

## Closed Doors and Open Footprints: Undocumented Migration, Precarious Trajectories, and Restrictive Policies in Chile

### Puertas cerradas y huellas abiertas: migración irregular, trayectorias precarias y políticas restrictivas en Chile

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#### ABSTRACT

This research aims to show the role the Chilean State has played in the production of the administrative irregularity of migrants based on restrictive access policies into the territory. From secondary information, the effect that the imposition of the consular visa requirement has had on the increase in undocumented access is analyzed. The analysis is based on a characterization of the immigration policy developed by the Chilean State between 1992 and 2018. It draws on the theory of recognition and the notion of migratory trajectory. It is concluded that restrictive immigration policy instruments, under favorable context for migratory flows, impact the creation of conditions for institutionalizing precarious conditions for migrants' trajectories.

*Keywords:* 1. precarious legal status, 2. irregular migration, 3. migratory policies, 4. Latin American migration, 5. Chile.

#### RESUMEN

Este artículo tiene por objetivo mostrar el papel que ha desempeñado el Estado chileno en la producción de la irregularidad administrativa de los migrantes con base en políticas orientadas a obstaculizar el ingreso al territorio. A partir de información secundaria se analiza el efecto que ha tenido la imposición del requisito de visa consular en el incremento de los ingresos clandestinos. El análisis se encuadra en una caracterización de la política migratoria impulsada por el Estado chileno entre los años 1992 y 2018; se nutre de la teoría del reconocimiento y de la noción trayectoria migratoria. Se concluye que los instrumentos de política migratoria que buscan restringir los ingresos, en el marco de una intensificación de las condiciones que llevan a las personas a salir de sus países, inciden en la creación de condiciones para institucionalizar trayectorias precarias en los migrantes.

*Palabras clave:* 1. estatus legal precario, 2. migración irregular, 3. políticas migratorias, 4. migración latinoamericana, 5. Chile.

Date received: January 16, 2020

Date accepted: January 8, 2021

Published online: November 30, 2021

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## INTRODUCTION<sup>2</sup>

The tension between migrants and the democratic State is based on the institutionalization of the category of *migrant* itself, which by definition implies establishing a set of conditions for the access to rights (Sassen, 2010). Thus, the exclusion that migrants face in relation to legal citizenship does not end in the social discrimination that usually follows along their trajectories as migrants, but is normatively produced by a series of explicit rules that establish the justification and criteria for that partial exclusion (Goldring & Landolt, 2013). In this sense, the migration policies of any State move between reducing these conditions for limited periods and creating an institutional framework that makes this conditionality a constant in the lives of migrants. Thus, migration policies are constituted as a paradoxical entity between those mechanisms establishing conditionality and the devices created to overcome it.

Regardless of how migration regulations are oriented, the trajectories of migrants imply a transition from temporary status to permanent residence and eventually to full citizenship (Bauböck, 2006). Now, one of the assumptions hereby made is that although the status of being a migrant is antagonistic to that of being a citizen (Menjívar, 2006; Goldring, Bernstein, & Bernhand, 2009), it is far from being a homogeneous category, since it groups together a set of different forms of transience and conditional access to rights that make up a system of diverse positions of legal status or provisions of conditionality (Goldring & Landolt, 2013).

On the other hand, recent literature has shown that in addition to not being homogeneous, the category of migrant also implies non-linear nor necessarily ascending trajectories in that kind of scale of rights leading to citizenship (Goldring & Landolt, 2013). This calls into question one of the main assumptions under which the relationship between migration and citizenship had been approached since the 1990s (Castles & Davidson, 2000): that the transition between the positions of the “legal status” of foreigners implied ascending linearly in the “ladder of rights” (Bauböck, 2006), or going through a series of successive “entrance doors” serving as stages of gradual access to citizenship (López, 2005).

Conversely, the most recent research has been profusely showing that in the case of North America (Menjívar, 2006; Menjívar & Abrego, 2012; Goldring & Landolt, 2012; Goldring & Landolt, 2013; Goldring, Bernstein, & Bernhand, 2009; Bernhand, Goldring, Young, Bernstein, & Wilson, 2008) and Southern Europe (Calavita, 2007), the trajectories of migrants towards legal citizenship imply the possibility of going back in the system of stratification of rights (Castles, 2003; Castles, 1995); or even perpetuating themselves in a position accounted for in the regulations as transitory or temporary (Menjívar, 2006).

The notions of “permanent temporality” or of “liminal legality” proposed by Menjívar (2006), allow us to account precisely for trajectories in which restricted access to rights is established as a constant. It is thus understood that migrants can lose access to rights that they had previously gained, even though they are in advanced stages of their trajectory and that, therefore, the fall into irregularity and non-citizenship can be part of the usual course of their

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<sup>2</sup> This article is part of the project *ANID Anillos SOC180008 Contemporary Migrations in Chile: Challenges to Democracy, Global Citizenship, and Access to Non-discriminatory Rights*.

trajectories, and not merely a surmountable starting point for migrants, as it used to be assumed (López, 2005; Solé, 2000).

From these assumptions, this paper is organized around two hypotheses. The first states that the precarious legal status of migrants, including the definitive denial of citizenship (Bernhard, Goldring, Young, Bernstein, & Wilson, 2008), is a condition that the State contributes to producing through its regulatory body, administrative devices, and the bureaucratic practices that make up immigration policy. The second argues that those immigration policies promoted in recent years by the State of Chile, which aim at selectively hindering the entry into the country of some national groups through the institutionalization of a system of consular visas, lead to a consolidation of forms of legal and administrative precariousness among migrant residents.

### THE STATE VS. MIGRANTS: CONCEPTS AND APPROACH

In theoretical terms, this work is supported by two complementary sources. The first is inscribed in the field of migration studies, specifically within the analytical framework of the modes of incorporation highlighting the role of the State in the definition of migration trajectories (Portes & Böröcz, 1989; Portes & Rumbaut, 1990; Portes & De Wind, 2006). The thesis that the State affects the trajectories of migrants is part of a more complex framework, in which two other factors act in addition to the policies promoted by the State: the prejudices held by society when it comes to different migrant groups, and the class and status composition that the insertion group occupies in the structure of the receiving society (Portes & Böröcz, 1989; Portes & Rumbaut, 1990). This approach helps overcome the neoclassical individualist perspective, which assumed that migration trajectories depended exclusively on the skills, strategies, and personal resources of migrants (Portes & Rumbaut, 1990). This work addresses particularly the State variable of the problem, leaving the other two for further studies.

