Citizenship, identity and otherness: the orientalisation of immigrants in the contemporary Spanish legal regime

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Abstract
Spain is one of the few countries in the EU where Islam has had a historical role in the social and cultural construction of its identity. However, its modern history is marked by acts of repudiation of non-Christian cultures. Opinion polls indicate that certain groups of immigrants from North Africa, Latin America and Eastern Europe, but mainly Muslims, are considered to be incompatible with the popular conception of Spanish identity. The reason for this perception is related to the social construction of the immigrant as the ‘other to govern’ by political, academic and media discourses. The aim of this paper is to demonstrate that immigration law also plays a fundamental role in this strategy of ‘orientalisation’, namely the attribution of certain qualities to immigrant groups (illegal, antisocial, criminal, inassimilable, terrorist), the aim of which is to legitimise the selective control of immigration. The Spanish immigration and citizenship regime contributes to the construction of otherness, and therefore to the political and legal (re)definition of what ‘being Spanish’ means.

I. Introduction: orientalist discourses as the strategy to legitimise the securitisation of migration

‘The problem that Spain has with Al-Qaeda and Islamic terrorism did not begin with the Iraq crisis. In fact, it has nothing to do with government decisions. We must go back no less than 1300 years, to the early 8th century, when a Spain recently invaded by the Moors refused to become just another piece of the Islamic world and began a long battle to recover its identity. This process of Reconquista took a very long time, lasting some 800 years. However, it ended successfully. There are many radical Muslims who continue to recall that defeat, many more than any rational Western mind might suspect.’ (José María Aznar, President of Spain from 1996 to 2004, Conference at Georgetown University, September 2004)

These words, spoken by the former Spanish Prime Minister José María Aznar in the context of an ongoing growth in the number of immigrants, particularly Muslims, highlight an issue that has marked the recent history of Spain: the need to identify an ‘other’ within, who can be blamed for all ills. José María Aznar’s words do two things. On the one hand, they exalt ‘our rational Western character’ and, on the other, they legitimise the perceived need to defend ‘our identity’ from this ‘other’ within. This idea is not new, but acquires relevance when framed within a European and Western political context. The Italian President Berlusconi, British Prime Minister Cameron, German Chancellor Merkel and French President Sarkozy have all delivered public speeches in

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recent years linking the loss of European-Christian identity and values with the consolidation of immigration communities coming from Muslim countries, and stressing the need to take action (Mavelli, 2014; Williams, 2013). In fact, there is no coincidence between the emergence of institutional discourses on the terminal stage of multiculturalism as a model of management of diversity and the growing multiplication of political initiatives that relate security with immigration (Fekete, 2004; Lentin and Titley, 2011). Although, from the moment of its conception, the EU (Rome Treaty 1957 or the TREVI Group – acronym for Terrorisme, radicalisme, extremism et Violence Internationale, 1976) has been built around the internal notion of ‘securitization of migration’ (Apap and Carrera, 2004; Huysmans, 2000), it is in the last decade, after the 9/11, that projects related to the control of mobility of outsiders, especially coming from Muslim countries, have been enacted (Squire, 2011; Rygiel, 2010), such as EU Regulation 810/2009 establishing a Community Code for Visas, the Return Directive 2008/115/EC, the European Neighbourhood Policy, the automated biometric border crossing systems implemented by the European Border Agency FRONTEX or the controversial Passenger Name Register (PNR) proposed by the European Council.1

In this sense, there is a clearly perceivable trend of ‘orientalisation of the citizenship regime’ (Barbero, 2012b). ‘Contemporary orientalism’ or ‘neo-orientalism’ (Sadowski, 1993; Musarrat, 2000; Tuastad, 2003) is not a new concept. Edward Said (1978) coined the term ‘orientalism’ to refer to the construction of the ‘oriental other’. According to Said, orientalism was, and still is, a complex discursive practice through which the West produced an East, an Orient, categorised as backward, primitive or inferior, and in doing so justified the civilising mission of the West. The term ‘legal orientalism’ has been used to describe a colonial and post-colonial way of domination of the other legal understandings (Taylor, 1997; Ruskola, 2002). In this paper, I am using the term orientalisation as a political and legal strategy, with a meaning closer to the neo-racism suggested by Balibar (1991), Wiewiorka (1998) or Tagieff (2001). These authors considered that the old discourse of the hierarchy of races had been replaced by the incompatibilities between certain identities (such as the so-called European identity) and certain groups or identities perceived as impossible to integrate. A number of authors and academics have produced a line of thought that is based on this argument of oriental-migrant-Muslim identities vs. Western values (Huntington, 1998; Sartori, 2003; Fukuyama, 2006).

