Politics of civility: the case of the Association of Undocumented People of Madrid

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Abstract

The mobilization of undocumented immigrants in civil society reflects the politics of civility, defined by Balibar as the creation of a space for an inclusive political community based on equality. The case analysed in this article, the Association of Undocumented People of Madrid, refers to a group of undocumented sellers of pirate products who decide to organize and claim their contribution to society. The Association aims to change the legislation both as undocumented and as sellers of illegal products (i.e. 'institutional change'), but in order to become equal members of the community, they also require a more radical change in society (i.e. 'societal change'). Thinking beyond the framework of national citizenship, migrants, as workers, attempt to foster alternative economic and social conditions.

Keywords: politics of civility, political community, equality, institutional change, societal change, undocumented immigrants.

Introduction

Over recent decades, especially in the 2000s, Spain has become a country of immigration rather than emigration (Arango, 2000; Zapata, 2000; De Lucas et al, 2008). During this period the government has been incapable of controlling the power of transnational economic flows. In other words, the market's demands for a non-controlled workforce have been stronger than governmental regulations and the rates of undocumented migrants have grown faster than those of documented migrants (Izquierdo, 2007). Various attempts to manage migrations have proven inefficient, as reflected by the impossibility of finding a stable legal and political framework. The Organic Law 4/2000 on the Rights and Freedoms of Aliens (known as the Alien Act) has thus been modified five times in the last 12 years and four regularization processes (1986, 1991, 2000/2001, 2005) have been launched to find a solution to irregular immigration. In a complementary sense, legislation can be seen not only as a response to the necessities of the market but also as an increasing interest in securitizing the national territory and its borders, particularly after the terrorist attacks in 2001 and 2004 (De Lucas, 2006). At a more symbolic level this entails the erroneous impression that migration can be managed and controlled.

The instability of the initiatives aimed at regulating and, even more, legalizing immigrants reveals the contingency of legal status in terms of creating illegality (Calavita, 2006). This is clear in the case of Spain: the country's informal economy is one of the largest in Europe and although it is relatively easy to

survive in the informal economy, it is very difficult, as in other Southern European countries, to gain access to formal employment or residence permits (Jordan & Düvell, 2003). The result is the emergence of immigrants at the margin (Calavita, 2005), who experience a strong legal and labour related exclusion since they are undocumented and only considered as workers.

In this context and with the clear resonance of the *sans-papiers* movement in France, the first association of undocumented people (*sin papeles*) emerged in Terrassa (Catalonia) in 2007. The following year associations were established in Barcelona and Seville as well as in Madrid (Ayllón, 2009). The establishment of these organizations is significant in the sense of attributing voice to an almost invisible collective in the public sphere. Furthermore they count on the support of civil society associations and networks trying to change legislation and expand the limits of the political community.

In Madrid, a group of 100 undocumented immigrants, primarily men of Senegalese origin, founded the Association of Undocumented People of Madrid (*Asociación de Sin Papeles de Madrid*, AUPM) on 16 October 2008. The stated aim of the association is to fight for rights for everyone. One of the specificities of this movement is the assumption of their condition as undocumented and, especially, of the illegal nature of their work. They are street sellers of 'pirate' products such as CDs, DVDs, videogames as well as counterfeit consumer goods. In Spanish this is referred to as *top-manta*, *manta* being the Spanish expression for 'blanket', on which products for sale are placed in the streets, permitting a fast recollection in case the police turn up (Castiñeira & Robles, 2007). Thus, the media also refers to AUPM as an association of *manteros* (i.e. those selling 'pirate' media products, etc.). A young migrant from the AUPM explains his reasons for working like this: "Anyone believes that I came here to sell in the *top-manta*? For us it is almost an obligation. Being undocumented it is not possible to find something decent" (Fernández-Savater, 2010). In the words of Daouda, the irregular condition is intrinsically attached to marginalized working conditions. Undocumented migrants are primarily workers who assume a type of work which is illegal, in this case in terms of intellectual property.

In this article I aim to analyse the emergence of AUPM as an organization of people assuming a subjectivity as migrant and worker. Both conditions are subsumed by the shadow of illegality: as undocumented migrants and as doers of illegal activities. Although 'manteros' are exposed to this double extreme vulnerability, the creation of an organization, based on their collective identity, challenges the exclusionary nature of citizenship and makes the economic exploitation evident. Applying Étienne Balibar's notion, I refer to the idea of politics of civility to account for the creation of citizenship from the margins to change the conditions in which social structures are grounded.

