

The precariousness of ‘civility’ and ‘incivility’ in immigration policy as observed through the lens of governmentality

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The state is normally seen as “a sovereign body that claims a monopoly of independent territorial power and means of violence, that inheres in - but lies behind the institutions of organized and formal political authority and that is separate from the rulers and the ruled.”² Traditional theories of state power in political science are often occupied with questions that attempt to explain the role of governments, identify agents wielding power and analyze the effects or outcomes of such actions. However, these discussions were found to be grounded in the assumption that ‘government’ is to be understood as “a process of instrumental choice by authorized decision-makers backed with the power to coerce.”³ Michel Foucault is one who defines power in terms of a ‘structure of actions’ bearing on the actions of those who are free, in contrast to domination, which refers to conditions under which the subordinated have relatively little room for manoeuvre⁴. He suggests that government lie between the spectrum of freedom on one hand and domination on the other.

The traditional notion of the state, government and power is challenged by Foucault’s notion of Governmentality, which see the process of governing as an ‘art’ involving ‘rationalities’. Foucault used the terms “rationality of government” interchangeably with the ‘art of government’ however, the “art of government can be defined as ways of knowing what the activity or practice of government consists of, while the ‘rationality of government’ on the other hand, is a system of thinking about the nature and practice of government (who rules?, what is the act of governing?, who/what is being governed?), capable of making some form of that activity thinkable and practicable, both to its practitioners and those on whom it is practised⁵. The study of governmentality is in accord with traditional theories of power in one regard as it intimates that the exercise of power and authority is anything but self-evident, thus it is in need of considerable analytical resources.⁶ Studies of governmentality also suggest that the art of government is an activity requiring craft, imagination, shrewd fashioning, the use of tacit skills, practical know-how and so

2 M. Dean, “Governmentality: Power and Rule in Modern Society.” Sage,. Chapter 1

3 Colebatch H.K, “Government and Governmentality: Using Multiple approaches to the Analysis of Government. Australian Journal of Political Science. Volume 37 (3) 417-435

4 M. Dean, “Governmentality: Power and Rule in Modern Society.” Sage,. Chapter 1

5 Gordon, Colin. 1991. “Governmental rationality: An Introduction”. In G. Burchell et al (eds.) *The Foucault Effect* (Harvester): 87-104

6 M. Dean, “Governmentality: Power and Rule in Modern Society.” Sage,. Chapter 1

on.⁷ This means moving beyond the traditional philosophic conceptions of the sovereign state to the realization that “to the extent that the modern state ‘rules’, it does so on the basis of an elaborate network of relations formed among the complex of institutions, organizations and apparatuses that make it up, and between state and non-state institutions⁸. Ruling is suggestive of boundaries between the relationship of individuals and the state, but governmentality seeks to go beyond these boundaries and interrogate this relationship. Government then, from the perspective of governmentality, is not a definite and uniform group of institutions, but “...an inventive, strategic, technical and artful set of ‘assemblages’ fashioned from diverse elements, put together in novel and special ways, and rationalized in relation to governmental objectives and goals.⁹ It

...is more or less, a calculated and rational activity that is undertaken by a multiplicity of authorities and agencies. These authorities and agencies employ a variety of techniques and forms of knowledge, in an attempt to shape *human* conduct by working through our desires, aspirations, interests and beliefs for definite but shifting ends, and with a diverse set of relatively unpredictable consequences, effects and outcomes.¹⁰

Jai Sen in an article entitled *On Civility and Transnationality: Toward Alliances of Critical Hope*¹¹ suggests that the role of the ‘civil’ in society is to establish ‘civility’, by means of subjugating and ‘civilising’ the incivil and the uncivilised, in a bid to bring order into society. In such societies Sen argues, there is no room for individuals who do not follow the rules of being civilised. Often these rules are set by those who consider themselves to be civil and civilised because they feel threatened by those who do not conform (and who then become termed ‘uncivil’, ‘anti-social’, ‘deviant’, ‘illegal’ and ‘wild’). The very existence of an uncivil, means that the civil will seek to subjugate it, convert it, tame it, civilise it; if it become sufficiently docile and domesticated, to then ignore it; and on the other hand, if it is too assertive, to attempt to destroy it,

7 Ibid

8 Rose and Miller, 1992. “Political Power beyond the state; problematics of government”, *British Journal of Sociology* 43(2):173-205

9 Dean M. and Hindess, B. 1998. *Governing Australia; Studies in Contemporary Rationalities of Government*. Cambridge. Pg 8.