In this paper, I also suggest not only that there is a new racism that bases its argument on a series of negative characteristics attributed to certain immigrant communities perceived as non-integrable, as has been suggested already, but I go further than this. I will suggest that the orientalist discourses that we are hearing from politicians and academics, or that appear in the letter of certain laws, are part of an intentional strategy and technology to legitimise the securitisation of migration, focusing particularly on people from Muslim countries. In Globalizing Citizenship (2010), Kim Rygiel, following Isin’s (2002) idea of alterity, from a Foucauldian perspective, makes a thorough analysis of how citizenship is increasingly a disciplinary regime for governing the mobility of populations. In this similar sense, the aim of this paper, then, is to reflect on the construction of otherness, and specifically on the ‘orientalisation’ that is promoted through immigration law in Spain, one of the few countries in the EU where Islam has had a historical role in the social and cultural construction of its identity. I will argue that, in addition to meeting the guidelines of securisation from European authorities, the regime of immigration and foreigners’ laws and related norms in Spain actually contribute to the construction of a ‘new’ otherness, and therefore to the political and legal (re)definition of what ‘being Spanish’ means. In order to do this, I will consider the strategies and tools used in political policy in recent years, where citizenship and  

border regimes have been clearly shaped by both the settlement of immigrant communities and the current economic crisis. I will begin by looking at how the migration process is approached from the perspective of the ‘social problem’; I will then argue how the different legal rules that make up the corpus on foreigners’ law seek to govern, restrain, suppress and, if necessary, expel that otherness that is perceived as being incompatible with certain values.

II. Otherness as a historical matter in Spanish identity

The Muslim world, as has been pointed out by Martín Corrales (2010), has long been the ‘archenemy’ in Spain. The construction of Hispanidad or Spanish identity as an essentially Christian identity goes back to the epic narratives of the Reconquista of St James or Santiago Matamoros (the Muslim killer), in which moors or moros, as the Muslims in Spain are called, were presented as fanatical, wild, cruel and lazy, and this has continued over the centuries. The notions of purity, conversion and barbarism travelled across the Atlantic Ocean. In his book on Law, Indigenous Knowledge and Identity (2009), Libardo Ariza observes that, in the colonisation of America in the fifteenth and sixteenth centuries, ‘purity of blood’, for example, was required for the exercise of professions and religious acts and rituals, thus preventing access to mulattos, mestizos or infidels, namely those not considered ‘Old Christians’. Anouar Majid, meanwhile, in his book We Are All Moors (2009), establishes a connection between the concept of the ‘moro’ and the treatment received by groups like the Moorish and Jews, and other less obvious groups such as the African slaves, Native Americans or Hispanic immigrants. The argument for the relationship between the Spain of the Reconquista and the colonisation of America can be seen in the use conversions and family genealogies as tools for the government of religious diversity and homogenisation of the American colonies.

In Spain today, every year on 2 January, certain political parties and right-wing groups still celebrate the day in 1492 when the last Muslim kingdom of Granada surrendered to the Catholic monarchs, marking the starting point for the construction of the discourse of the ‘defeated moros’. Street festivals and pageants popularly known as ‘Moors and Christians’ are a regular feature in many Spanish towns and villages. But it is interesting to consider how this discourse and these rituals represent both a particular reading of Spain’s historical relation with the moors, celebrating their expulsion as a people who surrendered in the face of defeat, and, at the same time, a populist demand for the expulsion of Muslim immigrants currently living among the Spanish people today. According to the census published periodically by the Union of Islamic Communities of Spain (UCIDE), there were 1,130,000 Muslims living in Spain in 2008, equivalent to 2.5 per cent of the total population, rising to 1,671,629 in 2012. In addition to those of Spanish origin, foreign Muslims living in Spain come mainly from the Maghreb (Morocco and Algeria), sub-Saharan countries (Senegal), the Middle East and Asian countries like Pakistan and Bangladesh. The largest group are Muslims from Morocco.

2 The process of assimilation of national minorities or peripheral nationalisms such as Galicians, Basques and Catalans has also been enforced through religious issues but, in recent centuries, it has been largely linked to language, culture and self-government issues. At the present time, there is a patriotic national identity, a ‘uniform Spain’ (Lacasta-Zabalza, 1998) somewhere between a post-Francoist national-Catholicism and constitutional patriotism, so the cultural and linguistic diversity that exists in the state is constructed by both streams as a secessionist and negative element, lacking in solidarity.

3 On this day, numerous groups oppose the commemoration, demanding the celebration of Mariana Pineda day, celebrating a local heroine who fought for the rights of women in the nineteenth century and was the protagonist of poems by Garcia Lorca. According to right-wing parties, if the Catholics had not conquered Granada, a woman might have lived in a burka or been imprisoned for her ideas about the rights of women.
Authors such as Lorente (2010), Zapata (2006), Martín Corrales (2004) and Moreras (2000) have pointed out that the diversity in Spain today arising from immigration and national minorities but, particularly with Islam, is an increasing problem for Spain. This can be considered in two ways. On the one hand, it may be seen as being part of the historical and contemporary cultural tradition (as expressly stipulated in the agreement signed with the Islamic community through Law 26/1992, which states that ‘the Islamic religion is a tradition in our country, with relevant importance in the formation of Spanish identity’). As Guia (2014) argues, the struggles of secular and devout Muslims for the recognition of their Muslim heritage and cultural diversity have strengthened rather than compromised Spain's fragile democracy since the end of dictatorship in 1975. However, on the other hand, another way of looking at this is to consider it an anomaly or a burden for the process of historical construction of Spanish identity. As Zapata says: ‘Islam in Spain is a new reality that people are encountering, but a historical fact that people tend to suppress’ (2006, p. 144). In this sense, the attitude existing in Spain towards Islam may, then, be interpreted as what some authors have called ‘internal orientalism’ (Dainotto, 2006). In other words, it may reflect the symbolic and material presence of otherness embedded-integrated within the society and that works as a reconstruction of the Spanish identity. But how is this strategy justified or legitimised?

