays to treatment, rather than a way of ensuring the effectiveness or sustainability of the healthcare system (bcnA17, bcnA08). I will discuss the role of this commission in more detail in Sect. 5.3, but what is important to note here is that following significant pressure from professional associations such as *PASUCAT*, the government eventually abandoned the 1-year waiting period in July 2015. Since then, irregular migrants have access to the full range of publicly funded services after only 3 months of (officially documented) residence in Catalonia (Blay, 2015).

Recent developments in the UK, on the contrary, point in the opposite direction: Since 2004, when the government first introduced the *Overseas Visitors Hospital Charging Regulations*, all foreigners who are not 'ordinarily resident' – a status not explicitly defined in law but conditional, among other things, on lawful residence – are categorised as 'Overseas Visitors' and as such, in principle, should be charged

the full cost of any NHS hospital treatment they incur⁷ (da Lomba, 2011; Department of Health, 2013a; Aspinall, 2014). At the same time, however, the Department of Health (2013b, p. 55) also makes very clear that where treatment is considered ‘urgent’ or ‘immediately necessary’ it cannot “be delayed or withheld pending payment”, which again gives significant weight to the medical assessment of the patient’s condition. As I will discuss in more detail below, the discretion in taking these decisions comes with the very nature of the medical profession and thus unavoidably plays a significant role within every healthcare system (semFYC, 2012). In the case of the UK, however, treatment of ‘Overseas Visitors’ is officially defined as ‘urgent’ where it “cannot wait until the person can be reasonably expected to return” to their country of citizenship (Department of Health, 2013a, p. 43). Clinicians are thus automatically required to take into consideration the likelihood and possible duration of a patient’s stay in the UK (da Lomba, 2011). Both directly depend on his or her immigration status and are particularly difficult to assess in the case of irregular migrants, who are estimated to represent more than 60% of the total ‘chargeable population’ (Department of Health, 2012, 2013a).

On one hand, the fear of having to pay – or even to receive a bill later on – obviously constitutes a significant additional barrier for many migrants in economically unstable situations. Being poor, thereby increases the exclusionary effect of irregularity. On the other hand, this is also where the incentive for NHS hospitals to recover the costs of the services they have delivered starts to overlap with the efforts of immigration authorities to detect irregular residents or at least deter their use of public services. According to current rules, once identified as an ‘Overseas Visitor’, the full costs have to be borne by the patient, or otherwise – if they cannot pay – the individual hospital. While this is meant to encourage hospitals to require payment in advance or otherwise deny treatment (where it is not considered ‘urgent’ enough), an official review of this policy recognised a lack of incentive to properly identify chargeable patients in the first place (Department of Health, 2012). While the efficiency of this system thus hinges on the participation of individuals working within each hospital, the structural proximity between healthcare and immigration policy also becomes explicit through a formal mechanism that allows

NHS bodies [... to] share non-medical information with the Home Office, via the Department of Health, on those [patients] with a debt of £1,000 or more once that debt has been outstanding for three months, with a view to better collect debts owed. The Home Office can then use that information to deny any future immigration application to enter or remain in the UK that the person with the debt might make (Department of Health, 2013a, p. 63).

While the threshold has since then been lowered to £500, this information exchange does not require patients’ explicit consent although they “should” be made “aware of the potential immigration consequences of not paying” (*ibid.*). For

⁷ Until 2004, like in Catalonia between 2012 and 2015, they were entitled to free treatment after 12 months of, even irregular, residence in the country. Exceptions from the general charging regulations are in place for certain cases, such as the diagnosis and treatment of a regularly updated list of communicable diseases.

Max Wind-Cowie and Claudia Wood (2014, p. 13), this “poses an enormous ethical challenge for healthcare professionals and the NHS as a whole”. A maternity health advocate I interviewed in Hackney described this dilemma from the perspective of a midwife:

Should she say, ‘I will treat you because you are entitled to maternity care, but I have to tell you that you will be billed, and if you can’t pay the bill, that information will be sent to the Home Office’? I mean, I don’t know what I would do if I was a midwife, but that would be the correct information (lonA08).

In this context, Rayah Feldman (Feldman, 2020) argues that the NHS charging regulations as such effectively discriminate against (migrant) women in particular, whereby she highlights the intersectionality of immigration status on one, and gender on the other hand.

The existence of such mechanism together with media reports about the Home Office routinely “accessing NHS records to help track down illegal immigrants” (Ball, 2014), strikingly highlight the lack of what numerous human rights bodies and NGOs describe as a necessary *firewall* between the state’s health services and its immigration enforcement agencies (FRA, 2013; OHCHR, 2014; Hermansson et al., 2020). DOTW specifically criticised the *NHS Health and Social Care Information Centre*, which collects data about everyone accessing NHS health or social care, for sharing personal information of individual patients – including the locality where they are registered with a GP – with the Home Office in response to so-called ‘trace requests’. According to a representative of DOTW, this “is the first time that we see that despite reassurances [by the Department of Health] actually information is being shared by health services for the purpose of immigration enforcement, and we are really worried about that” (lonA03).

In several respects this stands in stark contrast to the situation in Catalonia: Firstly (and this is the case in all of Spain), the unconditional entitlement of all minor children and pregnant women to free healthcare is safeguarded under national law and was left untouched by the restrictive health reform of 2012. Secondly, whether or not foreign patients are to be charged for the services they receive from *CatSalut* depends on whether or not they are residents of Catalonia and whether or not they have the economic means (or insurance) to pay, but not on the ‘legality’ of their presence. In practice, migrants in irregular situations and without resources might still be issued a bill and even the fear or expectation thereof can in some cases pose a barrier, as a community health worker told me from her experience at one of Barcelona’s biggest public hospitals (bcnA10). What these patients are often not aware of, however, is that receiving a bill will remain without further consequences for their (irregular) stay in the country, as *CatSalut*’s client relations manager clarified in an interview:

This could happen in some cases, mostly because [...] it is difficult to identify in a hospital [whether someone is a tourist and thus has to pay or have a European health card; or an irregular resident without resources], and so they sometimes make a provisional invoice (*‘pre-factura’*). But what is clear here is that we don’t pass these provisional invoices on – they don’t become official debt – and if the patients tell us, or they tell the hospital rather,

that they don't have resources, these invoices are cancelled, and the costs will be assumed by *CatSalut* (bcnA17).

Thirdly, and related to the latter, many of the health advocates, professionals and NGO workers I interviewed in Barcelona made very clear that public services play no active role in immigration control, let alone enforcement (bcnA02, bcnA10, bcnA12, bcnA13). That said, however, it is also important to differentiate between the function(s) of public institutions and the behaviour of individual street-level bureaucrats working within them, as a representative of *Caritas Barcelona* specifically pointed out to me:

It is true that going to social services or to the doctor you can find racist people, or people who are against immigrants, and so a migrant can be [treated wrongly]. But this is an individual issue [...] it is not that the educational or sanitary institutions, or social services, would carry out controls for the police, or for the ministry of the interior, no. It doesn't exist and nobody would defend that or say that it should exist (bcnA03).

Partly in order to bridge the conceptual gap between individual and institutional practices, the focus of my subsequent analysis is at the level of 'organisational roles', i.e. the particular positions and corresponding functions that individuals occupy within certain institutional settings (Lipsky, 1987; Scott, 2001; Webb, 2006). In the remainder of this chapter, I will look for instances where the professional or administrative duties attached to these roles are affected by the intersection of two functional imperatives of the state: the provision of healthcare and the control of immigration.

5.3 Negotiating the Effective Limits of Access, Medical Urgency and Immigration Control: The Role(s) and Agency of Healthcare Workers

As discussed in Sect. 3.1, my analysis differentiates between the roles and functions of three broader categories of actors: (i) general administrative personal, (ii) professional service providers, and (iii) those actors more specifically responsible for managing migrant irregularity *within* a certain sphere of the public welfare system. This will allow for a systematic comparison of their varying degrees of power, discretion and involvement with immigration control and enforcement across different sectors of service provision.

5.3.1 Administrators of Healthcare

Whether in a hospital, health centre or GP practice, most service users' first encounter with the public healthcare system is through reception staff, who are usually responsible for providing information, registering new patients, assigning them to a

doctor and arranging their appointments or referrals to other services. The main focus here is on patient registration, whereby they implement the formal access rules outlined earlier and thus apply the criteria established through laws and regulations. The receptionist of a health centre in the Raval, the multicultural heart of Barcelona, put it this way:

They [the politicians] are the ones telling us how we must work, in principle, no? This is to say: the system functions a bit according to what they tell us. But OK, then we know for ourselves how we can mould it [*'moldearlo'*]. *We are part of this as well*, but...of course, sometimes they put us a lot of obstacles, so we are unable to do our best possible work, no? Sometimes we would like to do more but it's not possible because *they don't let us* (bcnA13).

Even though the formal rules and limitations to individual agency are the same for all practices within a certain territory, the outcomes of these negotiations can vary significantly. The experience of a social assistant working for the *Catalan Refugee Aid Commission* in Barcelona confirms this:

What we have detected a lot here is that it depends on the CAP [...] and it depends on the person. That's it. It depends on the person that happens to be at the counter and that is more or less sensitive to these issues... you know? It depends on the will [of that person], that's how it is. But the legislation is this, at the moment (bcnA04).

It is not surprising, then, that even in Catalonia where the rules are clearer and tend to be communicated more openly and proactively than in the British context, many migrants at least initially struggle to gather the correct information, as one of my interviewees remembers:

[D]ealing with the health system is one of those things where you go into an office and every time they tell you something different, or every person tells you something different. [...] So basically, it's a question of... I need to probably go to a different [health centre – where nobody remembers him] and lie. And say, 'I'm a student but my visa has lapsed, and I am here irregularly, I don't have the money for insurance, bla bla bla... please!' And then cross my fingers and *hope that I found the right person* (bcnB03).

This account also reflects a strong awareness of the fact that *finding the right person* can make a significant difference. At the same time, however, individual attitudes and responses to irregular migrants and their claims also have to be understood within their legal-political as well as institutional context. For example, several of the people I interviewed in London directly related the less favourable attitudes they were experiencing on the part of some healthcare workers to the central government's 'hostile environment' policy or rhetoric. A caseworker for *DOTW* put it this way:

Some of them are perfectly nice and want to help and do understand that people are in a difficult situation and just need healthcare; but others, truly, are feeling that by refusing to register an irregular migrant they are protecting their country and *they see themselves as part of the Home Office* by checking immigration statuses, which is not their job. But, yeah, I think that it's more about the general climate that was created over the past few years (lonA12).

This 'climate' thus seems to be conducive to what I introduced (in Chap. 2) as *autonomisation*, and some welfare workers might thereby even feel encouraged to

at least try to find out the immigration status of the people requesting a service. At the same time, and this is the case in both cities, also the health centre management has a certain degree of both formal and informal discretion about how strictly the rules are to be applied in everyday practice. At least in Barcelona this administrative room for manoeuvre is often used with the aim of including patients who are in irregular or semi-irregular situations. This was most apparent with respect to those who do not (yet) fulfil the 3-months-residence requirement and are thus categorised as potential ‘health tourists’. One receptionist told me that in the CAP where she works,

[...] they have even given us informal orders to be able to attend to this type of person, [...because] if we were to comply with the regulations, we would have to charge them for their visit. But this for example... *we just don't do it* [*'lo pasamos'*] (bcnA13).

According to the same interviewee, the rules tend to be applied more strictly in other parts of Barcelona where immigration and irregularity are less common, so that administrative personnel themselves have to find ways to “make exceptions” where to them it seems necessary or simply convenient. For example, they can provisionally arrange a first appointment with reference to some “pending documentation” that the patient “is still in the process” of obtaining (bcnA13), or – as another administrator told me – by recording the appointment under a slightly later date so that it falls within the period of the patient’s formal entitlement (bcnA08). Interestingly, the second interviewee also mentioned that when migrants try to register a family member (usually a child) who is not present in person, “I always tell them: ‘no, you will need to bring your child, because I don’t know if your child is still in your country’” (bcnA08). Both instances can be seen as strategies employed by individuals – the receptionist in one case and the child’s parent in the other – to circumvent the same temporary limitation imposed by law in order to more strictly regulate access to the Catalan healthcare system.

In this sense, the situation is not too different from that in London, where at least some GP practices are aware that a too rigorous interpretation of official access rules might infringe their legal obligations towards local residents and thus opted for an explicitly lenient interpretation of these rules. When I asked the head receptionist of a GP surgery in Hackney what kind of documentation she and her team would usually ask for, she was keen to emphasise that

here we don’t take anything – no more. We used to ask for proof of address, but for the last 3 or 4 months we were told [that] we are not allowed to require any proof of address. So, if someone says, ‘I live there’, that’s it. If it’s in the catchment area, we just allow them to register without any proof [...]. We don’t ask for any kind of proof, ID, or anything like that (lonA14).

From her own perspective as reception staff, however, she also recognised that what she described as “our doctors’ decision” – to not (anymore) verify the patients’ home address or even identity – does create more work for her and can make it more difficult to administer any continuous or follow-up treatment:

I am not saying that we should [ask for proof of address] but it also helps it to be easier. At least we wouldn’t have a lot of people registering at one address and then when the health

authority sends out their medical card, it comes back as ‘not known’. Because that also means that it’s a lot more work this way, but it’s not my decision so I don’t really... I just go along with it. [...] I also think that a lot of other surgeries ask for proof of ID *just to make sure that the patients are who they say they are and that they are registered correctly*, because [here] you can come and change your name the next day and say I am someone else. So [...] how do you know that the care that you are giving is actually for that particular person? So, this is where I would find it a little bit conflicting, but as I said, *it’s not my decision* (lonA14).

Quite clearly, it is mostly the administration of public healthcare – rather than its actual provision by doctors and nurses – that is rendered more complicated by a lack of official documentation. This has also been noted by respondents in Barcelona, where minor children, for example, are entitled on the sole basis of their age and independent of the place, length or ‘legality’ of their residence. Asked how a patient’s age is assessed in case no documentation is presented, the reception manager of one CAP said:

I just believe it. When I am in doubt I just believe [them]. Also because, let’s say, they have the face... OK, someone who is 20 can fool me and say s/he is 18. But there are not so many, you know, if that happens once, in one year, it will not affect us very much. Now, if that would happen a lot, then *some kind of control would be needed* (bcnA08).

Importantly, given the nature of official identification documents such as the passport, it is only a small step from verifying a patient’s identity or age to (also) checking their immigration status. A recent report by *DOTW (2016)* shows that 13% of the recorded refusals of GP registration in England were due to reception staff mistakenly requiring proof of legal immigration status, which the applicants were unable to provide. In each of these cases, a health centre receptionist had felt entitled to or even responsible for exercising internal immigration control. Neither in the UK nor in Catalonia does the receptionist’s role involve a duty to systematically check immigration statuses, but it was mostly in the latter context that those I interviewed questioned their own authority to do so, as one of them emphasised:

Well, sometimes when I ask for their documentation, they tell me they don’t have [any], and so, of course, you’ll have to believe it. *I cannot force anyone to show me [a passport]*. If s/he tells you that s/he doesn’t have one, you believe it. And then later it sometimes comes out that s/he actually has a passport; that also happens. But I cannot refuse [registration] by demanding that they show me something (bcnA15).

At the same time, and in both cities, some of the reception staff I interviewed were convinced that being ‘laxer’ or having ‘more open’ access policies than other practices within the same area would automatically divert people – and particularly those perceived as administratively ‘difficult cases’ – to them, as the head receptionist I interviewed in Hackney pointed out:

I don’t know why [the other practices] have made those kinds of decisions, but what I am saying is [that] because we stick out, *people will come here more*, because we don’t ask for proof of address. So, a lot of *our services will probably get overloaded*; because... sometimes it goes through word of mouth, so someone would say ‘hey, you don’t need to provide proof of address here, just say you live here’ (lonA14).

This clearly echoes a familiar argument about immigration that is almost as widely accepted as it is difficult to substantiate or quantify: that comparatively liberal access policies but also stronger protection or better visibility of existing rights and entitlements granted to foreign residents will automatically attract further ‘unwanted’ immigration. As Marlou Schrover and Willem Schinkel (2013, p. 1130) put it, “no country wants to be accused of being less humanitarian than neighbouring countries, but no country wants to attract migrants with too much humanitarianism either“. Both at the level of states and that of health centres, this so-called ‘pull-effect’ is often suspected of leading to some kind of ‘overload’, unless it is countered through effective gatekeeping mechanisms.

Within the health centre, a lot of the gatekeeping responsibility is borne by front-line staff. The above-cited report on GP registration in England specifically highlights that in 32% of all refusals the responsible practice manager was not available to confirm the receptionists’ decision (DOTW, 2016). The latter thereby informally exercise a kind of discretion that is not explicitly foreseen under the current legal framework, although it arguably is fostered by its ambiguity. Here it is important to note, however, that individual gatekeepers can also use their discretion to facilitate access to a service they administer, as becomes clear from the following account of a reception manager I interviewed in the district Sant Martí of Barcelona:

When I refer someone [to secondary care] and tell [the hospital] that s/he is an irregular migrant who does not have anything [no money] ... then the hospital will charge it to *CatSalut*. Now, if the person arrives at a hospital and has *not* passed through me, they’re going to give him/her a bill. [...] They always have to go through primary care, because *I am the one who sends them*. So, if I send them, they will not be billed, and everything will be processed via *CatSalut* (bcnA08).

Independent of whether it bars or facilitates someone’s access to something, gatekeeping always involves the exercise of a certain form of power that comes with a particular role. While the power and responsibility to refer someone (or not) to a hospital actually lies with the family doctor – rather than the receptionist – it is important to remember that both in the UK and in Spain *all* patients (including citizens) are subject to this very kind of gatekeeping: If they want to receive a specialised treatment or examination that is publicly funded, they have to go through primary care and be assessed by their family doctor or GP as being in need of such service.

Throughout this book I argue that gatekeeping and other practices of inclusion or exclusion can only constitute a *legitimate* exercise of power or discretion as long as they are based on the internal logic(s) of the very subsystem which in order to effectively fulfil its function for society requires this particular power to be vested in a particular role. As soon as receptionists or other healthcare workers (have to) follow or take into account the external logic of immigration control when exercising their power or discretion over a patient, they become deputies of the immigration regime. The same is also true for medical professionals whose role and responsibility towards their patients is, overall, more likely to conflict with the logic of immigration control.

5.3.2 *Professional Providers of Healthcare*

When talking about irregular migrants' access to healthcare, many of my interviewees in both cities referred to the moral obligations and professional values attached to being a doctor or nurse. Quite often they pointed at the tension, if not outright contradiction, between these values and duties on one hand, and immigration law and the corresponding administrative procedures on the other. Especially healthcare professionals themselves were very often concerned about instances or mechanisms of selective exclusion towards certain groups of people from the services that, after all, *they* provide. A family doctor working in Ciutat Vella (Barcelona) put it this way:

We have our own deontological code [...which] *is necessary to ensure good practice* and the well-functioning of [the healthcare system], right? So, we cannot distinguish people by religion, and just as we don't deny health services to a person who is of a particular religion, also a particular administrative situation [...] would not be a cause [for exclusion]. We are very aware of this, but obviously *the government's policies are often antagonistic... contrary to our deontological code*. And so, we enter in a kind of moral conflict, or *they intend* that we enter into a moral conflict – into which we do not really enter because [for us] *it's life above all else*, taking care of and helping [the patient] above all else (bcnA12).

On the basis of these principles in combination with a particular expertise and bolstered by a strong professional standing within society, their job gives them a significant amount of individual discretion. This is most obvious where health professionals are expected to decide whether a particular case constitutes an 'emergency' and which types of care should be considered as 'necessary' (DOTW, 2013; OHCHR, 2014). The responsible doctor of another CAP in the centre of Barcelona proudly maintained that the ambiguity of these concepts together with the legal protections they afford allows him to basically treat *anyone* without breaking the law:

We [doctors] can decide that, and *that opens a door for us to make different exceptions when we think it is appropriate from a medical point of view*. [...] According to the law you can treat any urgent [case], someone that you consider is an urgent case. And I can consider that everything that comes through the door is an urgent case (bcnA14).

That said, he also acknowledged that depending on the workplace and specific role within the healthcare system, certain administrative rules and requirements more or less easily get in the way of doctors' professional freedom.⁸ While he generally appreciated that "under the law that they made in Catalonia *you can sort out* most [cases] pretty well" (bcnA14), he also noted that the recent introduction of a computerised system for prescribing medication has limited the flexibility that he used to have when writing all prescriptions by hand.

At the same time, the accounts of health professionals I interviewed in Barcelona and London also reflected their awareness of the fact that public funds are limited, and their decisions as public servants thus need to be justified. As one doctor in

⁸For example, family doctors will encounter different barriers in their everyday dealings with their patients than doctors working in A&E.

Barcelona put it, this usually involves weighing the costs of a particular treatment against its perceived necessity:

[It depends on] the cost that it represents [to the healthcare system] and even if we suppose that I see [one additional patient] each day – which is not even the case – they will still pay me the same, and so it will not be felt by the administration [...] or by society. [It will make a difference] just for me, but not beyond. So, I am not sure... but of course the funds are limited and come from everyone [...] and so *I think that it would need a solution that involves the whole society and not just one professional*. But in any case, I have to say that I don't know what I would do, I really don't know. If it were a serious disease, I would treat it for sure. If someone comes just because they have [...] a cold, I would possibly tell them... I don't know (bcnA09).

The deontological code, institutional logic and expert knowledge that underlie and justify a doctor's discretion are essentially the same whether s/he works in Barcelona or London. The somewhat tighter rules that the UK government has put in place, however, can make it more difficult for healthcare professionals to 'sort out' individual cases, as the following statements of a nurse (1) and a GP (2) I interviewed in London indicate:

(1) There is a little loophole because anything that is urgent or immediately necessary is free at the point of delivery. So, if there are patients [in an irregular situation] and it is kind of life threatening or critical... so if you can argue that without an intervention, they will be even more unwell, then that's a loophole. But obviously *not everything can be argued like that*, and it depends which healthcare provider you are arguing with (lonA13).

(2) I mean I personally would like to... to do that... I mean, I'd probably try and help patients to get [the treatment they need], even though sometimes they are not eligible, so it's probably not right... but... *it's difficult*. I think it's sometimes the right thing to do [if] it's in the best interest of the patient (lonA25).

In addition, and closely related to individual discretion, the medical profession also brings with it a significant degree of responsibility for the wellbeing of the patient, so that doctors in particular – even if *personally* they were 'against immigration' – could not simply choose to ignore their duty of care without potentially "risking their career", as several of my interviewees explicitly emphasised (bcnA08, lonA08, lonA11). Arguably, it is precisely because the nature of their job forces them "to attend to the persons and not to their administrative status" (bcnA10) – as a community health worker in Barcelona put it – that medical professionals usually tend to be *shielded* from having to perform gatekeeping functions that are not based on medical necessity but administrative criteria like local residence, income or immigration status. In both cities, several professionals and NGO workers I interviewed assured me that

doctors and nurses *themselves* don't put up barriers. [...] I am speaking as a nurse myself and having lots of medical colleagues I don't think we see a problem with our patients being from abroad or with our patients not having papers. *We see a patient from the point of view that they are sick and unwell, and they need our medical help. I think the problem comes in the people before they see the doctor or nurse* (lonA13).

The UK Department of Health (2010, p. 27), however, also recognised "the crucial role that GPs already play in committing NHS resources through their daily

clinical decisions – not only in terms of referrals and prescribing, but also how well they manage long-term conditions, and *the accessibility of their services*” (emphasis added). Behind what appears to reflect purely economic considerations lies a clear tendency of healthcare staff increasingly being expected to (help) police the government’s immigration rules, which at the same time are becoming ever more restrictive and complex. Especially GPs (as well as certain A&E staff) could – according to official guidelines – systematically “identify in the referral letter any patient whom they believe may be an overseas visitor, which the relevant NHS body could then check” (Department of Health, 2013a, p. 52). Individual doctors are thereby increasingly put in a difficult position, as a GP in London pointed out to me:

If that happens – because there has been also talk about that we should be one of the first... well... to put barriers, and we should actually identify people – it can be difficult with confidentiality. If for example, someone comes in and they are an ‘illegal’ immigrant and I see them as an emergency and they say, ‘oh please don’t say I am [irregular]’, then this is... I don’t know what to do in that situation. I wouldn’t know (lonA25).

But even without this ‘suggestion’ having yet become a formal obligation for doctors and nurses, the same interviewee later also acknowledged that already now she sometimes considers that the best advice she can give to a foreign patient is to leave the UK:

I mean, of course, if it is an emergency, they will get the help, but if someone needs continuous treatment [...] and it’s sometimes something that takes years... so I mean, we have to give the patient the best advice, and sometimes really the best advice is actually *not to be here* if they have a difficult situation... because that means that they cannot get... *the care would not be continuous, it would not be very effective* (lonA25).

Arguably, her account suggests that she not only considers advising certain patients to better leave the UK ‘voluntarily’, but that she also anticipates their likely deportation in case they do not – which is what in fact would then disrupt the treatment. Even without being legally obliged to do so, she thereby already assumes her designated role for the immigration regime and almost seems to have accepted her place within the ‘hostile environment’ through which the government aims at precisely that: encouraging return. This is a good example of how welfare workers can effectively become migration managers and return thereby an obvious solution to migrant irregularity. It also shows how the negative media and public discourse – whether focused on ‘health tourism’ or the imperative to ‘fight illegal immigration’ more generally – actually undermine not only the patients’ legal entitlements but also individual doctors’ duty of care (DOTW, 2013). All of this puts in jeopardy the confidentiality and trust that is not only essential to the doctor-patient relationship but also necessary for a correct diagnosis and successful treatment (Kilner, 2014; Wind-Cowie & Wood, 2014).

As will become clear from my analysis, also hospital doctors are increasingly expected to at least consider the immigration status of foreign patients when assessing their medical needs. The following quote of a nurse working in the A&E department of a hospital in North-London highlights the underlying contradiction:

[The patient's immigration status] shouldn't make a difference. It would not be ethical if it did make a difference to the [doctor's] decision [of which treatment is 'urgent']. Because they should be seeing the patient solely based on what is wrong with the patient, not on whether or not the patient is entitled to free healthcare (lonA13).

The UK government is aware of the inherent problem and noted that “[c]linicians are not expected to take on the role of immigration officials, but they are often well placed to identify visitors who are chargeable” (Department of Health, 2013b, p. 17). However, as long as immigration status is the main criterion for charging someone, and NHS staff – even if not necessarily clinicians themselves – have to identify who is chargeable, they will effectively be playing a role in controlling immigration. Importantly, this is not just a question of ethics, but also of correspondence between the allocation of competences and adequate training, as the GP I quoted above also emphasised:

I mean people will have different opinions [but] I personally don't think that as healthcare workers that is our job. We are not... I don't feel we should be border control. [...] I think this kind of checking and border control should be done by *other* people and not by healthcare workers. Public health shouldn't be involved in it. Sometimes it is very difficult *for us as healthcare workers* to ascertain that someone is an illegal immigrant, [...] because *it's not something that we are trained to do* (lonA25).

What she refers to is primarily the checking of relevant documents in order to establish someone's immigration status, or what I called '*having to know*' when I introduced my analytical framework in Chap. 2. But also the second dimension of this framework and of being implicated in immigration control – '*having to tell*' – has an impact on how individual healthcare workers interact with their patients, and vice versa. The A&E nurse I interviewed in London put it like this:

If doctors or nurses have to *disclose* the status of their patients all the time, it will be affecting the treatment that they give them, and nothing should affect the treatment that you are getting from a doctor or a nurse. [...] It will affect [it] because the patient would not engage as much with the services if they are thinking 'oh, the Home Office is going to find out', or 'I will need to pay'. It's going to be too stressful; they are not [even] going to come to a doctor or nurse (lonA13).

Given the sensitivity of the personal data that healthcare staff in general and professionals in particular are handling in their everyday work, confidentiality and data protection requirements play an important role in the area of healthcare and constitute a crucial element of individuals' professional duty. While several of my respondents in both cities were not sure whether or not there was a specific law or regulation that explicitly prohibits passing immigration related information about their patients to other agencies, almost all of them – and doctors in particular – made very clear that they would never do so:

I think doctors will consider it as just another issue of professional secrecy. It's the same as if someone tells you that s/he maintains high-risk sexual relationships or anything like that... and so, well, *it's a secret*. I don't know how this would be considered from an administrative point of view, but... [...] I think that *as doctors we don't consider ourselves to be the police for anything*; but actually the contrary, in this sense (bcnA09).

This last statement of a family doctor I spoke to in Barcelona strikingly coincides with the following – made by a GP in London – in that both make a similar distinction between doctors on one hand and administrative staff on the other.

[...] The *General Medical Council* [GMC] rule states that I may not even disclose that a patient is registered here, [...nor] any information whatsoever, without their consent. *Now that applies to doctors*. But our managers here would not do it either; and our receptionists obviously know not to give information to anybody over the phone. [...] But once somebody from the Home Office did phone our manager and said ‘well, we need this information’, and she said ‘well, I am quoting you the GMC rule’, and he or she said back ‘oh... but some doctors choose to give this information’, which was fairly horrifying, that apparently some doctors are... Now, they may be doing it in an innocent way, or they may not even realise (lonA11).

Whereas professional providers and administrators of mainstream public healthcare often rather inadvertently come to play a certain role within the overall management of migration, both the British and Catalan cases demonstrate that the internalisation of control also creates the need for new institutional structures and personnel that specifically deals with migrant irregularity *within* the healthcare system.

5.3.3 ‘Managers’ of Irregularity Within the Healthcare System

The UK Department of Health (2013b, p. 13) emphasises that all “[r]esidency based, tax-funded systems rely on the identification of those who are not entitled rather than those who are, with the onus on staff to identify those who should be charged.” While this leaves open at which stage, by whom, and on what basis such identification should be carried out, it is pertinent not only to the UK context but also for the Catalan health system. At the same time, an important difference becomes apparent here: Whereas in the case of Catalonia the level of any particular patient’s entitlement (depending on income, employment status and length of residence) is clearly indicated on their personal health card, ‘Overseas Visitors’ in the UK, once they are registered with a GP, hold exactly the same kind of NHS card as any other patient. This lack of specification of the holder’s entitlement beyond primary and emergency care is a remainder of the system’s universalistic origins and makes it difficult for hospitals to comply with the legal obligation that is now placed directly on them, “to determine whether the Charging Regulations apply to any overseas visitor they treat” (Department of Health, 2013a, p. 16).

At the hospital level, this mismatch has created the need for a particular kind of administrative personnel – that is, a new organisational role – responsible for identifying who is chargeable. It is not surprising that from the perspective of these so-called *Overseas Visitors Managers* (OVMs) one of the major problems of the NHS is that people too easily ‘slip through the system’, as the OVM of a mid-sized hospital in South-East London explained to me:

[...] and the reason why they can slip through the system [...] is that *anybody can obtain a national health number*. [...] All they do, actually, is go to a GP, ask the GP to register them, and the GP registers them and gives them an NHS number (lonA09).

On one hand, this reflects what according to one of the GPs I interviewed has become a common view within the NHS: that GP registration itself constitutes “an underground route to secondary care” (lonA11). On the other hand, the OVM acknowledged that even though “by law, we have to check every new patient that comes into the hospital, [...] that is physically impossible, and it would cost an absolute fortune” (lonA09); which is why in practice her department focuses mainly on the areas of women’s health and orthopaedic. Asked for the reasons behind this selection, she explained that it was “principally because a lot of people come over here to give birth, and orthopaedic because it is quite an expensive area”, but she also mentioned that “we have also good staff that we could *encourage to participate* in those sections” (lonA09). The exact meaning of this comment only became clear to me when she later received a phone call from the hospital’s maternity ward notifying her about the arrival of a new patient, after which she explained to me:

In that case I would be very very surprised if that person is entitled to NHS care. So, we will go up to see her, *we will ask her to see her documentation*. I mean she is on the labour ward, so I don’t think that’s the right time to ask, personally, so *I will probably leave that and go after she has given birth*. We will ask to see her documentation; we will ask her relatives to bring in that documentation. It could be that she has got leave to remain. It may have been that she just came to see her family and just came down... you know, we cannot guarantee it but that case we would class as suspicious (lonA09).

Her account is a good example of how “NHS staff often have to make assumptions about government [immigration] policy in their work”, as Wind-Cowie and Wood (2014, p. 55) have noted; but it also highlights the level of direct implication of her role in the actual enforcement of this policy, as well as the very subtle kind of discretion (as to whom, when and how to check) that she thereby employs. Asked what happens in case a patient is not able to prove their entitlement, or even to produce a valid passport, my interviewee replied that

they *have to* produce their passport, which [...] will have a stamp in it, so *that* will show whether that person is entitled or not. From there, once we have identified her, we will raise an invoice. If she doesn’t pay... again: we have to treat this patient, but if she doesn’t pay, then in three months’ time that invoice will be going over to... we will inform the Department of Health [...] who then filter it and would let the Home Office know (lonA09).