10 Ibid.

11 Jai Sen. “On Incivility and Transnationality: Towards Alliances of Critical Hope.”

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exterminate it. It becomes the task of those who arrogate this term to themselves, to ‘civilise’ society and to establish a civil order – which generally means establishing hegemony over all those who (and all that) they consider to be uncivil.

This paper is contending that this process occurs, in large part, by means of legislation and policy pronouncements that can vary as a result of some political, social or economic circumstance thereby making the labels of ‘civil’ and ‘incivil/uncivil’ transient. The ‘civil’ of course, tend to refer to the middle classes and above, and earlier as ‘the gentle folk’ (and where in English we still use the term ‘gentleman’). And those who constitute the ‘uncivil’ – as perceived by the civil - are the lower classes/ castes (and the outcastes), and in general people of colour, and especially the black, other than those who have been successfully domesticated and ‘civilised’ – but who are often also left in a tragic middle world, a second class denizen. They tend to take part in what are termed ‘illegal’ and ‘unauthorised’ activities, including living in extra-legal settlements or practising extra-legal occupations, or migrating illegally, only because social and economic exclusion, persecution, and devastation leaves them with no options – and where they are then criminalised and stigmatised by civil society for their actions. I am not unaware that the terms ‘civil’ and ‘incivil’ are themselves in need of significant critical engagement. What I am contending is that given the above definitions of civil and incivil, membership in these groups is not as absolute as they may initially appear. By using immigration policies, this paper demonstrates that the demarcation between ‘civil’ and ‘incivil’ is quite permeable and that members are moved in and out of one category depending on various governmental decrees.

Immigration policies can be usefully divided into two forms, namely soliciting strategies and stemming strategies. As James Hampshire puts it, “soliciting is about the creation of [immigration] flows; stemming presupposes existing flows, and tries to contain them.” New settler states such as those in North America, both solicit and stem immigrants, while most Western European nation states have historically adopted more exclusive stemming strategies. States seeks to solicit immigrants for a variety of reasons: to meet labour shortages, to sustain populations, to maintain or improve ethnic composition, or as Sen argues, to domesticate or ‘civilise’ the land. Conversely, attempts to stem immigration flows typically have three broad objectives: first, the regulation of the sheer number of people; second, control of national, racial or ethnic origin of immigrants; and third, the control of other social and demographic characteristics of immigrant

cohorts such as skill, age, gender,¹² and even ideology. However, changes in immigration policy are often accompanied by changes in political discourse which generally signal and justify the change. Often this change is accompanied by an event. Hence the process of political discourse analysis cannot be attempted without looking at what events developed the ‘problematics’ thereby necessitating change. Using the immigration policy of Spain and Australia as case studies this paper illustrates that the legislative policy pronouncements create a permeable border between the civil/legal and the incivil/illegal with certain events being used to provide a ‘rationale’ for this process.

It is important to explicitly state here that I consciously chose not to assign agency to the members of group constituting the incivil and the civil. There are already several well documented studies examining these groups as actors, whether victims, survivors or subjects. Instead, in accordance to the theory of governmentality, I view these members as they are viewed through the lens of government. That is, as a population upon whom multifarious modes of regulations, (legal, economic, social), are used to manage/control through different standards of health, wealth and prosperity. In other words, in order to get a better understanding of *what* is being termed ‘incivil’, I am asking, in the Foucaultian sense, *how* does one become ‘incivil’ or ‘civil’ given the definitions outlined by Sen. In the process of asking how these divisions operate and are normalised, I hope to attain a potent kind of intelligibility which illustrates that these terms are not as dogmatic as they seem and more importantly, that membership is within these groups are quite fluid.