The analysis is primarily based on the foundational declaration of the AUPM as well as diverse complementary sources. In my interpretation, the declaration is a moment of challenge and open defiance provoking the "rup-

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ture of the political *cordon sanitaire* between the hidden and the public transcript" (Scott, 1990). In other words, existing social practices, instead of occurring behind the back of the authorities (the police, in the Ranciérian sense), become public and question the system upon which the differentiation between legality and illegality is grounded. Although some of the claims or initiatives of the AUPM aim to change legislation or, at least, obtain influence in the policy-making process (what I call 'institutional change'), the nature of the membership of the organization, based on a 'dual illegality' as migrants and sellers, would require a radical change in society (what I refer to as 'societal change') in order for them to become equal members of the community. Both form part of the actions undertaken by the AUPM as political agency.

Civility: Politics as equality

In order to understand the emergence of political subjectivities and their claims to change the existent social order, it is useful to adopt Jacques Rancière's distinction between police and politics. The former corresponds with governing to create consent in community and consists in "the distribution of shares and the hierarchy of places and functions" (1992: 58). The latter is based on the principle of equality since action is guided by the supposition that everyone is equal. Politics emerge where the partition of the sensible (imposed by the police order) is interrupted when those who have no part question the separation (partition) between community and the Others (Rancière, 1998). Undocumented migrants can be identified as an example of those who have no rights, whose fight for their rights is equivalent to the fight for democracy (the part of those who have no part). Thus, undocumented migrants may potentially contest the established separation between community and the Others through mobilization.

In relation to this, I want to address the need to create space to establish democratic practices that challenge the dominant order. I do this by using the notion of 'civility' as developed by Balibar in his work and I complement it with Mezzadra's idea of 'autonomy of migration'. Citizenship status guarantees equal rights and obligations, but it is exclusionary both in its application (Villavicencio, 2007) and in its distribution, so people are, in practice, not considered as citizens with the same rights and obligations. Citizenship is applied and distributed in an exclusionary way in the sense that not all citizens are equal (application), on the one hand, and all persons do not have access to citizenship (distribution), on the other. Civility is *permanent access to*, compared to the complementary notion of citizenship, which is understood as *entitlement to* (Balibar, 2001). The space of civility is agonistic (Mouffe, 1993), since it allows for the symbolization of political conflict (in opposition to violence or riots), and inclusionary because of its openness to 'those who have no part'.

Effective participation based on civil citizenship can be considered a phase prior to the recognition of an extended citizenship at the juridical and political levels. However, the idea of civility is broader than that and it goes beyond

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other ways of politics, i.e. autonomy of politics as the struggle for rights and recognition (emancipation) and heteronomy of politics as the struggle against structural conditions (transformation). Balibar refers to civility as heteronomy of heteronomy, which implies recreating the conditions of structural conditions. This refers to the "imaginary dimension in which identities are shaped" (Balibar, 2002: 1-2). In the case of the European Union, for instance, it would be necessary to create new conditions to make the participation of those who are excluded (and not considered as part of the EU) possible. The practices of resistance are not only negative, as contestation of the dominant order, with the aim of obtaining rights or demanding social justice. There is also a positive component in the constitution of a place to form active subjectivities and collective solidarities. In other words, besides the fight for recognition and the transformation of social structures, civility entails building communities among equals and their conditions for being equals.

The notion of civility could, nonetheless, be enriched if related to Sandro Mezzadra's (2012) idea of 'autonomy of migration'. Civility can challenge not only citizenship but also the assumption that immigrants want to become citizens; the focus on autonomy emphasizes that migrants already are citizens and act as such. Consequently, integration within the existing political and legal framework is not the migrants' primary goal. In sum, the politics of civility entails an openness (not existing in membership as closure) which aims to create new structural conditions by doing and acting as citizens – and so avoiding the fixed borders between inclusion and exclusion.