Interestingly, while she clearly perceived her role within the hospital and the NHS as one of control, she did not readily acknowledge that what she is controlling is immigration. Instead, when I asked her how she felt about ‘quasi’ acting as an immigration officer, her answer was rather ambiguous:

I don’t think we do. I mean, if you were an immigration officer you would be informing immigration [authorities], you would be informing the borders agency. And we will work with the border agency, and we will let the... Department of Health know of *patients that owe us money*... Now: it’s the Department of Health that then would possibly pass that information to the Home Office, and it would, you know, then put it on a system so that perhaps these people... but they are not traced here! It’s normally the people that try to get

back [into the UK] that *we are stopping*. [...] So personally, I don't think that we work as an immigration officer... maybe wrongly, *perhaps we do* (lonA09).

She clearly emphasised that she and her team are not targeting immigration offenders but patients who owe the hospital money. At the same time, however, she is aware that her role – together with the mechanism that 'lets the Home Office know' – plays a decisive part in the government's broader efforts to limit irregular residence, but also unwanted immigration more generally:

I believe that that is a deterrent, and I think what it is doing is stopping a lot of people getting their Leave to Remain. What we are also finding is that some of the patients that have gone home, wherever that might be... the Caribbean, Africa, Asia... you know; they have gone home with a debt but when they apply for another visa, they are being told that they can't get it (lonA09).

Such outstanding NHS debt can thereby function as an effective barrier to regularisation, even where an applicant would otherwise meet the legal requirements. Importantly, the connection between healthcare and immigration control also works the other way around, so that even doctors are increasingly expected to take their patients' immigration situation into account when assessing their medical needs. When I asked the OVM whether the hospital doctors were aware of these regulations, she said:

Well, they don't need to know [the regulations], do they? We will send them a letter saying that their patient has been identified as *not entitled to NHS treatment*, and that we would therefore like to get confirmation from them as to how they wish to proceed.

[Interviewer] *So a patient having or not having LTR could influence their assessment?*
Yes, it will. *It has got to* (lonA09).

While the immigration status of a patient is explicitly not supposed to influence the assessment of a doctor working in the Catalan healthcare system, also this system relies on certain ways to identify patients who should (and can) be charged for the treatment they receive, whether directly or via their insurance if they have one. In principle, this happens at the level of *CatSalut*, where the patient information recorded by health centre receptionists is centralised and screened for potential fraud, as a community health worker explained to me:

Once *CatSalut* receives the documents of the person, there is an additional filter. That's where they investigate whether this person is a tourist who comes to take advantage of the health system or is a person without resources. [...] So not everyone who has applied for a health card has also been granted one. Not everyone. Because they saw that there are [some] persons who are not in this situation of vulnerability. But others, however, really need it because they are in an extreme situation. So, they [*CatSalut*] evaluate this quite well, I think (bcnA02).

CatSalut thus generally tries to draw a line between *residents* who (mostly because of their immigration status) are excluded from the national insurance system but also unable to pay privately, and *non-residents* suspected of 'health tourism'. For the UK system, in contrast, both of them are 'Overseas Visitors' and thus automatically placed in the same administrative category, which not only blurs two very distinct social realities (Wind-Cowie & Wood, 2014) but also renders even

those entitlements that irregular migrants theoretically have less visible (Schweitzer, 2019).

In Catalonia, as mentioned in Sect. 5.2, those relatively few cases of patients who were identified as entitled to free primary but not (yet) secondary care had to be managed individually by a special commission within *CatSalut*, as the organisation's client relations manager explained to me in May 2015, less than 2 months before the access rules were simplified and the commission dissolved:

The so-called *Commission of Exceptional Access to Programmed Specialised Care* was created to deal with those cases that did not have access to specialised care but because of their illness had to be treated; and [of those] we have had 60 or 70 cases a year... that is, there are very few people who are asking us [...] to be treated or admitted to a hospital during that first year. [...]

[Interviewer] *And what is the decision of this commission based on, then?*

The decision is based on a clinical report issued by a hospital, saying 'this person with this diagnosis would have to be provided access to specialised care'. And so, there is this commission formed by a lawyer, a purchasing specialist, a hospital doctor, a member of the Client Relations Department, and there is also a pharmacist... and between these professionals they analyse the case and then say yes or no. Basically in all the cases presented – I think 99 per cent – they said yes (bcnA17).

In accordance with this account, one of the health centre administrators I interviewed in Barcelona remembered “only one or two non-urgent cases” where patients had to wait until they fulfilled the 1-year residence requirement (bcnA08), whereas in all other cases they did receive the treatment that the family doctor had deemed necessary. In practice, the administrative categorisation and corresponding levels of eligibility that had been put in place in order to at least temporarily limit irregular migrants' access to secondary public healthcare had thus routinely been overruled by professional assessments of what the patient's medical condition required to be done. The responsibility and power to manage this particular aspect of irregularity has thereby remained in the hands of local actors primarily committed to the logic of providing healthcare (and *shielded* from that of immigration control), which stands in stark contrast to the role and duties of *Overseas Visitors Managers* in the UK context.

Another kind of actors, which are often crucial for the management of irregularities that public welfare systems face are NGOs and private associations. Their functions range from information, awareness raising and advocacy to the actual provision of complementary or even alternative services to particularly vulnerable groups. Their relationship to mainstream services can thereby be more or less formalised. In Catalonia, for example, they have become responsible for supporting the registration of those patients who cannot provide the otherwise necessary documentation, as the administrator of a CAP explained to me:

Before, those who came without anything, without papers, were handled here. There was an application form for all those who came without papers and we processed them here. But with the new law this group has been diverted to associations that are dedicated to doing just that.

[Interviewer] *So the law itself establishes that these associations have this role?*

Well, it has been agreed between *CatSalut* and these associations. The instruction [10/2012] simply says that these people without papers will be attended; that's what *CatSalut* says [...] but the procedure of how we apply this is now that these associations are doing it (bcnA08).

It is important to emphasise that here 'without papers' refers to the lack of a patient's means of identification, not the 'illegality' of his or her residence, which per se does not hinder their inclusion into the mainstream system, as the same interviewee later clarified:

For me, the *undocumented* are those who come by boat [*'en patera'*] with what they have on them, with no identification or anything, and these come through the associations. But those who came by plane [i.e. on a tourist visa, which they overstay] and have a passport... I can attend them and process their application without any problem (bcnA08).

More specifically, in 2015 *CatSalut* signed an agreement with the *Red Cross*, which empowers the organisation to certify – in cases of exceptional vulnerability and for the sole purpose of issuing a health card – that someone is residing within a municipality of Catalonia even though s/he is not officially registered (*La Vanguardia*, 2015). For *CatSalut*'s client relations manager, this was a step that "has helped us to close that little gap that had been left unresolved [by the law], because obviously it was not the fault of these persons that in some municipalities, they wouldn't allow them to register [without official proof of address, for example]" (bcnA17). Several of my interviewees have noted that without the help of a friend or support group, many migrants in irregular situations would not be receiving the care they are entitled to. In some cases, this facilitation works through personal contacts that NGOs have established with individual doctors (or reception staff), as the experience of a 19-year-old migrant from Gambia demonstrates:

When I didn't have my health card, in the flat where I was staying they [the NGO which provided the flat] had some contact with a doctor at [a particular CAP], and so I went there to do an analysis [...] and it was before I had the three months of local registration. [Interviewer] *So, it is known that [this CAP] is a place where you can go even without a health card?*

Well, *you cannot go alone*. Alone not, my [social worker] took me there but if I would have gone alone... no. If someone is with you or anyone has any contact, then they can call and [...it will work] (bcnB02).

Of the many charitable, community and migrant organisations and initiatives that are active (and usually based) in London, one particularly stands out in the area of health: *Doctors of the World (DOTW) UK* has for many years been operating a drop-in clinic in East-London (run by volunteer doctors and nurses), an advice line for people experiencing difficulties registering with GPs, and a nation-wide advocacy programme dedicated to the promotion of equal rights to healthcare. Since December 2014, *DOTW* is also running a second clinic in Hackney, which was commissioned and funded (initially as a 6-month pilot scheme) by the *City & Hackney Clinical Commissioning Group (CCG)*. In a press release the local NHS body confirmed that "Doctors of the World received £50,000 to provide support and advocacy for patients in vulnerable situations in Hackney, making sure they are able to register with a GP and overcome other barriers to healthcare" (City & Hackney CCG, 2015). What it

did not mention is that for roughly 70% of the persons that *DOTW* receive – including many pregnant women and other medically urgent cases – the barrier is their immigration status.

In practice it can often only be overcome by volunteers doing “a lot of work to persuade people that [going to a doctor] is the right thing to do and that it’s safe, or at least likely to be safe”, as the organisation’s programme director told me (lonA03). The volunteers I interviewed did not perceive this work as a political act or even statement, because “the law says that they can be linked in with a GP, so we are just... *I don’t want to say enforcing the law...* but we are kind of just taking what’s already laid out and just applying it” (lonA12). Also here, the aim is thus not to set up a parallel system for a certain group of people but to direct them to mainstream care, which according to one nurse who regularly volunteers for *DOTW* often requires individual solutions, since

barely any of the patients we see in this clinic have photographic identification [...], but doctors’ surgeries normally need that [...]. So, we do a lot of negotiating here and a lot of trying to provide letters for proof of identification and address, and *some GPs accept that* and are very kind, and others make a bit of a fuss (lonA13).

Her experience reflects an important difference between the two environments in terms of how Third Sector organisations relate to and collaborate with mainstream services even though in both contexts they fulfil a similar function. Whereas in Catalonia their mediating role has largely been formalised through official agreements, in the UK it seems to work in a rather ad-hoc manner and thus again hinges on the willingness of individual healthcare staff to accept it.

The empirical data I presented so far allows to draw some general conclusions: firstly, the nature of public healthcare inevitably leaves significant scope for individual discretion; secondly, every patient is automatically subjected to such discretion, which can have exclusionary as well as inclusionary effects; and thirdly, this discretion becomes problematic where it is not just based on medical indications but also the (il)legality of the patients’ residence in a given state. In the final section of this chapter, I will summarise my findings and visualise the various positions that different kinds of healthcare workers in London and Barcelona occupy in relation to the respective immigration regimes.

5.4 Healthcare Workers as Migration Managers?

The initial idea behind the framework I have developed for my analysis of the *micro-management of irregular migration and its control* was that individual actors and the roles they play within a particular organisational field could be differentiated and compared according to their specific position in relation to the immigration regime. One of the aims was to thereby visualise the different kinds of their being or becoming implicated in immigration control and/or enforcement efforts.

Figure 5.2 shows the results of this exercise for the area of healthcare, based on the empirical findings presented in this chapter.

Each of the six rectangles represents one of the three role-categories – *administrators*, *(medical) professionals* and *managers of irregularity* – for one of the two environments. This enables comparison between different kinds of roles in the same context as well as similar roles across contexts. Their position across the 16 sub-sectors of the diagram indicates the degree or likelihood of them being involved in immigration control – on a scale ranging from deputisation, via responsabilisation and autonomisation, to shielding. Their position along the horizontal axis thus shows whether they are formally required or explicitly encouraged to *know* and thus somehow check the immigration status of a patient (left side of the framework), or effectively prevented from doing so (far right). Accordingly, their position along the vertical axis indicates their deputisation, responsabilisation, (potential) autonomisation, or shielding in relation to the question of whether or not to *tell* the immigration authorities in case they detect (or suspect) irregularity. Their relative position to each other reflects minor variations in terms of how concrete and compelling these rules or expectations are in everyday practice, according to the perceptions and reported experiences of my interviewees.

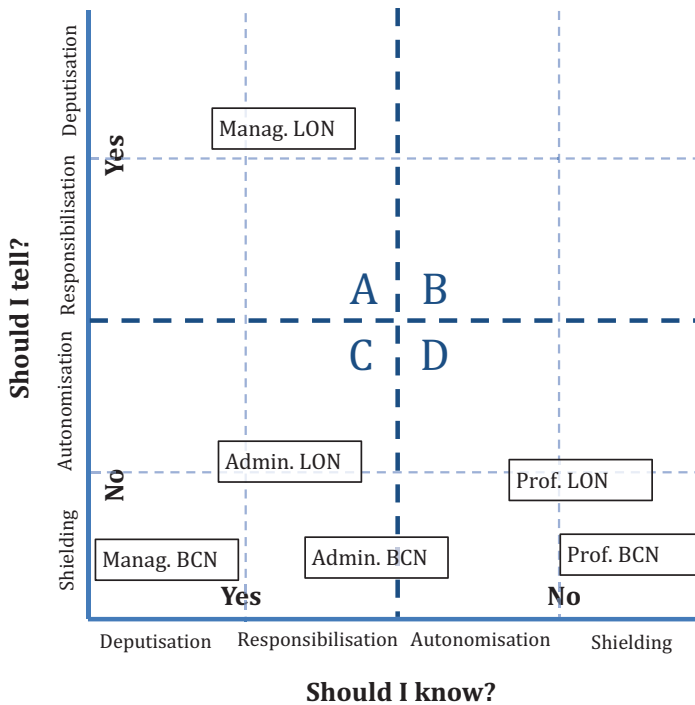


Fig. 5.2 The positions of different categories of healthcare workers in relation to migrant irregularity and its control

Both in London and Barcelona, *administrators* of healthcare are generally expected to (at least try to) find out the immigration status of a patient who wants to register. Although it is not their primary role to systematically check passports, they often rely on such documents to establish a patient's identity and/or eligibility. Since they are not obliged nor explicitly encouraged to share any of the information they thereby obtain (potentially including a patient's irregular immigration status) with the relevant authority, they are placed in sector 'C' of the framework. That those in Barcelona appear further to the right reflects two aspects: their stronger awareness that they cannot actually be expected to 'force' patients to prove their immigration status; and that regular status is less likely to be perceived as a precondition for registration with the Catalan healthcare system. Those in London are also closer to the top since they seem more likely to consider sharing immigration related information with the responsible authority, which explains the widespread (and not completely unfounded) fear among irregular migrants that dealing with healthcare administrators might trigger immigration enforcement.

Healthcare *professionals* working in London and Barcelona share the same 'deontological code' and values, and thus a strong conviction that immigration control is not part of their job. They are generally *shielded* from most gatekeeping functions and are not expected to check the eligibility or documentation of their patients themselves. Their work requires higher standards of confidentiality and data protection, which explicitly prohibit them to pass any personal information of their patients to other agencies, unless they have the patient's consent. In neither of the two cities are they formally obliged to *know* the immigration status of their patients, or to *tell* the relevant authorities if they happen to discover their irregularity. They are thus both placed in sector 'D', whereby professionals in London are somewhat closer to sector 'C' – since they sometimes do take immigration status into account when deciding which kind of treatment to offer; and closer to sector 'B' – because they are less explicitly shielded from, and in fact seem more likely to feel compelled to, share such information with the relevant authorities.

In both environments a certain management of irregularity becomes necessary because of how the rules and the systems for their implementation are set up, which creates the need for specific personnel. These *managers of irregularity* are (per definition) concerned with the immigration situation of the people whose cases they deal with, which is why they appear on the left side of the diagram. In Barcelona, the special commission that used to manage irregular migrants' exceptional access to secondary care was not linked to the immigration authority and its decisions were primarily based on a medical assessment of the patient's situation rather than their immigration status. *Overseas Visitors Managers* in London, in contrast, also work within the healthcare system but very much according to the logic of immigration control. While officially committed to the recovery of NHS debt, their main activity is checking immigration statuses – although they are not obliged by central government to check each and every patient. What arguably (and against my interviewee's self-perception) puts them close to the top of the diagram, however, is the mechanism through which the knowledge of patients' outstanding debt as well as their unlawful presence in the country is shared with the Home Office. For a

health advocate I interviewed in London, this “changes everything, because it’s the way that they have now discovered to penalise” (lonA08).

Crucial for my analysis is that the underlying policy not only aims at disciplining irregular migrants themselves but also the individual street-level bureaucrats through which the state delivers its services. Seen from this perspective, it is not a coincidence that healthcare workers in London increasingly feel under pressure to participate in the management of migration, as the A&E nurse told me:

Well at the hospital I don’t ask my patients anything to do with their immigration status, because if you [find out], the hospital unfortunately will have to act on it, and you will have to let your senior know and to let the hospital manager know [...]. So, it is very difficult in a hospital *if you have that knowledge* and someone knows you have that knowledge and then you don’t pass it on, you know... *I get in trouble* [...] So I tend to not ask my patients because I don’t want to... *I do not want to know* (lonA13).

On one hand, her statement reveals her concern about potentially being ‘penalised’ herself for failing to disclose her knowledge about the ‘illegality’ of a patient’s residence in the UK. On the other hand, she also hints at one way of avoiding such punishment: *refusing to know*, which generally appears to be an important mode of resistance against the internalisation of immigration control. As I will discuss at the beginning of the next chapter, the possibility of refusing to know has also been at the centre of a heated debate about whether or not British schools should collect information of their pupils’ country of birth and nationality.

References

- Aasen, H. S., Kjellevoid, A., & Stephens, P. (2014). ‘Undocumented’ migrants’ access to health care services in Europe: Tensions between international human rights, national law and professional ethics. In H. S. Aasen et al. (Eds.), *Juridification and social citizenship in the welfare state* (pp. 162–182). Edward Elgar Publishing, Incorporated.
- Agència de Salut Pública de Barcelona. (2011). *Immigració i serveis sanitaris a la ciutat de Barcelona. La perspectiva de la població marroquina, xinesa, equatoriana i pakistanesa*. Barcelona.
- Ajuntament de Barcelona. (2013). *Documento informativo sobre: Nueva directiva para el acceso al sistema público de salud*. Barcelona.
- Aspinall, P. (2014). *Inclusive practice. Vulnerable migrants, gypsies and travellers, people who are homeless, and sex workers: A review and synthesis of interventions/service models that improve access to primary care & reduce risk of avoidable admission to hospital*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/305912/Inclusive_Practice.pdf
- Ball, J. (2014). Home Office accessing NHS records to help track down illegal immigrants. *The Guardian*. Available at: <http://www.theguardian.com/uk-news/2014/jul/13/home-office-nhs-records-illegal-immigrants>. Accessed 10 May 2016.
- Blay, B. (2015). El Govern abre las puertas de la sanidad pública a colectivos que quedaban excluidos. *El Diario*. Available at: http://www.eldiario.es/catalunya/diarisanitat/Govern-sanidad-colectivos-queda-ban-excluidos_6_412318790.html. Accessed 10 May 2016.

- BMA. (2013). *Guidance for GP practices: Overseas visitors and primary care*. British Medical Association. Available at: http://www.blmc.co.uk/docs/BMA – Overseas Visitors and Primary Care _ British Medical Association.pdf.
- Boswell, C. (2007). Theorizing migration policy: Is there a third way? *International Migration Review*, 41(1), 75–100. <https://doi.org/10.1111/j.1747-7379.2007.00057.x>
- Cebulko, K. (2018). Privilege without papers: Intersecting inequalities among 1.5-generation Brazilians in Massachusetts. *Ethnicities*, 18(2), 225–241. <https://doi.org/10.1177/1468796817752562>
- City & Hackney CCG. (2015). *£400k fund launched for local health projects*.
- da Lomba, S. (2011). Irregular migrants and the human right to health care: A case-study of healthcare provision for irregular migrants in France and the UK. *International Journal of Law in Context*, 7(3), 357–374. <https://doi.org/10.1017/S1744552311000188>
- Delvino, N. (2020). European Union and national responses to migrants with irregular status: Is the fortress slowly crumbling? In S. Spencer & A. Triandafyllidou (Eds.), *Migrants with irregular status in Europe. Evolving conceptual and policy challenges* (pp. 73–97). Springer. https://doi.org/10.1007/978-3-030-34324-8_5
- Department of Health. (2010). *Equity and excellence: Liberating the NHS*.
- Department of Health. (2012). *2012 review of overseas visitors charging policy*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210439/Overseas_Visitors_Charging_Review_2012_-_Summary_document.pdf
- Department of Health. (2013a). *Guidance on implementing the overseas visitors hospital charging regulations*. Available at: <https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations>
- Department of Health. (2013b). *Sustaining services, ensuring fairness. A consultation on migrant access and their financial contribution to NHS provision in England*.
- DOTW. (2013). *Access to Healthcare in Europe in times of crisis and rising xenophobia*.
- DOTW. (2016). *Registration refused: A study on access to GP registration in England*. London. Available at: https://www.doctorsoftheworld.org.uk/files/RegistrationRefusedReport_Mar-Oct2015.pdf
- Feldman, R. (2020). NHS charging for maternity care in England: Its impact on migrant women. *Critical Social Policy*. <https://doi.org/10.1177/0261018320950168>
- FRA. (2013). *Apprehension of migrants in an irregular situation – Fundamental rights considerations*.
- FRA. (2015). *Cost of exclusion from healthcare – The case of migrants in an irregular situation*. Available at: <http://fra.europa.eu/en/publication/2015/cost-exclusion-healthcare-case-migrants-irregular-situation>. Accessed 5 Oct 2015.
- Hall, M. A., & Perrin, J. (2015). Irregular migrant access to care: Mapping public policy rationales. *Public Health Ethics*, 8(2), 130–138. <https://doi.org/10.1093/phe/phv016>
- Hermansson, L., et al. (2020). Firewalls: A necessary tool to enable social rights for undocumented migrants in social work. *International Social Work*. <https://doi.org/10.1177/0020872820924454>
- Home Office. (2013). *Immigration bill factsheet: Overview of the bill*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249251/Overview_Immigration_Bill_Factsheet.pdf. Accessed 5 Apr 2017.
- Isin, E. F. (2008). Theorizing acts of citizenship. In E. F. Isin & G. M. Nielsen (Eds.), *Acts of citizenship* (pp. 15–43). <https://doi.org/10.1016/B978-0-7020-2797-0.00001-1>
- Johnson, W. (2012). Boris Johnson criticised over medical guide for migrants. *The Independent*, 11 April. Available at: <http://www.independent.co.uk/news/uk/politics/boris-johnson-criticised-over-medical-guide-for-migrants-7636287.html>. Accessed 10 May 2016.
- Kilner, H. (2014). Hostile health care: Why charging migrants will harm the most vulnerable. *The British Journal of General Practice*, 64(626), e590–e592. <https://doi.org/10.3399/bjgp14X681565>
- Kirkup, J., & Winnett, R. (2012). Theresa May interview: “We’re going to give illegal migrants a really hostile reception”. *The Telegraph*. Available at: <http://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html>. Accessed 9 Nov 2015.

- Kraler, A. (2011). Fixing, adjusting, regulating, protecting human rights – The shifting uses of regularisations in the European Union. *European Journal of Migration and Law*, 13, 297–316.
- La Vanguardia. (2015). *Cruz Roja y Salud garantizarán el acceso a la sanidad a personas vulnerables*. Available at: <http://www.lavanguardia.com/vida/20150302/54427822808/cruz-roja-y-salud-garantizaran-el-acceso-a-la-sanidad-a-personas-vulnerables.html>. Accessed 27 Nov 2017.
- Legido-Quigley, H., et al. (2013). Erosion of universal health coverage in Spain. *The Lancet*, 382(9909), 1977. [https://doi.org/10.1016/S0140-6736\(13\)62649-5](https://doi.org/10.1016/S0140-6736(13)62649-5)
- Lipsky, M. (1987). Street-level bureaucrats as policy makers. In D. L. Yarwood (Ed.), *Public administration, politics, and the people: Selected readings for managers, employees, and citizens* (pp. 121–127). Longman.
- MdM. (2014). *Dos años de reforma sanitaria: más vidas humanas en riesgo*. Available at: http://www.medicosdelmundo.org/index.php/mod.documentos/mem.descargar/fichero.documentos_Impacto-Reforma-Sanitaria-Medicos-del-Mundo_3ec0bd9%232E%23pdf
- N.d. (2015). El Gobierno anuncia que devolverá parte de la atención sanitaria a los inmigrantes sin papeles. *El Diario*. Available at: http://www.eldiario.es/sociedad/inmigrantes-irregulares-volveran-atencion-primaria_0_372362835.html
- OHCHR. (2014). *The economic, social and cultural rights of migrants in an irregular situation*. New York/Geneva.
- PASUCAT. (2014). *Dos anys des del canvi de model sanitari. Dos anys d'exclusió*. Available at: <https://docs.google.com/file/d/0B20pi6SzyEKTXRxTWtLTjXNmc/edit>
- PICUM. (2009). *Undocumented and seriously Ill: Residence permits for medical reasons in Europe*. Available at: http://picum.org/picum.org/uploads/publication/Undocumented_and_Seriously_Ill_Report_Picum.pdf
- Rejón, R. (2015). El Gobierno crea un documento especial para que los inmigrantes sin papeles vayan al médico. *El Diario*. Available at: http://www.eldiario.es/sociedad/Gobierno-volveran-inmigrantes-Atencion-Primaria_0_372362938.html. Accessed 27 Nov 2017.
- Romero, M. (2008). The inclusion of citizenship status in intersectionality: What immigration raids tells us about mixed-status families, the state and assimilation. *International Journal of Sociology of the Family*, 34(2), 131–152. Available at: <http://www.jstor.org/stable/10.2307/23070749>
- Schrover, M., & Schinkel, W. (2013). Introduction: The language of inclusion and exclusion in the context of immigration and integration. *Ethnic and Racial Studies*, 36(7), 1123–1141. <https://doi.org/10.1080/01419870.2013.783711>
- Schweitzer, R. (2017). Integration against the state: Irregular migrants' agency between deportation and regularisation in the United Kingdom. *Politics*, 37(3), 317–331. <https://doi.org/10.1177/0263395716677759>
- Schweitzer, R. (2019). Health care versus border care: Justification and hypocrisy in the multi-level negotiation of irregular migrants' access to fundamental rights and services. *Journal of Immigrant & Refugee Studies*, 17(1), 61–76. <https://doi.org/10.1080/15562948.2018.1489088>
- Scott, W. R. (2001). *Institutions and organizations*. SAGE Publications.
- semFYC. (2012). *Análisis ético ante la retirada de la asistencia sanitaria a inmigrantes sin permiso de residencia*. Available at: http://www.semfyec.es/pfw_files/cma/noticias/noticia-analisis_etico_retirada_asistencia_sanitaria.pdf
- Steele, S., et al. (2014). The Immigration Bill: Extending charging regimes and scapegoating the vulnerable will pose risks to public health. *Journal of the Royal Society of Medicine*, 107(4), 132–133. <https://doi.org/10.1177/0141076814526132>
- Vosyliute, L., & Joki, A. -L. (2018). *Integration. The social inclusion of undocumented migrants*. ReSOMA.
- Webb, J. (2006). *Organisations, identities and the self*. Palgrave Macmillan.
- Wind-Cowie, M., & Wood, C. (2014). *Do no Harm. Ensuring fair use of the NHS efficiently and effectively*. London. Available at: http://demos.co.uk/files/Demos_DoNoHarmREPORT.pdf?1413823102

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.



Chapter 6

Managing Irregularity Through the Provision of Public Education



Similar to primary healthcare, the right to receive education is safeguarded under numerous human rights instruments¹ and although generally limited to persons of school age, it applies irrespectively of their citizenship and immigration status (UNCESCR, 2003). The corresponding legal frameworks regulating the public provision of education, however, can vary significantly between different national but also local contexts, and their inclusiveness often depends on the particular kind and level of education. Importantly, and in addition to being a fundamental right, education also constitutes “the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities” (UNCESCR, 2003, p. 7). Seen from this perspective, public education is thus also intrinsically linked to common understandings of social and economic integration.

Political debates and struggles around irregular migrants’ access to education have recently been attributed an important local dimension but continue to be portrayed as being primarily about human rights (Lundberg & Strange, 2016). Here I am going to show that they are not just struggles over irregular migrants’ rights, but also their very possibilities to ‘integrate into society’² – a process that at least officially still tends to be understood as largely contingent on legal status. According to the experience of Catherine Gladwell, the director of the *Refugee Support Network*,³ education plays a crucial role as a ‘normalising routine’ for many families who are waiting to be recognised as refugees or whose legal status is otherwise in dispute.

¹Including Art. 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), ratified by both Spain and the UK (in 1977 and 1976, respectively).

²I am aware of the conceptual problems surrounding the idea of (immigrant) ‘integration’, which is best understood as the sum of social practices and processes through which newcomers in general and largely independent of their administrative status gradually become part of and accepted by the community they have come to live in (cf. Penninx & Garcés-Mascreñas, 2015).

³Speaking at the Conference ‘Precarious Citizenship: Young people who are undocumented, separated and settled in the UK’, held on 1 June 2016 at Birkbeck College, University of London.

Their children's regular school attendance not only structures their day and week but also constitutes one of the first points of contact with other members of the community as well as many of the host state's institutions. It thus not only provides a source of hope and belonging, but also official prove of the family's continuous presence in the country. For Michael Strange and Anna Lundberg (2014, p. 201), "[s]chool is both a 'border' by which undocumented child migrants are excluded or included within society, but also where society can make itself felt by the individual child migrant" and arguably also their parents or even extended family. Both as social environments and bureaucratic institutions, schools and other educational establishments can thus significantly shape (irregular) migrants' perception of and (future) position within the host society.

Education thus plays a crucial role for the management of migration, whereby it is not just about learning, nor necessarily about children. Creating opportunities (and often even obligations) for adult migrants to learn the local language and acquire or strengthen specific skills is generally seen as indispensable for their 'successful integration', particularly into the labour market. While such measures obviously target and are often limited to those foreigners holding a legal residence status, it is the situation of irregular migrants in particular that highlights what several authors have identified as an outright contradiction between government approaches toward education on one hand, and immigration on the other (Arnot et al., 2009; Sigona & Hughes, 2012; Lundberg & Strange, 2016). While the former necessarily seek to foster equality and social inclusion, the latter – especially when targeting irregular migrants – explicitly aim at exclusion. In this chapter I will show how both, the centrality of education for local integration outcomes and the understanding of education in terms of preparing young people or newcomers for gainful employment, can bolster arguments for the exclusion of irregular migrants from educational opportunities. I will thereby follow the same structure as the previous (and the subsequent) chapter.

6.1 Between Human Rights and Unwanted Integration: Ambivalent Legal-Political Contexts for the Provision of Public Education to Irregular Migrants

In May 2016 the UK Department for Education (DfE) announced plans to include information about pupils' nationality and country of birth in the National Pupil Database (NPD). The NPD had been introduced in 2013 to provide a comprehensive "evidence base for the education sector", whereby data can also be shared with third parties "for the purpose of promoting the education or well-being of children in England" (Department for Education, 2015, p. 4). In practice, this means that all schools and colleges across England are now required to request this data from the pupils' parents or guardians, who in turn have been encouraged by several data

protection and human rights campaigns⁴ to make use of their right to refuse providing such information (Bhattacharyya, 2016; Gayle, 2016). Both the government's official justification and the DfE's specific guidelines on how schools should implement the new requirement are rather vague: According to the latter, "[t]he country of birth would be expected to appear on [...] the child's birth certificate or passport [...], but] there is no requirement for the school to request, or see, a copy of the birth certificate or passport" (Department for Education, 2016b, p. 64). The government claims that obtaining this information will help schools to better assess and address "additional educational challenges" brought about by immigration (*ibid.*) but has failed to explain how pupils' country of birth or nationality specifically relate to their educational needs or attainment, given that their English language proficiency is already being recorded separately. Critics were concerned that the newly added information might instead be used for the purpose of immigration control rather than promoting schools' or individual pupils' educational achievements.

This development came about a year after a former secretary of state for education had expressed a suspicion that the attractiveness and accessibility of British public schools were to blame for what she called 'education tourism', and therefore ordered an official investigation of the impact that immigration has on the educational system (Ross, 2015). Already in March 2013, not long after Theresa May had first announced the government's 'hostile environment' approach to irregular migration, a series of leaked internal emails from several DfE officials revealed a proposal elaborated by the *Inter-Ministerial Group on Migrants' Access to Benefits and Public Services* regarding the possibility of requiring schools to check the immigration status of prospective pupils as part of their standard admissions procedure, as reported by *The Guardian* (Malik & Walker, 2013). Following widespread criticism, including from professional bodies like the *National Union of Teachers* (NUT), and given the government's awareness that an outright exclusion of irregular migrant children from school would breach its obligations under human rights law, the plans were quickly abandoned, and their concreteness denied by high-ranking government officials including Theresa May herself (*ibid.*). Since then, while the sphere of higher education became a central battleground of the government's 'fight against illegal immigration', the issue of irregularity has not featured very prominently in the realm of compulsory education. Rather than on the basis of administrative status, the effects of past and present immigration on primary and secondary schools and school communities are being discussed in terms of growing numbers of pupils whose first language is not English or whose cultural background otherwise differs from that of their 'native' peers.