Case Study: Spain and the EU

Citizens of member states are free to move within the Union as a result of various treaties upheld by EU institutions. Citizens of nations states who do not belong to the Union, must undergo extensive controls that are being harmonized between member states, and strict visa requirements are put in place for places that are considered to be the source of “undesirable immigrants.”¹³ Harmonization of immigration controls within the EU began in the mid 1980’s and coincides with an increased flow of refugees from the Central Eastern European countries, Africa, and Asia. As such, the need for a common policy regarding migration and

12 James Hampshire, Citizenship and Belonging. Palgrave Macmillian Publishers (2005), Page 10

13 Dietrich Thranhardt and Robert Miles. Introduction. In Migration and European Integration: The Dynamic of Inclusion and Exclusion, ed, Robert Miles, and Dietrich Thranhardt (Printer Publisher: 1995) London Page 7

asylum policy was expressed. The first concern was to develop a system to deal with those asylum-seekers who successfully reached EU territory, and used local mechanisms to claim permanent status. Therefore the Schengen Agreement, the Dublin Convention and the introduction of a safe third country were implemented. These Agreements and Conventions are supposed to examine asylum requests within “Schengland”, (UK, Ireland, Denmark not members), while the Dublin Convention does the same for all other members. Both treaties agree that a refugee’s request will be heard by at least one party.¹⁴ Coordination of this policy is inter-governmental as all members are a party to it and the actors in this area tend to be senior officials from national ministries of justice, home affairs, and representatives from national criminal agencies.

Before 1985, Spain made no serious effort to enact a comprehensive immigration law. Its first attempt was the *ley de extranjeria* (officially titled La Ley Organica sobre Derechos y Libertades de los Extranjeros) (LOE), and it was approved by the Spanish Congress in April 1985 and implemented on July 1st of the same year.¹⁵ This law is seen to be entirely the result of external pressure associated with Spain’s entry into the EU on January 1, 1986, which required adherence to EC legislation restricting immigration from non-EC countries. As a result of accession into the EU, Spain, in the 1980s experienced a rapid transition from being a source country of immigrants, to a potential destination for immigrants. The number of immigrants residing legally in Spain rose from 241,971 in 1985 to 398,148 in 1989– a 65% increase.¹⁶ By 1992 the total number had risen to 835,000. While there is an obvious increase, the number of immigrants in Spain is still small, representing 1.5% of the total 40 million people compared to the EU average of 4%.¹⁷ However as a Member State in the EU, Spain was compelled to start seeing immigration as ‘an issue’, and sign on to the various treaties (Schengen and Dublin) in order to address this ‘growing immigration problem’. Suddenly, the Spanish government and its citizens became ‘disturbed’ by the potential for massive, uncontrolled immigration fuelled by the huge demographic and economic imbalances between Spain and its impoverished

14 Dietrich Thranhardt and Robert Miles. Introduction. In Migration and European Integration: The Dynamic of Inclusion and Exclusion, ed, Robert Miles, and Dietrich Thranhardt (Printer Publisher: 1995) London. Page 9

15 Wayne Cornelius, “Spain: The uneasy Transition from Labour Exporter to Labour Importer” In Controlling Immigration: A Global Perspective, eds Wayne Cornelius, Phillip Martin and James Hollifield. Stanford. California: Stanford University Press. Page 333

16 Ibid at 345

17 Ibid at. Page 347

North African neighbours, just twenty kilometres away.¹⁸ In this broad context we can see the dynamics of ‘civil’ and ‘incivil’ at play. As a historical source country of immigrants, Spain and by extension Spaniards, were categorized as ‘incivil’ by Western Europe; a population upon which various apparatuses of government were utilized in order to control. With their new member status in the EU, this categorization has disappeared. Spaniards now constitute the ‘civil’ group, with the inalienable right to travel within the EU. And as members of this ‘civil’ group, it is now their duty to manage or ‘civilize’ the ‘incivil’.