Along these lines, since the mid-2000s a trend has developed that looks critically at the role of the State as an agent producing legal precariousness among migrants (Menjívar, 2006; Menjívar & Ábrego, 2012; Goldring & Landolt, 2012; Goldring & Landolt, 2013; Goldring, Bernstein, & Bernhand, 2009; Bernhard, Goldring, Young, Bernstein & Wilson, 2008). This, as already stated, has been a turn as of the assumptions in the available literature since the 1990s in relation to the tension between migration and citizenship (Castles & Davidson, 2000; Castles, 2006; Bauböck, 2003; Faist & Gerdes, 2006; Cachón, 2010; Carens, 2004).

The second theoretical source from which this work draws comes from the theory of recognition (Honneth, 1997; 2009; 2010; Fraser & Honneth, 2006). This approach allows for us to understand the link between migrants and the State as a constitutive process not only of the conditions in which migrants are inserted but also of the character of the State and its degree of adherence to democratic principles such as equality and justice (Weil & Crowley, 1994). From the theory of recognition, it is assumed that the State and its subjects reciprocally constitute themselves in a dialogic and interactive dynamic (Fraser, 2006; Taylor, 2009; Renault, 2007; Haber, 2007; De Lucas, 2007; Fascioli, 2011). Citizenship in this sense is not

fulfilled by the mere access to rights, but also based on the self-recognition that the individual develops as part of the collective.

This notion of citizenship transcends the formulations by Marshall (2001), wherein citizenship is understood as a set of rights produced by the State and extended to the population. On the contrary, a notion of citizenship linked to the relationship of recognition assumes that the sense of belonging, or “civic identity” (Kymlicka, 1996), is an inescapable element of citizenship since it is that which allows “sustaining the level of commitment, accommodation and sacrifice that democracies require” to reproduce themselves (Kymlicka, 1996, p. 239). From this, we assume that the course of the trajectories depends not only on the access to rights but also on the sense of belonging of individuals to the political community (Kymlicka, 1996). This assumption follows Castles and Miller (1993), who argue that the identification of a migrant collective as a “minority” (excluded, exploited, subordinated, and culturally rejected), or as a “community” (accepted, participant, egalitarian, culturally interactive), depends as much on the receptivity of the State as on the dispositions of collectives (Castles & Miller, 1993, p. 47).

Regarding the above, migration trajectories can be understood as processes that set-in motion a dynamic of reciprocal recognition between migrants and the State, ultimately impacting both how the former are included and the definition of some principles fundamental of the latter. Thus, the migrant would be the result of an interaction with the environment that affects the conformation of the State. It is worth saying that individuals and the State are constituted from a relationship of reciprocal recognition in which they meet, conflict, and define each other (Honneth, 1997). The bibliography that has informed this theory since the 1990s (Honneth, 1997; 2010; Fraser & Honneth, 2006; Haber, 2007; Renault, 2007) allows for us to identify three typical situations to address this problem.

The first is based on a complete or partial denial of recognition by the State, before which the individual would face such relationship from discomfort, from moral injury (Honneth, 2009), faced with a self-perception of deprecation (Honneth, 1997; 2006). This denial of recognition, when not accepted by the individual, could motivate a struggle for recognition (Honneth, 1997). The second typical situation would be false recognition, which takes place when the individual’s expectation of recognition matches the denied or partial recognition granted by the State; in this case, the self-image that individuals develop would be inscribed in a situation of inequality imposed by the State. The identity of the individual would thus become, as pointed out by Taylor (2009), the main instrument of domination itself, which here would imply the self-identification of the migrant with the condition of denied citizenship or a precarious legal status. The third typical situation involves actual recognition (Taylor, 2009). This implies self-recognition within the framework of a State that creates normative conditions so that migrants can perform on equal terms with the native population, and a migration policy that contributes to creating conditions so that at the level of social relations migrants can be recognized within a framework of justice.

This notion of recognition, articulated with the condition of migrants, thus implies a conception of migration trajectory resulting from constant tension between the individual and the State. The notion of migration trajectory that we address here (Cachón, 1989) comes into

tension with the linear and ascending reading with which the process of incorporation of foreigners into the sphere of rights of the host society has traditionally been interpreted. We distance ourselves from the evolutionary inheritance, which part of the studies on migration and citizenship have adopted from the classic work of Marshall (2001), assuming that the access of migrants to citizenship is a process of an increasing expansion of rights mediated by a system of regulations based on gradualism. On the contrary, we understand the action of the State as a set of devices confronted with the dispositions of individuals, which results in both progressions towards rights and its opposite: the closing of doors, the delay in the possibility of crossing them, or directly, the reversal of the direction of trajectories, forcing individuals to cross over and over again through same doorways.

Migration trajectories would thus move within a gray area (Menjívar, 2006) of precarious, heterogeneous, and dynamic status positions that contradict the idea of a sequential and growing integration on the part of migrants into the spheres of rights (López, 2005). The notion of migration trajectory, on the contrary, understands the individual as moving through the different levels that make up the migrant condition in a round trip between formal citizenship, precarious status, and the denial of all legal status. Between this complete denial of the rights that undocumented migrants embody and the access to permanent residence, each State produces a gradient of transitory intermediate positions through which migrants move forward and backward. The trajectories develop as footprints between the unpredictability of the experience and the rigidity of bureaucracy (Bernhard, Goldring, Young, Bernstein, & Wilson, 2008).

The precariousness of legal status positions would be determined by conditionality, temporality, and dependency. Goldring and Landolt (2013) state that such precariousness is usually expressed by any of these elements or a combination of them: a) lack of work authorization; b) absence of the right to reside permanently in the country; c) dependence of their rights on the right of a third person to reside in the country; d) absence of full access to the rights guaranteed for national and foreign permanent residents; and e) dependence of the residence authorization to work, student or other conditions. In other words, the precariousness in the legal status of migrants is defined by the institutionalization of a temporality from which conditioning of the access to rights derives. To this should be added two other elements that affect the configuration of precarious trajectories: the revocability of the position reached and the eventual expulsion of individuals.

In this way, the linear interpretation of the process of access to citizenship by migrants has been subject to a profound criticism arising from the analysis of migration trajectories. On the one hand, it has been shown that in practice many devices of immigration regulation result in precarious trajectories, in the sense that they revoke the conditions that enabled access to rights. The metaphor of the “game of snakes and ladders” (Goldring & Landolt, 2013) expresses a situation that highlights the instability of the recognition of the rights of migrants. On the other hand, the questioning of linearity points to the assumption that political rights constitute the point of arrival for this kind of upward mobility towards citizenship. This would leave aside evidence showing that achieving social rights and well-being similar to that of the native population operates as an incentive for migrant communities to avoid actively participating in

the political sphere (Brubacker, 1989), a situation that would have originally resulted in the category of “semi-citizenship” or “denizenship” (Hammar, 1989; Castles, 2003; Layton-Henry, 1990).