Also in the Catalan context, the sharp increase of immigration during the first half of the 2000s has sometimes been discussed with reference to its impact on the education sector. For example, a former Catalan education minister identified the large number of foreign students enrolled in Catalan schools as one of the main

⁴See for example *Against Borders for Children*: <http://www.schoolsabc.net/>; or *#BoycottSchoolCensus*: <https://twitter.com/hashtag/BoycottSchoolCensus/> (last accessed 15/12/2017).

causes for the poor results obtained in the OECD's Programme for International Student Assessment (PISA) of 2013 (Ibáñez, 2015). Similar views were also common among the professionals I spoke to, and whose day-to-day work directly exposes them to this increasing diversity. The head teacher at a primary school located in one of Barcelona's most ethnically diverse areas put it this way:

At this moment, and it constantly changes because we enrol new students almost every day, we have about 28 different countries [of origin] and 17 or 18 different languages. So, it's almost like if we were the United Nations. [...] But they progressively develop more and more of a relationship, because you also have to keep in mind that [initially], depending on their culture, for example the fathers don't want to have anything to do with the kids' education and it's the mother who is responsible. Or the fact that for example the [school] director is a man... also helps sometimes. If I were a woman, it would not be the same. But with the help of intercultural mediators, it has changed a lot, it is changing a lot, and to the better (bcnA25).

While such accounts portray the school as a site where the societal impact of immigration is felt more strongly than in other spheres, they also highlight its importance as a place where integration actually happens and is actively promoted on a daily basis. Many of my interviewees stressed the crucial role that schools themselves, as institutions, can thereby play for the integration of newcomers, as reflected in the following statement of another head teacher I interviewed in Barcelona:

It is here, in school, that children spend the most hours, and therefore it is the first arena and context where they familiarise, right? And if they come from another country and arrive here, it is where the *protocol of reception* has to be most precise and as detailed as possible, because it is the first place to which they come and where they are received (bcnA30).

The question I am interested in here is to what extent this 'protocol of reception' involves taking into account the administrative status that the national immigration regime assigns to all foreign nationals – including children – present on the territory. At least within the early school environment, the equal right to basic education should render differences in immigration, citizenship or economic status largely irrelevant, while other categories such as age, intellect, motivation or (mis)behaviour tend to be more important than they are in many other institutional contexts and spheres social interaction. Roberto G. Gonzales' (2015, p. 13) influential study of migrant irregularity within and vis-à-vis the US education system has shown that in shaping "the parameters of social membership" and controlling access to scarce resources, schools tend to "make their own decisions about deservingness, setting terms of their own for inclusion and exclusion". The sphere of education thereby fits Luhmann's (1982) conceptualisation of a functionally differentiated subsystem of society, within which certain logics and categorisations are dominant while others – although crucial for the functioning of other subsystems – lose much of their relevance and regulatory force. As such, the ir/regularity of pupils' or their parents' residence in the country becomes rather invisible within the sphere of education, as the director of the *Department for Immigration and Interculturality of the Barcelona City Council* emphasised:

It's not an issue whether they are irregular or not: Here, everyone goes to school. Not like in France, where they persecute and denounce the 'irregulars'... no, no. *Here*, the school does not... *nobody even knows*. It is a foreign child, an immigrant, but they [the school staff] do not know if s/he has papers or not. Often this is only discovered in high school, when they plan the end-of-course trip to Italy, for example, and someone who had spent all his/her life in the school says 'no, I cannot go because I don't have papers'...only then they even discover it (bcnA28).

What he tried to present as something quite particular is in fact a characteristic that primary and secondary schools in many countries share: They are *shielded* from even having to know the immigration status of those individuals whose education and wellbeing is their main responsibility. Also in the UK context, as a migrant youth practitioner of the *Children's Society* in London explained to me, it often is

only once they turn 18 or 19 that most of their rights and entitlements are actually affected [by their irregularity], because generally they can go through school. They can go through primary and secondary, and even 6th form college, and *effectively be the same as everyone else* among their peers, but it's when they turn 18 that accessing services becomes an issue (lonA16).

This rather sudden shift from relative inclusion to outright exclusion, which accompanies irregular migrants' transition from childhood to adulthood, has been highlighted by a number of studies documenting the intersection between irregularity and youth in different national contexts (Gleeson & Gonzales, 2012; Sigona & Hughes, 2012; Gonzales, 2015).

Before I will look at the legal frameworks that regulate access to both compulsory and post-compulsory education provided in London and Barcelona, and the specific barriers that irregular migrants are facing in both contexts, it is important to recall the antagonistic relationship between migrants' 'integration' and their irregularity: What fundamentally distinguishes the situation of irregular residents (and their relation to the state in which they live) from that of 'regular' immigrants is that the former are generally *not* expected to integrate but instead explicitly discouraged or even effectively barred from doing so (Schweitzer, 2017). Compulsory schooling thereby seems to constitute one of relatively few public realms of integration that remain explicitly open to them. For many families in that situation, it is precisely the social and official fact that their child attends a local school, which undeniably "makes them part of the society" (lonA08), as a migrant rights advocate I interviewed in London put it. In fact, it can even render the whole family less deportable and/or strengthen their claim for regularisation. On one hand, the formal and personal relationships developed at school significantly count towards the private and family life that migrants in irregular situations must usually prove to have established when they apply for regularisation. On the other hand, being part of a school community also tends to boost popular support for campaigns against a particular family's deportation, as a representative of the London-based advocacy group *Right to Remain* explained to me:

Schools and colleges can be very supportive if it's a young person that's part of a family that is being removed or at risk [of deportation]. I think schools struggle sometimes though, because they don't know what the rules are, what they have to tell the Home Office, and

what the Home Office is allowed to ask for and do. But occasionally a school has come out in support of somebody and that is really helpful [for the success of a campaign] (lonA01).

Access to education and training certainly also represents a crucial means for the ‘integration’ of adults without children. This is particularly true for opportunities to increase language proficiency and acquire professional skills through vocational training. Both elements feature prominently within official integration policy agendas targeting certain regular migrants while usually excluding their irregular counterparts. Many of the education workers I interviewed in London and Barcelona highlighted their responsibility for facilitating all foreign students’ successful integration and expressed their reluctance to thereby discriminate on the basis of immigration status. The head of studies of an adult education centre located in a central district of Barcelona put it this way:

As a school we understand... and as a teacher I understand that our role is to give them a course and thus help them to understand and speak the language, whether Catalan or Spanish, and that this will link them more and better to the neighbourhood and the city and country [...] But *we do this from our point of view as a school*. What we do is [...] [giving the student] more possibilities to integrate better, because I believe *this is our job*. Another one I don’t think we have in this respect (bcnA26).

This perspective, however, even though very common among the teaching professionals I interviewed in both cities, does not tell the whole story. Rather, it contrasts some of the experiences reported by migrants and their advocates, who also mentioned significant legal and/or administrative barriers complicating their access, particularly to further education and training. While they usually accepted that given their status, they could not expect the host state to financially support their education, they also perceived these obstacles as yet another way of trying to keep them out or lock them into a marginal position. The following accounts of a 32-year-old Bolivian citizen living and working in London since 2004 (1), and a woman aged 27 who came to Barcelona in 2012 in order to support her family back in rural Morocco (2), are good examples:

(1) Before, it was still possible to study but it was very expensive. Now, you cannot study anything anymore, not even English. I tried to go and find out, but they asked me for my passport and [legal] residence in the country and all that. They make it more and more complicated [to access education] and close all the doors for us to stay (lonB05).

(2) Without my papers... I cannot do anything. The main thing is the papers: to be able to find some work, to study, to do courses – because there are also many courses that if you don’t have papers you cannot do them, [...] like I want to become a nurse or [learn] another profession... I really want to do that, but I... I am... [*makes a gesture indicating that her hands are tied*]. I cannot do anything (bcnB05).

Rather than leading to absolute exclusion, however, these limitations are part and parcel of a legal-political arrangement that channels irregular migrant workers into a few specific segments of the labour market, some of which have become structurally dependent on this constant supply of cheap and disposable labour (Portes, 1978; De Genova, 2002; Calavita, 2003; Mezzadra & Neilson, 2013). Together with the administrative hurdles that migrants often face when trying to obtain formal

recognition of those qualifications and skills they acquired before they migrated, their limited access to training also helps perpetuating the image of a predominantly poor and uneducated migrant population that is likely to become dependent on state benefits. The condition of irregularity further reinforces this effect, as one of my interviewees knew from her experience working as an educator for the *CEPAIM Foundation* in Barcelona:

Everything you have learned during your life is not being taken into account [...] so you start from zero and are completely stigmatised... Why? Because here immigrants generally occupy very concrete sectors of the labour market, those that [Spanish citizens] like the least; and if you don't have papers [...] you will occupy the niches that are even more hidden. And that reinforces the image of the immigrant who is untrained and doesn't have any education... Why? Because otherwise he wouldn't be collecting scrap metal, she wouldn't be taking care of some elderly person... But the thing is that they are not given the possibility to do something else, right? So, all this is like a circuit that reinforces and stigmatises and excludes (bcnA31).

Any debate about whether to promote, facilitate, obstruct or even deny access to certain kinds of education for certain categories of people is always also a debate about which social and economic position they should be assigned or at least allowed to occupy within society.

So why would a state offer any educational opportunities beyond those that are protected by human rights law to migrants in irregular situations? As I will show in the remainder of this chapter, part of the answer is that their effective exclusion would require various kinds of actors *within* the education sector itself to participate in immigration control, which contradicts (some of) the most fundamental values, professional duties and dominant institutional logics underlying the provision of public education. In addition, and similar to healthcare, the latter is not just premised on individual rights but constitutes another 'functional imperative' of the state, as the former UK *Department for Children, Schools and Families* (2009, p. 5) recognised in a White Paper outlining its vision of the country's future public education system:

Ensuring every child enjoys their childhood, does well at school and turns 18 with the knowledge, skills and qualifications that will give them the best chance of success in adult life is not only right for each individual child and family, it is also *what we must do to secure the future success of our country and society* (emphasis added).

6.2 Legal Frameworks, Formal Entitlements and Practical Barriers for Irregular Migrants' Access to Public Education Provided in London and Barcelona

As in the previous chapter, my analysis differentiates between two levels of provision, in this case: compulsory education including related support measures and post-compulsory education or training.

6.2.1 *Irregular Migrants' Access to Compulsory Education and Related Services*

According to both British and Spanish national law, education is compulsory and free of charge for all children of school age⁵ who reside in the country. The rather subtle difference is that Spanish legislation explicitly extends this right and obligation to children in irregular situations,⁶ whereas the legal framework in the UK simply does not exclude them from the general entitlement of all children to access primary and secondary education (Spencer & Hughes, 2015). In spite of their formal entitlement, however, a range of potential barriers can prevent irregular migrants from registering their children for school or constrain their regular attendance or educational achievement. These include the inability to fulfil specific documentary requirements established either by the responsible government,⁷ local educational authority (LEA) or individual school; but also, limitations on access to funding for extra-curricular expenses like transport, books or school meals, and the fear that dealing with the education system might somehow reveal their irregularity to the immigration authority.

The first contact with the school administration usually happens in the course of the admission and enrolment process. According to Spanish immigration law, education is not only a right but also an obligation of all foreigners until the age of sixteen and irrespective of their immigration status, which also puts a duty on their parents to register them with a local school. In order to be able to enrol a child, however, a number of documentary requirements have to be satisfied, since the education system generally requires proof of the parents' identity, the age of the child, the family relationship (or legal guardianship) and the place of residence. The official documents that will be requested include an official ID (DNI, NIE or passport) of the parents (as well as the child, if older than 14) and a copy of the family register (*'libro de familia'*) or other official certification of their relationship to each other and to the child. In addition, schools will normally ask for an official immunisation record of the child,⁸ as well as the registration certificate or other official proof of address.⁹ The latter is crucial because school places are allocated on the basis of residence within the immediate vicinity or predefined catchment area of any particular school.

⁵From the age of five (in the UK) or six (in Spain) and until 16.

⁶Point 3 of Article 10 of Organic Law 1/1996 on the Legal Protection of Minors establishes that all "foreign minors who are present in Spain have the right to education [...] under the same conditions as Spanish minors".

⁷In both countries some of the general admission procedures and funding rules vary between different regions (PICUM, 2011a, b); I only deal with those that apply to England and Catalonia, respectively.

⁸Otherwise, they make a referral to a health centre in order to establish the immunisation status, as a school administrator explained to me in an interview (bcnA24).

⁹As listed in an official information sheet elaborated by the Catalan Education Department and available online in 17 different languages. See: <http://xtec.gencat.cat/ca/projectes/alumnatnou/acollida/informacio2> (last accessed 15/12/2017).

The British *Education Act* of 1996 establishes a comparable entitlement along with the corresponding duty of every local (education) authority to provide the same standard of primary and secondary education for all persons who reside within the area and are either “of compulsory school age” or “of any age above or below that age [but] registered as pupils at schools maintained by the authority”.¹⁰ This last provision underlines the important role and relative autonomy of individual schools and LEAs in establishing the concrete admission procedures and requirements, which can thus vary considerably from one school or local authority to another (Sigona & Hughes, 2012). The formal documentary requirements that parents have to fulfil when applying for a school place in England, however, are fewer than in the Catalan case, since they merely comprise official proof(s) of the family’s residential address and the child’s date of birth. For example, the *Hackney Learning Trust* (HLT) – the LEA responsible for the London Borough of Hackney – annually publishes an *Admission Guide for Parents*, which lists three kinds of documents that should accompany an application (usually made online) for a place in a Hackney school: ‘Proof of Address’ should be provided in the form of “a copy of either a Council Tax bill or housing benefit entitlement letter” as well as “an original utility bill received within the last two months”, while “a copy of either birth certificate, passport or medical card” must show the child’s date of birth (Hackney Learning Trust, 2014, p. 27).

Other than in Catalonia, schools and LEAs in England are not explicitly required to systematically request and collect any specific documentation of the parents’ identity that would also reveal their citizenship or immigration status, such as a passport. Accordingly, when I asked one of my migrant interviewees how she had experienced registering her two UK-born children in school, she said it worked “without any problem; I just needed a proof of address and their birth certificates when I registered them... they didn’t ask for anything else. Their status has never influenced [this], not at all” (lonB04). Once allocated a place in a particular school, however, the actual enrolment process will usually encompass an initial interview with the parents, during which the school can also request additional documents – often including their passports – and information regarding the child’s previous educational achievements, particular needs, or GP registration (Sigona & Hughes, 2012). Particularly in the case of over-subscription, individual schools can establish their own criteria according to which they will allocate school places, as long as they do not discriminate on the basis of race, religion, disability or other unlawful grounds. In spite of such legal safeguards, this leaves individual schools with a significant degree of discretion, which can easily lead to disadvantages for families in an irregular situation, who are least likely to file a formal appeal against a decision that they perceive as unfair or discriminatory. For the head of the HLT’s admissions department, this is a good reason why school admission, including in-year

¹⁰Under section 13A of the Education Act 1996, available at: <http://www.legislation.gov.uk/ukpga/1996/56/part/II/chapter/III/crossheading/general-functions> (last accessed 15/12/2017);

admission and the setting of over-subscription criteria, should be centralised at Council level,¹¹ as is the case in her Borough:

[In] our Borough you come to a desk and we coordinate for all the schools where all the vacancies are, as up to date as we can be; [whereas in] the next Borough you would have to go to individual schools, and *there is nobody regulating those individual schools*. So yeah, once they realise that you don't have immigration status compared to the next parent that comes in and [may be] very well-heeled and speaks fluent English, they could have prejudices there. [...] [In Hackney] a school place will be assigned, and only when they go through an induction meeting in detail a school may pick up further information about immigration status, but *before the school place is offered, they are not allowed to ask, and they are not allowed to know*; and we personally wouldn't convey that information. In any of the forms that they have [...] as part of their school admissions criteria, they are not allowed to ask questions like that (lonA26).

One reason for individual schools to refuse irregular migrant children could be that they do not officially count towards the overall number of children from low-income families. The latter is calculated on the basis of pupils' eligibility for free school meals and determines the amount of additional government funding, the so-called 'pupil premium', a school will receive (PICUM, 2011b).

At least in terms of school autonomy the situation in Hackney is similar to that in Barcelona, where the admission and enrolment process itself is managed centrally for the whole municipality. The responsible public body, the *Education Consortium of Barcelona* ('*Consorci d'Educació de Barcelona*', CEB) was established in 1998 and precisely in order to allow a more effective coordination of all relevant functions and responsibilities that are formally shared between the municipal and regional government. Although applications for admission can also be made directly at a local school of the parents' choice, it is ultimately the responsibility of the CEB to check all applicants' personal information and documents. The accounts of a head teacher (1) and a senior CEB official (2) indicate how this reduces the discretion of individual school administrators:

(1) When the students are referred to us for enrolment, they already come from the *Consortium*, and there they also do the first screening and will also already inform us [about application numbers etc.]. There is a department dedicated to directly attending the families, which is where all the enrolments are formally dealt with [...] and from there they are then referred to the schools (bcnA30).

(2) If the school where they go makes it difficult for a family [to register – '*si les ponen problemes*'], they come to the *Consortium* and here we sort it out. We will call the school and let them know that if there is a free place, we are going to refer the child (bcnA29).

While this arrangement thus helps to reduce disparities regarding the local implementation of the rules for access and fair allocation, it cannot completely forestall more subtle gate-keeping mechanisms, as a college teacher pointed out:

¹¹She thereby also questioned the government's current plans to progressively transform all schools into independent state schools (so-called 'Academies') that are funded directly by central government and operate with more autonomy and less 'interference' from the Local Council (Department for Education, 2016a). See also: <https://www.gov.uk/government/news/nicky-morgan-unveils-new-vision-for-the-education-system> (last accessed 15/12/2017).

I know of schools [...] where head teachers during the interviews with parents told them things like ‘in this school we only speak Catalan, and your son will have many difficulties...’. They played this card so that there would be fewer students who had migrated [including] people without papers. It’s a mechanism of exclusion (bcnA27).

Another set of barriers can arise where a family needs additional financial assistance to cover extra-curricular expenses such as learning materials, school meals or transport to and from school. In Catalonia, the fact that one or both parents are in an irregular situation does not automatically exclude a child from these provisions. Instead, any family’s entitlement to receive such payments (as well as the level of support) primarily depends on their official income or receipt of minimum income support (Consorti d’Educació de Barcelona, 2015). Irregular migrants’ general exclusion from this state-level welfare provision thus indirectly complicates their access to subsidiary funding that is provided locally, where it has to be renegotiated on a case-by-case basis (see Sect. 6.3).

In the UK, in contrast, irregular migrants’ formal exclusion from all state-funded benefits (see Chap. 7) more explicitly extends into the sphere of education: While accessing state-funded education is itself not considered a ‘recourse to public funds’, irregular migrant children are generally not entitled to free school meals or financial support for uniforms, books or transport,¹² unless the family receives exceptional support by social services (PICUM, 2011b; Sigona & Hughes, 2012; CORAM, 2013). In relation to school meals, it should be noted that the introduction of *Universal Infant Free School Meals* in September 2014 extended this entitlement to every child up to the age of seven and enrolled in a public school in England, (implicitly) including the children of irregular migrants (Burns, 2014).

What migrant irregularity is not supposed to interfere with in either of the two contexts I am comparing is the detection and assessment of learning difficulties or any other Special Educational Need (SEN); nor the access to corresponding additional support, as a primary school head teacher in London specifically emphasised:

You know, immigration status is not relevant in any sense as far as the school is concerned. *If the child is here*, the family is here, then they would be entitled to any kind of support or intervention, including those that engage outside services like educational or psychological or speech and language therapists or social services, you know, immigration status wouldn’t have any bearing on that at all (lonA28).

While this reflects the principle that every child enrolled in school should be given the same opportunities to learn, assessing a child as ‘in need’ of additional support by the state might even strengthen a family’s claim for regularisation if their stay in the country is unlawful. Conversely, being assessed as ‘not in need’ can render such family more deportable, since the child could then also go to school in a country where such support is unavailable. Knowledge of the irregularity of a claimant might thus increase the pressure on those individuals or institutions that are given the power and discretion to make such assessments. Migrants themselves, on the other hand, can easily perceive these decisions as discrimination, as the

¹²Regulated under section 509 of the Education Act 1996.

above-cited migrant mother's experience of how the school had dealt with her older son's dyslexia suggests:

It has been very difficult because I had to fight a lot with the school so that they would give me the psychological assessment for [my son]. And so far, no support has been given because the school, from the beginning, made it clear to me that even if he has mild dyslexia there is no additional support [...]. So, I talked to everyone: the director of the school, the director of Special Educational Needs and they told me that [...] apparently, they could not... because the assessment costs a lot and [they] have other cases with more priority in the school...

[Interviewer] *...do you believe that your status had an influence in some way?*

Look, they don't say it, because those things are not said. They don't say it but... I think that if an English [person] goes to speak with the director, s/he will have all the support immediately. I feel it; it's something you feel. And I don't have any complex... it's not that I feel less... it's just realistic. I think that it was difficult for that reason (lonB04).

Particularly for migrants in an irregular situation, any such dealings with the school system require a huge degree of trust in the institution and the individual bureaucrat they face or even have to challenge. In the light of the recent developments outlined at the beginning of this chapter it is no surprise that fear (or at least a lack of trust) seemed to be more prevalent in London than Barcelona, even though schools and school staff in both contexts are generally keen to mitigate such fears. The latter ultimately reflects schools' fundamental responsibility to ensure all pupils' regular school attendance, as the head of the HLT's admissions department particularly stressed:

If the adults haven't got immigration status or are in a situation where they are not feeling secure, then the child doesn't come to school because at primary school age you have to be taken to school. [...] And here I think the ethos is that they want everybody to come to school and they want everybody to do well, because [otherwise] the head teachers are under pressure (lonA26).

Irregular migrants' uncertainty about existing entitlements or the risk that activating them might reveal their irregularity is frequently linked to more or less concrete knowledge or fear in relation to past or expected immigration enforcement activities by police or other authorities. Also in the less 'hostile' environment of Barcelona can even a rather vague perception of risk quite easily disrupt school attendance, as the experience of one of my migrant interviewees suggests:

There are a lot of other guys who study with me, from Africa, from Pakistan, who don't have papers, and we were told about [...] a 15-day inspection of people without papers throughout the whole European Union, to look for people who don't have papers... And so, during this time we didn't go out and we didn't come to school [...] because we were afraid (bcnB05).

This shows that fear of deportation can easily trump the pursuit of education, irrespective of whether it is framed in terms of a universal right or an obligation on the part of the parents or the school. In the next section I will look at the realm of post-compulsory education, where both legal entitlement and duty play a significantly lesser role but are not completely absent.

6.2.2 *Irregular Migrants' Access to Post-compulsory Education and Training*

The seemingly clear-cut division between compulsory and post-compulsory education does not neatly overlap with irregular migrants' inclusion and exclusion, nor is it resistant to change over time. Rather, the age until which young people in general are expected and encouraged to stay in full-time education has been progressively increased since access to publicly funded education started to be recognised as a fundamental right of all children. In the British context, where this happened at the end of the 19th century, the so-called 'education leaving age' is defined at the regional level, and in England it has only recently been increased from 16 to 18. This does not oblige young people to stay in full-time education beyond their 16th birthday but makes the local authority responsible for ensuring that they are offered a suitable place in post-16 education or an apprenticeship or traineeship. While the government has not specified what this exactly means for irregular migrants, it might in practice be interpreted as an extension of their right to education beyond compulsory school age, as the following account of an assistant principle at a college in Hackney suggests:

With the raised participation age to 18 now, we are yet to see whether there is any guidance on a student's relationship with their school being good enough to prove their eligibility for funding at age 17 and 18. We will be testing that this year [...] because if you are under 18 [...] and you are new to the country you are going to have to be able to prove, given the rulebooks, how you qualify [for funding], which is fine. But anyone who had been in secondary school for five years or has done all 11 years of schooling, they are entitled, as I understand it, to *continue* that education (lonA32).

Also a legal and policy officer working for an organisation called *CORAM* in London described the limit of young irregular migrants' entitlement to receive public education as rather vague but ultimately inescapable:

It usually kicks in at a certain point. In our experience young people often don't realise that they have any kind of immigration status issues [until] they apply for a job when they are 16, 17 or 18, or they apply to go to university. It's at that point that they realise they are not like their friends [and] peers... that they can't do what their teachers told them they were going to be able to do if they worked hard. Sometimes that's a kind of turning point in their lives (lonA10).

In the Spanish context, this turning point has shifted in 2007 following a landmark decision of the Constitutional Court. It declared unconstitutional a clause of the immigration rules that until then had limited the access to post-compulsory education to foreign minors who were 'resident' in Spain¹³ and thus excluded all those who did not have (or were unable to prove) legal residence rights in the country (PICUM, 2011a). The judges concluded that:

¹³Article 9.3 of Organic Law 4/2000 of January 11.

This right of access to non-compulsory education for foreign minors is part of the content of the right to education, and its exercise *may be subject to requirements of merit and ability, but not to other circumstances* such as the administrative situation of the minor.¹⁴

Before the law was changed accordingly, young people in irregular situations had been barred from accessing college ('*Bachillerato*') and professional training, and in many cases could not even obtain the official certification of their high school leaving exam (Morán, 2004). The current law, in contrast, not only entitles them to continue their education until the age of 18, but also explicitly allows them to finish any course they started before turning 18, to obtain the corresponding academic qualifications, and to benefit from public funding under the same conditions as Spanish citizens.¹⁵

The exercise of these rights, however, can still be obstructed by practical barriers such as the inability to fulfil the documentary requirements for college enrolment (which are not always consistent with the legal framework) or to evidence insufficient means to self-finance one's education; as well as difficulties (or delays) in obtaining official recognition of previous academic qualifications (PICUM, 2011a). The latter is particularly important given that selection for post-obligatory studies primarily depends on previous qualifications, as the head of studies of a public high school in the centre of Barcelona highlighted in an interview:

[They] do the pre-registration online and so we have a list of persons who obviously have to have a degree from their country of origin, that is, they have to have completed their secondary education or done an entry test. And based on this previous degree and their online application they are ranked according to their grades and then, well, from one to 30 they can be enrolled, and after that there is the waiting list (bcnA32).

Beyond the realm of formal education, current Spanish legislation also gives irregular migrants the right to access vocational training including temporary work placements, on the basis of a signed agreement between the employer and the school, which certifies that the objective is not employment but training (PICUM, 2011a). Such arrangements, however, also raise a number of practical issues that can easily frustrate employers' willingness to offer such an opportunity to someone who is not fully covered by the national insurance system, for example, as an NGO representative pointed out to me:

[Imagine] you have a youngster [...] learning in a kitchen and they burn themselves... The way [these placements] are designed, they are for people with documentation. They are not suited to undocumented people; that is just not thought of. Somehow... I don't want to say that they are punished, right, but *nothing is facilitated*, absolutely nothing (bcnA31).

In the UK, in contrast, irregular migrants' access to further education and training is not just 'not being facilitated', but in most cases deliberately obstructed, both in law and practice. As the *Platform for International Cooperation on Undocumented*

¹⁴Under point 8 of Judgement 236/2007, full text available online: <http://hj.tribunalconstitucional.es/en/Resolucion/Show/6203> (last accessed 15/12/2017).

¹⁵In 2010, the National Assembly removed the general obligation for foreigners to present a residence permit in order to receive state funding for non-compulsory education (PICUM, 2011a).

Migrants (PICUM, 2011b) has repeatedly criticised, they are generally denied access to non-compulsory education including vocational training and 16-18 education, whereby the transition to the latter is particularly problematic if it involves a change of schools.

The simple but fairly effective mechanism of exclusion is to make pupils' eligibility for state funding¹⁶ contingent on their legal residence in the country, which thus has to be verified in the course of the enrolment process: According to the *Education Funding Agency's* (2014, p. 11) guidelines, "[t]he main basis for assessing student eligibility is their ordinary residence", which means that "the student must have the legal right to be resident in the United Kingdom at the start of their study programme".¹⁷ As I will discuss in more detail (in Sect. 6.3), however, individual college administrators are given some discretion when processing the necessary 'evidence', whereas access to university education is strictly contingent on the student's legal residence. In accordance with these rules, young migrants who are not 'ordinarily resident' in the UK are also strictly barred from entering any employment-like relationship, even for training purposes. For example, when in December 2014 the local authority of Lewisham advertised various (paid) apprenticeships to the young (16-25) population of the Borough, it made very clear that potential candidates must not only be residents of Lewisham but also "have full residency entitlement [...] in the UK", and that in order to prove this "all successful candidates will need to produce their passport".¹⁸ For a lawyer working for *Praxis Community Projects*, an NGO based in East London, instances like this are part and parcel of

this whole culture of making immigration gatekeepers of people, [which also] means that people are sometimes refused services when actually they are entitled, like refusing people the opportunity to volunteer as well, because people think that they are not allowed to, which is rubbish, you know. Anyone can volunteer, regardless of his or her immigration status (lonA17).

Her reference to volunteering is particularly important given that active engagement within the local community is generally regarded as proof of 'integration' and thus often features prominently in public campaigns and legal cases against the deportation of local residents. A (perceived) lack of such efforts or opportunities, in turn, not only helps to reproduce irregular migrants' isolation from society but also renders them less deserving of regularisation.

Probably the most widely accepted proof of 'successful integration' is migrants' knowledge and adequate use of the local language. It is therefore important to

¹⁶Funding is provided either directly to the educational institution or via the responsible Local Authority.

¹⁷In addition, it is established that "[a]ny person subject to a Home Office deportation order will ordinarily be ineligible for funding until their situation has been resolved to the satisfaction of the Home Office, as funding should only be claimed for students who can complete their programmes" (Education Funding Agency, 2014, p. 11).

¹⁸See: <http://www.lewisham.gov.uk/mayorandcouncil/counciljobs/apprentices/Pages/Who-is-eligible-for-an-apprenticeship.aspx> (last accessed 15/12/2017).

underline how different the two environments I compare are in terms of the opportunities they provide for migrants in irregular situations to learn English, or Spanish and Catalan, respectively. In the UK, as with other educational opportunities for adult learners, almost all access to publicly funded English courses is strictly contingent on legal residence. In a report titled *English language for all*, the GLA not only recognised the importance of a comprehensive provision of English for Speakers of Other Languages (ESOL) but also the problems that many refugees and migrants face when trying to access such courses in London. As an example of good practice the report specifically highlighted that less formalised courses offered by NGOs like the *Migrant Resource Centre* are “inclusive of people regardless of gender, age, immigration status, employment or benefits status” (Greater London Authority, 2012, p. 34). Similarly, the *Hackney ESOL Advice Service* which coordinates ESOL provision within Hackney reported that in the period of 2014–15, “6% of learners did not or could not specify their immigration status” and that this meant that “they could only be directed to provision with funding which did not specify any immigration related restrictions¹⁹” (Hackney Learning Trust, 2015, p. 33). This is in line with the perception of a senior policy officer at the GLA, who told me in an informal conversation that ESOL provision funded by the central government explicitly excludes irregular residents, which according to her ultimately reflects the broader aim of these programmes: “to get people into employment” (lonC04). She also noted that private or Third Sector providers were often unsure whether they could offer a course or other service to migrants in irregular situations, which also becomes clear from the following quote of a representative of a local community organisation in Lewisham: “[As] a publicly funded organisation [we] cannot be seen to support people without the right to be in this country. I don’t know what would happen... if we would lose our funding... or if it would be a crime to support them, I am not sure” (lonC01).

Also in Catalonia irregular migrants’ access to further education and training can depend on how and by whom it is financed. When I asked the administrator of an adult occupational training centre (run by a national trade union) about their access criteria, he told me that it is always a question of funding: “The students have to fulfil the requirements that come with the subsidies we receive for offering our courses, because what we offer is [publicly] subsidised training” (bcnC02). Where beneficiaries are required to be officially registered as unemployed, for example, irregular migrants automatically remain excluded “because they cannot fulfil that requirement, just like retired persons are also excluded”, he added. Also the president of the *Association of Pakistani Workers*, which offers legal and occupational advice as well as publicly funded language courses to one of the oldest immigrant communities in Barcelona, acknowledged the broader logic underlying these limitations:

¹⁹In that year this was only the case with funding coming from the *Big Lottery Fund* as well as one specific programme of the Department for Communities and Local Government, called “English My Way” (*ibid.*).

They are also right because, of course, for an immigrant to take a course for a year... the government will have spent a lot of money to offer this course and the next day the police may pick him up and send him to his country... What happens? This money... the government loses it. For this reason, the courses are only for those who have papers. But Catalan courses yes, you can learn the language, *that* you can (bcnA11).

He thereby hints at the fact that in Catalonia, in contrast to the UK context, at least language courses are widely available and explicitly open to migrants in irregular situations. On one hand, this relates to a crucial component of Spanish immigration law, according to which at least basic knowledge of the local language constitutes one of the formal requirements for regularisation, as discussed in Sect. 4.1. On the other hand, it arguably also reflects the very particular status of the Catalan language as not only a vehicle for local integration but also an important symbol of regional autonomy and argument for potential independence from Spain. The head of the Catalan government's *General Directorate for Immigration* made no secret of this relationship:

[Somebody speaking Catalan] creates an empathy that does not exist with Spanish, because we are a country that historically has been screwed and jeopardised by everyone but that has its own language, which is a language that is not exclusive to the autochthonous [population] but is readily shared. There are always Catalan courses offered everywhere, and *people are grateful to the newcomers, to the strangers, who speak Catalan or who learn it* (bcnA16).