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The undocumented immigrant as the radically excluded (who has no part, in Rancière's terms) experiences violence in everyday life due to the convergence of denied citizenship and the precarious conditions of life as a worker. 'Clandestine inclusion' by Mezzadra (2004) refers to the extreme flexibility (as precarious figures) caused by economic exploitation and control (as irregular figures) within security systems. In opposition to this material and moral insecurity, the politics of civility, based on equality, implies a change in the legal and institutional framework (modifying the limits between legal and illegal) and, ultimately, the conditions of social structure (questioning said division).

Now, I turn to analyse the fight of the AUPM as an attempt to apply the politics of civility in practice and create spaces and scenarios that reveal the arbitrariness of police order (by the inclusion of those who have no part) and redefine the political community (by considering all humans as equals).

Dual illegality: migrant and worker

If we take into account the coexistence between formal and informal economy, to which undocumented immigrants have easy access, then the Spanish Alien Act can hardly be understood just as a way of controlling the entry of immigrants. The law rather aims to define the levels of economic and social inclusion/exclusion (Calavita, 2003), reinforcing the permanence of migrants in the informal economy because of their administrative status as illegal. This

does not mean that undocumented migrants lack rights completely since they have the right to education (if they are under 18), health assistance, association and legal advice. However, the economic crisis is having its effect on these basic rights, exemplified most recently by the loss of medical cards in 2012.

According to a survey concerning immigration in Madrid (ERI, 2009), 40.3% of Sub-Saharans work without a contract and 42.2% are unemployed. This reflects the economic vulnerability of Sub-Saharan migrants and explains why the majority of the street sellers of 'pirate' products are originally from this region. In this case, their administrative status as illegal closes the possibilities of moving away from the informal economy and the conception of their work as illegal multiplies their vulnerability. Undocumented migrants working as street sellers are exposed to the criminalization of their work activity, accompanied by a progressive securitization. In the following I emphasize how undocumented migrants become the target of (transnational) police securitization but also how (national) legislation is deployed not only to combat piracy but also as a threat to migrants.

A cable sent by the American Embassy in Madrid in 2004, revealed by Wikileaks, shows a huge concern about the fight against piracy. Although police enforcement efforts are underlined, the problem is still significant, it is argued: "Sales of pirated CDs continue to be handled mostly by illegal immigrants who display their pirate CD wares on blankets ("mantas," the sellers are therefore called "manteros" in Spanish) on city sidewalks in shopping districts and in subway stations" (Wikileaks, 2004). Indeed, the Spanish legislation was changed in 2003 and introduced fines and prison as penalty for the sellers. In 2008 street piracy is still considered a problem, but as another cable reflects: "the industry trade associations talk about internet piracy much more" (Wikileaks, 2008). Pressure has been placed on the Spanish government to regulate and control intellectual property, since Spain is included since April 2008, in the United States Trade Representative's Office annual Special 301 Report to 'exhibit' countries with 'bad' intellectual property policies (Hinze, 2010).

Apparently public opinion does not share this conception of piracy: a 2007 survey showed that only 29.4% considered downloading or sharing software and electronic files piracy, while 72.2% considered buying copies from unauthorized sellers piracy (CIS, 2007). The political agenda moved from street selling to downloading but more people perceive the former, rather than the latter, to be illegal. Surprising or not, the governmental change of interest does not entail a more condescending legislation for 'manteros' or street sellers. Irregular migrants selling illegal products are exposed to the threat of imprisonment and, ultimately, deportation. Despite the shift in the transnational economic paradigm ('piracy' becoming mainly an online phenomenon), legislation (and the public opinion) still constructs the migrant seller as a securitized figure, namely a "figure prey to fear and yearning for protection" (Hardt & Negri, 2012), who poses a dual illegality.

The foundation of AUPM challenged the police order of dual illegality, which persecutes and excludes undocumented immigrants. I consider the AUPM's practices of resistance as politics of civility because they broaden the political community (through the irruption of those who had no part) and promote new conditions for rethinking society based on equality (where all people do citizenship). Particularly I identify three essential aspects: incorrigibility to constitute their collective identity; illicitly to characterize their actions against the legislation on intellectual property; and equality to create new social relations grounded on an alternative basis.