Another line of criticism has pointed to the formalism of the approach, which assumes a continuity between the classification of rights and their actual exercise (Hammar, 1989; Castles & Miller, 1993; Castles, 1995; Brubacker, 1989; Layton-Henry, 1990), highlighting the polemic around institutional practices and social relations as an instance in which the goals pursued by normative regulations are affirmed or conflicted:

It is a well-known fact that formal equality often hides great qualitative inequalities and that legal rights can have different connotations depending on the treatment that officials and even ordinary citizens provide to the holders of those rights (Carens, 2004, p. 410).

In this way, the regulations set forth guarantees for migrants to access their rights are conceived as a necessary but not sufficient condition for effective access to those enshrined rights (Brubacker, 1989).

This criticism stresses the view of the incorporation of migrants in the political sphere as a linear path conducive to full citizenship, also bringing into question the idea that between citizenship and non-citizenship there is a single border dividing a bipolarity. These critical views suggest the contrary: that between citizenship and the denial of citizenship there is a system of permeable borders, based on formal regulations and social practices that would make up a gray area of intermediate statuses, which would tend to become a constant in migration trajectories, limiting the self-recognition of migrants in the host society, and the possibility of displaying a sense of belonging to it. In this way, the real heterogeneity that defines the different forms of State production of the migrant condition allows us to overcome binary conceptualizations such as regularity/irregularity, legal/illegal, citizenship/non-citizenship, with which the literature has usually addressed the problem of access to citizenship rights on the part of foreign populations (Goldring, Bernstein, & Bernhand, 2009).

#### RECENT IMMIGRATION POLICIES IN CHILE: THE INSTITUTIONALIZATION OF PRECARIOUS TRAJECTORIES

The relationship between the migration policy promoted by the executive branch over the last 30 years through its administrative powers, and the current immigration law, has passed through three stages. A first stage can be identified from the return to democracy in 1990 up to year 2003, in which the executive branch remained very active in the face of the emergence of a new migration process, ongoing to this day (Thayer, Stang, & Dilla, 2020). At this stage, the lack of a policy promoted by the executive branch made the trajectories of resident foreigners to be almost exclusively influenced by the effect of the law. In a second stage, from 2003 to 2017, migration policy began to occupy an increasingly relevant place on the agenda, and began exerting pressure on a law based on a national security approach, by means of actions and measures that broadly speaking aimed at rectifying the exclusion problems generated by the application of the law. In the third stage, from 2018 to date, the executive branch has sought to establish a continuity of meaning and goals between law and politics, by turning at both levels

towards a restrictive approach focused mainly on border management. In this section we carry out a general characterization of the relationship between immigration law and the policies of these three stages (see figure 1).

The main feature of the first stage, which spanned from 1990 to 2003, is the low activity at the executive level in matters of immigration policies, expressed, in part, in its secondary place on the public agenda. For this reason, it is impossible to characterize how meaningful the measures taken during this period were, as there are no consistent political definitions. In this stage, the law operated as a “policy by default.” The main administrative action carried out in 1997 was the implementation of an extraordinary regularization process that granted temporary visas to just over 40,000 people. Most of these people were in a situation of consequential irregularity, that is, they had entered the country regularly and then stayed beyond the 90 days set by law for the transitory tourist visa, an instrument usually resorted to at the beginning of trajectories. Given that the law considers an ordinary regularization mechanism for those who find themselves in this situation, consisting in obtaining a job and paying the corresponding fine, the regularization process implied streamlining a cumbersome, costly, and time-consuming procedure, rather than the creation of a new opportunity not accounted for in the regulation.

Table 1. Outline of the stages of migration policy in Chile

	<p><b>1993:</b> Presentation of the migration act (No. 2.891).  <b>1996:</b> Acknowledgement of the non-refoulement principle (Law No. 19.467)  <b>1996:</b> Creation of the category of border area inhabitant (Law No. 19.581)  <b>1998:</b> Regularization process, 44,000 visas granted.</p>	<p><b>2003:</b> Circular 1179: guarantees access to education to irregular children and adolescents.  <b>2003:</b> Resolution 6332, access to health for pregnant women in an irregular situation.  <b>2003:</b> Ratification of the International Convention on migrant workers and their families.  <b>2007:</b> Regularization process, 47,000 visas granted.  <b>2008:</b> Presidential instruction No. 9.  <b>2008:</b> Official Letter No. 12.766, access to health for irregular children and adolescents.  <b>2010:</b> Law No. 20.430 on refugees.  <b>2011:</b> Law No. 20.507 on trafficking and smuggling.  <b>2012:</b> Consular visa to the Dominican Republic.  <b>2013:</b> Presentation of the Bill (Piñera).  <b>2015:</b> Presidential instruction No. 5.  <b>2015:</b> Circular No. 67: access to public health for people in irregular situation.  <b>2016:</b> Creation of the National Migration Council.  <b>2016:</b> Decree guarantees access to primary health.  <b>2017:</b> Program Chile Te Recibe.  <b>2017:</b> Presentation of the Bill (Bachelet).</p>	<p><b>2018:</b> Bill is rejected (Bachelet).  <b>2018:</b> Regularization process.  <b>2018:</b> Consular visas to Haitians.  <b>2018:</b> Consular visas to workers.  <b>2018:</b> “Democratic responsibility” visa to Venezuelans.  <b>2018:</b> Presentation of the Bill (Piñera).  <b>2018:</b> Closure of the National Migration Council.  <b>2018:</b> Shift in expulsions politics.  <b>2018:</b> Humanitarian return plans.  <b>2019:</b> Consular visas to Venezuelans.</p>		
	1990	2003	2018		
	<p>Stage 1 “Policy by default” 1992–2002</p>			<p>Stage 2 “The politics of the state of mind” 2002–2017</p>	<p>Stage 3 “Putting the house in order” politics 2018 – present</p>
Migrants	105,070	184,464	746,458	1,492,522	
Percentage	0.8%	1.2%	4.3%	8.5%	

Source: Own elaboration from a database included in the CISJU-UCSH's Observatory of Migration Policies (2019).



Some legal changes were made in addition to the above-mentioned, such as the reform to Law Decree No. 1.094 through Law No. 19.476, which establishes the non-refoulement and other principles in relation to the recognition of refugee status, or the creation of the category of border area inhabitant through Law No. 19.581 of 1998. Along these lines, in 1993 the executive branch presented to Congress a bill to reform the immigration law, a reform that did not prosper beyond the first parliamentary procedure and was shelved in 1997. Finally, in terms of international regulation, in 1993 the State of Chile signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and in 1994 President Eduardo Frei submitted its ratification to the consideration of the Chamber of Deputies, which approved it after three years of processing, passing in December 1997 to the Senate, where the procedure was not set again in motion until 2003. The almost complete lack of policies at the administrative level and the scarce progress in legislative matters resulted in a stage in which the Law Decree No. 1.094 of 1975 that establishes the Immigration Law operated directly on the trajectories of migrants without the mediation of a policy or any measures to rectify the gaps in this decree.