In this very particular historical and political context, the additional value attributed to promoting the local language – also as a symbol of cultural distinctiveness from the rest of Spain – seems to tip the balance in favour of even irregular migrants' inclusion. An adult language teacher who works in the Raval also referred to the cost-benefit calculations that otherwise often underpin irregular migrants' exclusion from public services and integration measures:

For me this is a problem of... what do you invest in? [...] Either in training or otherwise... of course, in social exclusion, that's a bit what you invest in. Is it more expensive or cheaper? Well maybe it is actually cheaper if you [take into account] the social exclusion of people who have not been able to get trained (bcnA26).

Also the experiences of migrants I interviewed in both cities largely reflect the rather distinct conditions for learning the local language. A 42-year-old mother of four daughters found it quite easy for her and her family to learn both Spanish and Catalan since they arrived from Uzbekistan in 2011:

They do ask for documents that identify you, that you are you, which is the passport of my country – the only thing I have. Always [...] I go with my passport; they take a copy and use that for [any procedure]. They have no problem with that. They don't ask for a [residence] permit. Without any permit you can study, *not work, but study you can* (bcnB01).

This stands in stark contrast to the experiences that one of my interviewees in London has made since she entered the UK in 2001 with a false Spanish passport after the Home Office had denied her application for a student visa:

When I realised that I couldn't study in my own name I went to a college and registered with the Spanish name, because I really wanted to study, one way or the other. And so, I was

studying English for a few months, until someone told me that... if I kept studying like that, I was going to acquire knowledge, but it would not do me any good to get the certificates because they wouldn't really be in my name. That discouraged me a lot and so I started to look for work. I started to work all day and, well, had to forget about my studies (lonB04).

She dropped out of college and instead started working as a cleaner, while her partner found cash-in-hand jobs in construction before he was hired by a large cleaning firm. In contrast to the situation in Barcelona, many migrants I spoke to in London said it was much easier for them to find informal employment than (even self-funded) educational opportunities that would allow them to build their future. As in the previous chapter, I now turn to the perspective of the people who administer or provide publicly funded education in London and Barcelona, in order to highlight how they perceive and navigate the formal opportunities and legal frameworks I have outlined so far.

6.3 Negotiating the Effective Limits of Access, Educational Need and Immigration Control: The Role(s) and Agency of Education Workers

While most ethnographic research on irregular migrants' access to education has approached the issue primarily from the migrants' own perspective (Bloch & Schuster, 2005; Bloch et al., 2009, 2011; Gleeson & Gonzales, 2012; Sigona, 2012; Sigona & Hughes, 2012; CORAM, 2013), some studies also hint at the crucial role of institutions and individual professionals. Madeleine Arnot and her colleagues (2009, p. 251) have argued that local authorities as well as individual schools in the UK are "left with the micro-social costs of immigration policy" since they "have to cater for children whose families can be denied access to the social, political and economic rights of a citizen". In the US context, Gonzales (2015, p. 199) has shown that individual school administrators, counsellors and particularly teachers can sometimes "offset, delay[ed], and accelerate[d] the impact of illegality", often depending on the academic potential they see in individual students. As in the previous chapter, I now look at how different kinds of education workers perceive and deal with the various contradictions between the responsibilities of their job and the logic of immigration control.

6.3.1 Administrators of Public Education and Related Services

The admission and enrolment procedures constitute the most obvious instances of intersection with immigration control, since they involve checking at least potentially immigration-related documents by the administrative staff of educational institutions. According to a senior official of the *Education Consortium of Barcelona*,

the general requirement for parents to show (and submit a copy of) their passport when registering their child for school is necessary but unrelated to immigration control:

For the educational system it is important to *identify* the person. One thing is whether or not they have a passport; the other is if they have a residence permit. But that is another administration... and *each part of the administration should take care of its own [matters]* (bcnA29).

In a similar sense, he also argued that proof of residential registration is required “simply because [school] places are given to children who live in the vicinity of the school” and that a lack of such proof would “only mean fewer points for their application” but not inhibit their enrolment (bcnA29). According to NGO staff who are regularly involved in helping refugee and (irregular) migrant families to enrol their children in local schools, however, it is sometimes precisely their initial failure or inability to register their residence within the municipality that later significantly delays their children’s access to education (bcnA04, bcnA05). This suggests that in local everyday practice individual administrators often misunderstand registration as an absolute requirement for being allocated *any* school place. Interestingly, also my interviewee at the *Hackney Learning Trust* emphasised this particular issue as a potential obstacle:

If we ask somebody for Council Tax [bills] as a standard document for proof of address [...] it could make us aware that more individuals than are meant to be living there, are living there. But even though we are part of the Council, we don’t pass that information on to housing benefits or the council tax [department], [...] but we usually try and get around it somehow. We might take a bank statement... and we deal with them on an individual basis, [...] because sometimes if you apply for very popular schools, we have to be really stringent on the address to make sure you really live there, because *everybody is trying to live as close as possible to get into the school*. It’s not really that we are trying to highlight their living arrangements or their immigration status (lonA26).

Given that at least in the sphere of compulsory education these requirements are not formally related to immigration, administrators tend to find out about a family’s immigration status not because the law requires them to do so, but rather ‘by chance’, as the director of a primary school in Barcelona put it: “when we do the registration we ask for all the documentation, and there the family already tells us their situation, or when we enrol them or when they ask for scholarships or support for school lunch... also there they sometimes tell us” (bcnA30). While there is also no obligation or even expectation for them to pass such information on to any law enforcement agency, a lack of even just one of the required documents can cause significant delays to enrolment even for compulsory education. The secretary of a primary school located in a suburb of Barcelona with relatively little immigration, remembered the case of a Chinese family:

The family didn’t have papers and of course the first thing we ask for is the family register, to verify that it is really their child, even if they don’t have documentation. So, what happened was that they requested an affiliation document from China, which [had to be] signed by a notary [...]. So of course, what happens in these cases is that the process becomes very long, it is very slow; and the child stays out of school [... because of] an administrative issue, an issue of legal bureaucracy, which shouldn’t be detrimental for the child (bcnA24).

In such situations it is often the school that takes a lead in trying to solve the problem by liaising with other agencies at the local level, as the same interviewee went on to describe:

With the enrolment of a child in school – at least in the area where I work – they are very strict.²⁰ So, if any of the documentation that is required is missing, there is no enrolment. [...] If they lack the registration certificate from the municipality, [the school] contacts the City Council or makes arrangements with social services. [In her school] we don't have a lot of immigrants, maybe four per cent of the students, but what we do have are cases of family breakdown, we have enough of that, many children with quite dysfunctional family structures, and so we have a fairly fluid communication with social services (bcnA24).

Her account also suggests that in practice a lack of documentation will trigger a similar procedure as other symptoms of a 'difficult' family background (such as destitution or a suspicion of domestic violence), which usually entails a referral to social services. This parallels an important finding of Gonzales' (2015, p. 167) study in the US, where young people in irregular situations often "benefited from student service offices developed to assist low-income and first-generation students", which also "bolstered their feelings of belonging and claims to membership".

Not only school administrators but also some of the migrants I interviewed in Barcelona described the involvement of mainstream social services as crucial for accessing other public services including healthcare and education. Quite often it is thereby a social workers' individual assessment and written report – in lieu of missing documentation – that allows these systems to deal with and eventually even 'sort out' a client's irregularity, or at least a certain aspect of it. In fact, the Catalan Education Department specifically notes that "in extraordinary cases, alternative documents or reports elaborated by social services will be considered valid" (Departament d'Ensenyament, n.d., p. 3). At least in principle, also local social services in the UK have this role, as I was told at the HLT:

If a child comes into the country and we can't define their age [...] we will call on social services to determine their age. From an admissions point of view, we have done that a few times because [...] the age that the adults are claiming is incorrect, because a lot of times they might... push the age down a couple of years to keep them in education and *keep them in the English system longer*. But we need to know their exact age in order for them to mix with their appropriate age group. So yes, we do have people from children's services that work in the building and attendants in schools will call on other agencies to work with them as and when needed (lonA26).

The quite significant difference between both environments, however, is that irregular migrants in the UK seem much more eager to avoid any contact with social services. For example, Nando Sigona and Vanessa Hughes (2012) have found several instances where parents would push their kids to go to school even when they are sick, precisely because absence from school might raise attention from social

²⁰Here she refers to school inspectors (sent by the *Education Consortium*); at a different point of the interview, she specifically noted that it "also depends on the educational inspection you have, because the inspector may require certain documentation or not".

services who in turn might find out and divulge their irregular status to the Home Office (see Chap. 7).

Apart from admission and enrolment, school bureaucrats also play a key role in negotiating a family's access to financial help with extra-curricular expenses, which is another instance where irregular migrants' exclusion from public funds conflicts with the school's aim to make sure that every child participates fully and benefits equally from public education. The following accounts of two head teachers give an idea of how school administrations in Barcelona struggle to deal with but in collaboration with social workers manage to reconcile these contradictory objectives:

[In order] to receive grants and so on... I believe that a residence permit is required. With all the grants that a family may need... I do think that there is some filter, but *I am not sure*. For example, there is a grant for school meals from the state and a grant for school meals from the *Generalitat* (bcnA27).

Often it is only when they need to apply for [financial] help that you would find out [about their irregularity], because obviously in that case you need a social report, and thereby it may come out that there are 15 people registered in the same apartment, and so the whole issue becomes apparent. And so, we automatically [...] refer them to social services, for them to begin to investigate about the issue, and then we try to solve it [...] because the child has the right to be in school and to be attended [...] so there is the possibility that based on a report from a social assistant explaining the situation [...] such support can still be provided (bcnA25).

In the Catalan context, this administrative barrier can thus be circumvented on the basis of an individual assessment of the child's needs, which requires a referral to social services but ultimately allows the family's entitlement to be determined irrespective of their status. However, it also represents an instance where a lack of information and uncertainty on the part of individual bureaucrats can easily undermine irregular migrants' access to a public service that they might be entitled to receive.

In contrast to that, UK legislation does not foresee (let alone prescribe) any procedure through which a LEA or individual school could overcome this strict limitation on a case-by-case basis, as the senior official of the HLT also stressed:

In Hackney, and in most Boroughs, there is an income criterion, and if you meet that you are entitled to free school meals. But if your immigration status affects your potential to earn an [official] income, then that does make it difficult, because then *we can't offer you free school meals because you have got no national insurance number*. So, we can't do an Inland Revenue check on your salary, because there is no salary (lonA26).

At least in principle, this form of social assistance is – like in Catalonia – *means-tested*, i.e., triggered by an assessment of the claimant's insufficient financial means. As soon as such assessment either presupposes the claimant's fiscal status to be officially recognised by the state, or even potentially entails his or her immigration status being revealed to enforcement agencies, however, irregularity automatically becomes a barrier – whether that is specifically intended or not. This dilemma will become more apparent when looking the provision of social assistance per se (see Chap. 7).

The higher the level of education, the sharper become the differences between the roles and immigration-related responsibilities that local school administrators have in the two environments I compare: In Barcelona, the only immediate change from compulsory to post-compulsory education is that access to the latter presupposes previous academic qualifications, while immigration status continues to essentially be a non-issue, as a high school administrator emphasised:

The administrators, what do they do? Well, they are following this list [of student applications ranked according to their grades], regardless of the [residence] permits and all that. There is no place where this information would appear [...] and a person is the 4th or the 7th [on that list] not because s/he has an ID, but [...] because of] academic criteria. [...] Also the computer application we use... when you put in a [foreign] passport number it accepts it; it's not that it [refuses] and says 'that's not a NIE', but it accepts perfectly. That means that *the computer application has been set up to accept it*, because it could also require a NIE. [...] We also haven't received instructions on this... about what we have to do or must not do [...] or that would tell us: 'no, it has to be a person with a residence permit'. No, they are persons interested in the course that they want to enrol in, that's all. [...] *So this is not a conflict; it is not putting us in a difficult or conflictive situation* (bcnA32).

College administrators in London, in contrast, are legally required to establish every applicant's eligibility to receive public funding for 16-18-education and otherwise refuse their admission, as the vice-principle of a Hackney college explained to me:

We ask each of our students to bring in their passport [...] when they come to enrol with us, so that we can prove who they are. *In audit terms it's called their 'existence and eligibility', so that we are not falsifying records*; and then we are making sure that students are eligible, in their own right, to these public funds (lonA32).

According to official guidelines, the Education Funding Agency (2014, p. 31) "does not require or expect passports to be photocopied by institutions, although passport numbers or references may be recorded [...] where necessary". More importantly, it establishes that "[f]or circumstances that only affect an individual student the institution is expected to make any necessary decisions itself" and with due consideration of not only "the spirit of this guidance" but also "the best interest of their students" (Education Funding Agency, 2014, p. 8). This effectively does put individual administrators in a difficult position, but also leaves significant room for their interpretation and discretion, as my interviewee went on to explain:

If you read the guidance, we are supposed to make sure that the place we offer a student is a place that they are able to complete. So, if they are an asylum seeker at threat of deportation, immanent deportation, we are not supposed to enrol them, because it's unlikely that they can finish the program... Ahm, it's an interesting one, and we do get students who come in with letters saying that they have been refused, or that their first claim has been refused but is being appealed. And I think then we just take the view that you are still under 18, you are a child, and we will continue to educate you until the point at which... [...] So we would take a very broad-brush approach, because *the rules also say you are not supposed to interrupt the education of someone* because of their immigration status and the fact that it might change (lonA32).

Asked how in practice his team would thus deal with such cases, he told me that they had basically been relying on an earlier response from the Education Funding Agency to a previous request regarding one specific case:

They basically wrote back and gave us a *carte blanche* by saying: ‘If you expect the student to be able to... you know, if the student has an application in, or if the student is here with a parent, you can reasonably assume that the student is allowed or will be allowed to stay. [...] So, if there is an expectation that he would be allowed to stay then we can just say ‘yes, you are funded’. So, it was good to make the query and get something back that was *more general than answering the question being asked*; that was good. And we still use it (lonA32).

On one hand, this confirms Gonzales’ (2015, p. 166) observation that “a lack of clear guidelines [can work] in the students’ favor”; on the other, it suggests that not only official policy documents can serve street-level bureaucrats as “a form of shield [...] in negotiation between institutions and government”, as Jones (2013, p. 28) argued, but also more informal guidance, as long as it comes from what is perceived as the responsible government agency.

6.3.2 Professional Providers of Public Education

According to the UK Department for Education (2011), “[t]eachers make the education of their pupils their first concern, and are accountable for achieving the highest possible standards in work and conduct”. A crucial part of their professional duty is to promote the emotional and cognitive development as well as the safety and well-being of every child in school. Where a family’s immigration status is precarious, this very duty acquires an additional meaning, as the head teacher at a primary school in Hackney described:

Obviously once a child is admitted to the school, *we have that duty* to act in their best interest. Now, *we interpret this as [a duty] to minimise disruption to their life generally*. If the child has arrived here the basic assumption is that the family has chosen to be here... maybe not freely chosen, but actually this is where they have ended up. And so, you know, we just see it as our duty to provide some kind of stability [...] and that includes minimising the disruption in their life, which obviously would be the case if there were a big struggle about their status...[so] we’d always support them in that (lonA28).

Arnot *et al.* (2009, p. 258) argued that any “involvement of teachers with the issue of immigration redefines [their] relationship [...] to the state” and particularly their “protecting [of asylum-seeking and refugee] youth, encouraging their abilities and helping them settle into the school community positions teachers *in opposition* to state immigration policy” (emphasis added). The teaching professionals I spoke to, however, tended to frame their role as less political and more pragmatic, as the quote above as well as the following accounts of a primary school teacher (1) and a language instructor (2) I interviewed in Barcelona suggest:

(1) You have to understand that for a teacher a child in an irregular or regular situation is the same. In fact, *the teacher doesn't even have to know*, because it's a thing of the secretary and the management. For the teacher it doesn't matter if [a child] has papers or doesn't have papers, we don't even consider that (bcnA30).

(2) In my class *I don't know who has papers and who doesn't, and I don't care*. They are students who are in my class and want to learn Spanish or want to learn Catalan, and if they are at [the right] level, I teach them the class (bcnA26).

In the UK, on the other hand, several advocates for the rights of migrants or children in general also noted that immigration status is becoming more of an issue in schools, and that “the very heated national rhetoric about irregularity is absolutely to blame for that” (lonA02). The fact that in response many teachers deliberately disengage themselves from any potential immigration issue can also have negative consequences for a child, as a representative of the *Children's Society* in London noted:

It's just not picked up there, and that is another reason why it's not recognised at an early stage. Because actually if a teacher realises when a child is 12 that they were born here but aren't actually British, then they could help them to try and register [for British citizenship] and avoid any issues further down the line, but I guess [...] *there is a bit of reluctance sometimes from professionals to delve into anything to do with immigration*. They are a bit scarred of approaching this subject and [...] there can be quite a lot of misunderstanding about families' rights [...] and so they are like: 'I don't really know what to do with this, so I'm just going to not look at it, I'm just going to concentrate on the *other things that I can have an influence on*' (lonA16).

It clearly lies beyond the limits of any teacher's professional duty to 'solve' a family's immigration problems, but particularly head teachers can sometimes even contribute to that. Their particular role combines the strong professional ethos of teachers with important administrative and managerial functions and responsibilities: They oversee the admission of new pupils and allocation of specialised services, liaise with families and external agencies, and deal with issues around student behaviour. On the basis of the latter, they may even, under certain circumstances, refuse the admission of a child into a particular class, as one of my interviewees noted (lonA28). Especially in London Boroughs where the allocation of school places is not centralised (as it is in Hackney) but decided at the level of schools, the room for individual discretion is substantial and local practices “can vary significantly between different local authorities, even to the extent where access is dependent on a particular head teacher” (Sigona & Hughes, 2012, p. 30).

Also in Barcelona, as already indicated, can the attitude of individual head teachers (as well as school inspectors) facilitate or delay a child's enrolment and effective participation in class. A recent resolution by the Catalan Education Department²¹ determines that the head teacher may decide to accept 'alternative documents' if parents are unable to completely fulfil the documentary requirements for admission.

²¹ Resolution ENS/280/2015, of February 18, see: http://www.educacio.novaciudadania.bcn.cat/es/documentaci%C3%B3n-que-debe-presentarse_7374 (last accessed 15/10/2016).

Also the head teachers I interviewed myself, both in Barcelona (1) and London (2), seemed to be aware of their room for discretion in this regard:

(1) From the outset, when they come to enrol a child, the first thing we do is to enrol the child, regardless of whether s/he has all the papers or doesn't have papers. They come with their passport and we register [the child] (bcnA25).

(2) We have had cases in the past of families from Africa, where documentation just wasn't available, so we couldn't even get a confirmation of the date of birth, as there was no birth certificate, and no kind of status, but we would still admit a child into school (lonA28).

Given their far-reaching responsibilities, head teachers also tend to become personally involved with the families and sometimes also their immigration cases, as the one working in London particularly highlighted:

We know our families pretty well and those families where there are clearly big challenges, we know them very well because *we have to be involved*. And *my job is to make sure that the provision that needs to be there is there*, and that within increasingly limited resources. [...] So, I am not saying that we should have a kind of completely open-door policy, but you know, where the case is very strong for LTR to be granted it should be granted. And I mean, I am obviously speaking from the perspective of somebody *working with the families* and getting to know them as individuals, getting to know the kids, seeing the kids grow up, you know, so I am not going to take a more kind of formal, sort of legal view of it, you know, *I take a much more personal perspective* (lonA28).

It is because of this close personal relationship with the families in combination with their strong (professional) standing within society that individual teachers can sometimes even influence court decisions on immigration cases. According to Kathryn Cronin, the Head of Chambers at the *Garden Court Chambers*,²² cases involving children are often won on the basis of oral evidence provided by a teacher about their good behaviour in school or the negative consequences that their precarious status or even deportation would have for their development. Among the (head) teachers I spoke to, particularly those working in London were very aware of this potential intersection of their own role with the rules and logics of immigration governance, as one of them explained:

Often I am asked to write a letter, basically to confirm that the child is attending the school... and most of the time that's for a solicitor who is making some kind of application. And most times I don't hear anything more, so I guess in many cases applications are successful. But there are a few that keep coming back and it's clear that these families are having a particular struggle, but I am not sure what the difference is, you know. [...] *From my point of view*, I am just trying to confirm to the authority [...] that the child is in school regularly, that the parents are very responsible and whatever... But also, you know, that having to leave would be a massive upheaval for that child, [...] so *I am just trying to argue the case* (lonA28).

Also some of the practitioners I interviewed in Barcelona mentioned that reports from schools are sometimes used to support applications for regularisation or renewal of residence permits (bcnA25). Particularly language schools (and teachers) as well as NGOs that deliver officially certified language courses play a much

²² Speaking at the 'Precarious Citizenship' conference in London, on 1 June 2016.

more formal role within the management of irregularity – and thereby also its control, as the following account of a language teacher reveals:

We have many students who come to school because they are interested – apart from learning Catalan or Spanish – in the certificate so that they can obtain papers, regularisations and all these things. [...] One of the things that the administration requests, is a course of a few hours of Catalan or Spanish. [...] So when they come to class, we make them sign. *The teacher controls [...] how many days and how many hours they have done* and [certifies these], because there are some who want the certificate but don't come to class. But we say 'No, *chico*, if you want the certificate, I'll give it to you for the hours you've come to class' [...] In this we want to be [strict – *hits the table*] [...] *As a teacher I don't care if you need it [...] because you are from one country or another, if you have papers or don't have papers, I don't care*. But what I do want is [that] you come to my class and participate, otherwise no. What I can't do is a false [certificate] that this guy has come to class if he hasn't come. We can't do that, and *I don't want to do that!* (bcnA26).

It is important to note that the specific kind of control that individual teachers exercise in this context largely corresponds with their very own professional logic, as the same interviewee later convincingly emphasised:

For us it's [like this]: If they come to class, they will learn more languages and integrate better. That is, let's say, our thinking. It's not so much: 'I'm going to force them to comply with the administration...', no: *I don't care about that. What I want is to have them in class*, because I firmly believe that if they come to class, they will learn more, and if they learn more, *it's better for them*. That is the classic position of any teacher; *it's in the DNA of a teacher, this idea* (bcnA26).

While he acknowledged that the (external) obligation imposed on his students by immigration law often incentivises their attendance in class, he was keen to emphasise that by exercising this kind of control he is not taking over the state's responsibility to regulate immigration:

The administrative situation... should be dealt with by the state, and in this aspect, we *are not state, we are school*. And I think this is how the majority here thinks. And so, the administration... I don't think it wants... to somehow obtain information [from the school], because they know that they won't get it, because *there is no predisposition on the part of the teachers, or those who work here, to give such information*. What we want is what I was saying: schooling. And the administration should deal with other things, their own [issues]. So, I won't get involved in whether the administration decides [to require] 45 hours or 60, or [previous residence] of three months or six months, [...] I don't know, *it's not my topic*. But in return, *my topic is schooling and in that we want our freedom*, in a certain way (bcnA26).

He thereby relates teachers' professional freedom to the existence of a firewall between schools and 'the state', at least in relation to the immigration situation of their students. While the latter has become much more of an issue in the British context, the general tendency to refrain from controlling immigration – as well as other administrative matters – was essentially the same among teachers I interviewed in London. One of them put it this way:

If the immigration authority rang me, just hypothetically, and said 'can you tell me what you know about this or that family', I would just refuse to say anything obviously, but then I'd be thinking: 'I need to take some advice on this'. I mean *I don't know where I would*

stand with that. But it's... we know that we have families here that falsely claim benefits, or that have been giving false details about their address to gain access to education in this or that particular school, you know... And I don't know what other head teachers do but I have never reported any of that, because I just feel, well, people do what they have to do to kind of manage. And I am sure families would not want to divulge that kind of information to me as a kind of... you know, obvious representative of the establishment and the authority, but we hear about this and that, whatever it is, but I have never actually acted upon that (lonA28).

This reluctance arguably reflects his awareness that being involved in controlling aspects of his pupils' or their parents' lives that are not directly related to his professional role and function as a (head) teacher could compromise the crucial relationship with them, and thereby undermine his ability to effectively do his job. In the following, I will argue that the need to *shield* teaching professionals from having to control their students' immigration status can thereby also partly explain the emergence of dedicated immigration departments within British universities, where even more of this responsibility has been effectively transferred to individual institutions and their employees.

6.3.3 *'Managers' of Irregularity Within the Education System*

Other than in Spain, where a foreigner's admission to university generally precedes (and is administratively unrelated to) the granting or refusal of a student visa by the immigration authority, admission to study at a British university is strictly contingent on legal residence in the country and both processes are closely linked. In fact, universities themselves are given a fundamental role in determining international students' eligibility for a student visa. Before the latter can even make an application to the Home Office, they have to request a *Confirmation of Acceptance for Studies* (CAS) statement from their prospective university, which thereby officially confirms its intention to 'sponsor' the student's visa application. Only institutions holding a sponsor licence, which has to be renewed annually by the Home Office, can issue CAS statements and thus recruit international students. Following a series of incidents where universities were accused of having enrolled 'bogus' students and therefore lost their licences, the government further tightened these rules in 2014.²³

In principle, the issuing of a CAS statement is at the university's discretion, but it should be refused if a student is (or has been in the past) in breach of immigration rules, or where the university deems any of the documents submitted or declarations made by the student to be fraudulent. According to the Immigration Policy and

²³ Since November 2014 universities risk losing their licence to sponsor overseas students if ten per cent (previously 20 per cent) or more of the individuals they have offered a study place are refused a visa. See: <https://www.gov.uk/government/news/new-measures-to-tighten-up-the-immigration-system> (last accessed 15/12/2017).

Guidance Manager of a mid-sized university in London this puts a lot of pressure on institutions, but also individual members of staff:

We have to get that balance right, and we won't always get it right. There will be instances where... you know, we would have said 'no' to the student when actually... we might have been able to be a little bit more flexible with them. [...] So, it's very difficult, and I think also the guidance that comes up from the Home Office to education providers [...] about what you can and can't accept, isn't always helpful. And therefore, there is a lot of interpretation, and a lot of discretion, and of discrepancy across the education sector in particular, [with] *people like myself having to say what this or that particular rule means* (lonA29).

She also highlighted the intricate power relation between universities and the government, which has clearly facilitated this shift of responsibility:

We, as a sector, are responding to the Home Office because we have to, because we need international students because it's such a big financial incentive. *We have to have those students to operate*, and that's the same for most universities in the UK, and so in a way any changes that they make, while we will complain about them across the sector, and we will lobby for them to be slightly different, ultimately those changes will go ahead and [in order to] continue to sponsor students [...] *we will have to comply with them* (lonA29).

Also here, the logic of internal immigration control clearly overlaps with some of the universities' own functional logics, whereby the intersection of the two creates certain conflicts and contradictions, as the following two statements illustrate:

We don't have that many obligations that are border-control-like. We just need to know that the students we have got here should be here, and *everything else is what you would expect to do as a normal university anyway*; you know, check whether your students are attending classes... *that's not about immigration control*, that's about your students [...] getting what they are paying for. [...] They have the right that if they are not attending classes somebody knows that and is asking why, so that kind of overlap between good pastoral care and regulating university life and Home Office intelligence is... you know, *there is a bit of a blurred line* with that, I think (lonA29).

The difficulty is that that often [conflicts] with the kind of academic assessment about whether somebody is suitable for a particular course. For example, somebody might apply to study with us and the academic department might say 'we really want that student', but we have to say whether or not we are going to be able to sponsor them for a visa, and if we can't then obviously, we can't go ahead with the process. [...] So] *you almost want that to be separate from the academic* because a student should be made an offer on the basis of their academic suitability, and all the other stuff should come next. But because of the way the process works *we have to consider that at the same time*, and that's often difficult for students to understand, and academic colleagues as well because *they are only interested in the academic situation* (lonA29).

The position of academic staff in relation to such obligations is clear: Even more than most schoolteachers they try to shield themselves from any control responsibility beyond the academic, as a lecturer at another London university emphasised:

The idea that universities are now the gatekeepers is something they hate, because they don't think it's their job, and I think they are right. It's the government's job and the government is outsourcing immigration control to a whole variety of people [...] It certainly increases the workload, which is why [...] *it's now all being done by bureaucrats* because

they have to do it like that, it has to be centralised, and that makes sense to me, because *otherwise it would just be a pain in the neck* (lonA24).

What she seems to hint at is the necessity of (prospective) students' immigration issues to be negotiated and 'managed' centrally – if not by central government then at least by especially trained bureaucrats working within the university. According to organisation theory, one way in which organisations tend to respond to such internal logic incompatibilities is “by developing a cadre of organisational members who are less strongly attached to particular logics” (Besharov & Smith, 2013, p. 376). Most UK universities have established dedicated teams of advisors who check all foreign students' eligibility and assist them with any visa issue. While these are officially certified (to give immigration advice) by the central government's *Office of the Immigration Services Commissioner* (OISC), they are 'buffered' from some of the logics that otherwise dominate organisational action and decisions within universities. The way the Immigration Policy and Guidance Manager justified the role of her own team clearly indicates this:

We try to be consistent, and actually the fact that it comes through one team means that those decisions are consistent. Before my team existed, these decisions might have been taken by different colleagues depending on who is involved, so it might have been the academic department even... And so, there was room for different decisions based on personalities, and there was no record of those decisions, it was a bit... of a mess. So, *this allows us to be consistent and to apply the same rules to all of our students.* [...] There is not so much awareness of the actual technicalities and the rules and so on, you know, [...] I wouldn't expect admissions to understand that necessarily; because *their job is to process an application, and an academic's job is to teach somebody* (lonA29).

Crucial to my analysis and framework is that this organisational adjustment also facilitates a closer cooperation between part of the university's own administration and the immigration authorities. As my interviewee explained, her team has “names and contacts at the Home Office” and “where we are concerned about a student's status [or] if the student is telling us things and we need more information, with the student's consent we can actually contact the Home Office for what's called a 'student eligibility check'” (lonA29).

Importantly, what she initially described as a mechanism through which the Home Office can 'help' them to deal with complex cases also puts a legal obligation on individual student advisors to inform the Home Office “if we categorically know that somebody is in breach of their visa condition” (lonA29). The way she and her team tend to handle such encounters with (potential) irregularity in practice suggests that they regularly struggle with, and sometimes try to bypass, this particular obligation:

If I am completely honest, where we suspect that, we would from an advisory point of view make the student aware [...] that they are potentially in breach and that if we found out that they were, we would have a legal obligation... but we wouldn't just say 'we think you are in breach' and tell the Home Office. *We would kind of engage with the individual to try and encourage them to stop doing what we think they are doing, but ultimately, we wouldn't want to kind of police that because that puts an unrealistic kind of burden on us.* [...] We did have an application once from a student who... was a failed asylum seeker, and had gone kind of underground, so to speak, and so obviously if we would have suddenly sent

this student’s eligibility check to the Home Office, we would be flagging up that this student is here, that we have their address, we had all that information... And that doesn’t... *that’s not what we are there to do*, we are there to assess a student’s ability to study with us, not to say to the Home Office ‘we found this failed asylum seeker and here is where they are’ (lonA29).

Ultimately, this reflects her awareness of the consequences that such information exchange with the immigration authority could potentially have for a student’s stay in the country, but also that immigration enforcement as such lies beyond what she perceives as her core responsibility.

6.4 Education Workers as Migration Managers?

Following my discussion of the intersections of immigration control with the provision of public healthcare (Chap. 5), the aim of this chapter was to identify equivalent roles and mechanisms in relation to public education. Figure 6.1 summarises the empirical findings presented above by positioning these roles within the same analytical framework, based on whether or not the individuals occupying them in

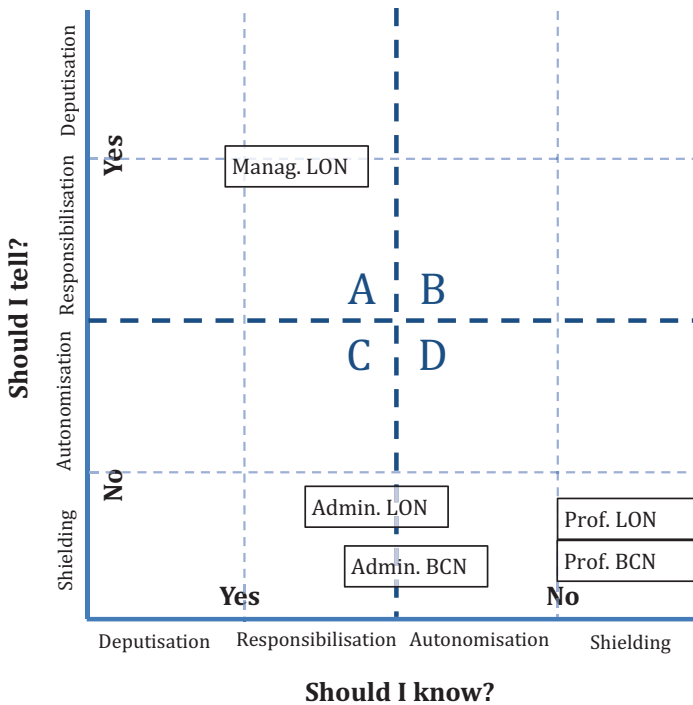


Fig. 6.1 The positions of different categories of education workers in relation to migrant irregularity and its control

each environment are legally obliged, officially encouraged, or just enabled to (i) find out students' (or their parents') immigration status and (ii) to share such knowledge with immigration authorities.