Indeed the Spanish government have come under constant criticism for the absence of a real national immigration policy, as well as the lack of an administrative infrastructure and capacity that would be needed to implement a stricter immigration policy. Thus the Spanish government performs a balancing act between the necessity of immigrants in supplying labour for the viability of the economy, and pressures from the EU to police its Southern Borders and clamp down on immigrants. Spain has now been placed in the role of the “policeman of Southern Europe” that keeps the hordes of Third World immigrants at bay, since historically the country’s geographical location made it an entry point into Europe for illegal migrants from Africa as Morocco is only 6.3km¹⁹ away. In other words, the country has always been a porous border and with ascension into the EU is now expected to be a gatekeeper. Many argue the reason for the reticence of the Spanish government is due to the fact that immigrants are the source of labour in the country’s large and diversified underground economy that provide a cheap and flexible source of labour for various industries. Making changes in this area would also require significant changes in Spain’s social welfare policy, which currently make it attractive for native-born Spaniards *not* to work.²⁰

However, under pressure from the EC community and the Schengen group, Spain now has visa requirements for the Mahgreb countries since 1991, and some selected Latin American countries since 1992.²¹ In fact, the Felipe Gonzalez government insisted that Spain must be one of the six or seven key players in achieving the goals of the Maastricht treaty on European Union, and that the country will do as much as possible to achieve convergence with the rest of the EC because it is the best route for Spain to

18 K. Calavita.”Spanish Immigration law and the construction of difference: citizens and “illegals” on Europe’s Southern Border”, In *Globalization under Construction*. University of Minnesota Press 2004. Page 105

19 CIA WorldFact Book - <https://www.cia.gov/cia/publications/factbook/geos/sp.html>

20 Wayne Cornelius, “Spain: The uneasy Transition from Labour Exporter to Labour Importer” In *Controlling Immigration: A Global Perspective*, eds Wayne Cornelius, Phillip Martin and James Hollifield. Stanford. California: Stanford University Press

21 Ibid at Page 362

achieve higher economic growth and living standards for Spain²²; therefore, Spain cannot afford to ignore pressures relating to immigration.

The development of Spain's immigration law, ascension into the EU and rhetorical focus on border control and the dangers of immigration are not independent of each other. By employing the theory of governmentality, one can argue that a rhetorical (re) construction of third- world immigrants occurred through the country's legislative process. In this process Spain attempts to (re) create its national identity with new images of citizenship and belonging thereby practicing a politics of inclusion and exclusion. One end result of this process is that with the stroke of the proverbial pen, one group of people previously thought to be 'civil' are now moved into the category of 'incivil'.

A striking localized example of the shift in the parameters of 'belonging' (civil) and the 'other' (incivil) and this new conception of citizenship in Spain is evident among the Andalusian peasants in the south of the country. Historically the Andalusian peasants and Arab immigrants were drawn together in a shared understanding of their common cultural heritage, a shared identity as members of a 'darker' race relative to Northern Europeans, and a common class position, both in the local economy where they were poor farm-workers and as citizens of relatively underdeveloped regions. However with this new (re) orientation of Spanish citizenship, because of legislation, there is increased hostility being expressed by the Andalusian peasants for their African immigrant counterpart. The transformation of ethnic and cultural identity now pits the racially and culturally distinct African immigrants (incivil), with the 'new' Andalusian peasants – full-fledged members of the Spanish nation-state and citizens of the European Union (civil).

In the above example the shift in viewing African immigrants as incivil could be argued to be an indirect result of new legislation regarding ascension of Spain into the EU. However the contention here is that legislation was enacted which explicitly shifted people into, and out of, the categories of incivil and civil since these immigration laws were creating new categories of legal and illegal immigrants. For example people from non-EC countries were now required to have entrance visas, and those who intended to stay in the country longer than ninety days were required to have residence and work permits. As a result of this a very large number of people became illegals. It could also be argued that Spain's heavy dependence on

22 K. Calavita."Spanish Immigration law and the construction of difference:citizens and "illegals" on Europe's Southern Border", In Globalization under Construction. University of Minnesota Press 2004. Page 100

illegal immigrants for economic reasons causes the country to create laws that deliberately make it difficult for individuals to retain their legal status. There are provisions in the LOE that require the individual to demonstrate on an annual basis that the original conditions, (most important being a formal work contract), still exists. As a result some immigrants do not qualify for renewal because the work contract on which the permit was based has ended, or more commonly that the original contractual commitments were not fulfilled by employers who generally prefer that immigrants remain undocumented/incivil. The vulnerability of this position allows employers to reduce the costs of production via lower pay, non payment of social security benefits and so on.