The second stage followed from 2003 to 2017 and covered the final period of the Ricardo Lagos' government, the first and second government of Michelle Bachelet (2006-2010), and (2014-2018) the first term of Sebastián Piñera (2010-2014). During these years the executive branch intensified activities, activities that were however not undertaken in an articulated manner nor led to institutionalization that would make them sustainable over time. More than a policy, a set of fragmented actions was deployed, without continuity nor ordered by the setting of unifying goals. In another paper, I have called this stage "the politics of the state of mind" (Thayer et al., 2020), in the sense that measures were subject to the mercy and will of officials and authorities on duty, as a temporary response to the growing presence of migrants, and not as a result of provisions defined by the State, or even the government.

Despite the fragmentation of the measures and the lack of continuity between them, it should be acknowledged that in the second stage migration policies were generally aimed at rectifying the conditions and restrictions set for the migrant population's access to rights derived from the application of current legal regulations. The main setbacks contained in the law, stressed by migration policy, were linked, on the one hand, to the restrictions associated with the irregular administrative situation, and on the other, to the void expressed by Law Decree 1.094 in relation to the granting of rights for resident foreign population. Regarding the former, it should be noted that this legal framework does not establish any protection or guarantee for those who are in an irregular administrative situation, be it consequential or of origin. In fact, it is an administrative situation set as a crime when it results from unauthorized entry. As for the latter, the law does not take into account any reference to rights nor does it establish principles to access them. The direction of this law is limited to managing the border, as well as to defining and dealing with the misdemeanors and crimes that it defines as such, and to establishing the conditions for residence and work authorizations. It is a framework that, in short, refuses to establish criteria and principles for the recognition of a catalog of rights.

Thus, during this last stage, the tension brought about by the policies regarding the law was expressed in the issuance of decrees, presidential instructions, and the implementation of sectoral integration programs aimed at establishing conditions of effective access to their social rights. It should be noted that between 2010 and 2014 political activity on migration slowed down, and was oriented more towards border management than integration policies. We identify here, in addition to a pause in the process that had been developing, an incipient and anticipated version of the shift towards an immigration policy that would take place later in 2018 during Sebastián Piñera's second presidential term. Indeed, the main administrative measure between 2010 and 2014 was the imposition of the consular visa requirement for tourism purposes on Dominican citizens. A measure that, as will be seen later, is one of the main incentive devices for the increase in clandestine entry during that period. This measure, taken in 2012 for Dominican citizens, constitutes a clear precedent of the policies that would be later implemented as of 2018.

The year 2003 is key to understanding this second stage, as it became clear that some measures were being taken to rectify the discrimination institutionalized by the law to which resident foreigners were subjected. Exemplary in this regard are official letters No. 1.179 and No. 6.232 of the Department of Foreigners and Immigration, whose declared goal is to "increasingly reduce the discrimination to which foreign citizens residing in our country are subjected" (Official Letter 1.179, 2003, p. 1). These documents instruct particularly on the access of foreign minors in an irregular situation to student visas, and in the case of pregnant women, to temporary visas. This is to facilitate the integration process of these groups and regularize the exercise of the right to health care in the case of pregnant women, and to school education in the case of minors.

Although these measures are of limited scope, they constitute devices that rectify the institutional discrimination under which the two groups referred to were found until then. Indeed, the very fact of being directed at specific groups, pregnant women and minors, and not at the migrant population in general, implies a limitation in the granting of the right. The same applies to it being aimed exclusively at people in a situation of irregularity, that is, those residing in Chile beyond the period set by the tourist visa with which they entered, which excludes those who entered the country clandestinely.

Along the same lines, in December 2003 the report contained in bulletin No. 1256-10 was sent to the Senate of the Republic, by decision of the Ministry of Foreign Affairs, to advance the confirmation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. As pointed out above, this had been approved by the Chamber of Deputies in 1997, and therefore had not been processed already for six years at that point. Finally, the Senate approved the convention in which it is promulgated and entered into force in Chile with Decree No. 84 of 2005. With this, the State's commitment to promoting regularity is enshrined (Article 69). At the same time, progress was made in the recognition of the right to education and health care under certain conditions, regardless of an administrative situation. Echoing this, in June 2008 the Department of Foreigners and Immigration published Official Letter No. 12.766, which established the principles of an agreement with the Ministry of Health to guarantee access to health care for minors, regardless of their administrative

situation, although requiring to have a tourist card implies the exclusion of people in irregular situations who have entered the country clandestinely.

On the other hand, this second stage is marked by the issuance of two presidential instructions, No. 9 of 2008 and No. 5 of 2015, which established guidelines for sectoral policies aimed at the equal integration of migrants. Despite having been issued in the two administrations of Michelle Bachelet, the first (published during her first term) complies with respect to some rights such as access to health with a more guaranteeing standard than the second, although also with limitations. Indeed, Instruction No. 9 of 2008 states that “under no circumstances could health benefits be denied to foreigners who require it, according to their social security situation” (Government of Chile, 2008, p. 4); otherwise stated, the guarantee is established yet it is conditioned to the person’s social security situation.

In turn, Instruction No. 5 of 2015 sets forth that State administration bodies, when it comes to health matters, must “ensure the availability of health system options and in any case guarantee effective access to health for pregnant women, children and teenagers, to emergency care and public health benefits” (Government of Chile, 2015, p. 7). With this, in addition to ratifying the guarantees already established in 2003 of access to health focused on pregnant women and minors, the 2015 instruction only establishes that migrants will be able to choose the health system to which they join. The difference between these instructions, issued during Bachelet’s first and second terms, helps us confirm the nature of this stage, marked by partial advances in the rights approach, nevertheless adding tension to the restrictions derived from the law and accounting for administrative measures little consistent with each other.

In line with the right to health and recognition aimed at the population under irregular situation, the Ministry of Health (2016) issued Decree No. 67, one of the last administrative documents of the period aimed at rectifying the exclusions derived from the law. This decree established that foreigners who are in an irregular administrative situation will be able to access public health benefits, included as they are in the National Health Fund (FONASA, for its acronym in Spanish), under “category A” as “lacking resources or below the poverty line.” This document is probably the most significant in terms of the recognition of the rights of persons in an irregular migration situation since it does not differentiate either in the text or in the requirements between people in a situation of irregularity, be it consequential or of origin. This decree defines as under an irregular condition any “immigrant person who lacks documents or residence permits and signs a document declaring lack of resources” (Ministry of Health, 2016, p. 1), thus including by omission those who had entered the country clandestinely.

All these administrative measures represent the main actions that brought tension to the current law in terms of immigration policies, although it should be noted that in two instances of this stage there were attempts at modifying the immigration law. First in 2013, during the first term of Piñera, and then in 2017 during the second term of Bachelet. The lack of an agreement between political actors, and that of the will of the executive branch to prioritize these reforms, led to both initiatives stalling in the Congress of the Republic. The last one definitively, when it was rejected in its first parliamentary procedure with votes of deputies from the same governing coalition that presented the project; and the first in 2018, when during

his second administration Sebastián Piñera prioritized on the legislative agenda the processing of the legal initiative presented in 2013.