III. Contemporary orientalisation of political and media discourses and strategies

According to the opinion polls periodically conducted by CIS, the Spanish Centre for Sociological Research, immigration has been considered one of the great problems in Spain for the last ten years, consistently ranking in the top five along with unemployment, terrorism, housing and public safety (Izquierdo, 1994; Cea D’Ancona, 2002; Blanco, 2007). In the present financial crisis, unemployment, economic problems, corruption and fraud, health and education have become the most relevant issues affecting people's lives, but in fact many of these are directly or indirectly related to questions of migration: fears about the increasing precarity of working conditions due to the competitive job market, access to social rights, feelings of disillusionment and distrust, especially regarding issues such as education, childcare, social housing, public benefits and the welfare state in general (Cea D’Ancona, 2009).

Of course, not all immigration is perceived as a problem; not all groups inspire the same fears. The data from the years 2008–2010 presented in the report published in 2011 by the Spanish Observatory on the Evolution of Racism and Xenophobia in Spain reveal evident differences in attitudes towards groups of different origins. Tourists or seasonal inhabitants, such as the English, German and Dutch elderly couples or families settled on the Mediterranean coast and the Spanish Islands, are perceived as posing no threat. While Latin Americans in general (especially the Argentineans) are the most positively valued, the respondents showed a degree of antipathy towards some nationalities in this group, mainly Colombians and Ecuadorians. This might be because these national groups are perceived as engaging in antisocial behaviour (fighting, making a lot of noise, dressing and dancing differently, etc.), often occupying public spaces such as leisure centres and sports facilities. Romanian nationals were also viewed with antipathy, partly because of their Roma or

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4 The programme Alliance of Civilizations adopted by the UN on 26 April 2007 was proposed by the Spanish Prime Minister José Luis Rodríguez Zapatero at the 59th General Assembly of the UN, 21 September 2004. That proposal advocated an alliance between the West and the Arab and Muslim world to combat international terrorism by a method other than the military. It has been heavily criticised especially from Spanish neoconservatives because it has been considered a utopian project arguing that an alliance between Western and Islamic culture is impossible by the huge disparity and a dangerous project, as it relies on a genetically fundamentalist world (Soriano, 2011).
gypsy ethnicity and cultural background, but also because they are frequently referred to by politicians and portrayed in the media as being involved in criminal activities. However, it is the immigrants from Muslim countries, and in general people who are practising Muslims, who are perceived as the most distant, the most difficult to integrate and the most worrying. This statement itself may be creating perception too, but how is this perception created?

First, according to Xenomedia-Observatorio de la Diversidad, every day in Spain, there are dozens of news items reporting irregular border crossings, stories linking immigration to crime and public safety or to the erosion of the welfare state (Igartua et al., 2004; Aierbe, 2002; Granados, 2006; Van Dijck, 2006) and a direct relationship between immigration and Islamic terrorism after the bomb attacks in Madrid in 2005 (Barbado et al., 2005). According to a recent article entitled ‘This is the campaign of fear in the border: Front pages and sensationalism. Immigration policy of criminalization and fear’ (Diagonal, January 2015), the main Spanish newspapers are magnifying the extent of illegal crossings on the border with Morocco in order to justify police taking illegal action by returning people to their country of origin. (These crossings in Ceuta and Melilla are also linked to jihadist terrorism, as we will see later.) All this, according to the 3047 CIS report on perceptions for December 2014, has led to immigration being perceived as worse than violence against women or tax fraud.

Second, political discourse indicating preference for a particular collective on the grounds of cultural or religious affinity vs. a distant (non-integrable) collective has been a frequent feature of Spanish politics (Álvarez, 2002). Today, with the intention of neutralising and counteracting the growing support increased electoral votes for the flourishing extreme-right-wing political parties such as España 2000, Democracia Nacional and especially Plataforma por Cataluña-PxC, the ruling elites have been radicalising their own discourse. This was made clear by the leader of the Partido Popular (PP) party in Catalonia, Alícia Sánchez-Camacho, and also the mayor of Badalona, Xabier García Albiol: ‘Immigrants who have come to commit crime, to steal, to make life miserable for their neighbours and to take advantage of social benefits, will suffer police pressure’ (La Vanguardia, 15 May 2011). In a similar vein, the mayor of Vitoria-Gasteiz, Javier Maroto, and member of the same party said at a meeting of the think-tank Forum Europa

‘We must adapt our policies and laws to render incompatible those who reject our basic principles of coexistence, those who do not believe in our social model and use every subterfuge to take advantage of a system designed in solidarity. They can’t be the first in the queues to claim benefits or to demand public services.’ (El Mundo, 2 October 2012)

Some years later, in 2014, Maroto led a popular legislative proposal campaign called Ayudas más Justas (More Fair Aid) proposing legislation for changes in the social aid service because ‘we all know that the majority of Moroccans and Algerians are living on social benefits that we pay for’ (El País, 14 August 2014).