Other than in the sphere of healthcare, the local *administrators* of (at least compulsory) education are not expected to find out, record or reveal the immigration status of the students they enrol for school. Just in relation to additional state support for extra-curricular expenses can irregularity become an issue for them and thus – particularly in the UK context – represent a barrier to equal access, which is otherwise well protected by strong human rights provisions as well as the dogma that school is not the right place for immigration control. In relation to post-compulsory education and training, however, and again particularly in the UK, the role of street-level bureaucrats dealing with student admissions can involve the checking of immigration status. This is reflected in their position between sectors 'C' and 'D' of the diagram, whereby those working in London appear further to the left and top.

The *professional providers* of education are – similar to doctors and nurses in the case of healthcare – effectively shielded from any responsibility to either *know* or *tell* the immigration situation of the persons they teach, even though their individual confidentiality is not as firmly protected as that between health professionals and their patients. This also extends into the sphere of post-compulsory and even adult education and is true for both environments studied. Those teaching professionals who also have managerial responsibilities (like head teachers) are more likely to get personally involved with a particular family's immigration case, but in no way expected to *know* and often particularly reluctant to *tell* anything related to immigration status.

Specific *managers of (potential) irregularity* – comparable to the Overseas Visitors Managers in NHS hospitals – only seem to be necessary within UK universities, whereas elsewhere the control of ir/regularity is carried out, if at all, by regular administrative staff. The establishment of immigration advice departments within British universities and the involvement of these departments in controlling immigration, however, is largely a matter of responsabilisation. While both status determination and information exchange with immigration authorities forms part of the managers' work routine, these tasks are not underpinned by explicit legal obligations but rather follow from financial incentives that universities feel unable to resist.

That the existence of a firewall is particularly crucial in the sphere of education has also become apparent from the heated public debate I mentioned at the beginning of this chapter (regarding the content and use of the National Pupil Database in the UK). Notably, it was not so much about students' immigration-related information being included in a national database than the fact that this would potentially make this sensitive information accessible to other state agencies. While the government has assured that this data would not be used for immigration enforcement purposes (Gayle, 2016), a spokesman of the education department, quoted in *Schools Week*, admitted that “[w]here the police or Home Office have clear evidence of illegal activity or fear of harm, limited data including a pupil's address and school

details may be requested” (Whittaker, 2016). Given that this has already happened in the past,²⁴ the general secretary of the *National Union of Teachers* said in a press release that the union could only agree to the collection of such data if given “a guarantee from the Government that personal information will not be passed to the Home Office, so that it is clear that schools are not part of policing immigration”.²⁵ What schools to a large degree are responsible for, and where individual teachers thus are required to report any suspicion to relevant agencies including the police, however, is the health and safety of every child in school, as many of my interviewees assured me. This ultimately highlights the rather close connection between education and (social) control more generally, as well as the potential usefulness of this connection for immigration enforcement. Already in 2010, in a White Paper entitled *Protecting our Border, Protecting the Public*, the UK Border Agency revealed (under the heading ‘*Child Protection*’) that it has initiated “joint projects on the exchange of data and intelligence with schools [...] in order to aid consistent support to migrant children whose families abscond or avoid immigration compliance controls” (UKBA, 2010, p. 18). From the theoretical perspective of my study, such projects must be interpreted as a deliberate effort to develop and justify new forms of immigration control by abusing its potential overlap with the protection of vulnerable individuals against abuse, negligence or destitution. This will become more obvious in the next chapter, where I look at the challenges that underlie the local provision of social assistance to persons who are not only in need of support or protection but also subject to immigration control.

References

- Arnot, M., Pinson, H., & Candappa, M. (2009). Compassion, caring and justice: Teachers’ strategies to maintain moral integrity in the face of national hostility to the “non-citizen”. *Educational Review*, 61(3), 249–264. <https://doi.org/10.1080/00131910903045906>
- Besharov, M. L., & Smith, W. K. (2013). Multiple institutional logics in organizations: Explaining their varied nature and implications. *Academy of Management Review*. Academy of Management, 39(3), 364–381. <https://doi.org/10.5465/amr.2011.0431>
- Bhattacharyya, G. (2016). The Home Office are turning teachers into immigration officers. *politics.co.uk*. Available at: <http://www.politics.co.uk/comment-analysis/2016/10/31/the-home-office-are-turning-teachers-into-immigration-offic>
- Bloch, A., & Schuster, L. (2005). At the extremes of exclusion: Deportation, detention and dispersal. *Ethnic and Racial Studies*, 28(3), 491–512. <https://doi.org/10.1080/0141987042000337858>

²⁴A Freedom of Information Request from July 2016 revealed that the Home Office has submitted 20 requests for information to the National Pupil Database since April 2012; see: https://www.whatdotheyknow.com/request/pupil_data_sharing_with_the_poli#incoming-846569 (last accessed 3/08/2016). See also: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-10-13/48635/> (about Home Office requests made since July 2015, last accessed 15/12/2017).

²⁵See: <https://www.teachers.org.uk/news-events/press-releases-england/school-census-data> (last accessed 15/12/2017).

- Bloch, A., Sigona, N., & Zetter, R. (2009). *No right to dream. The social and economic lives of young undocumented migrants in Britain*. Available at: <https://www.phf.org.uk/wp-content/uploads/2014/10/Young-Undocumented-Migrants-report.pdf>
- Bloch, A., Sigona, N., & Zetter, R. (2011). Migration routes and strategies of young undocumented migrants in England: A qualitative perspective. *Ethnic and Racial Studies*, 34(8), 1286–1302. <https://doi.org/10.1080/01419870.2011.560276>
- Burns, J. (2014). Free meals ready to be served in infant schools. *BBC News*, 2 September. Available at: <http://www.bbc.co.uk/news/education-29013640>
- Calavita, K. (2003). A ‘reserve army of delinquents’ – The criminalization and economic punishment of immigrants in Spain. *Punishment & Society-International Journal of Penology*, 5(4), 399–413. <https://doi.org/10.1177/14624745030054002>
- Consorci d’Educació de Barcelona. (2015). *Ajuts de menjador escolar: Curs 2015–2016*.
- CORAM. (2013). *Growing up in a hostile environment: The rights of undocumented migrant children in the UK*.
- De Genova, N. (2002). Migrant “illegality” and deportability in everyday life. *Annual Review of Anthropology*, 31(1), 419–447. <https://doi.org/10.1146/annurev.anthro.31.040402.085432>
- Departament d’Ensenyament. (n.d.). *El Sistema Educativo En Catalunya – Aspectos Básicos*. Barcelona. Available at: <http://xtec.gencat.cat/web/.content/alfresco/d/d/workspace/SpacesStore/0076/b4cfbe2b-2a15-4997-a7ce-81f4b4219f56/castella.pdf>
- Department for Children Schools and Families. (2009). *Your child, your schools, our future: Building a 21st century schools system*.
- Department for Education. (2011, June). *Teachers’ standards* (pp. 1–11). <https://doi.org/DFE-00066-2011>
- Department for Education. (2015). *The national pupil database. User guide*. Available at: <https://www.gov.uk/government/collections/national-pupil-database>
- Department for Education. (2016a). *Educational excellence everywhere* (p. 128).
- Department for Education. (2016b). *School census 2016 to 2017 (Guide, version 1.0)*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522546/2016_to_2017_School_Census_Guide_V1_0.pdf
- Education Funding Agency. (2014). *Funding guidance for young people 2014 to 2015 – Funding regulations*.
- Gayle, D. (2016). Parents urged to boycott requests for children’s country of birth information. *The Guardian*, 26 September. Available at: <https://www.theguardian.com/uk-news/2016/sep/26/parents-boycott-requests-childrens-country-of-birth-information>
- Gleeson, S., & Gonzales, R. G. (2012). When do papers matter? An institutional analysis of undocumented life in the United States. *International Migration*, 50(4), 1–19. <https://doi.org/10.1111/j.1468-2435.2011.00726.x>
- Gonzales, R. G. (2015). *Lives in Limbo: Undocumented and coming of age in America*. University of California Press.
- Greater London Authority. (2012, August). *English language for all*.
- Hackney Learning Trust. (2014). *Hackney primary school admissions guide 2015*. London.
- Hackney Learning Trust. (2015). *Hackney ESOL advice service – Annual report 2014–15*.
- Ibáñez, M. J. (2015). La escuela española recula en la integración de los alumnos inmigrantes. *El Periodico*. Available at: <http://www.elperiodico.com/es/noticias/educacion/ocde-informe-escolares-inmigrantes-escuela-espanola-ricula-integracion-extranjeros-4757256#>
- Jones, H. (2013). *Negotiating cohesion, inequality and change: Uncomfortable positions in local government*. The Policy Press.
- Luhmann, N. (1982). *The differentiation of society*. Columbia University Press.
- Lundberg, A., & Strange, M. (2016). Struggles over human rights in local government – The case of access to education for undocumented youth in Malmö, Sweden. *Critical Policy Studies*, 1–20. <https://doi.org/10.1080/19460171.2016.1142456>

- Malik, S., & Walker, P. (2013). Ministers planning immigration crackdown on “education tourists”. *The Guardian*. Available at: <https://www.theguardian.com/politics/2013/mar/27/ministers-immigration-crackdown-education-tourists>
- Mezzadra, S., & Neilson, B. (2013). *Border as method, or, the multiplication of labor*. Duke University Press.
- Morán, C. (2004). Miles de alumnos extranjeros no pueden cursar bachillerato por carecer de papeles. *El País*. Available at: http://elpais.com/diario/2004/07/28/sociedad/1090965602_850215.html. Accessed 7 Dec 2016.
- Penninx, R., & Garcés-Mascareñas, B. (2015). The concept of integration as an analytical tool and as a policy concept. In B. Garcés-Mascareñas & R. Penninx (Eds.), *Integration processes and policies in Europe: Contexts, levels and actors* (pp. 11–29). Springer.
- PICUM. (2011a). *Building strategies to protect children in an irregular migration situation: Country brief Spain*.
- PICUM. (2011b). *Building strategies to protect children in an irregular migration situation: Country brief United Kingdom*.
- Portes, A. (1978). Toward a structural analysis of illegal (undocumented) immigration. *International Migration Review*, 12(4), 469–484.
- Ross, T. (2015). Nicky Morgan orders immigration review to examine “education tourism”. *The Telegraph*, 16 August. Available at: <http://www.telegraph.co.uk/news/uknews/immigration/11805477/Nicky-Morgan-orders-immigration-review-to-examine-education-tourism.html>
- Schweitzer, R. (2017). Integration against the state: Irregular migrants’ agency between deportation and regularisation in the United Kingdom. *Politics*, 37(3), 317–331. <https://doi.org/10.1177/0263395716677759>
- Sigona, N. (2012). “I have too much baggage”: The impacts of legal status on the social worlds of irregular migrants. *Social Anthropology*, 20(1), 50–65. <https://doi.org/10.1111/j.1469-8676.2011.00191.x>
- Sigona, N., & Hughes, V. (2012). *No way out, no way in irregular migrant children and families in the UK*.
- Spencer, S., & Hughes, V. (2015). *Outside and in: Legal entitlements to health care and education for migrants with irregular status in Europe*.
- Strange, M., & Lundberg, A. (2014). Education as hospitality. *Peace Review*, 26(2), 201–208. <https://doi.org/10.1080/10402659.2014.906886>
- UKBA. (2010). *Protecting our border, protecting the public: The UK Border Agency’s five year strategy for enforcing our immigration rules and addressing immigration and cross border crime*.
- UNCESCR. (2003). *Right to education – Scope and implementation. General Comment 13 on the right to education*.
- Whittaker, F. (2016). DfE refuses to release pupil nationality data agreement. *Schools Week*. Available at: <https://schoolsweek.co.uk/dfе-refuses-to-release-pupil-nationality-data-agreement/>

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter’s Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter’s Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.



Chapter 7

Managing Irregularity Through the Provision of Social Assistance



Policies and measures of social assistance and protection represent the core and ultimate safety net of the welfare state. Their aim is to reduce the social and economic vulnerability of poor or otherwise marginalised members of society by mitigating the risks associated with old age, illness or disability, as well as the loss of employment or other sources of income. Compared to the provision of and access to public healthcare and education, these targeted provisions arguably constitute a more explicit link between the state and a particular individual or household, since they often involve a direct transfer of public funds. Like other forms of public welfare, social protection systems are thereby based on the contributions – either employment-related or through general taxes – of potential beneficiaries, and thus hinge on a sense of trust and solidarity among all members of the ‘community’ (Banting, 2000; Alesina & Glaeser, 2004). Following Thomas H. Marshall’s (1950) classic conceptualisation of national citizenship as the successive conferral of civic, political and only then also social rights, Esping-Andersen (1990, p. 21) emphasised that “social citizenship constitutes the core idea of a welfare state”.

Not only but particularly in advanced European welfare states, immigration has thus instinctively been perceived and treated as a potential threat to existing welfare arrangements, due to an increased competition of ‘outsiders’ for employment, public services and other resources (Borjas, 1999; Banting, 2000; Sainsbury, 2012). Quantitative analyses of opinion data suggest an inverse relationship between the inflow of newcomers – particularly if they are relatively low-skilled or poorly integrated into the labour market – and the level of support among ‘native’ populations for policies aiming at redistribution and social protection (Burgoon, 2014; Gaston, 2015). It has also been argued that “a political backlash against immigration and multiculturalism might help fuel a more comprehensive neo-liberal attack on the welfare state” (Banting, 2000, p. 22). Notably, the growing anti-immigrant rhetoric – traditionally associated with right-wing political parties – has

indeed become part and parcel of how many governments are justifying welfare cuts that ultimately affect not just immigrants but also the ‘native’ poor. The same argument has also been turned on its head by studies suggesting that strong and inclusive welfare policies can also reduce popular hostility towards immigrants by decreasing their (visible) marginalisation and thus stigmatisation (PICUM, 2015) and lowering overall social inequality as well as the general risk of poverty (Artiles & Meardi, 2014). Banting (2000) therefore suggested that expansive welfare states based on (near-)universal social insurance systems are better suited to guard against anti-immigrant backlashes than slim welfare states, which are generally more prone to welfare chauvinism.

Openness for immigration ultimately involves the extension of social rights to foreign residents (Soysal, 1994; Ruhs, 2008) and their more or less equal representation in public and political discourse (Papadopoulos et al., 2008). From a strictly economic perspective, Martin Ruhs and Philip Martin (2008) posit an obvious trade-off between the overall number of immigrants allowed to enter and stay in a given host country and the social and economic rights afforded to them. In practice, and in order for immigration to be perceived as compatible with relatively extensive national welfare provisions, any level of openness must be mediated through ever more complex and stratified systems of immigration statuses and correspondingly differentiated rights (Morris, 2002). Irregular migrants’ position at the very bottom of this hierarchy, and their explicit lack of formal membership further exacerbate the underlying frictions and make their inclusion a particularly contested matter. It has also been noted, however, that “the denial of the most basic social rights could create more economic costs than benefits for the existing population” (Ruhs, 2008, p. 420). This is obviously true for any category of residents and irrespective of the il/legality of their presence (PICUM, 2015), and can thus justify universal access to not only (primary) healthcare and (compulsory) education, but also basic social assistance and protection measures. In this chapter I therefore look at how migrant irregularity and its control interact with the various mechanisms of inclusion and exclusion that underpin the local provision of social assistance and protection measures in London and Barcelona. As in previous chapters I thereby focus on the perspective of welfare bureaucracies, which have long been attributed a decisive role in (re)negotiating immigrants’ social rights and access to such services (Guiraudon, 2000; van der Leun, 2003, 2006). It is the third area of public service provision where individual street-level bureaucrats have to manage certain contradictory logics and obligations following from their own professional responsibilities on one hand, and immigration law on the other (Furman et al., 2012; Cuadra & Staaf, 2014; Price & Spencer, 2015).

7.1 Public Support for Non-members: Ambivalent Legal-Political Contexts for the Provision of Social Assistance and Protection to Irregular Migrants

While the provision of public assistance primarily aims to achieve social inclusion and thereby preserve the overall cohesion of society, it always also entails a certain element of exclusion, since not every claimant will meet the legal and moral-political criteria of eligibility and deservingness (Hemerijck et al., 2013). Unless it is understood as a truly universal *right*, access to social assistance and protection is granted or denied either on the basis of *need* (such as absolute or relative poverty or evidence of destitution), previous *contributions* (in the form of taxes or social insurance payments) or *membership*. Possible loci of control and regulation of access by non-members are either the territorial border of the nation state or the internal boundaries of its welfare system or formal labour market. The negative consequences of welfare exclusion as well as the immediate costs of providing such services, however, are also felt at the local level (Price & Spencer, 2014). Both in Britain and Spain this is partly because the gradual decentralisation of competences and responsibilities in this realm of service provision has not been matched by a corresponding redistribution of public funds. In Spain, the quite substantial shift of powers (starting in the 1980s) from central to both regional and municipal governments has resulted in a rather fragmented system of cash benefits and social care services delivered at various administrative levels (Moreno & Bruquetas, 2011; Rodríguez-Cabrero, 2011). Not only for (irregular) migrants – whose eligibility often precisely depends on which level of the administration finances a particular service – it is difficult to discern the various components (and corresponding competences) of this system. The following account of the director of a migrant community organisation in Barcelona reflects this complexity:

There are support measures [*ayudas*] from City Hall that are different from those of the *Generalitat* [*the Catalan government*]; [whereas] the minimum income support [RMI] doesn't really come from the *Generalitat* but from [the central government]. What happens is that the *Generalitat de Catalunya* administers the RMI, but all the other benefits, like let's say the grant for the children to eat at school, the help to pay the rent, to pay the electricity... all these are local measures that the city can decide to whom they are given and to whom not (bcnA01).

While the influence of local government, and thus also the variation between different municipalities in this regard, has increased during the years of fiscal consolidation, both the central government and most Autonomous Communities have rigorously reduced their expenditure in all areas of social policy (Moreno, 2007; Moreno & Bruquetas, 2011; Rodríguez-Cabrero et al., 2015). Empirical research has shown that irregular migrants have been particularly affected by the economic downturn, which coincided with various government proposals to further restrict their access to basic services and employment (Manzanedo & Fabre, 2009).

In Britain, the devolution of competences in the field of social policy has been less far-reaching but like in Spain it was accompanied by significant cuts to central

government funding for local authorities (LAs) to provide social services to their residents (Hastings et al., 2013). Almost all of the local administrators and practitioners I interviewed in London mentioned insufficient resources as the most significant barrier to an effective provision of social care and support services. As the immigration advisor of a local *Citizens Advice Bureau* emphasised, this is not only an issue in relation to the specific needs of irregular residents but also other parts of the population and areas of provision:

There is this tension between the central government and the LA as to who is responsible for these very vulnerable people. And that plays out aside from immigration, isn't it? I mean that's also with the cuts; the government is cutting LAs' budgets and is expecting them to do more and better work (lonA19).

Facing increasing pressure from LAs as well as civil society, the central government re-introduced a specific funding stream – previously called '*Migration Impacts Fund*' (2009–2010) – that should help LAs to deal with “the impacts of immigration on local communities” and on locally provided services in particular. Since 2016, the '*Controlling Migration Fund*' essentially aims to achieve the same goal, but mainly by reducing the number of unlawful residents, which in turn requires a closer cooperation between LAs and the UK Home Office in order to implement additional measures of immigration enforcement (Department for Communities and Local Government, 2016). At the centre of these developments are the legitimate claims of increasing numbers of immigrant families – in mostly irregular but also certain regular situations – who according to immigration rules have no recourse to public funds, but still a fundamental right to receive support from their local Council if otherwise they would become destitute and that would constitute a breach of a child's human rights (Price & Spencer, 2015).

At the same time, and in both countries under study, social services are increasingly expected to fulfil much of their function by '(re)activating' people for gainful employment, i.e., channelling them (back) into the formal labour market. While certainly not a new trend (nor specifically related to the management of migration), it underpins another important mechanism of excluding irregular residents from longer-term social assistance. Since at least the beginning of the 1990s, British welfare policy has been characterised by a strong reliance on employment and 'employability' as the central elements of so-called 'workfare' and later 'welfare-to-work' approaches to reducing poverty and social exclusion (Hemerijck et al., 2013). The same trend has also, although more recently, become apparent in Spain, where “activation has progressively become a key element in the new social assistance schemes, as well as in the reforms introduced to unemployment programs since the early 2000s” (Rodríguez-Cabrero et al., 2015, p. 14). State support is thereby increasingly made contingent on clients' active and often full-time job seeking, as well as their participation in official training and job qualification measures. The following account of a social worker I interviewed in Barcelona shows that this logic makes it more difficult to 'successfully' do social work with a client who is unlikely to eventually enter the formal labour market, whether because there are generally no jobs available or because that person has no permission to work:

[Irregular migrants] are usually more linked to *Caritas* than to social services because *Caritas* can provide this more assistential support. [...] But *we are in another logic now*, more [about] promotion of the person, which is something *you cannot do with these people* because the promotion happens through work. [...] And if there are no jobs, what the hell are we going to do? Obviously, the irregular person is the most brutal case, the clearest, most paradigmatic, but this is also happening with people who are Spanish or are regular immigrants: What do we do if there is no work? (bcnA21)

Like in the areas of healthcare and education, the inclusion of irregular residents in the local provision of social assistance and protection requires the reconciliation of contradictory legal frameworks and institutional logics, which in turn can lead to rather unexpected outcomes and alliances, as I will show in the remainder of this chapter.

7.2 Legal Frameworks, Formal Entitlements and Practical Barriers for Irregular Migrants' Access to Social Assistance Provided in London and Barcelona

In outlining the formal frameworks and in order to highlight the various contradictions and practical barriers that arise in the course of their implementation, I differentiate – as in the previous chapters – between the provision of basic and more substantial or longer-term support.

7.2.1 Irregular Migrants' Access to Basic Support

Basic forms of social assistance and protection aim to alleviate the most immediate and pressing symptoms of destitution, such as street-homelessness or the inability to cover alimentary or other essential needs. They address temporary hardship through emergency social care services including night shelters, food banks or soup kitchens, but also individual counselling and street work. Such measures do not involve substantial cash transfers and are often accessible to any person who exhibits a specific need. Both in the UK and Spain, the principal responsibility for providing these services to particularly vulnerable individuals and families lies with the LA, i.e., the city or Borough where they officially reside. That said, also charities and church organisations have traditionally played an important role in this regard (and in both national contexts), by providing additional services to those who have 'fallen through the cracks'. A representative of *Caritas* who I interviewed in Barcelona emphasised that it is not only but especially in the context of migrant irregularity that the Third Sector has to make up for generally insufficient public provisions:

In relation to irregular immigration, it's just... they [public services] don't do anything. It's like, I don't know, sometimes I wonder: if in Spain there were no private entities... who

would take care of all this population? Of 20,000 [clients in Barcelona] we have 3,600 [in an irregular situation]. Where would these people be? Some of them we provide with housing, many receive financial aid, we help them with their regularisation, and we have psychologists who support them... because otherwise, where would all these people be? I believe that the Third Sector in Spain is what [prevents] a time bomb, mainly in relation to the [irregular] migrant population, but also in general (bcnA03).

At the national level, while the relative share of social services and benefits addressing basic needs has increased (from 33% in 2007 to 50% in 2011), local governments' overall social expenditure has decreased by almost 20% between 2010 and 2013 (Rodríguez-Cabrero et al., 2015, p. 16/7). Within this context, and in order to counter social tensions and the growing risk of social exclusion and disintegration, the city government of Barcelona has taken steps to compensate for the lack of universality that increasingly characterises central government policy in this field. A universalistic approach is particularly crucial in the context of sustained immigration, as a former City Councillor for social welfare wrote in an official publication:

[T]he universal nature of social services is absolutely fundamental in the medium and long term because it is necessary that social services can continue to manage in a sustained way the tensions generated by the pressure that newcomers [put on our] care services. As long as this universalisation does not occur [at the national level], the City Council has chosen to strengthen its network of primary social care, so that the criterion for attending the users [can] be based on their needs and not on their origin (Gomà, 2006, p. 117, own translation).

While in Spain the provision of primary social care services is generally a municipal competence, Barcelona occupies an exceptional position also within Catalonia in that it also administers specialised social care services. The costs of these provisions should – according to official agreements – be equally shared between the state, the Catalan government and the municipality, but in the case of Barcelona around 80% of the costs are effectively covered by the city alone, a fact that the local government has referred to as “the historical deficit in financing municipal responsibilities for policies of inclusion” (Ajuntament de Barcelona, 2005, p. 61/2, own translation).

For migrants who irregularly reside in Barcelona, this means that at least in principle, they can access those elements of social service provision that directly depend on the municipality, as the director of the city's *Department for Immigration and Interculturality* assured me:

If you are irregular you cannot work, or at least [not] legally, and [...] you cannot opt for any of the regular economic benefits like the RMI... But then on the other hand, what we do on the part of the Municipality is... well, anything that we are not forbidden [to provide] by law, we offer also to them. So, a person who has these needs and is irregular can still go to social services and generally, *if s/he really needs it*, will receive help. If it's necessary for food and other basic needs... for these basic things not only does [the law] not prohibit this, but our Social Services Law says very clearly that *everyone has to be attended, regardless of their legal status* (bcnA18).

The legal basis for this, however, is not only laid out by municipal law but also Spanish immigration law, which stipulates that all “foreigners, regardless of their

administrative status, are entitled to basic social services and benefits”.¹ For the director of one of the city’s 40 social service centres (SSC) it is obvious that what justifies this comparatively open access for irregular migrants is the immanent link between an individual’s access to such services and his or her social inclusion:

Of course, all financial aid that [comes] from the City Council [...] is geared towards inclusion. So, it addresses situations in which a family or an individual needs support for... well, *to be able to function*. It aims at [their] social inclusion. Obviously, these aids always have to be linked to a basic need, or more or less basic, such as the *Solidarity Card* [*Tarjeta Solidaria*], which is for food, so very basic; but there could also be some help to buy new glasses, for example (bcnA20).

Like with other local services, what ultimately gives access to such support is the claimant’s *official* – even though not necessarily *legal* – residence within the municipality. As an NGO representative who also works as intercultural mediator within the public health and social care system explained to me, however, the lack of specific documentation certifying local residence often constitutes a practical barrier:

In the case of social services, whether or not someone has access to a benefit – whatever type of benefit – is strictly conditional on [local] registration. It’s not enough to arrive with your documentation, let’s say the national ID of Romania. You will be required to be registered and show the certificate of regular residence [in Barcelona] [...]. And if you don’t meet this requirement you cannot access the service (bcnA10).

This also means that even though irregular migrants’ formal entitlement to basic social services is, in principle, uniform across the country, much depends on where exactly they live. Since the overall cost of welfare provisions tends to increase with their inclusiveness, financial constraints often preclude this kind of local investment in social cohesion, especially in the wake of an economic crisis and if it means spending money on people whose deservingness is increasingly questioned. The following accounts of a social worker (1) and a migrant community representative (2) reflect these limitations as well as the distinctiveness of Barcelona in this respect:

(1) It is also true that the City of Barcelona in recent years has stood out for having more money than other City Councils. *The law says that local support depends on each city, so each city invents what it wants*. In recent years, during the crisis [...], we have disposed of money to be able to do and cover things that in other municipalities, smaller or with another economic situation [...] could not be done. I have colleagues in the Prat [a municipality next to Barcelona] who don’t even attend [irregular] immigrants at all. But this is not so much a policy of migration, but a policy of ‘there is no money for almost anything’ (bcnA20).

(2) What they did [in Barcelona] was the opposite: raise this provision so that all the people who used to receive [support] continue to receive it, and apart from that the ones below also receive it. [...] You put so much more money that everyone can get the food scholarship. What for? So that the one who had it and would lose it does not blame the immigrants that now he no longer receives it because of them (bcnA01).

¹Art. 14(3) of Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration, see: http://noticias.juridicas.com/base_datos/Admin/lo4-2000.t1.html#a14 (last accessed 15/12/2017).

Whereas in Spain and even within Catalonia irregular migrants' access to basic assistance can thus significantly vary from one municipality to the next, in the UK they officially have '*No Recourse to Public Funds*' (NRPF) wherever they live. NRPF is a condition defined under immigration legislation that renders certain persons who are 'subject to immigration control' ineligible to receive any public support or benefit, including services administered directly by local authorities, like temporary housing, homelessness support or basic attendance allowances² (Stephens et al., 2010; NRPF Network, 2011). While it also applies to increasing numbers of 'regular' immigrants holding a temporary residence permit, it is clearly a central element of the government's 'hostile environment' approach to irregular migration. The underlying rationale is that by increasing their risk of destitution, unlawful residents including many refused asylum seekers might be persuaded to leave 'voluntarily', even though a growing body of evidence suggests that this is generally not the case (Crawley et al., 2011; Refugee Council, 2012; CORAM, 2013). The resulting legal framework only acknowledges very few and narrowly defined situations – mostly if minor children are involved – in which unlawful residents can avail themselves of public assistance: if a family's asylum claim has been refused but there are legal or practical barriers impeding their removal, they can qualify for (very limited) support from the HO.³ More generally, irregular migrants with minor children who are destitute or about to become destitute might be eligible for support provided directly by the LA, which has a duty under Section 17 of the *Children Act 1989*, to ensure the welfare of every child in need within its jurisdiction (NRPF Network, 2011; CORAM, 2013). It is important to note that LAs are only allowed to support unlawful residents where withholding such support would result in a breach of the child's – or a vulnerable adult's⁴ – human rights. Where it is assessed that a LA is responsible for a particular family, however, support tends to go well beyond the rather basic and fragmented provision that local social services in Barcelona would be able to offer in a comparable situation.

Another policy element that significantly determines the effective accessibility of a service for unlawful residents and which clearly sets both cases apart is the existence (in Spain) and lack (in Britain) of an effective *firewall* between local social services and national immigration enforcement agencies. Unlike in Spain, UK immigration law places a legal duty on local authorities "to supply information for the purpose of establishing where a person is if the Secretary of State reasonably suspects" that a (former) resident of that area has committed an immigration offence.⁵ More specifically, the same law also requires the LA to inform the

²According to Section 115 of the *Immigration and Asylum Act 1999*. Primary and emergency healthcare and compulsory education are not classified as 'public funds' in this respect.

³Under Section 4 or 95 of the *Immigration and Asylum Act 1999* (see CORAM, 2013, pp. 14–16).

⁴The *Care Act* of 2014 establishes a similar duty towards particularly 'vulnerable adults', whose needs do not just arise from their destitution but from a mental or physical illness or disability (NRPF Network, 2015).

⁵Section 129 of the *Nationality, Immigration and Asylum Act 2002*, see: <http://www.legislation.gov.uk/ukpga/2002/41/section/129> (last accessed 15/12/2017).

immigration enforcement agency if an unlawful resident requests support from social services (NRPF Network, 2011). The therefore often well-founded fear on the part of irregular migrant families represents a significant additional barrier to accessing or even approaching a service that they might well be entitled to, as a practitioner working for the *Children's Society* in London asserted:

There is a bit of reluctance that sometimes you find with families to even approach social services in the first place. So even when we sit down with them and explain the situation and the kind of support that they might be able to provide to them, and that it is the LA's duty to support them, then they are still quite reluctant. And I think that's because they don't want the Home Office finding out. And we always have to [...] explain that the Home Office will; you know, if we refer a family to social services it will be reported to the Home Office in one way or another (lonA22).

Several other interviewees also suggested that what they perceived as varying degrees of reluctance among migrant families generally seems to correspond with their actual deportability and their legal prospects of eventually being regularised.

Among the people I interviewed in Barcelona, in contrast, the corresponding *firewall* was generally perceived as intact. In combination with the comparatively smaller overall chance of irregular residence leading to deportation (see Sect. 4.1), this explains the much lower level of fear among irregular migrants to approach social services in the first place. The following accounts of two social workers I interviewed together (1) and an irregular migrant from Morocco (2) seem to confirm this:

(1) [Social worker 1] I think that they come here fairly calm in this sense. Some are rather demanding sometimes, it's rather the other way around: that they are mounting quite a show, and they are very demanding at times...

[Social worker 2] I think they are very aware that everything that is immigration depends on the central government and [that] we are only the City Council. Another thing is the level of exigency that they exhibit because of this message that they receive... that *they are citizens of BCN*... (bcnA20).