Incorrigibility / Collectivity

The creation of AUPM is caused not only by the particular situation of migrants in a concrete place, Madrid or Spain, but by the recognition of migration as a transnational movement only fragmented by the arbitrariness of borders: "We, being here, share with them [the migrants who died on the way to Europe or were deported] the same project that is not fulfilled. The reasons which pushed us to leave our countries are still there, and here we have new difficulties every day. But we also have all the strength of our determination to continue struggling for a better life" (Manifesto, 2008). I consider this declaration to be what De Genova calls 'politics of incorrigibility' since national sovereignty is challenged by migrants who are "not asking any authorities for permission or pardon, and did not seek anyone's approval or acceptance" (2010a: 103). The starting point motivating the foundational moment is not the fight for citizenship but the recognition of migration, global and illegalized by the nation state, as political agency. It is actually not a negative movement (against the negation of their identity) but a positive one originated in the acceptance of themselves constituted by their doing: "Today we feel strong and we are proud of our path. We want to speak with our own voice" (Manifesto, 2008). Incorrigibility as part of the politics of civility reveals the pride of migrants to do as citizens and maintain their own voices despite the arbitrariness imposed by national borders. This contrasts with the structural push factors causing them to migrate.

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Initially, the AUPM could not gain legal status as an association due to judicial restrictions in the Spanish law whereby undocumented people lacked the constitutional right of association. This points to the exclusion of a group from the community (conformed by the naturalized members or those with residence permits) and refuses the universality of the right of association, recognized by the International Covenant on Civil and Political Rights (ICCPR). Nevertheless, the tension between exclusionary universality (of the legal practice) and universality grounded in the affirmation of equality changed with the reform of the Immigration Law in 2009 (Organic Law 2/2009 of 11 December 2009). The latter deemed the previous law unconstitutional since the limitation of the right of association, among others, to 'legal residents' could not be justified. However, it only partially opens the space to those who had no

part, since the legislative change does not alter the status of illegality despite them being members of the community (but lacking membership).

Illicity / Institutional change

The figure of the undocumented migrant is attached to that of the precarious worker who sells 'illegal' products. The condition of economic exploitation originates in the condition of being 'illegal'. It is the only possibility rather than one option among many: "No one wants to work selling CDs in the street, but for many it is the only possibility" (AUPM, 2010). At the same time, it intensifies the risk of imprisonment and deportation. Fighting against the vulnerability imposed by the condition of being 'illegal' only becomes possible by claiming a new societal order and the redefinition of the conditions for the political community. It is nonetheless feasible to achieve improvements of their labour conditions as precarious (migrant) workers through a change in the regulation of the punishment (from penal to administrative procedures). Consequently, one of the reasons for the establishment of the association, and also one of the first focus points of its mobilization activities, was the protest against the imprisonment of undocumented immigrants selling 'pirate' products on the streets of Madrid. There is a concrete focus in the activities of the AUPM as part of the chain of economic exploitation, although it is an indissoluble consequence of their status as irregular migrants.

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The association emphasizes the difference between legalizing and decriminalizing the selling of 'pirate' products with the aim to reduce the punishment and the easy excuse for strong police intervention (AUPM, 2010). The argument is that condemning the *top-manta* with penal sanctions instead of through administrative procedures is out of proportion compared to the seriousness of the action. Furthermore this is a way of prioritizing intellectual property rights over other basic human rights, which are then violated. The AUPM proposes a policy change in this regard and reclaims their right to participate in policy-making in order to improve their labour conditions, which are tightly related to their status as undocumented immigrants.

The actions of the AUPM were supported by a campaign for the decriminalization of *top-manta* undertaken by civil society organizations (lawyers, artists, activists). The social pressure resulted in a slight reduction of the sanctions applied in cases of selling 'pirate' products in the street. Thus, the 2010 reform of the Penal Code states that this is not to be penalized (with imprisonment) if the material for sale has a value of less than 400 euros. The selling is considered a misdemeanour and not a crime. Although the activists did not achieve their goal to move the legal judging of the activity to the Administrative Code, the risk of long-term imprisonment was reduced. However, the possibility of ending up in prison does not completely vanish, since some *manteros* cannot pay the fines. Still, it is an improvement of the labour conditions, although the *manteros* are still exposed to the arbitrariness of violence as irregular immigrants.