Thus, the third stage in question (beginning in 2018) arises from the will of the executive branch to prioritize an agenda on migration. This implied promoting coordinated and consistent actions in matters of legislative reform, administrative measures, and not least, in the construction of a narrative and a communications strategy that ordered, for the first time since 1990, the principles of an actual migration policy. In this sense, in 2018 there was a shift towards a migration policy clear in goals to put actions in order, allowing thus building a relationship of agreement between the level of law and administrative measures. Now, this shift has two other relevant components of meaning: on the one hand, it establishes border management as an exclusive priority, thereby letting go of the preponderance of policies focused on the recognition of rights and the integration of migrants; and on the other, it establishes an openly restrictive and border control-oriented direction, which modifies the criteria for entry into the national territory that has existed since 1975.

If until 2018 administrative measures aimed at rectifying the conditions of exclusion of foreigners derived from the law, the turn of that year saw the actions promoted by the executive branch rather aim at the administrative institutionalization of the conditions of that exclusion.

#### BORDER CLOSURE AS A WAY IN WHICH IRREGULARITY IS CREATED

A few weeks after taking office, President Sebastián Piñera announced a set of measures in migration matters framed in a speech partly based on the idea of “putting the house in order” in the face of a migration flow described as chaotic, “illegal” and causing serious social problems, such as crime, the saturation of public services, an increase in extreme poverty and the degradation of the working conditions of national workers. Thus, this set of measures would correct what was pointed out as blame on the previous government, which supposedly had neglected the border, giving way to migratory chaos.

Concisely said, the measures decreed as of 2018 can be grouped into three articulated lines of action: first, the reactivation in Congress of the processing of the immigration bill presented in 2013 by the first Piñera administration is announced; for this, a new version of said project is presented to the National Congress with more than 100 modifications to the first version. By presenting it as “urgent,” the project was established as one of the priorities of the parliamentary discussion of the first year of government, then approved in the Chamber of Deputies in January 2019.

Second, the opening of an extraordinary regularization process is announced, which according to government calculations would allow the registration of more than 300,000 migrants within three months, estimated to be in an irregular administrative situation. However, by the end of the process, just over 155,000 people registered, of which around 90% were in a situation of irregularity. Therefore, by the beginning of the process, that majority had ordinary regularization mechanisms according to law. Finally, a series of administrative measures were

implemented aimed at selectively establishing particular entry requirements for migrants by reason of their national status or their level of qualification. With this, a consular visa system was established as a requirement to enter the job market. A precedent of this policy can be found in 2012, the year in which precisely during the first Piñera administration the requirement of a consular visa was established for people from the Dominican Republic.

The creation of this system of access through consular channels limited the possibilities of obtaining authorization at the border conducive to temporary residence. With this, the main mechanism that the foreign population had made use of to regularly access the job market in previous decades was closed. Both the creation of the consular visa system, as well as the restrictions on the change of immigration status for those who obtain a visa at the border, were carried out administratively and at the same time incorporated into the proposed modification to the immigration bill reactivated in the Congress. In this way, the policy and the law ceased to be in tension, to move into a phase of consistent articulation aimed at establishing a selective and restrictive immigration policy.

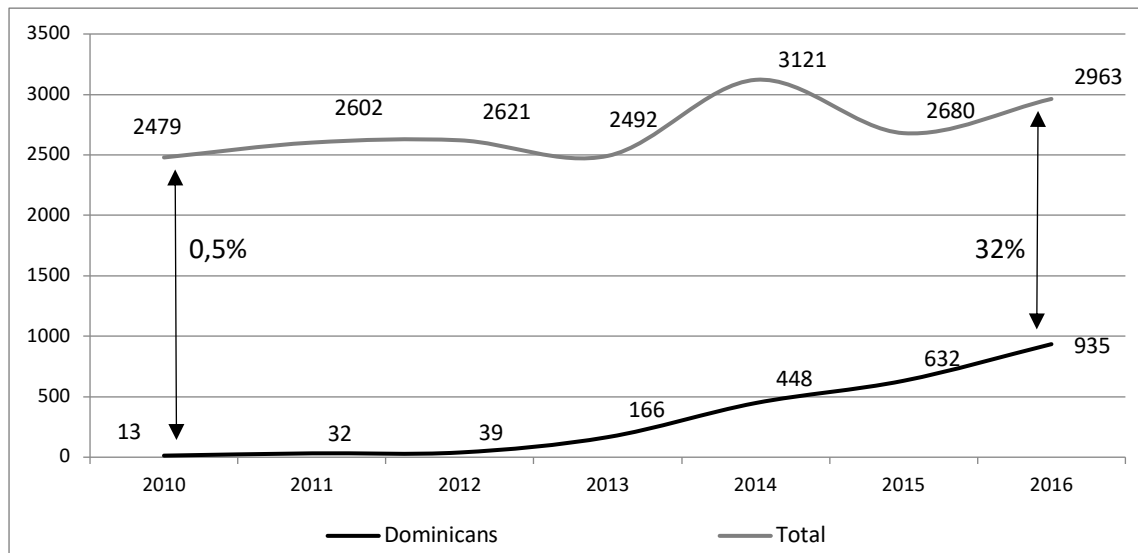
From the point of view of access to rights, these measures implemented in a context of favorable economic and social conditions for the arrival of migrants have resulted in an incentive to irregularity of origin, which represents one of the main obstacles faced by migrants when trying to access rights. In fact, information from the Ministry of Home Affairs shows that complaints for clandestine entry went from 2,905 in 2017 to almost 9,000 in 2019. This is attributable to the increase in the migration flow from countries of the region, under conditions of border restriction for regular entry. The consequences that have been observed in relation to the Dominican population from 2013 onwards presented below constitute a preview of a reality that will foreseeably extend to other migrant groups also denied entry.

The requirement for the Dominican population of having a visa issued through the consular channel was established through a verbal note transmitted by telephone by the General Directorate of Consular Affairs of the Ministry of Foreign Affairs to the Government of the Dominican Republic. The administrative requirement in force since September 1, 2012, requires citizens of that country who wish to enter Chile for tourism reasons, to request authorization at the Chilean consulate located in the Dominican capital, and not at the Chilean border as it had been until then. The justification expressed by the Ministry for this determination was the need to control the growing trafficking and smuggling of persons linked to sexual exploitation. It is important to note that in 2012 the number of Dominicans residing in Chile represented a low proportion in relation to the total volume of foreigners residing in Chile. In fact, in 2014 the Dominican population represented less than 1% of the foreign population permanently residing in Chile (DEM, 2016). In this sense, it can be said that volume was not a relevant factor in establishing the requirement, as the requirement has also subsequently been imposed on other national groups, such as Haitians (2018) and Venezuelans (2019).