(2) [At social services] they nonetheless help people. Before, I didn't think this service was for people like me... because we don't have that [in Morocco]. I had no idea that there are people who help other people who don't have papers. You understand me? But thanks to God, Spain has this; [...] I didn't know anything about the rights in this country, [...but] little by little you find out (bcnB05).

In the UK, no equivalent right exists per se. It can only be activated under very particular circumstances and through a statutory assessment procedure that automatically reveals the claimant's legal-administrative situation to the national immigration authorities. As a result, most of irregular migrants' needs in terms of ad-hoc support either have to be covered within their own kinship or community networks or picked up by the Third Sector. The former tends to be unsustainable and due to a lack of scrutiny can increase already vulnerable individuals' risk of exploitation, mistreatment and abuse. The latter, in turn, puts additional pressure on already overburdened local community organisations and charities struggling to provide mainstream poverty relief, food hand-outs or night shelters (Butler, 2016). During my time as a volunteer for a local migrant advice and support centre, the rapidly

growing demand for the weekly service repeatedly made it necessary to replace the open drop-in session with a system that required ‘visitors’ to queue, sometimes for several hours, in order to be seen by a professional advisor. When I resumed my volunteering at the centre in October 2019, the weekly open drop-in service had been limited to 20 visitors per session and was allocated on a first-come-first-serve basis. In practice, this meant that many demonstrable needs could not be responded to; and that often very vulnerable people coming from all over London, including many families, would wait in front of the venue from very early morning or even spend the whole night on a bus or in a nearby park in order to arrive early enough to be attended. It also became increasingly difficult to refer people to specialised agencies and services (both private and public), and this was quite often precisely due to limited capacities for dealing with foreign residents without or with precarious immigration status.

7.2.2 Irregular Migrants’ Access to Substantial and Longer-Term Support

Both in Britain and Spain most mainstream social benefits are under central government control – exercised by the (UK) Department for Work and Pensions or the (Spanish) Ministry of Work and Social Security, respectively. Foreigners in irregular situations are generally excluded from the pension system, regular unemployment support and the provision of social housing, as well as child, family and other benefits or tax credits. In Spain, the public welfare net also relies significantly on minimum income (support) schemes administered at the level of the 17 Autonomous Communities, which also determine the corresponding eligibility criteria and payment rates. This non-contributory, means-tested but generally low financial support⁶ precisely aims at the social inclusion of those not (or not anymore) covered by the national unemployment and social security system. In exchange for support the beneficiaries are obliged to work towards their occupational (re-)integration.

The Catalan *Minimum Insertion Income* (*‘Renta M nima de Inserci n’*, RMI) can be claimed by anyone who can prove a lack of financial means and social security coverage as well as continuous registration in Catalonia during the preceding two years. In addition, and unlike ad-hoc support by social services, eligibility is also strictly contingent on legal residence in Spain.⁷ In this case it is Catalan law that explicitly extends irregular migrants’ exclusion from the contributory into the non-contributory sphere of mainstream social security, and from the national to the local level of service delivery. Interestingly however, while this puts clear legal limits on the provision of more substantial services and resources to migrants living irregularly in Barcelona, the logic of local residence as the

⁶Rates vary but remain significantly below the national minimum income threshold.

⁷Explicitly set out in Art. 6.1(b) of *Ley 10/1997, de 3 de juli, de la Renta M nima de Inserci n*.

principal criterion of eligibility is thereby not completely dismissed. A social worker gave me a good example of this:

The RMI is regulated by law, like unemployment benefits, and the first requirement is to have been registered for two years in Catalonia and have permission [to reside] *at the time of the application*. In other words – and I did have cases, especially where permits are obtained because of a serious illness [...] which is a residence permit but no work permit – once they have the residence permit and [if] they have been living in Catalonia for two years, they can [apply for] the RMI, *from the first day they have their NIE in hand*. But it's a legal requirement [to] have a NIE. If you don't [...] you cannot access it (bcnA22).

This means that irregular but officially registered residence in a locality does count towards the minimum residence period required by Catalan law. The length of this residence is measured via the municipal register (see Sect. 4.2), which does not even record its lawfulness under national immigration law. What matters is the effective previous residence in a place. It also shows that the idea of irregular residents nonetheless being 'citizens of Barcelona' – which one of the social workers quoted earlier had referred to – is not just an empty message they receive but is also reflected in the legal framework itself (cf. Chauvin & Garcés-Mascareñas, 2020) and thus only has to be effectively implemented in everyday practice.

In the UK context, the official message that irregular migrants – as well as public service providers who are confronted with their needs – receive, is very different: They are very explicitly *not* considered citizens (neither of London nor the UK) and their accessing of any state support or social assistance – even if provided locally – can only constitute an exception from the general rule that demands their absolute exclusion. In this sense, the (administrative) function of certain migrants' having '*No Recourse to Public Funds*' is also a symbolic one. It demonstrates to the wider public as well as to service providers that because of their irregularity (or limited right of residence) some residents simply cannot benefit from any public spending. This not only hides the fact that they do have access to schooling and basic healthcare, for example, but also generates confusion about the relationship between NRPF and so-called *Section-17-support* for vulnerable families in irregular situations. The following quotes from interviews with a representative of the *Children's Society* (1) and a local Councillor responsible for social policy and housing (2) demonstrate this:

(1) I still hear all the time from [LAs'] Duty and Assessment teams that 'oh no, no, we can't support them, they are *NRPF*'; and when you say, 'oh well, that's not correct, you need to look into it and do a human rights assessment', they don't know what we're talking about and they are just like: 'Oh no, no, no, we can't support, if they've got *NRPF* we can't provide any support' (lonA22).

(2) We have got this issue in [the Borough], which is happening in lots of other London Boroughs as well, where you have people who have come here, who don't have Leave to Remain but are still here, and there is *some EU legislation* which I am sure you are aware of, where if they have children that are born here, then they can claim money while their cases are being sorted out (lonA21).

Fact is that neither does the child have to be born in the UK (or be a British or EU citizen) nor is it EU law that establishes this entitlement; but what these quotes show quite well is how difficult it is – even for expert practitioners and politicians

working in this field – to understand that UK legislation not only allows but can even demand the provision of social assistance to what the government keeps calling ‘illegal immigrants’ with ‘*No Recourse to Public Funds*’. This is in line with findings of Jonathan Price and Sarah Spencer (2015, p. 29) whereas the NRPF-label increases the likelihood of certain physical or mental health needs and even child protection concerns to be inadequately addressed by statutory services. Quite clearly, the exclusion of certain migrants threatens to undermine the important role that social services have to play for society as a whole (Schweitzer, 2020).

It is also important to recall that *Section-17-support* is meant to be a transitory measure until certain irregularities of a client’s situation can be resolved and his or her needs then covered by mainstream support or benefits. The legally complex and protracted situation that irregular migrant families usually find themselves in, however, often means a quite substantial and rather persistent financial burden for the supporting LA. Data collected by Price and Spencer (2015, p. 51) suggests that more than one third of NRPF cases remain in LA support for between one and three years. In the absence of any additional support from the community or charities, the LA is supposed to cover the full costs of living (including privately rented accommodation) until the immigration case is resolved, i.e., the family is either regularised or deported. Support cannot be refused solely on the basis of insufficient municipal funds, nor will the LA be reimbursed by the state for these additional expenditures (NRPF Network, 2011). Based on the argument that this would create an additional pull-factor for irregular immigration to the UK, the Home Office has repeatedly rejected various local authorities’ requests for reimbursement (Price & Spencer, 2015, p. 23). This represents an additional challenge for LAs, not only in terms of their responsibilities towards their (regular) residents but also as organisations whose legitimacy hinges on democratic elections, as one Council worker emphasised:

There is a skewing of resources away from the types and categories of people that those legislations were originally designed to help, towards people whose only reason [for] approaching support is that the government says they can’t work, and they can’t claim benefits. And that is problematic for a political organisation, and particularly at a time when it has to make huge cuts in budgets. We have to be mindful of how that is received and understood by our electorate; that is hugely problematic (lonA30).

Interestingly, what really underpins a particular LA’s statutory responsibility to provide *Section-17-support* to a destitute family is – just like in Barcelona – their effective residence in the neighbourhood, which is independent of formal or political membership. In practice, however, support can only be provided following complex assessments of the family’s destitution, the child’s concrete needs, and of whether or not a human rights breach would ensue if support were withheld. This makes it very difficult for families to enact their right to such support and creates a significant divergence between law and practice, as two NGO practitioners who regularly help families through this process told me:

There are a lot of discrepancies between different LAs and also there are a lot of families who just don’t know that they can access that support. [...] And if they do know about it, they might still be denied and wouldn’t necessarily get the legal support to challenge the LA

to be able to actually exercise their rights. So that's the kind of area where I think you see *the legislation is there, but the practice is a very mixed picture* (lonA10).

[LAs] are going to want evidence of immigration status, so if you have put in a claim [for LTR] they want the acknowledged letter and they want the actual application, [...] they want evidence of destitution, so if you are being evicted they will normally want to wait until you get the eviction warrant, or if you are staying with friends and they are asking you to leave then letters from the friend or letters from people who have been supporting you (lonA04).

In spite of how difficult it is in practice to gain access to this kind of support, the overall financial pressure that it particularly implies for LAs in London has risen steeply over the last couple of years. What certainly has contributed to this development is that many of the 'hostile environment' measures have made it more difficult for migrants in irregular situations to support themselves. Usually as the very last resort, after all other sources of support have been exhausted, more and more families have to fall back on support from local social services, as one of the social workers I spoke to noted:

Every time they have a refusal from the HO, or their ability to exist outside contact with public services is restricted – so every time there are cuts in the right to work, every time there are changes in access to housing, every time there are rules coming in about the shadow economy – it funnels all down to the LA. [...] *So the issue around managed migration and its functioning or lack of functioning has a massive impact on local services and [is] a drain on our resources, and it's getting worse all the time* (lonA30).

While there is no evidence that shows that this approach has provoked the 'voluntary departure' of a significant number of irregular migrants, as the government hopes, it does curtail the ability of local institutions to protect the most vulnerable members of society from destitution, abuse and social exclusion, let alone support their successful integration. The following section looks at how individual street-level bureaucrats who either administer or provide social assistance at the local level perceive and deal with these challenges.

7.3 Negotiating the Effective Limits of Vulnerability, Deservingness and Immigration Control: The Role(s) and Agency of Social Assistance Workers

Like in the spheres of healthcare and education, and as shown by Joanne van der Leun (2003) and others, most of the everyday gatekeeping is done by those actors who locally administer social assistance and protection, rather than those actually providing such services to the user. Particularly in the case of social assistance, however, even the initial determination of a client's eligibility often requires professional training and experience. Although this, in practice, slightly blurs the distinction between administrative (e.g., reception) staff and professionals (social

workers), I uphold the analytical differentiation between administrators, professional providers, and managers of irregularity.

7.3.1 *Administrators of Social Assistance and Protection*

Particularly in the British context, the strict formal exclusion of irregular migrants from mainstream social assistance and protection also significantly limits the discretion of local authorities and individual welfare workers to effectively renegotiate access to locally funded support measures. Whereas the municipality of Barcelona has – with a view to maintaining social inclusion and community cohesion – extended basic social service provision beyond the scope of national and Catalan law, UK legislation generally precludes such extension of local welfare rights.⁸ The only exception is where LAs themselves assess that not addressing the needs of a destitute child (or vulnerable adult) living within their jurisdiction would amount to a human rights breach. While these assessments open up some room for individual discretion, the tremendous financial pressure under which such decisions have to be taken renders inclusionary interpretations of the corresponding rules rather unlikely. The following accounts of a Council worker (1) and an NGO practitioner (2) clearly reflect both of these aspects:

(1) There is a lot of... opportunity for discretion and for interpretation, and people can be lucky and perhaps access somebody who is in a good mood that day and who might feel like allowing them access to something without perhaps probing so deeply. But more generally it seems that *increasingly people are meeting gatekeepers who are very worried about not exceeding what they are allowed to give* and very concerned about making sure that all the procedures are very strictly adhered to; and that can result in people being actually excluded from a service or a provision to which in fact they were entitled (lonA27).

(2) Very often we see gatekeeping practices; because the money spent on families through Section 17 is not reimbursed by central government [but] comes out of [LAs'] own budgets *there is a lot of pressure on them to kind of hold their money tight*. So, they are unwilling to spend it and very often if you start carrying out an assessment you have to eventually provide support. So, *the easiest way for LAs to avoid spending money is just to say 'there is nothing we can do' at the very first stage*. And they do things like threaten to take children into care, saying it's not their responsibility but another LA's responsibility, saying 'oh you have got NRPF, so we can't help you' or 'you got no leave to remain' ... you know, whatever it is, *they will sometimes just think of an excuse* (lonA04).

The study of Price and Spencer (2015, p. 35) highlights the wide range of reasons given by Council workers for rejecting applicants already at screening stage, and their findings underline the fact that once a case is admitted for a statutory needs assessment the most likely outcome is that support will have to be provided. Other

⁸ Section 7(1) of the *Local Authority Social Services Act 1970* establishes that "[l]ocal authorities shall, in the exercise of their social services functions, including the exercise of any discretion [...], act under the general guidance of the Secretary of State", see: <http://www.legislation.gov.uk/ukpga/1970/42> (last accessed 15/12/2017).

reports show that the general reluctance of LAs is also underpinned by a widespread perception that offering support to a family that lives in the UK unlawfully will reduce the likelihood of them returning ‘voluntarily’ (or at all) to their country of origin (CORAM, 2013). One of the Council workers I interviewed clearly expressed this feeling:

Increasingly LAs are being seen by applicants and [their] advisors, to a large extent, as a means by which someone, particularly if they have a child, can continue to remain in the UK, but without having to be involved with the Home Office, and that is in itself a huge issue for us. Because actually that’s not our role, *our purpose is not to facilitate someone to be allowed to stay, when they have reached the end of the road as far as the Home Office is concerned*, just because actual removal of families is technically difficult; and nor is it our role to facilitate them being able to make multiple applications, which they wouldn’t be able to do if they weren’t being supported by us (lonA30).

For most families in this situation, however, return is not a viable option and “very often [they] just go and live in destitution in order to avoid [...] dealing with this [social service] department that they see as really hostile” (lonA04), as an NGO practitioner described her experience. Those who do make such claims increasingly have to be accompanied by a privately contracted lawyer or specialised NGO, in order not to be ‘put off that easily’, as a representative of the *Children’s Society* emphasised:

When they’re going on their own, those tactics are often used. So, what we do is we tend to put a written referral in, so that there is a paper trail of the act and all their circumstances have been documented, it’s written, it’s been sent in through the correct channels and we can chase it up with them (lonA22).

Just like the official exclusion of irregular migrants living in London is not as straightforward as their NRPF-condition suggests, also their formal inclusion in the case of Barcelona is mediated through administrative gatekeeping practices that can lead to (informal) exclusion. Basic documentary requirements – while necessary in order to establish service users’ identity – represent the first potential barrier, as the director of a social service centre (SSC) in Ciutat Vella noted:

Well usually when they come to ask for an appointment, they identify themselves. We ask for a document to identify them, *to know who this person is*. And so, they show us an identity card [DNI], or their residence permit, or the passport. *If someone presents a passport it’s because s/he doesn’t have anything else, so... that already tells you*. [...] It is also not to duplicate, so when you come with your DNI or your NIE or your passport and we open your file, we can see if you are being attended in [another SSC] at the same time. What we are not going to do is attend you in two places at once (bcnA20).

While this is a common way in which welfare bureaucrats including receptionists regularly ‘happen to find out’ about the irregularity of a (potential) client’s residence in Spain, it does not prevent them from normally administering that person’s access to at least the most basic forms of support, as another interviewee clarified:

People can come and say, ‘well I’m here but I don’t have a [residence] permit, I only have a passport’, so they identify with their passport and we open a file with the passport number, just like someone else with the DNI or NIE. And from there they are treated just like any other person but *within the limitations that the law imposes* (bcnA22).

What he also hints at, is that the legal framework leaves less room for renegotiating irregular migrants' access to more substantial support like mainstream benefits. Only in some cases can these limitations at least partially be bypassed or attenuated by individual workers taking into account the client's specific situation and social context and thus interpreting the rules more flexibly, like in the case of mixed-status families:

In the case of [irregular migrants] it is obviously more likely that they remain at the primary level [of support], because since they will only qualify for sporadic assistance, you cannot really make a work plan... But if it's a family where one [partner] doesn't have a residence permit but the other does, then you can make a work plan, and you can even process a benefit like the RMI for the person who has the permit, even if the other is administratively irregular (bcnA21).

Local social services in Barcelona are not only 'allowed to work with' clients in irregular situations, but they can also play a crucial role within the process of their regularisation and thus the overall management of (irregular) migration to Spain. Part of this role consists in facilitating municipal registration for people without a permanent address, as an employee of a CSS in another district of Barcelona explained to me:

We can produce a document that says that *we know that this person resides in the city*, and with this document and an ID – which can be their passport – they go to City Hall or the local municipal office in their district and there they are registered 'without fixed abode'. This has the same effect as a registration with permanent address, only that it won't show your address and so you won't receive the letters that City Hall may send you. For example, here in [the district] the address of someone registered 'without fixed abode' is that of this centre, so of course there are thousands of letters that are lost, except someone tells you, or is well known, or comes to collect them, so it's very complicated (bcnA22).

This arrangement thus creates some extra work for local welfare bureaucrats and requires a certain level of cooperation and information exchange with City Hall; but it is generally not perceived as part of immigration control, as the following extract from an interview with two social workers indicates:

[Social worker 1] Immigration control would be if I were forced to report this person who is irregular and then the police came and took him...

[Interviewer] ...*but that doesn't happen?*

[Social worker 2] No. That's what I was trying to explain: It's that the whole issue of immigration... depends a lot on how it works in any particular country of Europe and the issue of social services is sometimes linked to immigration, whereas here it's a part that is disconnected [...]

[Social worker 1] *And obviously they would stop to come*; if I tell you that I have to inform [the police] you are not going to come to me. Or if I put you into the system and that [raises a red flag] and the police comes to your house... well, you better not come (bcnA21).

The latter statement once again highlights welfare bureaucrats' awareness that much of the effectiveness of social service provision hinges on the clients' trust. Trust in general and particularly in the promise that without their consent no information about their identity, immigration (or other) status or whereabouts will be passed on to the police or other authority. As already mentioned, this is what fundamentally sets the case apart from the British context, where no such *firewall* is in

place. Instead, the legal obligation to inform the immigration authority of any ‘reasonable suspicion’ of a potential immigration offence extends into the sphere of local social service provision, where it has important implications for how individual gatekeepers deal with this client group. The internal guidance from a London Council’s *Safeguarding Children Board* on what it calls “Inter-agency Information regarding NRPF Families” clearly states that “[i]f there is a family that *comes to the attention* of the Local Authority and it is discovered they are in the UK unlawfully, then there is a legal duty on the Local Authority to inform the Home Office of their whereabouts” (emphasis added). In practice, such information can be exchanged through so-called ‘local immigration teams’, which the *UK Border Agency* established in 2008 as a way of “bringing our people closer to the communities we serve” (cit. in Vine, 2010, p. 7; see also NRPF Network, 2011, p. 12). In addition, and following the initiative of various LAs in London, the *NRPF network* set up a computerised system called *NRPF connect*,⁹ which a Council worker described to me as

a database used by LAs to record the cases that they are supporting and to share that data with the Home Office; and indeed, for the Home Office to provide immigration information to look at how they can progress cases, so that you move them on towards grants of status or indeed move them on to removals and start family removal processes [...] where we feel that there are no barriers, and that return should be pursued (lonA15).

At the time, LAs were charged an annual fee of £2000 for using this system while the Home Office since the beginning contributes to its maintenance. What already became clear is that this cooperation was not just based on a one-way obligation, but rather seems to benefit both sides: On one hand, it certainly helps the Home Office to keep track of or detect new cases of unlawful residence, including people who have ‘absconded’ following the rejection of their claims for asylum or LTR. On the other, it allows the LA to reduce the pressure on its welfare budget by discouraging potential clients from even applying for support. In the meantime, the ‘annual user charge’ increased to £2.500 (for the ‘standard service’); and in 2019 alone, LAs using NRPF-Connect “saw an overall reduction of £100,000/week (10% over the year) due to a decrease in the number of households receiving support”.¹⁰ In addition, LAs can verify not only the immigration status of those who do apply, but also their declarations regarding any alternative sources of support that could prevent their destitution and thus absolve the LA from its duty towards them, as several of my interviewees, including a case worker for the *Children’s Society*, mentioned:

There’re a few things that social services tend to use to try and put people and families off, and the first one being that connection with the Home Office; [...] and there is fear sometimes among families, and particularly when their [immigration] claim is around them having family and friends and a private life here in the UK and then they approach social

⁹The project was initiated by the *NRPF Network* in 2006 and by September 2016 had been joined by a total of 45 local authorities, including 25 (of 33) London Boroughs, see: <http://www.nrpfnetwork.org.uk/nrpfconnect/Pages/default.aspx> (last accessed 15/12/2017).

¹⁰See: <http://www.nrpfnetwork.org.uk/nrpfconnect/Pages/default.aspx#join> (last accessed 15/07/2020).

services saying ‘I’ve got no support, no family or friends who can help me out’... I think sometimes there is that worry that that might actually have a negative impact on the outcome of the claim (lonA22).

Having this close relationship with the Home Office, in combination with the slow decision-making of the latter, thus seems to push individual gatekeepers to question even more the deservingness of irregular migrant families and to treat their claims as illegitimate or at least suspicious. The following accounts of an NGO practitioner (1) and a Council worker (2) exemplify this:

(1) If they [the immigration authorities] are taking four years to make a decision and the person isn’t able to access any services in the meantime, nor to access benefits or work, then that’s going to fall on the LA. And I think *there is an incentive in a way for the LA to inform the Home Office* about a person who is ‘appeal rights exhausted’, because then they would speed up removal and they won’t have to support them anymore (lonA16).

(2) Our relationship with the Home Office is an interesting one, because *part of it is working together*. We are two statutory organisations, [...] we are spending tax-payers’ money on providing financial support and we are keen to make sure that if there is a ‘genuine claim’ – well that’s Home Office terminology, but you know what I mean by ‘genuine claim’ – that they are granted [LTR], and of course if there isn’t then you pursue removal; but *we don’t like limbo, we don’t like people just hanging about*. [...] So, the argument for data sharing, or not the argument but the reason, is that a LA *can’t actually fulfil its statutory duties without knowing someone’s immigration status*, because we need to know whether those exclusions apply (lonA15).

Since in these cases the immediate costs of irregular migrants’ limbo have to be borne by LAs, getting them ‘resolved’ also becomes *their* number one priority, even though it primarily depends on the Home Office to sort out the underlying immigration issue. Arguably, this leads to a dangerous conflation of the claimants’ destitution with their (potential) irregularity. In its guidance for LAs the *NRPF Network* (2011, p. 20) explicitly highlights their duty to “consider resolving the family’s destitution by offering assistance in returning the family to the parents’ country of origin”. At least from an administrative perspective there is thus a significant overlap between the destitute family’s need for social protection and the need for more efficient immigration enforcement. A single mother from Nigeria whose child was born in the UK after she had overstayed a visitor’s visa in 2013, experienced this overlap first-hand when she approached social services:

So, if it’s their [duty] to provide for the baby, why would they provide for the baby without the mother? What they are saying is that the mother has to be... has to have an application with the Home Office, or have LTR... that’s when they will provide, but without that they can’t provide [support] for the baby (lonB11).

This link plays a crucial part in how local welfare bureaucrats in the UK are encouraged to see their clients’ immigration situation as part of their own work or even the basis for any dealings with them. In the following section I will look at what this conflation means in relation to social work as a professional duty rather than merely a service to be financed and administered on the basis of legal entitlement. This will also expose the much subtler mechanisms that ensure that even in

the less ‘hostile’ environment of Barcelona irregular migrants can never be effectively integrated into local support systems.

7.3.2 *Professional Providers of Social Assistance and Protection*

In both contexts, most of the professionals I spoke to did generally perceive irregular migrants as (a small) part of their clientele, even though not always as deserving the same level of support as other local residents. Particularly in relation to those quite central elements of their work that do not involve an actual transfer of financial resources – like individual counselling and child protection – immigration status matters the least (Cuadra & Staaf, 2014). This is also true for the generally more restrictive UK context, as one social worker pointed out:

For example, the general child protection teams are obviously *still delivering a service to everybody*. If a hospital rings up and says we have got a child who has been admitted and they seem to have some non-accidental injury, or a school that rings up and says that a child comes in always very hungry and very dirty [...] or looks like it’s being harmed by its parents... you know, they go under the remit of the general safeguarding and child protection teams, *regardless of any immigration status* (lonA27).

At the same time, and particularly in Barcelona where these interactions are much more normalised, social workers tend to perceive a client’s lack of immigration status as something external but also potentially disruptive to the close and ideally longer-term relationship they seek to establish with the client in order to effectively do social work. The following extracts from interviews with two social workers (1) and a social educator working for a local NGO (2) reflect this:

(1) [Social worker 1] The whole issue of irregularity does not depend on us. It is a state issue. We are not going to give these people a residence card... because that depends on the state, but obviously...

[Social worker 2] ...it leaves us in a very assistentialist position, from the outset.

[Social worker 1] Yes... yes exactly that (bcnA21).

(2) [We] have to initiate a process with the person and [...] *that process has to be longer*, also to be able to make our intervention a bit more comprehensive; because if not, it will remain very assistentialist and will always just be a sporadic relief here and another one there... *but it won’t be an intervention that would lead towards inclusion and towards integration* (bcnA06).

Being able to establish an agreed, longer-term ‘plan’ for working together with the client is important because it helps social workers to justify the difficult decisions they have to take throughout this process, like whether or not to grant any particular subsidy, as another social worker explained to me:

When we say no [to a client], it’s normally because the person didn’t stick to the work plan, and since these are not statutory benefits, they depend a little bit on the ‘deal’ you make with the user in relation to the work plan [...]. So, if they’re just going to come here and ask

for money... then no. We try to do social work in the sense of committing people to this [work plan] (bcnA20).

An important insight of Lipsky's (1980, p. 152) ground-breaking study of the workings of street-level bureaucracies was precisely that "orienting services toward cooperative clients, or clients who respond to treatment, allows street-level bureaucrats to believe that they are optimizing their use of resources". A housing officer I interviewed in London put it this way:

Sometimes I do think that depending on how the person presents – but this is more generally, it isn't necessarily to do with migrants only – does determine your response to that person as well. So, if people are prepared to work with you to try and find something in the private rental sector, to work with you to try and... you know, to give you all the information you need and not to be obstructive about things, actually *I think we are much more willing to be able to try and meet more of their need* in a certain sense (lonA30).

Especially if social services are known or expected to work closely with the immigration authority, a client whose stay in the country is unlawful has a very good reason *not* to provide all the information and is certainly more likely to come across as being 'obstructive about things'. This is one reason why the "increasing connection between social services and Home Office [...] doesn't seem to sit right with a lot of practitioners" (lonA22), as one of my interviewees put it. While some of the social workers I spoke to in London admitted that the lack of a *firewall* gives them a certain power over some of their clients, they generally tried to downplay their own role in informing the Home Office about a suspected immigration offence:

We say it right up front, *not as a threat but a piece of information* that is: 'you need to take this into account as to whether you wish to proceed or not'. Because it's important that they know that there is a consequence, potentially. But [...] the reality of the situation is that there are so few [family] removals that they don't see that as much of a risk, I don't think. It certainly hasn't had much of a deterring effect on people... withdrawing or walking away from an application for assistance from us (lonA30).

Personally, I have not heard of any [colleague] who has volunteered such information, other than the [client's] address, which *is actually not even done by us but by somebody in the finance department* who monitors the grant claims, and occasionally we get asked a question like... if somebody is not sure about the address or thinks that something hasn't been recorded correctly or whatever... But *that isn't even our job*. That's the job of the finance department (lonA27).

In Barcelona, on the other hand, neither finance departments nor social workers themselves face any obligation (nor open encouragement) to notify immigration authorities of their dealings with unlawful residents. The following dialogue between two of them reveals some uncertainty about the corresponding rules but also highlights their reluctance to accept eventually having to report cases of irregular residence, even though they do perceive it as part of their work to potentially act as a link to law enforcement:

[Social worker 1] I think *on paper* we should report situations that are... illegal, [...] like when a guy tells me that he sells drugs.

[Social worker 2] Yes... legally you have to report it; you *would* have to report it.

[Social worker 1] But if he tells us 'I am administratively irregular'... would we have to report that?

[Social worker 2] I don't think so.

[Social worker 1] Look [...] *we don't want to know*. In any case, I don't know if by law we are obliged, but somehow, consciously or unconsciously, we object [*nos hacemos objetores*']. No one is going to report that, [...] just like the guy who says that he [is a drug dealer]: I will not call the [police] to tell them, no. Why? *Because I understand it is a confidential space*. Another thing is if someone tells me that s/he has killed someone, or is being beaten by the partner, or that a child is being mistreated... *Obviously I am bound to report this*, and I will see if I do it immediately or if I will work with [the client] so that s/he takes a series of decisions... (bcnA21).

The fact that a *firewall* prevents exchanges of certain information between social services and immigration authority, however, does not automatically mean that irregular migrants can be treated as 'normal' services users. As the Catalan case shows, there are other mechanisms that ensure that social workers will perceive them as a client group that is 'more complicated' to deal with. What according to most social workers I spoke to in Barcelona troubles their relationship with irregular migrants in particular, is the general expectation that social assistance should be geared towards finding employment or at least enhancing employability. This demand increasingly pushes them to direct their own efforts at clients who might find a job in the near future, rather than those who are not even allowed to work:

[Social worker 1] Since there are so many unemployed people and so many foreigners who already have residence permits, to bet on someone without a permit... some time ago you could consider doing that, but now it has become a very remote possibility.

[Social worker 2] Yes, it's more complicated to do that.

[Social worker 1] Because... okay, I'll bet on you and offer you a training, and then? If you are not going to get a work contract... I mean, it's tough, but *I will dedicate my efforts to another person* who afterwards *can* get a work contract (bcnA21).

Also in this case social workers thus tend to 'orient' their services and resources to those clients who can 'respond' to these measures in the way that is expected of them. To focus on the formally unemployed rather than their irregular counterparts, thus seems to make sense for them but it also makes them realise the limits of their own professional discretion:

We will always look for solutions but what we cannot do as social services is if someone doesn't have the right to receive the RMI or another subsidy established by law, *we cannot ignore this*. We can give them a grant, generally during a maximum of six months [...], but *we have to justify this a lot*. To give someone a grant to pay for a room I have to explain very well and justify and justify and be convinced that after that *there will be a solution for that family*, otherwise... So, with those who have just arrived and within the next three years [until they can apply for regularisation] will not be able to work... I cannot even consider that; *it's not going to be approved* (bcnA22).

Often, the only way they feel they can help in these cases is by referring the client to Third Sector organisations, where they can at least enrol in language or other training courses (see Chap. 6). While social workers were rather split about the actual utility of these courses and aware that they sometimes create false expectations, they also saw them as a way to start working towards regularisation. After all,

“the objective is always the pursuit of the documentation” (bcnA20), as one of them put it.

What became clear in both environments is that professionals dealing with irregular migrants tend to shift at least part of their attention away from the social needs of these clients and towards their irregularity. The latter, as I argued (in Sect. 4.1), is a condition framed by the possibility of being either regularised or deported. On one hand, social workers thus regularly have to take into account the actual prospects of their clients being granted a residence (and work) permit as one possible solution to their situation. Also in the UK, according to the *NRPF Network’s* (2011, p. 37) guidelines for professionals, finding a solution for a family “may also involve exploring opportunities to apply for LTR with the assistance of an immigration solicitor”. The following quotes taken from interviews with a social worker in Barcelona (1) and an NGO practitioner in London (2) highlight that this often poses the difficult question of *how long* support can and should be maintained:

(1) What is true is that these cases of people without papers but with children present dilemmas. They present dilemmas in the sense of until when you maintain a situation of irregularity given the difficulty that this person can put herself in a process of regularisation... So, until when should we [support them]? (bcnA21)

(2) We have a case at the moment of a woman who has a child that will be seven in June, and in June she will be able to make her application based on that, but not within the next six months, so... you know, what does she do until then? [...] In fact, the LA was supporting her, and they terminated support, and it seems unlikely that she would be able to challenge that [...because] *you need an exit strategy*. So, in her case it would probably get somewhere because it’s only going to be six months, but *if you got a person with a two-year-old, they are not going to have any claim until the child is seven, and so that would be too long* (lonA04).