Third, a number intellectuals, influenced by the teachings of Huntington, Lewis, Fukuyama and Sartori, present immigration or certain types of immigration as a phenomenon that is harmful to certain political, legal and cultural aspects of Western societies, including the Spanish. According
to Carmona, García and Sánchez in their work on neoconservatism in Spain (2012), the think-tank Fundación para el Análisis y los Estudios Sociales (FAES) and others such as the Burke Foundation, the Grupo de Estudios Estratégicos and the Fundación Juan de Mariana, together with a number of smaller satellite groups, are the main sources of ideas regarding the external threat, the crisis of multiculturalism, the clash between ‘West’ and ‘East’ or the problems caused by certain immigrant groups. In early 1995, at the Euro-Mediterranean Conference held in Barcelona, the Spanish politician, diplomat and writer, Javier Rupérez, drew attention to the factors of instability in the region arising from cultural differences between both shores of the Mediterranean, warning that ‘the problem is not in Islamism. The problem is Islam’. But undoubtedly one of the most overtly ‘orientalist’ speeches came from Mikel Azurmendi, a social anthropologist and former revolutionary, who was president of the Spanish Forum for the Social Integration of Immigrants from late 2001 until 2003, and continues to act as a consultant on social issues to the government through think-tanks such as FAES. In July 2007, he said

‘If somebody does not follow our democratic culture, he should be obliged to do so, and if not, get him out of here. . . . It doesn’t matter what they eat, what they fuck, in accordance with their Korans, their Talmuds or their Bibles, but if they want to live here they have to live with our values, be citizens.6

The data and discourses discussed here offer us just a glimpse of the influence that academics, politicians and journalists have on the process of orientalisation of immigrants and the idea of citizenship as an institution identified with certain Western values. In the next section, I will concentrate on the content of certain rules relating to the political and social context, and the main actors who enact, interpret and enforce them.

IV. Immigration law in the process of orientalisation of immigrants

The role played by the law in the process of the orientalisation of immigrants is manifold. The attention given to immigration policy and border management specifically has been significant in the creation of Spain as a European, Western and modern country. Moving on from the old popular saying that ‘Africa begins at the Pyrenees’, which presented Spain as a developing country, Santamaría (2002) noted that the perception of the country as a new, desirable destination for foreigners was a turning point for Spain in its progression towards becoming a modern, advanced, globalised, European country. Spain joined the European Economic Community in 1986, and this not only allowed the country to take part in the free movement of money, goods and services, but also, as the southernmost European Member State, required a scheme of borders and an immigration regime to control the influx of immigrants coming from Africa. For the new Spain, border control was seen as an essential part of becoming European and, as a consequence, the ‘selective control of migration’ model (Barbero, 2012a) was adopted. This model means that, on the one hand, the EU harmonises the standards of what is considered ‘desired immigration’ (skilled immigrants, blue card, etc.) and what is considered to be ‘unwanted migration’ (Frontex, Return Directive, etc.), thereby justifying its raison d’être as a transnational entity to combat the fabricated risk of the invasion of migrants. On the other hand, Spain, like the rest of the Member States, takes advantage of this transnationalisation–Europeanisation of the border regime to re-constitute itself as a strong nation-state. Both are strategies in that they feed

off each other, one demanding more supranationalisation and the other renationalising some of its basic constitutive elements.

These claims, of course, require empirically based arguments to support them. So let us now consider a number of legal moments where the orientalisation of immigrants can be perceived in their construction as aliens or strangers, in the selection of immigrants who are culturally compatible (i.e. the ‘good immigrant’ and, in a sense, ‘the good citizen’) and, finally, in the construction of the ‘bad immigrant’, the ‘anti-citizen’.

4.1 Integrability as a criterion for selection of the ‘good immigrant’

The constitutional and civil-law concept of nationality draws the line between Spanish citizens and foreigners. Unlike citizenship systems based on membership related to a legal and political affiliation, in Spain, as in other countries, nationality is the link to an inherited identity that determines who belongs and who does not. Indeed, apart from the dominant ius sanguinis rule, the regulation for the acquisition of Spanish nationality is one of the most relevant aspects regarding the construction of otherness by immigration law. How can somebody stop being a foreigner, a stranger, and become Spanish and European? Article 22.1 of the Civil Code says that

‘To grant nationality on the basis of legal residence, it is required that this residence has lasted ten years. Five years will be enough for those who have obtained refugee status and two years in the case of nationals of Ibero-American countries, Andorra, Philippines, Equatorial Guinea or Portugal or Sephardic communities.’