According to information published by the Ministry of Home Affairs and Public Security (DEM, 2016), the clandestine entry of the Dominican population estimated from the expulsions decreed for that reason increased 24 times, that is, it grew by 24% between 2012 and 2016

(Graph 1). In relation to the proportion of expulsions of Dominicans over the total of expulsions, these went from representing 0.5% to 32% of that total in that period. Although the data on expulsions due to clandestine entry does not express the real magnitude of this entry and tends to underestimate it, it constitutes a valid approximation to represent the probable evolution curve of these entries.

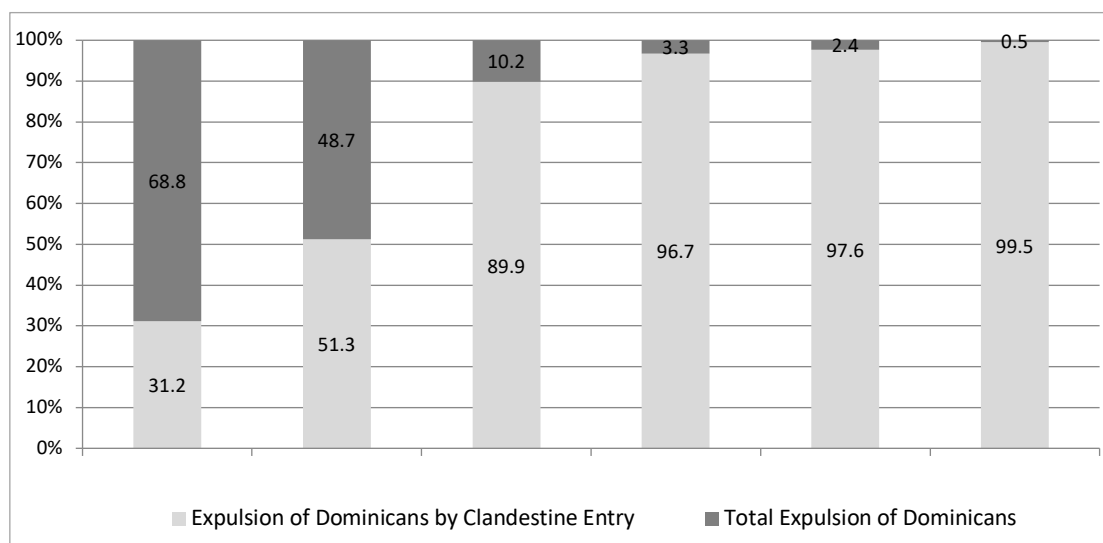
Graph 1. Total Expulsions and of Dominicans for Clandestine Entry (2010-2016)



Source: Own elaboration based on a report from the Immigration Department (DEM, 2016).

Along the same line, and as can be seen in Graph 2, expulsions of Dominicans for clandestine entry went in 2011 from representing 31% of the total expulsions of this group to representing almost 100% in 2016. That is, after the consular visa being imposed on this group in 2012 practically all of the expulsions have been due to clandestine entry.

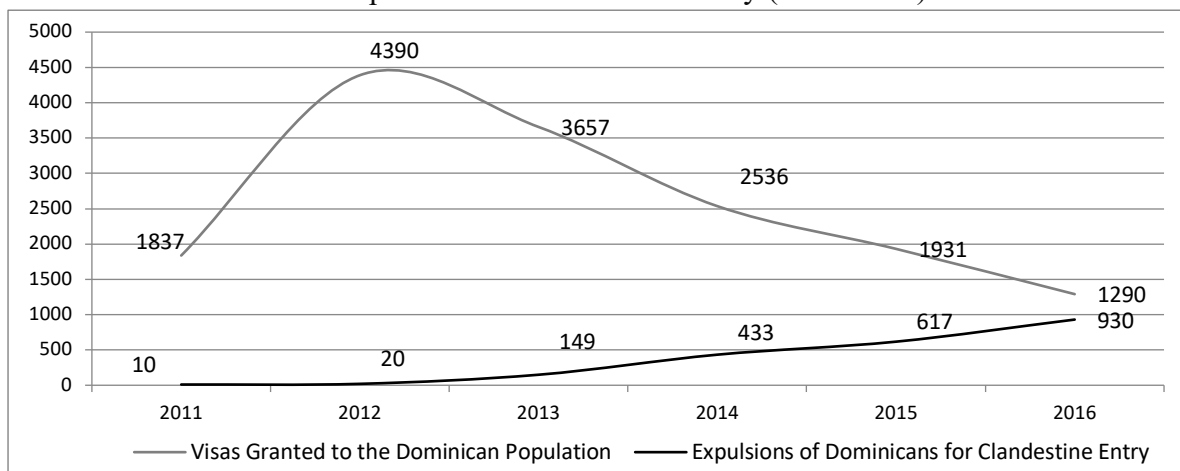
Graph 2. Expulsions of Dominican Population. Total and by Clandestine Entry (2011-2016)



Source: Own elaboration based on a report from the Immigration Department (DEM, 2016).

Finally, it should be noted that the consular visa instrument operates in practice as a border closure resource. This is shown by the drop in visas granted once the requirement was established. Graph 3 shows that from 2012 to 2016, the visas issued to Dominican citizens through the Chilean consulate in that country decreased significantly, from 4,390 in 2012 to 1,290 in 2016, at the same time as the expulsions for clandestine entry increased in an inverse relationship. In this regard, it should be noted that the decline in the granting of visas may also be influenced by the fact that once applications are denied, people tend to inhibit themselves from applying for authorization.

Graph 3. Visas Granted to the Dominican Population and Expulsions for Clandestine Entry (2011-2016)



Source: Own elaboration based on a report from the Immigration Department (DEM, 2016).

Along the same lines, the May 2018 balance carried out by the government authorities on the extraordinary regularization process started in April 2018 showed that of the 9,720 Dominicans residing in Chile at that time, 6,200 were registered during the first month; that is 64% of the group, a proportion significantly higher than the 30% of Haitians, 17% of Venezuelans, 12% of Colombians and 7% of Peruvians registered during that first month. The reason why the Dominican population enrolled in such a high proportion is probably due to the high rate of irregularity of origin in the group, since, as established in the decree of the regularization process, those who entered Chile clandestinely would have 30 days to register, unlike those who had entered the country regularly and had lost the documentation, or had not renewed it to date, who were granted a longer registration period (three months).