On the other hand, social workers are often expected to (also) consider the possibility and likelihood of their clients’ returning or being deported to their country of origin. Particularly in the UK this happens quite systematically – although without any statutory guidance or training (Price & Spencer, 2015) – and often even before having properly assessed a family’s actual needs. The following account of a social worker clearly reflects this nexus, which in itself becomes an argument for working closer with the Home Office:

The Home Office will provide information about whether there is a barrier to removal; *that’s really what we are looking for in the information from the Home Office*. If there is no barrier to removal, then you could be [...] trying to do a child-in-need assessment and a human rights assessment to offer tickets home, as an... as that’s being the limits of your powers. But if there is a barrier in place [...] then it’s not going anywhere, so you are not going to be able to discharge your social services duties by offering tickets home, but you are back to thinking ‘is the child in need because the child is destitute?’ So, it changes our assessment process; *the information from the Home Office will change our assessment process* (lonA15).

Notably, also some of the professionals I interviewed in Barcelona mentioned that when dealing with irregular migrants they would consider – and sometimes discuss with their clients – the possibility of return. They did not, however, perceive

return as an option that they, as social workers, could prescribe, let alone enforce, as one of them explained:

It's not that we are expelling these people, but in the end, we have to make an inevitable reflection with the person of 'what is your life plan? What is your migratory project? What options do you have? Until here we can help you: you can get [food vouchers] and such... but what about the future? What happens if you go back to your country? Is that an option? *Could you go back...?*' [...] And there are people who say, 'Well actually, this is not what I have expected' – 'Well we can help you to return... do you want that?' – 'No, no, because despite everything I'm better off here, I am better off under a bridge than where I came from' – 'Okay then, nothing, we will try to do what we can'; and that's it (bcnA21).

That not all such situations follow the same plot, has recently been shown by Ioana Vrăbiescu (2017), who documents cases specifically of Roma migrant children in Catalonia being taken into state care in order to push their families to consider the 'alternative of voluntary return'. Independent of the means and amount of effort that individual social workers put into encouraging their clients to return, however, there is a crucial difference to the UK, where the Immigration Act of 2016 specifically aimed to further restrict irregular migrants' access to section 17 support by limiting it "to those who are destitute and face a genuine obstacle to leaving the UK" (Home Office, 2016, p. 3). In Catalonia, the fact that somebody receives local support has no impact on how the state handles their immigration case; nor will a migrants' decision against 'voluntary' return have any systematic bearing on their entitlement or access to social services.

That said, several of the social workers I interviewed in each city also described their clients' irregularity as an additional source of vulnerability, and thus perceived it as part of their professional duty to address the inequality that underlies this condition:

When we are dealing with a person who is undocumented, we know that s/he is in a situation of a lot of... vulnerability. S/he is much more vulnerable, isn't s/he? And s/he will not be entitled to various types of benefits... (bcnA20).

At the end of the day, *we have signed up to a profession where we are meant to be... addressing the imbalances of society*, which is all about advocating for the most vulnerable. Whether they happen to be migrants or whether they happen to be disabled people or whatever, isn't so much the point. And we should be pushing towards a rebalancing of these... these discriminations and, you know, things that people are experiencing, and not making them worse (lonA27).

For Lipsky (1980, p. 151) it is one of the paradoxes of street-level bureaucracy that although individual bureaucrats "are expected to treat all people in common circumstances alike" it is precisely what he calls 'client differentiation' that enables them to rationalise "the contradictions in their work". That their everyday professional practice often requires them to "do for some [service users] what they are unable to do for all" (ibid.) seems particularly true for social workers. Where available resources are scarce, trying to ensure a fair distribution can thereby easily trigger existing tensions between various ethnic (or other) groups that make up the target population, as my interviewees in both cities were also well aware:

We have to be careful about how someone who has no right to be in the UK gains access to social support, compared to someone who is here [legally] and tries to make an application as homeless. So, *we have to be careful about our judgements* as well, about setting precedents that *appear to favour groups that have arguably less need and arguably less entitlement to expect a service* than people who have an argument to expect a service. That [...] is a very difficult line for us to find on a case-by-case basis; it's hugely problematic (lonA30).

When you say no to [a client] based on your professional judgement [...] you will either hear 'you are only giving it to the [foreigners]', or vice versa, that you are a racist. They will always tell you something, and always normally in this sense, isn't it, whether it's someone from [here] or from outside. That's our challenge (bcnA20).

Particularly in the case of Barcelona, where the legal framework leaves more room for individual social workers' professional discretion, these and other external pressures constantly interact with their own strategies for identifying those clients that are more deserving than others. The following passage of an interview with two social workers exemplifies this:

[Social worker 1] The more experience you have [...] and the more capacity to reflect and see the complexity of [a client's situation], you will have a different way of acting, and a different outlook.

[Social worker 2] And *the professional judgement gives you a lot of leeway*. Depending on how you are – more giving or less giving – and the vision you have of social work, or *of what the person deserves or doesn't deserve*, or what s/he has to do or shouldn't do, ... you can grant lots of subsidies or you can grant few. *The subsidies are there, but you use them or don't use them*, that's the reality [...]

[Social worker 1] Yes, when I close the door of my office, after all it's the person with me. *I have an institution behind me* that says, 'you can do this, and you cannot do this', *but I am a professional with a judgement*, and I have a lot of autonomy to exercise this judgement, according to which I will mobilise or not the resources that I have behind me (bcnA21).

This autonomy can also very easily be used to unlawfully exclude someone, especially if the likelihood of facing a legal challenge is low, as the same interviewee later clarified:

If I am hostile and tell that person that s/he has no right to anything and that person accepts it s/he will go out through the door and will not appear again, and *no one will find out*. I can then write what I want in my data record and that's it. Whether the person will complain... well, [...] it will also depend on [...] the capacity that s/he has in the given situation to make a complaint, to mount a show, or not (bcnA21).

In the UK context, where the local institutions that social workers 'have behind them' are themselves more constrained in responding to irregular migrants' claims, the room for professional discretion is much more limited, although never completely removed. Eligibility for *Section-17-support*, for example, often hinges on little more than the social worker's professional judgement of the applicant's credibility, as one of my interviewees in London noted:

The problem is that when people apply for 'no recourse', the burden of proof initially is on them to show that they are in fact destitute, that they are in fact who they say they are, that they are the parent of the child, that they are... all kinds of things. Now, *sometimes [...]* *there is very little evidence that they can provide* as to who they are, where they are living, particularly if they are subletting illegally, etc. And so, there will be times when you are looking at that and say, '*what I have to do here is basically make a decision on credibility*',

because that's all there is. [...] So, the area where discretion comes in is that judgement call (lonA30).

It is important to note that the statutory guidelines for social workers in relation to the safeguarding of children do not specifically mention families with NRPF (cf. Department for Education, 2015), nor does the law establish the exact or minimum amount of money to be paid in case support is granted. Since the latter always depends on the particular needs of the child in question it can vary significantly from one Borough to the next, as well as between cases (NRPF Network, 2011).

The amount that they pay is not set by law, but what often happens is that *LAs have a policy somewhere*. They probably don't publish it but somewhere they set some amounts; because quite often when you are speaking to social workers, they would say like [...] 'well, it's the set amount, *we can't increase it*' (lonA22).

What this NGO practitioner interpreted as an informal local policy might also be understood as individual professionals seeking to "deny that they have influence" in order to defend themselves "against the possibility that they might be able to act more as clients would wish" (Lipsky, 1980, p. 149). Interpreted as such, it is part of their trying to reconcile the two contradictory demands – immigration control and social protection – which underpin and severely trouble the application of *Section 17* in the context of migrant irregularity.

At the same time, the difficulty of dealing with these contradictory demands has also triggered responses at the institutional level. As one of my interviewees indicated, many social service departments have changed their organisational structure in order to deal more effectively with irregular migrants' claims:

Certain social service departments now have NRPF-teams and so they seem to have... I mean, whereas I would dispute that that makes them better at judging whether the child is in need or not, they at least know a bit more about the immigration situation, and so they seem a little... *they are less reluctant to get involved in it* (lonA22).

As I will show in the following, this institutional adjustment clearly parallels what is also happening in UK hospitals and universities and thus appears to be quite emblematic for the British case while it does not seem to occur in Spain or at least Catalonia.

7.3.3 *'Managers' of Irregularity Within the Social Assistance System*

For Price and Spencer (2015), the existence of a dedicated NRPF-team constitutes one of three crucial factors that explain the significant variation in how different LAs respond to claims for support under *Section 17* of the Children Act.¹¹ Specifically tasked to deal with clients identified as having '*No Recourse to Public Funds*', these

¹¹The other two being the strength of local advocacy networks and the overall framing of the issue among LA staff.

teams are particularly common within London, where the majority of families receiving *Section-17*-support live.¹² From the perspective of LAs, having such a team seems to favour a more consistent application of the rules and more efficient internal referral procedures, but also allows for more effective gatekeeping, as the manager of an NRPF-team was keen to emphasise:

They will only be able to get support [...] through my team, the 'No Recourse Team', and then it's only provided conditional on various other things. So for example they have to be able to show that they are territorially the responsibility of [this Borough], that they are destitute, and that they have either an on-going application with the Home Office or are imminently about to make one [...] And *that's the point about having the dedicated team*, that when this function was spread across the LA's social care and health service, applicants could come in repeatedly, and they still do that, but what wasn't being picked up across so many people was patterns; information that was spread across a wide number of assessments that meant it was impossible to identify a scenario that had been heard before. When you have a small discrete team, you can [...] pick up patterns of information that are out in the community [about] what worked, and that other people would then come in repeating; we spot that much more quickly now (lonA30).

That NRPF-teams tend to perceive their role primarily in terms of gatekeeping rather than safeguarding and providing social care to vulnerable residents reflects the conditions under which they are being introduced. In one Borough, the annual costs of supporting a total of 278 NRPF-cases reached more than 6 million pounds by 2014 (compared to around £150,000 in the years before 2008). A review of how the Council had been dealing with such cases found the overall approach to be ambiguous and ineffective. Part of the identified problem was that "the assessment by social workers prioritises safeguarding [...] not NRPF eligibility criteria", as stated in the official minutes of a meeting where the review results were discussed in November 2014. In order to address this deficit a dedicated team of five specialised case workers and one 'embedded' Home Office worker was set up¹³ in order to deal with all NRPF-cases, about 80% of which concern migrant families in irregular situations. In a background paper presented at the same meeting, this "robust front door approach" was praised for having already "started to have significant impact on managing spend in this area". Whereas prior to the new approach more than half of all cases had been accepted for support, only one of the 96 applications that were made since then has been successful while eight were being supported temporarily pending full assessment. Based on the average acceptance rates of 9.7 (prior to the pilot) and 1.3 cases per month (during the pilot), another internal document calculates the annual saving for the LA at 2.2 million pounds.

Quite clearly, shifting the responsibility for carrying out initial case assessments from 'normal' social workers to NRPF-teams (who in this case are directly supported by a Home Office worker) has altered the priority driving the assessment itself. As an NGO practitioner put it,

¹²According to a countrywide survey, around 60% of families that received support during financial year 2012/13 were registered in one of the 33 London Boroughs, at least 16 of which already had established NRPF-teams (Price & Spencer, 2015, p. 25).

¹³In June 2014, initially as a 6-months pilot scheme, after which it became a permanent arrangement.

there can be a bit of a culture of looking at the immigration status first, or looking at the adults, and I think because *it's not part of social services* you don't get such child-centred approach. So, they are not really looking at 'is this child in need and what are the needs of this child'; they are looking at 'well this adult overstayed their visa', or 'this adult is somehow to blame' and you know, *trying to allocate blame or deciding who deserves is not the correct test* (lonA04).

Also Price and Spencer's (2015, p. 47) study suggests that those NRPF-teams that consist mainly of caseworkers rather than social workers "tended to conceive of their duties to these families as administrative tasks". According to the job description of an open position announced by another London Council in spring 2017, the ideal candidate to "manage the Council's NRPF-team" should have a degree or qualification in social work, even though the listed 'duties and responsibilities' comprised mostly administrative and managerial tasks. One of them was "to ensure that proactive liaison with the Home Office is taking place in relation to immigration status and that cases are progressed and moved on wherever possible". This also shows that one crucial function of NRPF-teams precisely consists in linking local social service departments even closer to the Home Office. In the eyes of a 'normal' social worker I interviewed (together with the NRPF-team manager), this again appears to be a mutual approximation:

I do think that there has been over the last few months a change from the Home Office as well, and I don't know whether or not that's the work that the *No Recourse Team* has been doing, because they are much more open to us. We had a visit, [...] they are coming and doing some training for us and we have a point of contact if we have concerns over any person, which actually is something that's practically unheard of. [...] They didn't have an open-door-approach at all. And I think that has changed because *they have seen the value of actually working much more in partnership; and we hope to build on that as well* (lonA30).

Another benefit of having a specially trained team dealing with all these cases centrally is that 'normal' social workers are thereby effectively 'buffered' from having to apply the logic of immigration control, as the same interviewee also indicated:

...if we see people where we think there is some issue around their status, then actually we refer it to [the NRPF-team] for them to investigate; that's where the expertise around migration is [...]. *We don't have to make those judgements* (lonA30).

Overall, it is no surprise that more and more social service departments in London either rely on dedicated Home Office caseworkers 'embedded' within their NRPF-teams or decide to join *NRPF-Connect*. Importantly, both kinds of institutional change are not just about expertise but also imply access to certain information that social services – as well as the Home Office – would otherwise lack. According to the NRPF-team manager, the difference between the two options is that

having an embedded worker is much more effective; because the embedded worker goes straight onto the system and is able to do a forensic analysis of what's happening. So, when we have walk-ins, we get the answer that minute: this person has a claim, this person doesn't have a claim, they have a long history, it has been refused so many times, or they have an outstanding appeal, or whatever. [...] And likewise, the reason the Home Office agreed to this, and the reason they are now extending these options to other Boroughs, is because they have learned that actually *the quality of intelligence that they get from us,*

about patterns more than to do with individuals, is much greater than you will get from just the kind of exchange around individual cases [through *NRPF-Connect*] (lonA30).

While this again reflects shared interests between the LA and the Home Office, for applicants who are destitute and ‘irregular’ it means an almost total overlap of both parts of the administration: the one that might be legally obliged to help them and the one that threatens to deport them. The way in which the above-cited migrant mother spoke about an appointment with social services exemplifies this:

I have to call and ask my lawyer now, because they said that... they normally would invite immigration so that immigration will threaten people... that they will take them back home... so now I have to call my lawyer to let her know...

[Interviewer] *So on Monday you are going to meet with your social worker, and you think there will also be an immigration officer?*

Yes, immigration officers, that’s what they do. *That’s what they do to threaten...* they will say that it’s better for them to take you back to your country than just to leave you here without support. [...] But once I have sent the application and I have the copy of the proof of posting, that way they can’t... (lonB11).

Her reluctance to even meet her social worker without prior advice from a lawyer says a lot about the level of trust she has in the former. What triggers such reluctance is precisely the intimate institutional relationship between social work and immigration enforcement, to which the invention of NRPF-teams has significantly contributed.

7.4 Social Assistance Workers as Migration Managers?

In this chapter I have shown that under certain conditions the interests of social service providers and immigration officers can overlap to quite a significant extent. In the case of London, where this overlap is much more institutionalised, the common interest of both institutions in ‘resolving’ their caseload thereby tends to be geared towards return or deportation rather than regularisation, as one social worker suggested:

Working with the Home Office [is not] that easy, because it’s kind of like... you think you are going into a room and say ‘well I’ve got 157 families with Art. 8 applications, British children, etc.’ – this is the stuff that we deal with, you know – ‘so why don’t you just pull out your caseworkers, grant them status because you will never remove them and they [...] kind of meet the conditions... and thus help me reduce my number of cases...?’ But if I do any work with the Home Office *it always has to be around family removals*, you know, *that’s their interest* (lonA15).

My analysis of the situation in Barcelona points in the opposite direction: The strict institutional separation between local social services and the immigration regime does represent a certain contradiction, but it allows the former to work *with* their clients, even if the latter renders them irregular. Individual social workers’ engagement with migrants in irregular situations thereby automatically becomes geared towards the client’s regularisation, as one social worker indicated:

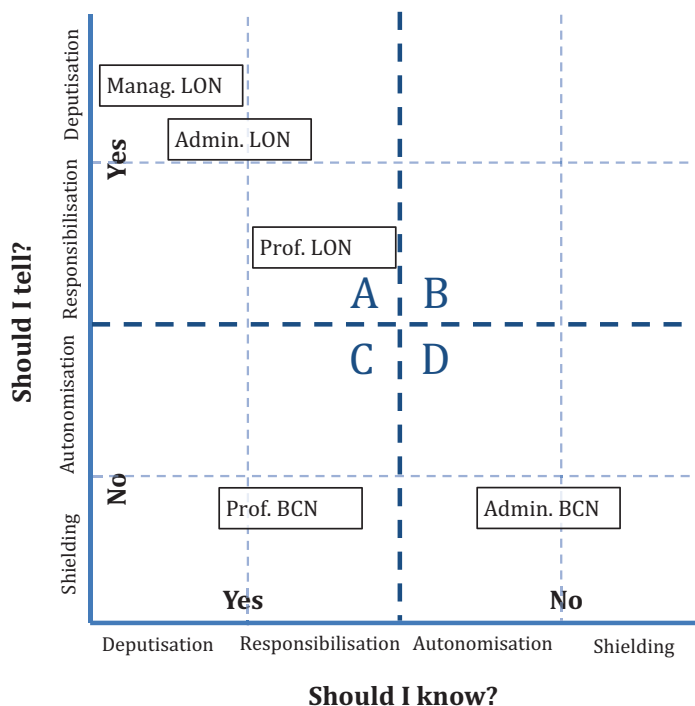


Fig. 7.1 The positions of different categories of social assistance workers in relation to migrant irregularity and its control

There are public administrations that are responsible for kicking you out and there are others, like social services and municipalities in general, who are in charge of helping you. *It's a bit contradictory* [...] but people eventually know it. [...] It's something that spreads through word of mouth, so people know us and know that they can come here with total peace of mind; and we're not going to pick on their administrative situation, but rather the opposite: *we are going to orient them in how to solve this problem* (bcnA22).

The welfare workers I met in Barcelona generally seemed to see the solution to the problem of irregularity in regularisation rather than return or even deportation, which arguably reflects the way in which migrant irregularity is generally framed and institutionalised in Spain, compared to Britain. Like in the previous two chapters, Fig. 7.1 summarises the empirical findings regarding the crucial question of whether or not the individuals working in the field of social assistance are obliged or encouraged to check their clients' immigration status and to share such knowledge with immigration authorities. As before, I do this by positioning the three role-categories – *administrators*, *professionals* and *managers of irregularity* – within the analytical framework introduced in Sect. 2.4. The different positions within each sector reflect variations in terms of how explicit or compelling the underlying rules or expectations are in everyday practice, according to the reported perceptions and experiences of my interviewees.

The diametrically opposed positions that *administrators* of social assistance and protection occupy in this framework (sector 'A' in the case of London; 'D' in the case of Barcelona) reflect the very different implications that a lack of immigration status has for local residents' general eligibility for these services. In London, access to publicly financed support provided by local social services is generally contingent on legal residence rights and thus almost automatically involves an immigration check at the point of first contact. In the exceptional case of a suspected human rights breach or immediate child protection concern social services will provide the necessary support but are also obliged to notify immigration authorities. In Barcelona, reception staff is required to ascertain applicants' identity and local residence, but not necessarily their immigration status (although they sometimes do). It is then on the social worker to determine how far support can go in any particular case.

The job of *professional providers* of social services always involves a significant element of control over the client and his or her actions and behaviour. Arguably more than professionals working in education, and healthcare in particular, social workers are generally expected to not only sanction certain wrongdoings, but potentially also to trigger law-enforcement if they discover (serious) breaches of the law. In both environments this is mostly in relation to the safeguarding of others and does not usually involve immigration control as such. However, the level of engagement and the exact measures through which they can provide support often depend on immigration status, so that they will at a certain point be required to *know* a client's ir/regularity. In London this is the case from the very beginning, but it is usually not the social worker him/herself who would pass such information on to the Home Office (even though there are clear incentives for doing so). Social workers in Barcelona, in contrast, have to determine immigration status only in relation to more formalised and/or longer-term assistance and have no duty or incentive (nor a specific interest) to inform immigration authorities.

Like in the sphere of education, specific *managers of irregularity* only exist in the case of London, and here in the form of the so-called NRPF-teams, which institutionalise the exact opposite of a *firewall* between local social service departments and the national immigration enforcement agency. Even though they are institutionally integrated in the former, they at least partly fulfil the function of the latter. An important part of this function is not only to establish the immigration status of 'suspicious' clients and assess the likelihood of them being either regularised or deported, but also to share this knowledge with the Home Office. Like 'Overseas Visitors Managers' in NHS hospitals and Immigration Departments of public universities, they thereby act as an extension of the Home Office into the various spheres of local service provision, which in this case is even underpinned by a more explicit legal obligation.

The UK governments' 'hostile environment' approach and rhetoric, in combination with increasing financial pressure, thereby significantly affects how migrant irregularity is perceived and dealt with at the local level. This becomes particularly apparent in the domain of social assistance, as a LA representative emphasised:

It [used to be] very much ‘LAs *versus* Home Office’ on what should happen with this client group, and LAs were very much like ‘well if there is a child in need, we must act’. And so, *it’s just like a warning thing for me* at the moment [...] that in fact you are now struggling to maintain a kind of consensus amongst the LAs on how they perceive the client group. And if they undermine the client group by calling them fraudsters or... you know, talking mainly about the criminality of their situation, *which is a discussion that seems to be coming out from all sides at the moment*, you kind of undermine [LAs’] ability to [...] stave off some of the more hostile immigration policies (lonA15).

Instead of resisting central government policies that undermine their ability to serve the communities they are responsible for, many local social service departments in London are developing strategies that allow them to evade those already very limited statutory responsibilities that they might still have towards destitute local residents in irregular situations. Even more than health centres and hospitals, and certainly more than schools, these local institutions are thus becoming part and parcel of the ‘hostile environment’ that the government seeks to create for this category of people. In the worst case, this means that legislation like the *UK Children Act* only effectively protects the human rights of those children in irregular situations whose parents’ immigration claim, i.e., their prospects for regularisation, are strong enough to ensure that they will not be deported as a result of trying to activate these rights. For one of the social workers I interviewed in London, LAs are thereby deliberately given a task on which they are bound to fail:

Ultimately it is the LA that will do the assessment about whether something is a breach of human rights or not. And that is *something that was never ever meant to be our role*, and it’s not something we are resourced to do. *We just had to become experts at it*, because *we have been handed that responsibility*, which is a responsibility that really should lie on central government. And because they have been failing on it, they simply wanted to *transfer the arena of failure* from themselves to the LAs. And then, somewhere down the line, it will be ‘look, how awful LAs are’, because *they are failing on them* (lonA30).

References

- Ajuntament de Barcelona. (2005). *Barcelona Inclusiva 2005/2010: Pla Municipal per a la Inclusió Social*. Barcelona.
- Alesina, A., & Glaeser, E. (2004). *Fighting poverty in the US and Europe*. Oxford University Press. <https://doi.org/10.1093/0199267669.001.0001>
- Artiles, A. M., & Meardi, G. (2014). Public opinion immigration and welfare in the context of uncertainty. *Transfer: European Review of Labour and Research*, 20(1), 53–68. <https://doi.org/10.1177/1024258913515368>
- Banting, K. G. (2000). Looking in three directions. Migration and the European welfare state in comparative perspective. In M. Bommers & A. Geddes (Eds.), *Immigration and welfare: Challenging the borders of the welfare state* (pp. 13–33). Routledge.
- Borjas, G. J. (1999). Immigration and welfare magnets. *Journal of Labor Economics*, 17(4), 607–637. Available at: <http://www.jstor.org/stable/10.1086/209933>
- Burgoon, B. (2014). Immigration, integration, and support for redistribution in Europe. *World Politics*. Cambridge University Press, 66(03), 365–405. <https://doi.org/10.1017/S0043887114000100>

- Butler, P. (2016). Poorer renters at risk from homelessness as benefit shortfall grows. *The Guardian*. Available at: <https://www.theguardian.com/society/2016/aug/24/poor-uk-private-rent-homelessness-risk-housing-benefit-shortfall-2020>. Accessed 28 Jan 2017.
- Chauvin, S., & Garcés-Masareñas, B. (2020). Contradictions in the moral economy of migrant irregularity. In S. Spencer & A. Triandafyllidou (Eds.), *Migrants with irregular status in Europe* (pp. 33–49). Springer. https://doi.org/10.1007/978-3-030-34324-8_3
- CORAM. (2013). *Growing up in a hostile environment: The rights of undocumented migrant children in the UK*.
- Crawley, H., Hemmings, J., & Price, N. (2011). *Coping with destitution. Survival and livelihood strategies of refused asylum seekers living in the UK*. Available at: <https://oxfamlibrary.open-repository.com/bitstream/handle/10546/121667/rr-coping-with-destitution-survival-strategies-uk-040211-en.pdf;jsessionid=BF8327BEB8B707EC2BA7D3A558CF595?sequence=1>. Accessed 11 Jan 2017.
- Cuadra, C. B., & Staaf, A. (2014). Public social services' encounters with irregular migrants in Sweden: Amid values of social work and control of migration. *European Journal of Social Work*, *17*(1), 88–103. <https://doi.org/10.1080/13691457.2012.739556>
- Department for Communities and Local Government. (2016). *Controlling migration fund: Mitigating the impacts of immigration on local communities – Prospectus*. London.
- Department for Education. (2015). *Working together to safeguard children. A guide to inter-agency working to safeguard and promote the welfare of children* (p. 393). <https://doi.org/10.1080/13561820020003919>
- Esping-Andersen, G. (1990). *The three worlds of welfare capitalism*. Princeton University Press.
- Furman, R., et al. (2012). The criminalization of immigration: Value conflicts for the social work profession. *Journal of Sociology and Social Welfare*, *39*(1), 169–185.
- Gaston, N. (2015). International migration, immigration policy and welfare spending. *International Migration*, *53*(2), 386–396. <https://doi.org/10.1111/imig.12181>
- Gomà, R. (2006). Diversidad y políticas sociales en Barcelona. In G. Pinyol (Ed.), *Inmigración y derechos de ciudadanía. III Seminario Inmigración y Europa* (pp. 112–118). Fundación CIDOB. Available at: http://www.cidob.org/es/media2/publicacions/monografias/iii_seminari_migracions/09_goma_cast
- Guiraudon, V. (2000). The Marshallian triptych reordered: The role of courts and bureaucracies in furthering migrants' social rights. In M. Bommes & A. Geddes (Eds.), *Immigration and welfare: Challenging the borders of the welfare state* (pp. 72–89). Routledge.
- Hastings, A., et al. (2013). *Coping with the cuts? Local government and poorer communities*. Glasgow. Available at: <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/local-government-communities-full.pdf>. Accessed 31 Jan 2017.
- Hemerijck, A. C., et al. (2013). *Changing European welfare states and the evolution of migrant incorporation regimes: Background paper reviewing welfare state structures and reform dynamics in a comparative*. Available at: http://www.compas.ox.ac.uk/media/PR-2013-IMPACIM_Background_Welfare_States.pdf. Accessed 16 Jan 2017.
- Home Office (2016). *Reforming support for migrants without immigration status. The new system contained in Schedules 8 and 9 to the Immigration Bill*. Accessible online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/494240/Support.pdf
- Lipsky, M. (1980). *Street-level bureaucracy: The dilemmas of the individual in public service*. Russell Sage Foundation.
- Manzanedo, C., & Fabre, R. G. (2009). *Impacto de la crisis económica sobre los inmigrantes irregulares en España*. Available at: <http://pueblosunidos.org/wp-content/uploads/2009ImpactoCrisisEmigrantesEspaña.pdf>. Accessed 13 Jan 2017.
- Marshall, T. H. (1950). *Citizenship and social class, and other essays*. Cambridge: Cambridge University Press.
- Moreno, F. J. (2007). Inmigración y Estado de Bienestar en España. *Política y Sociedad*, *44*(2), 171–184. <https://doi.org/10.5209/POSITO.23431>

- Moreno, F. J., & Bruquetas, M. (2011). *Inmigración y Estado de bienestar en España, Colección Estudios Sociales*. Barcelona.
- Morris, L. (2002). *Managing migration: Civic stratification and migrants' rights*. Routledge.
- NRPF Network. (2011). *Practice guidance for local authorities: Assessing and supporting children & families and former looked-after children who have No Recourse to Public Funds (NRPF) for support from local authorities under the Children Act 1989*. London (Islington).
- NRPF Network. (2015). *Practice guidance for local authorities (England): Assessing and supporting adults who have no recourse to public funds*.
- Papadopoulos, D., Stephenson, N., & Tsianos, V. (2008). *Escape routes: Control and subversion in the twenty-first century*. Pluto Press.
- PICUM. (2015). *Undocumented migrants and the Europe 2020 strategy: Making social inclusion a reality for all migrants in Europe*. Brussels.
- Price, J., & Spencer, S. (2014). *City-level responses to migrant families with restricted access to welfare benefits*. Oxford. Available at: https://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/Report_City_level_responses.pdf
- Price, J., & Spencer, S. (2015). *Safeguarding children from destitution: Local authority responses to families with 'no recourse to public funds'*. Oxford. Available at: www.compas.ox.ac.uk/research/welfare/nrpf/
- Refugee Council. (2012). *Between a rock and a hard place: The dilemma facing refused asylum seekers*.
- Rodríguez-Cabrero, G. (2011). The consolidation of the Spanish welfare state (1975-2010). In A. M. Guillén & M. León (Eds.), *The Spanish welfare state in European context* (pp. 17–38). Ashgate.
- Rodríguez-Cabrero, G., et al. (2015). *ESPN thematic report on social investment: Spain*. Brussels.
- Ruhs, M. (2008). Economic research and labour immigration policy. *Oxford Review of Economic Policy*, 24(3), 403–426. <https://doi.org/10.1093/oxrep/gm034>
- Ruhs, M., & Martin, P. (2008). Numbers vs. rights: Trade-offs and guest worker programs. *International Migration Review*, 42(1), 249–265. <https://doi.org/10.1111/j.1747-7379.2007.00120.x>
- Sainsbury, D. (2012). *Welfare states and immigrant rights: The politics of inclusion and exclusion*. Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199654772.003.0002>
- Schweitzer, R. (2020). How inclusive institutions enforce exclusive immigration rules: Mainstream public service provision and the implementation of a hostile environment for irregular migrants living in Britain. In S. Hinger & R. Schweitzer (Eds.), *Politics of (dis)integration* (pp. 121–140). Springer. https://doi.org/10.1007/978-3-030-25089-8_7
- Soysal, Y. N. (1994). *Limits of citizenship. Migrants and postnational membership in Europe*. University of Chicago Press.
- Stephens, M., et al. (2010). *Study on housing exclusion: Welfare policies, labour market and housing provision*. Brussels. Available at: https://pureapps2.hw.ac.uk/portal/files/4727289/housing_exclusion_1_.pdf
- van der Leun, J. (2003). *Looking for loopholes*. Amsterdam University Press. <https://doi.org/10.2307/j.ctt46n2vd>
- Van Der Leun, J. (2006). Excluding illegal migrants in The Netherlands: Between national policies and local implementation. *West European Politics*, 29(2), 310–326. <https://doi.org/10.1080/01402380500512650>
- Vine, J. (2010). *Local immigration teams: The change management process*. Available at: http://icinspector.independent.gov.uk/wp-content/uploads/2010/03/Local-Immigration-Teams_The-Change-Management-Process.pdf
- Vrăbăiescu, I. (2017). Roma migrant children in Catalonia: Between the politics of benevolence and the normalization of violence. *Ethnic and Racial Studies*, 40(10), 1663–1680.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.



Chapter 8

Conclusion



Having or not having a legal immigration status matters in many situations, though certainly not in all, and never in the exact same way. The concrete meaning and practical implications that irregularity has – for the person who lacks status and the people s/he interacts with – are the momentary outcome of ongoing negotiations about rights, rules, autonomy, and control. What is at stake in these negotiations is not only the inclusion and/or exclusion of irregular migrants but also the ability of a whole range of institutions, such as those providing public services, to fulfil their actual functions for society. For Michael Bommers and Giuseppe Sciortino (2011, p. 218) it is “an old sociological truth” that “modern society does not provide societal inclusion on the basis of a totalising social status, but rather a bundle of differentiated conditions for participation in a variety of social contexts structured by different modes of inclusion”. Throughout this book I have shown that the same can be said about irregular residents’ exclusion from society: It is neither absolute nor uniform, nor does it happen automatically. A lack of status or official documentation often complicates the practice of public service provision but does not immediately trigger exclusion. In order to become effective, internalised immigration control has to be specifically enacted by someone working within the corresponding institutions. The intrinsic logics and guiding principles of these institutions thereby often tend to conflict, but can also partly converge, with the logic of immigration control. My close and comparative analysis of these various intersections and underlying negotiations shows that what I conceptualise as micro-management of irregular migration plays a decisive role within contemporary processes of border internalisation.