Equality / societal change

At the time of the establishment of the association, the financial crisis was setting in. The undocumented immigrants felt the pressure of intensified persecution and identity controls by the police. This situation increased the need to create networks of mutual support and social collectives among undocumented persons in Madrid and elsewhere in Spain. Their demands respond to their dual identity as migrants and precarious workers: regularization of their situation as immigrants (i.e. achieving residence and work permits as well as basic rights) and decriminalization of the *top-manta*.

To overcome the exclusionary gap between legality and illegality, the categories which enact exclusion based on inequality are rejected. This implies a change of the limits of the community, imposed by the police order. Echoing the French *sans-papiers*, the AUPM states that "rights are the same for everyone" and they add "also in Spain, also if you do not have papers". Thus, the principle of equality is stressed in order to redefine the political community. This is made possible by questioning the imposition of categories by nation-states and the distribution of the legal and political space between those who have rights (or part) and those who do not. Members of the AUPM directly oppose the performative exclusion produced by national borders. They do not want to be categorized as 'undocumented' per se because they have documents from their countries of origin. They became 'undocumented' when they arrived to Spain, and this emphasizes the role of borders in terms of putting constraints on identity and rights (Genova, 2010b).

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In order to maintain equality in a coherent manner, they do not see Spain as "the country of our dreams" since "it is not what we imagined" (Manifesto, 2008). This statement confirms migrants' incorrigibility and breaks with the imaginary of host countries as 'perfect places' where immigrants must be grateful to be integrated in the community. However, members of the AUPM claim that they 'have decided to stay' and now consider Spain as 'our country too'. They are not passive subjects but political subjects who are capable of deciding for themselves and want to contribute to being included and changing the limits of community, since they are already doing citizenship from the point of view of civility.

As undocumented immigrants, they do not fight only for emancipation: "This is not a struggle just for our rights" (Manifesto, 2008). They also fight for civility to create new conditions for politics: "It is a struggle for a societal change" (Manifesto, 2008). In this sense, their goal becomes an ethical horizon rather than a concrete policy or institutional change. Although this is more difficult to achieve, it entails a political openness to rethink the social partition and make the mechanisms of exclusion and violence more visible.

Conclusion

Through its activities and actions, the AUPM questions national borders and legislation. The latter produces the conditions of illegality and, consequently, a 'great vulnerability' for undocumented people, since they are constantly exposed to deportation (Genova, 2010b), originating in their dual condition as migrants and workers. I refer to the notion of politics of civility to describe how migrants *do* citizenship based on the principle of equality in order to redefine social relations and challenge the political system. In the AUPM case, I identify three elements: incorrigibility/collectivity, illicity/institutional change, and equality/societal change. Firstly, the existence of a collective identity is necessary for the foundation of the organization. Since it is grounded on the incorrigibility of migration, collectivity connects migration beyond national borders and, in the national arena, it confronts the exclusionary legislation which originally impeded the possibility of creating an association. Secondly, illicity characterizes the activity of migrants as workers and reinforces their marginalization because the activity is penalized by the law against piracy. Migrants assume their condition of workers and fight for improvements in the legislation. Their struggle aims to change the institutional order and reduce vulnerability. Thirdly, equality reflects the impossibility of restricting their claims to the institutional framework since the collectivity of migrants across borders cannot be contained within the nation state limits and requires a wider societal change in which social relations are redefined. The AUPM already contributes to configuring spaces of equality and to participating in the process of legislative change. Assuming their dual 'illegality' there is no contradiction between institutional and societal change since both are indispensable to reducing vulnerability (although only societal change can eventually dissolve it).

The precariousness of migrants relies on the coexistence of this dual 'illegality'. As Mousa Faye of the AUPM says: "Together we fight for the recognition of our work. And this is because, in reality, we are here because of jobs, and that is why we demand a decent work" (Chaves, 2008). What makes it difficult to be incorporated within the national community is being migrant, as a working under-class (Calavita, 2006). From this perspective the main struggle of the undocumented people is to challenge the economic conditions of global capitalism and the production of 'illegality' by nation states. The politics of civility offers the possibility of thinking beyond citizenship and the need to create alternative economic and social conditions.

References

Arango, J. (2000). "Becoming a Country of Immigration at the End of the Twentieth Century: The Case of Spain". In: King, Russell et al.(eds.) *El Dorado or Fortress? Migration in the Southern Europe*. New York: St. Martin's Press, 253-276.