Previously, I referred to the preference manifested by certain politicians for countries of origin with a cultural proximity to Spain. In accordance with this, the legislation on acquisition of nationality grants preferential treatment to nationals of countries that have historical and colonial links with Spain (Domínguez and Ortega-Rivera, 2015; Izquierdo et al., 2002). What is interesting is that included in this legislation are references to the Sephardic Jewish community, who were expelled from Spain in the fifteenth century. According to the current legal reform carried out by the Ministry of Justice, a certificate from the Sephardic Federation of Jewish Communities will suffice to be included in this preferential treatment. However, it is interesting to note that no references are included to the descendants of the Andalusian Muslims, who were also expelled barely a century later (early seventeenth century) under similar laws and deportation procedures as the Jews. Here, again, we can see the historical tension between Spanishness and Islam reflected in existing legal standards. Other immigrants are given preference over those coming from Muslim countries.

This selective immigration has been a constant of the contemporary immigration regime in Spain. One of the first legal proposals was included in the Global Regulation and Coordination of Foreigners and Immigration or Greco programme (2001–2004), which also mentioned origins, historical, cultural, linguistic and religious affinity, and the existence of certain groups whose ‘cultural roots’ led to them having to make a greater ‘effort’ to ‘adapt, respect and enjoy’ the democratic values of tolerance and equality. One of PP’s ongoing electoral promises has been the creation of an ‘integration contract’ for those third-country national immigrants who would like to renew their residence permit and work for more than one year in Spain. This proposal is not original but responds to a growing trend in many countries of the EU under a different morphology: contracts and integration courses, exams on citizenship, with or without a binding nature, etc. (Carrera et al., 2009; Van Oers et al., 2010; Turner, 2014). In Spain, the procedure of nationality was partially privatised through the Intensive Nationality Plan, launched by the

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7 The name of the famous Renaissance painter El Greco was used as a model of the good immigrant that came to Spain and contributed with his art work to the praise of the Spanish nation.
Ministry of Justice in 2012. This policy, implemented in 2013, extended power to notaries and property registrars to perform the pledges of loyalty to the king and obedience to the Constitution and laws, and to certify the levels of integration.

Since the new immigration regulations came into force, there have been cuts in the production of the Report of Social Integration, which was previously issued by the municipalities and has now been transferred to the Autonomous Communities. As a result, the Community of Madrid (governed by PP) has launched the course Conoce tus derechos (Know Your Rights), a programme of training modules that includes the PECOLE, a test of oral communication proficiency for non-Spanish-speaking immigrants, a necessary requirement for obtaining the Integration Effort Report. Meanwhile, Article 6.2 of Law 15/2008 of 5 December, on the Integration of Immigrants in Valencia (also governed by PP), provides a Certificate of positive use of the program for understanding Valencian society. As the jurist of the University of Valencia, Angeles Solanes (2009) has argued, this type of accreditation is meaningless, since it neither determines the degree of integration (it is not a substitute for the municipal report on social roots) nor facilitates incorporation into the work force, responding instead to a Sarkozyan assimilationist vision. But most importantly of all, one of the parts of the contract clearly contravenes the principle of equality because one of the parties, the immigrant, has to bear the costs involved in the process without being able to incorporate clauses or issues that fit personal or economic needs.

The search for the ‘good immigrant’ and therefore the good citizen is also the centre of the debate at the local level. In recent years, we have witnessed the approval and implementation of ‘codes of civility’, ‘conviviality ordinances’ or ‘good conduct’ at the municipal level. These are rules aimed at punishing behaviour that is considered to be antisocial but not yet criminal or illegal, such as hawking, drinking in public, panhandling, prostitution, graffiti or camping in public places. The resulting sanctions, and the consequent criminalisation of certain conducts, also send the message to the ‘good citizenry’ about who are the ‘bad citizens’ (prostitutes, beggars, urban tribes, social movements or immigrants amongst others). With regard to the latter, the words of one of the pioneering law-makers of Barcelona Ordinance, Jiménez Asensio, are particularly significant. According to this author, certain activities such as begging, especially the ‘organized begging’ of Eastern Europeans, the supply of and demand for sexual services or the provision of unauthorised services in public spaces (bootleggers, street beer sellers, beach massages, etc.) do constitute uncivic behaviour. These three areas, as Jiménez Asensio says, apart from being work niches for irregular immigrants resulting in a ‘crowding out of the native’, also cause the ‘degradation of public space’, ‘turning our cities into souks or bazaars’, with the ‘consequent deterrent effect on potential customers of the business premises’ (2008, pp. 58–59).