8.1 The Role of Local Contexts, Public Institutions, and Street-Level Bureaucrats in the Micro-management of Irregular Migration

The novelty of my approach is that I draw systematic comparisons between and across distinct legal-political environments, different spheres of public service provision, as well as different categories of welfare workers. Overall, my analysis portrays Barcelona and London as rather distinct contexts for local service provision to irregular migrants, but I also identify striking similarities between both locations. This shows that although formal legal frameworks and official framings of the underlying problem are reflected in local practices, they never fully determine the outcome of street-level bureaucrats' interactions with irregular residents. The latter form part of the local population but lack formal residence rights and from the perspective of the immigration regime should therefore be either regularised or deported.

8.1.1 *Public Service Provision Between Regularisation and Deportation*

What most fundamentally sets the two environments apart is that in the British context the sometimes overlapping aims and interests of the immigration agency on one hand and welfare institutions on the other tend to be geared towards irregular residents' return or deportation rather than their regularisation. In Sect. 4.1 I highlighted the clear lack of political support for the latter, as well as the very limited opportunities provided by the British immigration regime. In addition, explicit 'hostile environment' policies and rhetoric significantly helped to undermine the necessary firewalls separating the various parts and levels of the public administration and instead command or at least encourage and incentivise active cooperation with the immigration authority. A government official quoted at the time of my research by *The Telegraph* put it this way:

It is important for every government department to play their part in tackling immigration [...]. As we have a cross-governmental focus on reducing immigration and tackling illegal immigration, it is right that we look at what role the education system is playing (cit. in Ross, 2015).

In order for not only the education system but all sectors to effectively work together and towards the same goal, the immigration regime needs to impose its own functional logic and codes upon several other societal subsystems and spheres of everyday life (as argued in Sect. 2.3). This is easier within what Robert Merton (1973, p. 265/6) called 'totalitarian structures' than it is in 'liberal structures':

The differences in the mechanisms through which integration [of different spheres, logics, etc.] is typically effected permit a greater latitude for self-determination and autonomy to

various institutions, including science, in the liberal than the totalitarian structure. [...] Incompatible sentiments must be insulated from one another or integrated with each other if there is to be social stability. But such insulation becomes virtually impossible when there exists centralised control under the aegis of any one sector of social life, which imposes, and attempts to enforce, the *obligation of adherence to its values and sentiments as a condition of continued existence*. In liberal structures, the absence of such centralization permits the necessary degree of insulation by guaranteeing to each sphere restricted rights of autonomy and thus enables the *gradual integration of temporarily inconsistent elements* (emphasis added).

It is precisely in this sense, that the case of Spain represents a more ‘liberal structure’, within which migrant irregularity can be institutionalised as a temporary inconsistency that might eventually be resolved through regularisation. In principle, this is possible after three years of officially registered residence in the country. An important finding of my study is that regularisation thereby appears as a solution not only for migrants themselves but also the people and institutions that (have to) deal with them on a more or less regular basis, since it is ultimately their *interaction* that becomes regular. Both the more liberal Spanish immigration law and the more pragmatic framing of irregular migration and residence make it easier for individual and institutional actors at the local level to deal with at least some of irregular migrants’ claims. These actors are thereby enabled to temporarily resolve some of the underlying ethical conflicts and legal or practical contradictions that otherwise complicate their work and keep them from fulfilling their function for society.

As I have shown, it is both easier and more common for public institutions and individual workers in Barcelona – compared to those working in London – to ‘micro-regularise’ the situation of irregular residents in order to facilitate at least their own specific interactions with them. For example, the Catalan healthcare system found a way to treat all residents who need medical assistance and fulfil certain documentary requirements as regular patients without depending on the immigration regime to formally ‘sort out’ their status, as a senior healthcare official (1) and a family doctor (2) explained to me:

(1) Regularisation is a policy of the state; but here [at the local level] it is *us* who have to act, that is, to address the reality that exists. [...] And what I think the [healthcare system] is doing is to say ‘well, the [immigration] policies will be applied whenever they will be applied, but as long as we have people here who are in an irregular situation but *who are here*, we are going to care for them. So, *the healthcare system has no responsibility to regulate immigration, but its role is to provide assistance to the people who are here* (bcnA17).

(2) In the case of Catalonia [...] it was decided to give them [health] cards with different levels: [...] A first level that gives access to the general practitioner, certain specialists and some concrete analyses; and a second level in which *the patient is not anymore irregular*, and therefore can, in principle, access any type of health treatment, whether specialised or not, and all kinds of examinations (bcnA12).

In this case, the healthcare system successfully converts irregular residents into regular patients. More often than not, however, the legal frameworks, formal policies and official discourses through which governments try to manage irregular migration and residence significantly limit or undermine the ability of public

institutions to ‘micro-regularise’ unlawful residents. This generally happens at two different levels:

At the institutional level, law and policy determine whether or not migrants in irregular situations are formally entitled to access any particular service for free and can approach the relevant institutions without thereby increasing their risk of deportation. Based on the two-dimensional analytical framework I introduced in Sect. 2.4, Fig. 8.1 illustrates how the two environments differ in both of these respects: Access to the kinds and levels of services that appear on the left side of each diagram is formally linked to immigration status, whereas those on the right can, at least in principle, be accessed irrespectively. Their positions along the vertical axis indicate the likelihood of the corresponding institutions thereby exchanging information with the immigration regime: The more systematic this institutional link the closer they appear to the top; the more effective the firewall the closer they are to the bottom.

Both kinds of linkages have direct implications for irregular migrants’ ability and likelihood to access a service they think they need: Where access hinges on legal residence (sectors ‘A’ and ‘C’) they are formally excluded, but only if there is no firewall in place (‘A’) will even an attempt to access the service also increase their deportability. Where access is formally independent on immigration status (‘B’ and ‘D’), the lack of a firewall (‘B’) still acts as a deterrent and can effectively lead to informal exclusion, whereas the existence of such firewall (‘D’) ultimately permits irregular migrants’ formal inclusion through ‘micro-regularisation’.

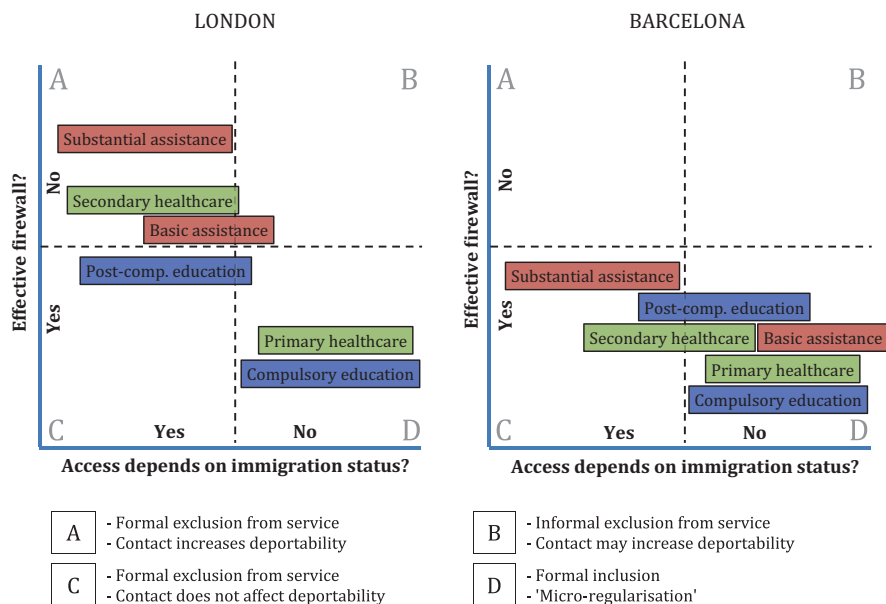


Fig. 8.1 The positions of different kinds of services provided in London and Barcelona, in relation to migrant irregularity and its control

Overall, the chances that migrant irregularity not only precludes service provision but also triggers immigration enforcement are significantly higher in London than they are in Barcelona.

At ‘street-level’, the same legal frameworks and policies also circumscribe how individual public employees perceive and deal with migrant irregularity within their respective institutional spheres, such as primary schools or health centres. At the end of each of the chapters on healthcare, education and social assistance I summarised the main differences between the two environments in terms of how they position various categories of workers in relation to migrant irregularity and its control. Figures 8.2 and 8.3 aggregate the findings from all three sectors of service provision for each environment, in order to better illustrate not only the overall differences between these, but also variations between the three sectors as well as the three role-categories (different patterns). Overall, the positions of most street-level bureaucrats range from segments ‘D’ to ‘C’ of the framework, and only in London also into segment ‘A’. The latter represents the closest cooperation of individual workers with the immigration regime, whereas ‘D’ represents the greatest distance. As I explained in Sect. 2.4, the stronger the concrete incentive, legal obligation or practical necessity for someone to know the immigration status of potential service users, the further they are placed towards the left side of the framework. The relative position along the vertical axis indicates the degree to which someone is expected or obliged to notify the immigration authority of any suspicion, encounter or dealings with irregular migrants. Across both environments and all role-categories, those actors involved in the provision of social assistance generally appear closer to sector ‘A’, whereas healthcare and education workers tend to be closer to ‘D’. Across all three spheres of provision, the so-called ‘managers of irregularity’ are – unsurprisingly – closest to ‘A’, followed by administrative roles, whereas professionals tend to be closest to ‘D’.¹ It is important to note that their various positions within the framework not only reflect the contextual differences between the two environments, but also the distinctive nature of each welfare sector as well as the concrete responsibilities and level of autonomy attached to different organisational roles, like that of a receptionist, doctor or school administrator.

8.1.2 Different Kinds and Categories of Street-Level Bureaucrats

The patterns that appear in Figs. 8.2 and 8.3 illustrate another important finding of my study: that within both environments some sectors of welfare provision and certain categories of workers generally seem more likely to internalise the logic of

¹This is true for all but the case of social assistance in Barcelona, where the access to particular services that require legal status (like the RMI) can only be granted or denied by social workers who therefore – unlike administrative staff – *have to know* the immigration status of a client.

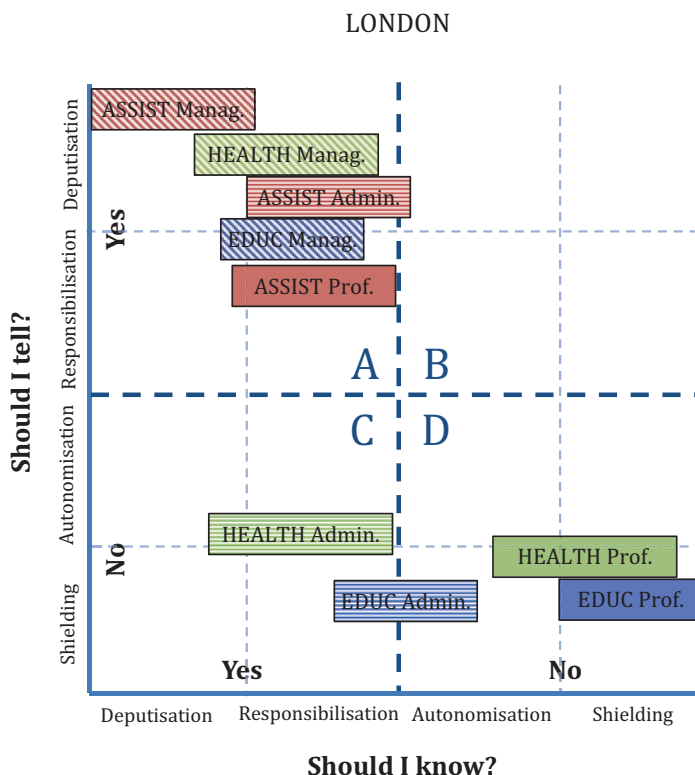


Fig. 8.2 The positions of different kinds and categories of street-level bureaucrats working in London, in relation to migrant irregularity and its control

immigration control than others. This is in line with the results of research conducted in other countries, particularly van der Leun's (2003, 2006) analysis of the Dutch context. At least four aspects explain these variations:

First of all, depending on the kind of service and the level of provision, the inclusion or exclusion of irregular residents is underpinned by a **distinctive mix of rationales**: International human rights norms, for instance, are more powerful in the spheres of (compulsory) education and (primary or urgent) healthcare than with regard to (even basic) social assistance. While access to any of the three presupposes local residence, especially the last is also linked to national conceptions of membership, belonging or deservingness, which tend to favour the exclusion of formal non-members (see Chap. 7). The closely related claim that unlawful residents simply should not benefit from welfare provisions that are financed with taxpayers' money is more or less effectively counterbalanced by other pragmatic arguments such as the negative long-term effects that their rigorous exclusion would have for public health and safety, individual integration

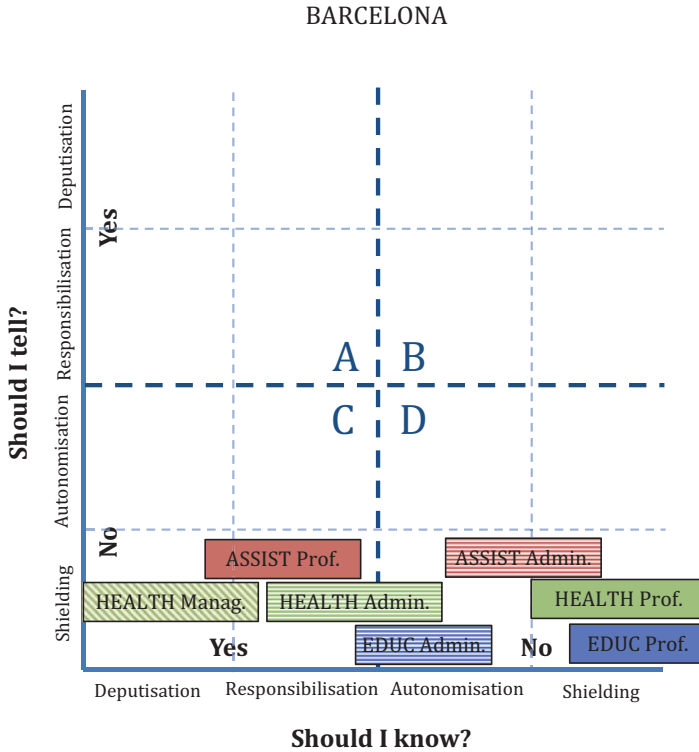


Fig. 8.3 The positions of different kinds and categories of street-level bureaucrats working in Barcelona, in relation to migrant irregularity and its control

or overall social cohesion. The idea that ‘integration’ necessarily implies or even presupposes lawful residence is particularly salient in the UK, where irregular migrants are therefore explicitly excluded not only from official ‘integration’ policies but also more and more spheres of everyday interaction.

Secondly, each sector of welfare provision is characterised by its **own functional and organisational logics**. Potential service users are included or excluded primarily on the basis of intrinsically relevant aspects of their circumstances rather than their immigration status: A comprehensive healthcare system must be accessible for anyone exhibiting pathological symptoms and be able to offer the corresponding treatment, including regular preventive care, to any member of the public. The education system generally accepts pupils on the basis of their age and/or previous educational qualifications and is committed to providing equal opportunities to all students. Social assistance is provided precisely with the aim of compensating existing socio-economic inequalities and is thus normally triggered by symptoms of marginalisation and exclusion – which is exactly what internal immigration control creates for irregular migrants. The resulting

contradictions are thus often sector-specific and tend to become most evident in the case of professionals, who as a result of their specific training and experience in a way ‘embody’ the functional logics of their respective institution. For example, one of my interviewees insisted that “it’s in the DNA of a teacher” (bcnA26) that students should regularly attend and participate in class, which is also a good example for how certain internal logics can converge with external logics of control: As discussed in Chap. 6, school or university records officially certifying students’ attendance, home address or other personal information can also be (ab)used for the purpose of immigration control. Since the individual teachers or lecturers who compile these records are thereby ‘only doing their job’, no additional incentive or obligation might be needed to ensure their (often unconscious) participation.

Thirdly, different organisational roles involve **different kinds and degrees of power and control**, which the individuals occupying them routinely exercise over service users. A high level of administrative or professional discretion thereby generally reflects a significant degree of specialisation and often goes hand in hand with a particularly strong standing within society and vis-à-vis certain aspects of the law. The doctor who told me that he “can decide that everyone who comes through this door is an urgent case” (bcnA14) and can thus be treated without regard to immigration law is a good example for this. Across both environments and all three sectors I have compared, it is the administration of public services, rather than their actual provision, that is rendered more complicated by migrant irregularity and more likely to overlap with its control. This is because migrant irregularity only manifests itself in the lack of specific documents, like a national identity card or social insurance number, while someone’s health condition, educational achievement or social needs may well be affected by a lack of immigration status but certainly cannot prove it. Whereas welfare administrators thus routinely handle potential evidence of irregularity, welfare professionals tend to be more explicitly shielded from dealing with immigration issues. This shielding ensures their close attachment to the dominant functional logic of their institution and is necessary because their roles require a trustful relationship with service users. After all, neither doctors nor teachers nor social workers can successfully do their job without the trust of their patients, students or clients.

Fourthly, the kind and degree of control that street-level bureaucrats exercise over service users as part of their role not only sets professionals apart from administrators but also varies across **different professions**: As my data suggests, doctors and nurses can themselves hardly be expected to control aspects of a patient’s life that have no direct bearing on their health, whereas teachers typically control their students’ presence and behaviour to ensure their educational success. Both of them tend to resist any abuse of the resulting records for other purposes, particularly immigration enforcement. Social workers, on the other hand, routinely exercise control over significantly more aspects of their clients’ economic, private and family life and thereby have to deal with more complex eligibility criteria that are often directly linked to legal residence. This

arguably helps to explain why the social workers I interviewed generally seemed less reluctant than most doctors and teachers to be seen as helping to control not only immigration but also other ‘irregularities’, like informal employment, tax evasion or benefit fraud.

It was also in relation to welfare programmes that Goodin (1986, p. 240) not only highlighted the general inevitability of bureaucratic discretion but also provided examples of “discretion serving as a source of illicit power” (p. 240). But what is it that renders such control efforts a legitimate or illegitimate exercise of discretionary power? For Goodin (1986, p. 241) himself, the problem lies in “taking advantage of the situation in which your discretion gives you power over others to realize benefits (or to pursue projects, more generally) in some other sphere”. Arguably, internal immigration control often relies on people taking advantage of their discretion in this way. As a general rule, gatekeeping and other practices of inclusion or exclusion can only constitute a legitimate exercise of discretionary power as long as they are based on the internal logic(s) of the very subsystem that – in order to effectively fulfil its function for society – requires this particular power to be vested in a particular role. No one but the doctor can decide what medical treatment is necessary, and how urgently it needs to be provided to a patient. The discretionary power that doctors’ thereby exercise over their patients becomes problematic, however, where it exceeds the realm of their profession. This is the case when they also (have to) take into account the external logic of immigration control and thereby become deputies of the immigration regime.

8.1.3 The Difference Between, and Varying Degrees of, ‘Having to Know’ and ‘Having to Tell’

A third significant finding of my study is that the internalisation of immigration control works quite differently for each of the two dimensions of my analytical framework: Compelling or encouraging welfare workers to notify the immigration authority of any interaction with irregular migrants (*‘having to tell’*) involves the removal or undermining of some sort of firewall and is thus primarily a legal and/or technical matter. Particularly in the British context it is thereby quite often the welfare institution that requests immigration-related information about individual service users from the Home Office in order to be able to correctly assess their eligibility. As the programme director of *Doctors of the World UK* emphasised in an interview, however, it is difficult to allow one side of this exchange while effectively preventing the other:

In order to see whether people are eligible or not for free care they want to connect the NHS IT system with the Home Office IT system, and the idea would be [to] simply pull data to see what your immigration status is [...]; but our biggest concern is that the Home Office will use that connection to have a two-way stream of information and use that for immigration enforcement (lonA03).

Notably, also the Catalan health service relies on an automatic digital link to the National Institute of Social Security in order to verify claimants' insufficient income or other economic means and thus their eligibility for receiving free healthcare; but no information is thereby exchanged for the purpose of immigration control (see Chap. 5).

The analytically more interesting question is whether or not (and for what reason) individual street-level bureaucrats should even obtain this kind of knowledge about potential service users. My study shows that their reasons for '*having to know*' can often be traced to some functional overlap between certain aspects of their own job within the public welfare system and the government's efforts to more effectively control immigration. Many service administrators, for example, almost automatically become involved in immigration control as soon as immigration status becomes part of the basis for their assessment of potential service users' eligibility. In order for immigration status to be taken into account, however, it first of all has to be determined by someone working within the corresponding institution. My findings suggest that individual workers are thereby often led to believe that what they are controlling – by checking someone's passport, for example – is not immigration, but rather the person's identity, place of residence or previous tax or other financial contribution to the welfare system.

Both kinds of participation are thereby not always a matter of straightforward *deputisation*, but sometimes rather the result of *responsibilisation* or *autonomisation*. This means that in fact there are four possible answers to each of the two basic questions ('*Should I know?*' and '*Should I tell?*') that underlie my framework; (1) '*No, you absolutely should not*' (shielding), (2) '*No, but you can if you want*' (potential autonomisation), (3) '*Yes, you should*' (responsibilisation), and (4) '*Yes, you have to*' (deputisation). The second and third answers reflect not just the individual discretion that public welfare workers often have, but also the governmental nature of the power relation between them and the government. Since the latter is unable to fully control many aspects of their dealings with the population, it has to exercise its power by modifying the environment in which these dealings take place *and* by adapting eligibility rules in ways that facilitate or create more overlap with immigration control. The former is mostly achieved via discursive means and provides street-level bureaucrats with moral arguments for internalising certain aspects of this external logic into their work routines. The latter usually requires legislative changes and provides more practical reasons for such internalisation. Either way, individual workers become more likely to exercise some form of immigration control.

That they often seemingly 'do it in an innocent way' or 'without even realising it', as one of my interviewees had put it, particularly highlights the importance of autonomisation. In fact, my data suggest that they sometimes 'do it' simply because it makes their own work easier or helps them to reduce their workload or other pressure they face (including expectations from other service users or the wider public). Administrators working in either of the two environments and across all three sectors of service provision described rather similar instances where allowing or facilitating irregular residents' access to a service tended to increase or complicate

their own work, often as a result of having to accept and deal with incomplete or unofficial documentation. The work of most professional providers of welfare services, in contrast, is not immediately rendered more difficult or complex by a service user's lack of immigration status; nor does the latter automatically warrant any special treatment. This is particularly true for doctors and teachers, who in both contexts tend to be most effectively shielded from having to deal with immigration issues, as shown in Figs. 8.2 and 8.3. That said, also some of the medical professionals mentioned instances – like a change in immigration law (in the UK) or the introduction of a computerised system for managing patient referrals and prescriptions (in Catalonia) – that suddenly limited their own individual discretion and thus also their possibility to fully disregard their patients' immigration status (see Chap. 5). Across both environments it was most common among social workers to describe migrant irregularity as a significant obstacle to their own work, partly because it interferes with two crucial aspects of it: the social worker's ability to develop a close, trustful and ideally longer-term relationship with the client, and the client's possibility to eventually (re)enter the formal labour market (see Chap. 7).

It is also important to keep in mind, however, that all street-level bureaucrats almost inevitably employ some form of what Lipsky (1980, p. 152) called 'client differentiation', whereby "unsanctioned distinctions between worthy and unworthy clients narrow the range of clients for whom street-level bureaucrats must provide their best efforts". Seen from this perspective, immigration status can also be 'helpful' in providing a distinction that is not only unsanctioned, but very often has "the sanction of the state behind [it]", as Bowen et al. (2013, p. 3) have argued. My own analysis shows that the systematic incorporation of this distinction into the various parts of the welfare system requires not only individual workers to adjust their actions towards certain service users but has also prompted responses at the institutional level.

8.1.4 Organisational Responses to Internalised Control

A last crucial finding of my study is that the sometimes rather unconscious or at least not fully intentional collaboration between local welfare workers and the immigration agency can be further encouraged through incentive mechanisms that operate at the organisational rather than individual level and often trigger a certain institutionalisation of this overlap. The most obvious example for such mechanisms is the financial pressure put on organisations that seem particularly 'well placed' to exercise some kind of immigration control but are not sufficiently 'interested' in assuming this responsibility. Particularly in the UK, this kind of leverage is quite openly used against organisations that directly depend on central government funding, like NHS hospitals (Chap. 5) and local welfare departments (Chap. 7): The more their funding is cut, the bigger the incentive to identify those patients who can be charged privately or those claimants who can legally be denied support because of their immigration status. The same mechanism works slightly differently in the

case of UK universities, which financially depend on being allowed to ‘sponsor’ foreign students who they can charge significantly higher tuition fees. The government only renews a university’s sponsor licence, however, if the university’s own admission system not only takes into account prospective students’ academic credentials but also their likelihood of being granted a student visa or other residence right (Chap. 6). In all three cases the responsibility for immigration control has been partly transferred to the local level, where it created the need for specific ‘managers’ of potential irregularity to work within the corresponding organisations. As I have shown in Chaps. 5, 6, and 7, these managers not only perceive it as (part of) their role to *know* the immigration status of their clients, but also tend to be obliged or at least more inclined to *tell* the immigration authority about it. Hence, it is precisely through so-called ‘Overseas Visitors Managers’, ‘Student Immigration Advisors’ and ‘NRPF-teams’ that the UK government has been able to not only raise but also quite effectively patrol the “protective wall [...] around the key institutions of the welfare state”, as Broeders and Engbersen (2007, p. 1595) called it. As a result, and other than in Catalonia, this wall does not anymore just surround these institutions but increasingly runs right through them.

According to organisation theory, such structural adjustments to a new set of external requirements represent a common way for organisations to avoid internal conflicts between the dominant and other logics that compete to guide their actions (as I discussed in Sect. 2.3). Precisely in order to more effectively deal with contradictory external demands it arguably makes sense for local welfare institutions to develop what Besharov and Smith (2013, p. 376) called “a cadre of organisational members who are less strongly attached to particular logics”. While the various ‘managers of irregularity’ have certainly come to play an important role within the UK government’s ‘hostile environment’ approach, their creation has not been explicitly demanded by central government. Instead, it was the need to ensure their own (cost-) effective functioning that encouraged the various organisations themselves to introduce a certain element of immigration control into their own institutional structures and operations. These structural adjustments have also helped to systematically undermine the necessary firewall between immigration enforcement and public service provision, and arguably rendered this overlap less visible to the general public and less exposed to internal and external resistance and contestation.

8.2 Problematising Migrant Irregularity Together with Its Control

From a historical perspective, Park (2013, p. 10) argued that the “problems of illegality [...] tell us a great deal about how law might be viewed from the bottom up, from the perspective of people who were *subject* to the law and then resisted it in complex, disquieting ways”. The increasing internalisation of immigration control

ultimately means that ever more people – who in numerous ways interact with potentially irregular migrants on a more or less regular basis – will themselves become subject to immigration law. This, in turn, might increase the potential for resistance. My findings show that while street-level bureaucrats quite often prefer not to know and sometimes effectively refuse to know service users' immigration status, they are often given other reasons for checking documentation that – like a passport – ‘happens’ to not only certify their identity, age or local residence but also the legality of their presence on the national territory. Once street-level bureaucracies have agreed to know and more or less systematically incorporated immigration checks into their own work, the outcome of their involvement becomes a matter of how migrant irregularity is officially framed and how effectively it is being addressed through measures of regularisation and/or deportation. If it is presented as a serious breach of law that can (and will) only be ‘corrected’ through deportation or return, as in the British case, street-level bureaucrats are given a strong argument for also sharing immigration-related information (that is already ‘available’ to them) with the relevant authority in order to help ‘resolve’ the problem of irregular migration. If instead depicted and institutionalised as a temporary administrative irregularity that is more likely to be resolved through eventual regularisation, as in Spain, there is less need for street-level bureaucrats to put in jeopardy the trust and confidence of parts of their clientele by helping the immigration regime to exclude, detect or even deport irregular residents.

McDonald (2012, p. 133) argued that “a challenge to these governmentalised borders can also pose a challenge to processes of migrant illegalisation, and thus to the production of migrant illegality itself”. I certainly hope that the insights that this book provides will contribute to a better understanding and more comprehensive problematisation of not only migrant irregularity itself, but also its control. The underlying argument can be summarised in the following way:

Firstly, the concrete challenges that irregular migration poses for receiving societies are provoked by the condition of irregularity itself, not the person that has been assigned the irregular status. The expiry of a residence permit, for example, does not make its holder a different person nor does it immediately change that person's behaviour. What it does, however, is render many of his or her ordinary activities and interactions suddenly unlawful and thus subject to state control. Irregularity is thus first of all a social rather than a legal problem; and its consequences are not only felt by the person lacking the permit, but also those who even potentially come in contact with her.

Secondly, these consequences become particularly apparent and often most problematic at the local level, where the implementation of national immigration law intervenes in many different areas of social policy and spheres of everyday interaction, including the provision of public services. What thereby complicates these fundamental social relations is not that some local residents are foreigners or that some foreigners live in the country without the government's permission, but that other people have to translate this lack of permission into everyday exclusion. The problem with this translation is that the underlying legal distinction

is too simplistic to match a social reality where irregular migrants are also neighbours, patients, students and so on.

Thirdly, the moral and practical contradictions caused by this mismatch are particularly profound for those individuals and institutions on which the health, education and social security of the entire population depends to a very large degree. In order to detect and exclude irregular migrants they have to adapt at least some of the rules and established practices according to which they normally provide these services. The more effective a public welfare system thereby becomes at controlling immigration the less effective it tends to become at providing public welfare.

Most of the street-level bureaucrats I interviewed in London and Barcelona were aware of this danger, although many of them also supported the idea that ‘immigration should be controlled better’. Extending immigration control to ever more spheres of everyday life will almost certainly increase its overall effectiveness, but also create significant costs for the corresponding institutions and the people who work there. My analysis shows that instances where the logic of immigration control thereby converges with internal logics are the exception but can play a significant role in undermining internal resistance. For most of my respondents, however, the internalisation of immigration control constituted part of the underlying problem rather than its solution.

Just like certain recreational drugs continue to be used widely although they have long been declared ‘illegal’ and put under stricter state control than others, some irregularity will always accompany state efforts to regulate the cross-border mobility of people. Both are efforts to enforce certain limits on human behaviour that in liberal societies cannot be fully controlled; and both are based on artificial distinctions that are relatively easy to put in law but difficult to uphold in everyday practice. Any successful management of the actual consequences that ir/regular migration and drug ab/use can have for individuals and society as a whole necessarily involves a whole range of specialised institutions and professional services, including those providing education, healthcare and social assistance. It is precisely their effective collaboration in this management that ultimately requires a clear limitation of government control rather than its further expansion and diffusion.

References

- Besharov, M. L., & Smith, W. K. (2013). Multiple institutional logics in organizations: Explaining their varied nature and implications. *Academy of Management Review*. Academy of Management, 39(3), 364–381. <https://doi.org/10.5465/amr.2011.0431>
- Bommes, M., & Sciortino, G. (2011). In lieu of a conclusion: Steps towards a conceptual framework for the study of irregular migration. In M. Bommes & G. Sciortino (Eds.), *Foggy social structures: Irregular migration, European labour markets and the welfare state* (pp. 213–228). Amsterdam University Press/IMISCOE.
- Bowen, J. R., et al. (2013). An institutional approach to framing Muslims in Europe. In J. R. Bowen et al. (Eds.), *European states and their Muslim citizens. The impact of institutions on per-*

- ceptions and boundaries* (pp. 1–26). Cambridge University Press. <https://doi.org/10.1017/CBO9781139839174>
- Broeders, D., & Engbersen, G. (2007). The fight against illegal migration: Identification policies and immigrants' counterstrategies. *American Behavioral Scientist*, 50, 1592–1609. <https://doi.org/10.1177/0002764207302470>
- Goodin, R. E. (1986). Welfare, rights and discretion. *Oxford Journal of Legal Studies*. Oxford University Press, 6(2), 232–261. Available at: <http://www.jstor.org/stable/764205>
- Lipsky, M. (1980). *Street-level bureaucracy: The dilemmas of the individual in public service*. Russell Sage Foundation.
- McDonald, J. (2012). Building a sanctuary city municipal migrant rights in the city of Toronto. In P. Nyers & K. Rygiel (Eds.), *Citizenship, migrant activism and the politics of movement* (pp. 129–145). Taylor & Francis.
- Merton, R. K. (1973). *The sociology of science: Theoretical and empirical investigations*. University of Chicago Press.
- Park, J. S. W. (2013). *Illegal migrations and the huckleberry Finn problem*. Temple University Press.
- Ross, T. (2015). Nicky Morgan orders immigration review to examine “education tourism”. *The Telegraph*, 16 August. Available at: <http://www.telegraph.co.uk/news/uknews/immigration/11805477/Nicky-Morgan-orders-immigration-review-to-examine-education-tourism.html>
- van der Leun, J. (2003). *Looking for loopholes*. Amsterdam University Press. <https://doi.org/10.2307/j.ctt46n2vd>
- van Der Leun, J. (2006) Excluding illegal migrants in The Netherlands: Between national policies and local implementation. *West European Politics* 29(2), 310–326. <https://doi.org/10.1080/01402380500512650>

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