The information shows in the first place that the consular visa mechanism has the functionality to limit selective entry authorizations. This is confirmed by recent information regarding the consular requirement imposed on Haitians and Venezuelans in 2018 and 2019, respectively: of the 40,000 consular tourism visas that citizens of these countries applied for during those two years, just over 5,000 were granted, 15% of the total, and 26,000 were rejected, representing 66%; 16% were pending or unresolved. The information also shows that the imposition of entry restrictions in the case of the Chilean border does not prevent entries but rather that these are still carried out clandestinely. In this sense, it can be said that if in six years

the irregularity of origin of a relatively small group such as the Dominican has increased significantly, then the projection of that figure on other larger groups that come from countries under more critical conditions will make us face the medium-term perspective of a significant increase in irregularity of origin.

## CLOSING DISCUSSION

In Chile, as in the rest of the South American host countries, a series of conditions make our borders very fragile walls in the face of the power of the social and structural processes that encourage migration flows in the region. The demand for foreign workforce in local labor markets, the deepening of regional inequalities, and the presence of increasingly dense and extensive social and family networks stimulate the reproduction of migration flows in the migratory system of which Chile is a part of. Added to this is the persistence of historical, economic, and cultural links that in many cases are sustained by migration flows that precede the constitution of national States and institutional elements such as the Mercosur Residence Agreement or the Andean Immigration Statute.

Although it can be pointed out that in general terms the security and border control policies partially achieve their goal of reducing the entry of migrants, they also achieve, and inescapably so, increasing the death of migrants on the way, encouraging trafficking and smuggling networks, multiplying irregularity and the violation of the rights of migrants. In addition, they increase the cost of transfers and contribute to stigmatizing both migrants already residing in receiving countries and new migrants as illegitimate residents, which results in discrimination and racism in receiving societies (Thayer, 2016). In this sense, border security policies set in motion a complex system of incentives for migratory insecurity. At the same time, restrictive migration policy instruments encourage the precarious incorporation of immigrants into the labor market, as shown by Calavita (2007) for the context of migration to southern Europe.

In the same way, the restrictive policies recently imposed in Chile, of which the consular visa system is only one part, in addition to having consequences that directly affect people's rights, create the conditions for the institutionalization of permanently precarious entry mechanisms in the labor market, encouraging the formation of a subclass of workers below the national working class in terms of living conditions, type of employment, salary, security, labor regulations, access to social rights and access to power. This interpretation allows progressing towards a reading of restrictive policies that go beyond the formal problem of access to citizenship and rights. In this sense, the grayscale that separates citizenship from the denial of it would be a set of norms for the institutionalization of precarious citizenship as a way of sustaining or increasing the profit margins of those sectors in which migrant workers participate. This opens up a powerful avenue of research that is still seldomly explored in Latin America, yet considerably developed in North America (Goldring & Landolt, 2013).

Beyond the research agenda that is opening up, the Latin American scenario, marked by the intensification and expansion of systemic crises that are expelling more and more people from its countries, at the same time that many host States such as Chile begin to shift towards restrictive border policies poses significant challenges, in which nothing less than the lives and well-being of many people are at stake. The creation of border mechanisms able to cease the



encouraging of clandestine entry is one of those challenges, certainly part of a greater one, consisting of establishing regional criteria to think about our borders from a humanitarian, but above all, realistic approach.

In the same sense, the policies that affect migration trajectories by extending the temporality or the transitory condition of legal recognition, expose individuals to fallbacks and setbacks in their attained status, which affects the possibilities of developing their life projects inadequate conditions of self-respect, which in turn affects social segmentation and access to rights and work. In this sense, temporality puts migrants on the edge of irregularity, so extending it implies exposing the subjects to a more likely precariousness of their lives. Those devices that subject temporary residence to employment contracts have the same effect of exacerbating the inherent asymmetry of the employer/employee relationship, at the same time exposing migrants who lose their employment contracts to additional difficulties in obtaining a new one that would allow them to renew their legal residence permit.

Avoiding the institutionalization of political devices that encourage administrative irregularity is as crucial as establishing permanent regularization mechanisms. There is no border or system of access to citizenship for foreigners that by definition does not imply the institutionalization of conditionality and restriction. Migration policy thus naturally pushes towards irregularity or at least creates the conditions that make it possible and make it a probable and credible destination in the lives of those who decide to migrate. Having instruments to rectify this situation is then the State's responsibility, as is preventing the loss of status or the fall into irregularity from becoming the path to a dead end.

As a destination, Chile and the countries of origin of its migrants —90% South American and from the Caribbean— are part of a migratory system territorially articulated by the history, economy, culture, and social ties of its inhabitants. Deploying an immigration policy that ignores this articulation, seeking to regulate and normatively restrict the ties that structure it, supposes rowing against the current of reality. The intensification of the conditions of expulsion in the countries of South America and the Caribbean, and the relative inequalities, rather invite a rethinking of migration and border policies in the light of a regional integration perspective, one that assumes the reality of the region as a basic criterion, and not the desires of a State whose destiny is one way or the other irrevocably linked to it.

Translation: Fernando Llanas

#### REFERENCES

- Bauböck, R. (2003). Towards a political theory of migrant transnationalism. *The International Migration Review*, 37(7), 700-723.
- Bauböck, R. (2006). Migración y ciudadanía. *Zona Abierta*, (116/117), 135-169.

- Bernhard, J., Goldring, L., Young, J., Bernstein, C., & Wilson, B. (2008). Living with precarious legal status in Canada: implications for the well-being of children and families. *Canada's Journal of Refugee*, 24(2), 101-114.
- Brubaker, W. R. (1989). Membership without citizenship: the economic and social rights of noncitizens. In W. R. Brubaker (Ed.), *Immigration and the politics of citizenship in Europe and North America* (pp. 379-407). United States: New York University Press.
- Cachón, L. (1989). *¿Movilidad social o trayectorias de clase? Elementos para una crítica de la sociología de la movilidad social*. Madrid: Centro de Investigaciones Sociológicas-CIS.
- Cachón, L. (2010). *La España inmigrante: marco discriminatorio, mercado de trabajo y políticas de integración*. Barcelona: Anthropos.
- Calavita, K. (2007). Law, immigration and exclusion in Italy and Spain. *Papers: Revista de sociología*, (85), 95-108.
- Carens, J. (2004). La integración de los inmigrantes. In G. Aubarell & R. Zapata (Eds.), *Inmigración y procesos de cambio* (pp. 393-420). Barcelona: Icaria.
- Castles, S. (1995). How nation states respond to immigration and ethnic diversity. *Journal of Ethnic and Migration Studies*, 21(3), 293-308.
- Castles, S. (2003). Jerarquías de ciudadanía en el nuevo orden global. *Anales de la Catedra Francisco Suárez*, 37, 9-33.
- Castles, S. (2006). Factores que hacen y deshacen las políticas migratorias. In A. Portes & J. De Wind (Coords.), *Repensando las migraciones. Nuevas perspectivas teóricas y empíricas* (pp. 33-66). Mexico: Universidad de Zacatecas.
- Castles, S., & Davidson, A. (2000). *Citizenship and migration: globalization and the politics of belonging*. New York: Routledge.
- Castles, S., & Miller, M. (1993). *La era de la migración. Movimientos internacionales de población en el mundo moderno*. Mexico: INM-Fundación Colosio.
- De Lucas, J. (2007). Inmigración, diversidad cultura y reconocimiento político. *Papers: revista de sociología*, (94), 11-27.
- Decreto de Ley 1.094. (1975). Establece normas para extranjeros en Chile. Chile: Ministerio de Interior. Retrieved from <https://www.bcn.cl/leychile/navegar?idNorma=6483>
- Decreto N° 84. (2005). Promulga la Convención Internacional sobre la Protección de los Trabajadores Migratorios y Sus Familiares. Chile: Ministerio de Relaciones Exteriores. Retrieved from <https://www.bcn.cl/leychile/navegar?idNorma=238928>
- Departamento de Extranjería y Migración. (2003a). Oficio circular N° 1.179.
- Departamento de Extranjería y Migración. (2003b). Oficio circular N°6223.
- Departamento de Extranjería y Migración. (2008). Oficio Circular N° 12.766.
- Departamento de Extranjería y Migración. (2016). *Boletín informativo N°2: inmigración dominicana en Chile*. Santiago: Ministerio del Interior.