Furthermore, in line with the ordinances of civility, in recent months, several municipal motions have been passed banning Islamic full-body veils (the burka and the niqab) in municipal buildings on the pretext that this prevents visual identification of women who wear the garment. The first was passed in the town of Lleida on 28 May 2010, and was followed by Reus, Tarragona, Cunit, El Vendrell, Cervera and Tàrrega. The Spanish House of Representatives rejected the proposal presented by PP on 2 July 2010 – something that could not happen today, given PP’s absolute majority. While certain clothing is radically contrary to the dignity of women, all these measures appear to be taken in a context of electioneering. As the expert on Islam, Jordi Moreras responded when asked by the media

‘there is not a real problem with the burqa. There are hardly any cases that can be found on the streets. It has fallen into dangerous demagoguery, fuelling tensions … The reference to Western culture is evil. … It generates a dangerous inequality at the legal level.’ (El País, 10 June 2011).
Finally, speaking of the relationship between integration, the granting of nationality and Islam, it is worth mentioning that there has been a wealth of case-law in recent years in Spain contrary to the claim of the Ministries of Interior and Justice to deny the Spanish nationality for ‘national security issues’ or ‘Islam’. The judgment of the Audiencia Nacional of 15 October 2014 is a good example. Artemio (name given by the court) is a Syrian national and lives with his wife and son in Malaga, in southern Spain. He has had his residence permit since June 2001, he has worked for 2,800 days and Hacienda, the tax office, has no complaints about him. After ten years of mandatory legal residence, in December 2012, he requested Spanish nationality, with favourable reports of the Public Prosecutor and the General Registrar. The response of the Ministry of Justice, three months later, was negative ‘for reasons of public security or national interest’. According to a first report, it says that ‘According to confidential data contained in this General Commissariat for Immigration will be facilitated’. A second police report states that

‘the investigations carried out under the Jihadist Terrorism Prevention Program, it has been noted that the subject has maintained close relations with well known radical Islamists, some of them condemned in Spain because of collaborating with a terrorist organization. Such investigations reveal the profile of that extremist marking and his proximity to radical thesis of Islam, this is why he cannot be considered appropriate to be grant the Spanish nationality.’

Artemio appealed the denial and finally the Audiencia Nacional recognised his right to Spanish nationality. As the court reprobated, ‘Administration has never provided any specific data on which particular aspect of the life story of Artemio is the one that is revealed incompatible with the clause of public order or national interest’.

4.2 The legal construction of immigrants as criminal

The treatment of immigration from the police–criminal perspective has also been a significant constant of Spanish immigration law (García, 2001; Monclús, 2005; Portilla, 2004; Calavita, 2005). The security issue, as we have just seen in the previous section, has used the entire spectrum of norms – European directives, immigration laws, regulations, administrative instructions or local civility regulations – to consider irregular immigrants as ‘risk subjects’ or ‘dangerous classes’ (Melossi, 2003; Brandariz and Fernández, 2010; Palidda, 2011). The act of creating a risk group implies not only that their mobility will be selectively controlled, but also that they will fill the role of a ‘scapegoat’ on which all blame will fall for social problems such as health-care fraud, public safety, crime or terrorism (Wacquant, 1999).

The fourth law, Organic Law 14/2003, and the fifth law, Organic Law 11/2003 of 29 September, whose name ironically was ‘Specific measures for public safety, domestic violence and the social integration of foreigners’, complemented the previous idea of immigration control associated with the threat to public safety generated by certain groups by granting the police access to public registries on which even irregular migrants could enrol (Seventh additional provision OL 14/2003). The most recent reform of the immigration law, Organic Law 2/2009 of 11 December, introduced what is commonly known as the ‘crime of solidarity’. According to this, a simulated employment relationship undertaken for reasons of altruism in order to help someone obtain regularisation and rights under (Article 54f) is considered a breach of the law and incurs a fine of up to 100,000 Euros. Further to this, according to the draft of the penal code reform approved in December 2012, to harbour and protect an undocumented immigrant is a felony, rendering humanitarian aid and acts of solidarity punishable by the law.

Most of the foreign detainees are transferred to Centros de Internamiento de Extranjeros (CIEs; Immigrant Detention Centers), which are administrative prisons. According to numerous reports
by the European Parliament (2007), the Andalusian Human Rights Association APDHA (2008) and the Spanish Commission for Refugee Aid CEAR (2009), these centres are places where the police have total control, which results in a constant violation of the detainees’ rights. I would like to bring a case that represents the everyday of these centres. Some years ago, in connection with the complaint filed by the Spanish Association for the Right International Human Rights (AEDIDH), the UN Working Group on Arbitrary Detention (Opinion 37/2012 of 30 August 2012) declared that the arrest and detention of the Moroccan citizen Adnam el Hadj were illegal. According to the judgment, ‘the detention was arbitrary because of the absence of a warrant, the lack of access to rapid judicial remedies to end his detention and the abuses to which he was subjected’. Adnam had been sent to the CIE of Aluche (Madrid) where, on 8 May, ‘he was harassed, ill-treated and tortured, as well as being subjected to insults that were highly racist – and therefore discriminatory – including phrases such as “you came to Spain to eat for nothing” and “let them feed you in your own country. Fucking moor”’. Although the organisation Pueblos Unidos drew these facts to the attention of the judicial control of the CIE, and summoned the complainant to Adnam el Hadj, he was unable to appear before the court because, that same day, he had been expelled. Adnam was forcibly transferred to the port of Tarifa and from there was sent to Morocco, without being allowed the medical and legal aid and just treatment to which he was entitled.