Calivita and Suarez-Navaz argue that the production and reproduction of illegality, and by extension civility and incivility, through law enhances the precariousness and marginalization of those who are ‘illegalized’ and that this marginalization is not limited to the illegal population but applies to those who are (temporarily) legal as well. Indeed in light of the theory of governmentality this paper argues there is little difference between the two states – legal/civil and illegal/incivil - as they are both dependent on public policy and how the various apparatuses of government are utilized to manage a particular population at a particular point in time.

Case Study: Australia

This fluidity between the border of what is termed civil and incivil in the context of immigration policy manifests itself in a different way in Australia. Traditionally, Australia has not been the country of choice for migrants. Its isolation is one obvious factor and it shares no land border with any other country. It also tends to be a country of final destination on most airline routes, therefore it does not need to play host to large numbers of transit airline passengers, who have proven to be a control problem in many other countries. Australia originally had a ‘white-only’ immigration policy set up with the express purpose of nation building using people who fit certain racial characteristics. The institutions, rules and practices surrounding this process were established by English and Scottish Protestants. In the post world war years, a mass non-Anglo immigration was initiated using the discourse of “nation building”. The phrase used by the then Minister of Immigration Arthur Cadwell was ‘populate or perish.’²³ These immigrants tended to form ethno-religious

23 Marie Kabala, “Immigration as Public Policy”, in *The Politics of Australian Immigration* eds James Jupp and Marie Kabala

groups, and if people were allowed into the country it was to conform to the established principles of that society.

Australia has always exerted stringent control over the arrival and stay of foreigners. The country enforces a universal visa system to ensure that no one from overseas visits without satisfying an immigration officer that their 'expressed intention only to visit Australia is genuine.'²⁴ In fact, there have been visa requirements for all non-Australians travelling to Australia and carrier sanctions since 1855. In particular there have been laws that explicitly targeted the Chinese, rendering them 'incivil'.

Attempts to block Chinese entry to Australia can be found in the *Act to Make Provisions for Certain Immigrants 1855*. The target immigrant group was initially described as "...any male adult native of China or its dependencies, or of any islands in the Chinese Seas, or any persons born of Chinese parents."²⁵ A prominent Melbourne merchant Lowe Kong Meng, argued in 1923 that this definition did not apply to him as he had been born outside of the China Seas in British Penang to naturalised British parents. Melbourne magistrates disagreed, and held that Lowe Kong Meng's physical appearance was such that it showed him to be a Chinese immigrant. To avoid future legal challenges the target group came to be "every person of Chinese race."²⁶ This general view of the Chinese was held by Australians for a very long time, and in fact, received some 'validation' during the Cold War, with Communist China an ever present threat against Australia- an ally of the West.

In the late 1980s, Australia was faced with a trade deficit (difference between what it spent on imports and what it earned from exports). Australian policy makers determined that one way to address this issue was to sell its education services to the lucrative Asian economies by bringing in paying students on temporary student visas.²⁷ Australia then started to actively market its English language and university courses overseas, while loosening student entry and application procedures to facilitate enrolments.

This move by the Australian government coincided with the relaxation of exit controls by the People's

Australian Government Publishing Services, 1993 page 16

24 Glen Nicholls, "Unsettling Admission: Asylum Seekers in Australia", *Journal of Refugee Studies*, Vol. 11, No. 1, 1998 Page 61

25 Robyn Iredale, Tim Turpin, and Charles Hawksley. (2004) Migration research and migration policy making: a study of Australia, the Philippines, and Thailand. *International Social Science Journal* 56:179, 115