Asociación de Sin Papeles de Madrid (2008). "Manifiesto por nuestros hermanos en el fondo del mar, por los que aún seguimos a la deriva". *Transfronterizo*, 17th October.

Ayllón, D. (2009). "Los inmigrantes sin papeles se organizan". *Público*, 12th April.

Balibar, É. (2001). "Outlines of a Topography of Cruelty: Citizenship and Civility in the Era of Global Violence". *Constellations* 8(1): 15-29.

Balibar, É. (2002). *Politics and the Other Scene*. London: Verso.

Calavita, K. (2003). "A 'Reserve Army of Delinquents': The Criminalization and Punishment of Immigrants in Spain". *Punishment and Society*, 5(4): 399-413.

Calavita, K. (2005). *Immigrants at the margin*. Cambridge: Cambridge University Press.

Calavita, K. (2006). "Contradicciones estructurales en la política de inmigración: los casos de la Europa del Sur y de los Estados Unidos". *Reis*, 116: 186-212.

Castiñeira Palou, M. T. & Robles Planas, R. (2007). "¿Cómo absolver a los 'top manta'? (Panorama jurisprudencial)". *Indret*, 2: 1-15.

Chaves, O. (2008). "Entrevista: Mousa Faye, de la Asociación de Sin Papeles de Madrid. Reclamamos nuestra parte del pastel". *Periódico Diagonal*, 30th October.

CIS (2007). Barómetro de marzo, estudio no. 2.681.

De Genova, N. (2010a). "The Queer Politics of Migration: Reflections on 'Illegality' and Incorrigibility". *Studies in Social Justice*, 4(2): 101-126

De Genova, N. (2010b). "The Deportation Regime: Sovereignty, Space, and the Freedom of Movement". In: De Genova, Nicholas and Peutz, Nathalie (eds.) *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*. Durham: Duke University Press 33-65.

De Lucas, J. (2006). "La inmigración en España: Una obsesión desbordada", *Le Monde Diplomatique*, 5th January.

De Lucas, J. (2008). *Los derechos de participación como elementos de integración de los inmigrantes*. Bilbao: Fundación BBVA.

ERI (2009). *Encuesta Regional de Inmigración*. Madrid: Comunidad de Madrid.

Fernández-Savater, A. (2010). "A los sin papeles nos intentan reducir al miedo y al silencio". *Público*, 24th April.

Hinze, G. (2010). "Not-So-Gentle Persuasion: US Bullies Spain into Proposed Website Blocking Law". *Electronic Frontier Foundation*, 17th December.

Izquierdo Escribano, A. (2007). "Economía e inmigración: la panorámica española". Séptimo Congreso de Economía de Navarra. Inmigración y Economía, 7-8 November. Pamplona.

Jordan, B. & F. Düvell. (2003). *Migration. The boundaries of equality and justice*. Cambridge: Policy Press.

Mezzadra, S. (2004). *Derecho de fuga. Migraciones, ciudadanía y globalización*. Madrid: Traficantes de sueños.

Mezzadra, S. (2012). "Capitalismo, migraciones y luchas sociales. La mirada de la autonomía". *Nueva Sociedad*, 237: 159-178.

Mouffe, C. (1993). *The return of the political*. London: Verso.

Rancière, J. (1992). "Politics, Identification, and Subjectivization". *The Identity in Question* 6: 58-64.

Rancière, J. (1998). *Disagreement: Politics and Philosophy*. Minneapolis: University of Minnesota Press.

Scott, J. (1990). *Domination and the Arts of Resistance: Hidden Transcripts*. New Haven: Yale University Press.

Villavicencio, S. (2007). "Ciudadanía y civilidad: acerca del derecho a tener derechos". *Colombia Internacional*, 066: 36-51.

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Wikileaks (2004). "Cable 04MADRID736. Special 301: Progress not perfection". Available: http://wikileaks.org/cable/2004/03/04MADRID736.html.

Wikileaks (2008). "Cable 08MADRID211. Special 301: Spain Recommendation". Available: http://wikileaks.org/cable/2008/02/08MADRID211.html.

Zapata Barrero, R. (2000). "Justicia para inmigrantes: mercado y política de extranjería". *Reis*, 90: 159-181.