4.3 The Muslim immigrant as the terrorist

‘Jihadist terrorists are trying to sneak among the flood of illegal immigrants who enter Spain jumping over the fences in Ceuta and Melilla.’ (Jorge Fernandez Diaz, Ministry of Home Affairs, 7 November 2014)

One of the hot issues in today’s ethnically overcrowded prisons is the number of detainees belonging to radical religious groups, which is both the cause (some are detained because of their radical opinions) and the result of their internment (some become radical as a reaction to their imprisonment) (Aranda and Rivera, 2009). The criminalisation of immigration is, then, primarily due to its perceived link with terrorism, specifically with international terrorism or the Islamic Jihad. Over 652 arrests were carried out in Spain up to 2015 in police operations against ‘Islamic terrorism’ – 216 of them have been tried and only 144 have been convicted – and almost eighty between 2014 and 2015 in regard to terrorist recruitment to Syria. Although the first detentions of members of the Algerian Armed Islamic Group (GIA) and Islamic Salvation Front (FIS) occurred in 1997, the 9/11 attacks in New York and especially the tragic attacks of 11 March 2004 in Madrid placed Spain on the map of global terrorism and the Muslim population in Spain under suspicion.

Fernando Reinares (2006), Professor of Political Science, Interior Ministry adviser on counter-terrorism and programme director of global terrorism at the think-tank Real Instituto Elcano, established a profile of the potential jihadist terrorist: a North African man, middle-aged, without permits or documents and religious. This profile matched thousands of people in the Spain at that time. Manuel R. Torres Soriano, another member of the ‘Real Instituto Elcano’ and Professor of Political Science at the University Pablo de Olavide of Seville, predicted that, after the end of the second war in Iraq, there would be what he called ‘a migration of jihadists’ bound for EU countries, as they offer ‘a weak and porous border’. According to him, ‘the European Muslim communities offer anonymity and a series of legal guarantees allowing them to go unnoticed, which makes these countries a much safer environment than other Muslim countries’.

Meanwhile, a Wikileaks cable dated 2 October 2007 indicated that Catalonia was ‘the major Mediterranean centre of radical Islamist activity’. According to the cable,

‘A high level of legal and illegal immigration, coming from North Africa (Morocco, Tunisia and Algeria), as well as Pakistan and Bangladesh makes this region a magnet for recruiting terrorists.'
The National Police estimated that there are about 60,000 Pakistanis living in Barcelona and surroundings, mostly male, unmarried, without documentation. They live on the margins of Spanish society, do not speak the language, are often unemployed and have few places to practice their religion with dignity. Individually, these conditions provide fertile ground for terrorist recruitment.

In an interview with the newspaper *La Vanguardia* on 26 July 2008, the former director of the National Counter-Terrorism Centre, Eugenio Pereiro, described the profile of the suspected terrorists they were investigating as follows:

‘First, second and third-generation immigrants, with different levels of training, and cultural acquisition although a large percentage belongs to low levels of social integration. … We are aware that we cannot establish security measures based on the physical appearance of people, but it is also true that the alleged profiles that are obtained from the candidates to join terrorist cells show common characteristics. And there is a third profile. Converts are a growing phenomenon. National individuals, Westerners who are becoming radical Islamists: some have already been recruited. They are very difficult to detect, and bad guys know it.’

According to Pereiro, there are several reasons, related to past history, colonialism and present immigration, why Spain has become the target of jihadist groups:

‘Because Spain symbolizes the period of splendour, Al Andalus, where terrorists want to return, and because we have two towns nestled in North Africa, which Al Qaeda considers as the Islamic Maghreb, and over a hundred prisoners, its people, detained for crimes related to international terrorism.’

The anti-terror alert level 3 decreed in Spain in January 2015 following the attacks on the French magazine *Charlie Hebdo* have led to the implementation of security protocols to be followed by police officers when dealing with citizens of Arab origin, especially Moroccans, and Algerians, the most dangerous. While the first recommendation is to ‘avoid any kind of racist or xenophobic comment’ when talking to Arab citizens, officials at border points and identifications on public roads should check entry stamps in passports to ascertain ‘if that person has been in hot countries or in countries that have borders with Iraq, Saudi Arabia, Jordan, Turkey, Syria and Lebanon; if the suspect ‘is carrying large sums of money, more than 1,000 euros, in which case they may be considered as porters’ or if ‘they are making video recordings in non-tourist places (ports, airports, railway transportation, nuclear power plants and some shopping …).’ Although, a few days after the leak to the press, the General Directorate of Police had to revoke the order, the message was already everywhere.

As we can see from the words of the director of National Counterterrorism Center (NCTC) or the internal order for policemen, there is a discursive construction of an enemy within, which aims to subvert the democratic order, and that is coming again from the Southern Orient.