26 Ibid at 123

27 Ibid at 43

Republic of China (PRC). The result was that a large number of places in Australian schools were taken up by Chinese students. The number of Chinese students in the country had accumulated to approximately 20,000 when the 1989 Tiananmen protest movement was suppressed.²⁸ Twice that number of students had already been approved to arrive in the following year. In the outrage at the suppression of the movement, the then Australian Prime Minister R. Hawke, following the lead of the United States and with an eye to improving the country's international political profile, gave a televised promise of sanctuary, assuring Chinese students that they would not be forced to return to China against their will.²⁹ Subsequently, 20,000 Chinese students applied for sanctuary in the form of refugee status. Approximately 70% of all asylum applications in 1990 and 1992 were Chinese citizens, which accounted for the steep increase in those years. From January 1989 to April 1992 there were 26, 625 applications for refugee status in Australia. Of these, 17,404 were submitted by PRC citizens.³⁰ The existing asylum determination mechanism was overwhelmed by the size of the new caseload and as such necessitated the move to reform the current system. This move to reorient the policy on Chinese people applying for residency resulted in more difficulty for Chinese citizens to apply. The improving economic climate in Australia coupled with the sheer number of Chinese asylum-seekers shifted the discourse from one of inclusion and civility (a viable part of the economic system and humanitarian solidarity), to one of exclusion and incivility (a 'yellow peril' representing a threat to national security).

While the contexts and motivations are different in the case of Australia and Spain, the end result is a politics of inclusion and exclusion that through the various application of governmental apparatus - such as immigration departments, border patrols, detention centres – render the distinction between civil and incivil both inconstant and conditional on a number of political, economic or social circumstances.

It is important to mention here that I deliberately avoided looking at immigration law/policy in the United States and Canada after the September 11th attacks on the World Trade Centre although they are the most recent example supporting the argument I make in this analysis. There is no doubt that since September

28 Ibid at 111

29 Ibid at 104

30 Simon Green, The Politics of Exclusion. Manchester University Press 2004, page 9

11, 2001 there has been intense normalising practices in place with regard to immigration policy and security. Also, that the result of this practice is an unquestioning acceptance among traditionally receiving countries, particularly Canada and the US, that the changes in lifestyle, the deprivation of certain liberties and the lack of human empathy when dealing with immigrants are necessary to ensure security.³¹ Consequently, the threats of terrorism and the practices of counter-terrorism have become normalised into everyday life in these countries. Social and political life in North America in particular has become reconceptualized to include the imminent possibilities of terrorism, the need for eternal vigilance and the acceptance that certain sacrifices need to be made to protect the greater community.³² I contend that it should not be assumed that the September 11th event is the beginning of the phenomena of a politics of inclusion and exclusion, and by extension of the civil and the incivil, or even that it represents a significant departure. Rather my contention is that events such as the terrorist attacks are used as ‘rationales’ for enacting certain policies that would not have been possible in anything other than the ‘state of emergency’ conditions which these situations create. The Patriot Act tabled in the United States and its subdued Canadian counterpart Bill C-36 could not have been proposed in any other context. I aver that states employed the same tactics during the Cold War and the so-called ‘Red Threat’ and before that with the Germans and Japanese during WWII.

In returning to the theory governmentality and applying it to these case studies, this paper argues that there is a *precariousness* implicit in the construction of ‘incivil’ and ‘civil’. These case studies make visible the fact that the construction has a complex interconnection with a multiplicity of historical and governmental processes, rather than an *arbitrariness* which is often taken for granted. This is because government is a ‘rational’ activity, undertaken by a multiplicity of authorities and agencies, employing a variety of techniques and forms of knowledge in a bid to shape conduct. By giving priority to ‘how’ questions, that is, by what means, mechanisms, procedures, instruments, tactics, techniques, technologies and vocabularies are used to manage a population, governmentality exposes the naturalness or arbitrariness of these categories of inclusion and exclusion as problematic. Indeed membership in these categories, whether civil or incivil, legal or illegal, mad or sane and so on, is contingent on a number of factors which change depending on a variety of circumstances.

31 Katrina Lee Koo, “Terror Australis: Security, Australia and War on Terror Discourse”, *Borderlands* vol. 4 issue 1, 2005

32 *Ibid* at page 8

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CIA WorldFact Book - <https://www.cia.gov/cia/publications/factbook/geos/sp.html>