**V. Conclusion: orientalisation as a strategy of government**

The European trend towards the extreme right, with two countries, namely Hungary and Poland, already in the hands of anti-European and xenophobic parties, is not trivial. The quasi-simultaneous management that national and communitarian authorities are doing of the Syrian refugee crisis and jihadist terrorism has much to do. The political statements and police reports that terrorists (or sexual abusers) hidden among the refugees crossing the borders of Europe have
contributed to this. The proposal of the French Socialist President François Hollande to withdraw nationality to those convicted of terrorism (despite its questionable effectiveness) undermines the republican principle of *ius soli* on which the French identity is based. The recent approval by the Danish Parliament of a legal provision allowing the confiscation of money and goods of asylum seekers is another stain on the most vaunted northern European welfare and equality system. The EU citizenry has witnessed the spectacle of its leaders bargaining in the negotiations on quotas of refugees to be distributed among states. Thus, we see that the issue of immigrants’ orientalisation is not a particularly Spanish subject, although the historical particularities attributed special importance.

In the process of becoming a strong, modern European country, Spain has found immigration to have a fundamental role in the re-evaluation of issues such as identity or sovereignty, which might have become eroded in the process of globalisation-Europeanisation. Immigration, and specifically that proceeding from Muslim countries, has led to the re-emergence of historical distinctions between the good Spanish vs. the bad unfaithful ‘other’. In this sense, the debate as to whether we are dealing with Islamophobia, understood as an ideology that arises from the prejudices and fears generated by the presence of immigrant Muslim communities, especially as a result of the New York 9/11 or Madrid 3/11 terrorist actions, or more with *Maurophobia*, namely the fear of the moor or ‘moro’ and contempt for the Moorish (or Arab) culture and its subsequent expressions, including those professed by their descendants, who are now immigrants. Maurophobia, while reaffirming traditional Spanish identity that has, throughout history, resisted the Muslim presence, enables Spain to join the Western trend for differentiation, containment and the consideration of Islamic immigration as an aberration – a religious, political, legal and cultural antithesis.

From a socio-legal point of view, the functions of laws and other normative texts may go beyond their declared purpose. In fact, all Spanish immigration law expressly mentions the purpose of foreigners’ rights and integration in its titles. As we have seen throughout the previous sections, they also play secondary or latent roles. Apart from the control, detention and removal of illegal immigrants, immigration law also sends the message that the immigrant collective should be limited to the social role with which they have been assigned, and should forget any aspirations to become members of the society with full rights. As Terray says, ‘It keeps the illegal in terror of being arrested, forcing them to hide, to walk close to the walls, and make no noise. At least enough so that the mechanism can work’ (2008, p. 103). This would mean that integration plans would be directed towards welcoming a certain social category and status, ‘the good immigrants’, and at the same time, those who would not fit under that category would be considered as the ‘bad-migrants’ or ‘non-integrable migrants’ category. So, at this point, one could say that orientalisation goes beyond strategies for the assimilation of different cultures or religions and becomes a set of strategies and technologies to be made use of in the control and rights limitation of the immigrant community.

In addition, the general public is also addressed in the implicit messages that immigration laws and institutional discourses emit. The reforms of the immigration laws, the tightening of penal codes and administrative sanctions, the filtering of police instructions for identity checks all have the task of conveying the message that the state apparatus is fulfilling its function of maintaining public order, while allaying the sensation of insecurity generated by the current multiple crises. In any case, legislators have announced that all the tools of the system will be used, even legal reforms, to transcend, where necessary, the system’s own legal limits because, above all, the aim is to ensure that the constitutional, democratic, universal, Western values are maintained.

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Although racist police raids, arbitrary detention practices, assimilationist nationality regulations or discriminatory legal measures against the Muslim community are forbidden by law, they continue to occur in streets, public registries and offices. These administrative practices that result in the construction of otherness respond to a contradiction between the statement of principles and values shaped by democratic and social legal culture (freedom, equality, diversity, etc.) and unlawful measures, with minimal or no legal control mechanisms for officers and policemen, leading to practices that are contrary to those values and principles. Although the main laws of the Spanish legal system do not expressly advocate an orientalist strategy, as I aimed to describe, there are many circumstances, gaps, interpretations, tools or technologies that are used to govern certain populations, specifically Muslim immigrants, presenting them as dangerous others.

In short, the construction of categories such as the ‘non-EU citizen’, ‘irregular’ or ‘sufficient integration’ legalises mechanisms that, as De Lucas (2003) has pointed out, aim to place certain immigrant groups at a quasi-perpetual legal distance. This means that some immigrant groups have easier access to the full enjoyment of rights (in other words, nationality) than others, while those who are less compatible with ‘Spanishness’ remain foreigners for longer. As we can see from this text, Maurophobia would be but the Spanish version of Islamophobia – that is, not so much due to religious or political reasons, but a manifestation of the need to find an imminent ‘other’ on which to shift all evil. Moreover, the perception that the Spanish have about Muslims has, so far, been confined to those from North Africa. However, as we saw when discussing how the shadow of terrorism has influenced perceptions, it is spreading through immigration rules and their implementation in different communities, including some South Americans, Romanians and the most recently immigrated Islam groups such as South Asian Pakistanis and Indians of Bangladeshis. As Anour Majid says: ‘We are all Moors.’

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