- Faist, T., & Gerdes, J. (2006). La doble ciudadanía como un proceso dependiente de la trayectoria. In A. Portes & J. De Wind (Coords.), *Repensando las migraciones: nuevas perspectivas teóricas y empíricas* (pp. 97-130). Mexico: Universidad de Zacatecas.
- Fascioli, A. (2011). Justicia social en clave de capacidades y reconocimiento. *Areté*, 23(1), 53-78.
- Fraser, N. (2006). La justicia social en la era de la política de la identidad: redistribución, reconocimiento y participación (P. Manzano Bernárdez, Trans). In N. Fraser & A. Honneth (Authors), *¿Redistribución o reconocimiento?* (pp. 17-88). Madrid: Morata.
- Fraser, N., & Honneth, A. (2006). *¿Redistribución o reconocimiento?*. Madrid: Morata.
- Government of Chile. (2008). Instructivo Presidencial N°9: Imparte Instrucciones sobre la Política Migratoria.
- Government of Chile. (2015). Instructivo Presidencial N°5: Lineamientos de Instrucciones para la Política Migratoria.
- Goldring, L., & Landolt, P. (2012). *The impact of precarious legal status in immigrants economic outcomes. Institute for Research on Public Policy*. Montreal: Institute for Research on Public Policy.
- Goldring, L., & Landolt, P. (2013). *Producing and negotiating non-citizenship. Precarious legal status in Canadá*. Canada: University of Toronto Press.
- Goldring, L., Bernstein, C., & Bernhand, J. (2009). Institutionalizing Precarious Migratory Status. *Citizenship Studies*, 13(3), 239-265.
- Haber, S. (2007). Reconocimiento, justicia y patologías sociales en los trabajos recientes de Axel Honneth. *Revista de Ciencia Política*, 27(2), 159-170.
- Hammar, T. (1989). Comparing european and north american internacional migration. *International Migration Review*, 23(3), 631-637.
- Honneth, A. (1997). *La lucha por el reconocimiento*. Barcelona: Grijalbo-Crítica.
- Honneth, A. (2006). Redistribución como reconocimiento: respuesta a Nancy Fraser (P. Manzano Bernárdez, Trans.). In N. Fraser & A. Honneth (Authors), *¿Redistribución o Reconocimiento?* (pp. 89-148). Madrid: Ediciones Morata.
- Honneth, A. (2009). *Crítica del agravio moral. Patologías de la sociedad contemporánea*. Buenos Aires: Fondo de Cultura Económica.
- Honneth, A. (2010). *Reconocimiento y menosprecio*. Buenos Aires: Katz editores.
- Kymlicka, W. (1996). *Ciudadanía multicultural*. Barcelona: Paidós.
- Layton-Henry, Z. (1990). Citizenship or denizenship for migrant workers? In Z. Layton-Henry (Ed.), *The political right of migrant workers in western Europe* (pp. 186-195). London: Sage.
- Ley N°1.9476. (1996). Introduce Modificaciones el D.L. 1.094, de 1975 Sobre Refugiados Chile: Ministerio de Interior. Retrieved from <https://www.bcn.cl/leychile/navegar?idNorma=30843>

- Ley N°19.581. (1998). Establance Categoría de Habitante de Zona Fronteriza. Chile: Ministerio de Interior. Retrieved from <https://www.bcn.cl/leychile/navegar?idNorma=123603>
- López, A. M. (2005). *Inmigrantes y Estados: la respuesta política a la cuestión migratoria*. Barcelona: Anthropos.
- Marshall, T. H. (2001). *Ciudadanía y clase social*. Madrid: Alianza.
- Menjívar, C. (2006). Liminal Legality: Salvadoran and Guatemalan immigrants' lives in the United States. *American Journal of Sociology*, 111(4), 999-1037.
- Menjívar, C., & Ábrego, L. (2012). Legal violence: immigration law and lives on Central American immigrants. *American Journal of Sociology*, 117(5), 1380-1421.
- Ministry of Health. (2016). Decreto N°67 Modifica Decreto N°110 de 2004 que fila las Circunstancias y Mecanismos para Acreditar a las Personas como Carentes de Recursos o Indigentes.
- Portes, A., & Böröcz, J. (1989). Contemporary immigration: theoretical perspectives on its determinants and modes of incorporation. *International Migration Review*, 23(3), 606-630.
- Portes, A., & De Wind, J. (2006). Un diálogo transatlántico: el progreso de la investigación y la teoría en el estudio de la migración internacional. In A. Portes & J. De Wind (Coords.), *Repensando las migraciones: nuevas perspectivas teóricas y empíricas* (pp. 7-32). Mexico: Universidad de Zacateca.
- Portes, A., & Rumbaut, R. (1990). *Immigrant America: a portrait*. Los Angeles, Ca: University of California Press.
- Observatorio de Políticas Migratorias-Centro de Investigación en Ciencias Sociales y Juventud (CISJU)-Universidad Católica Silva Henríquez (UCSH). (2019). *Migraciones contemporáneas en Chile: desafíos para la democracia, ciudadanía global y acceso no discriminatorio a derechos*. [Report], Proyecto Anillos SOC180008. Universidad de Chile y Universidad Católica Silva Henríquez.
- Renault, E. (2007). What is the use of the notion of the struggle of recognition? *Revista de Ciencia Política*, 27(2), 195-205.
- Sassen, S. (2010). *Territorio, autoridad y derechos. De los ensablajes medievales a los ensablajes globales*. Buenos Aires: Katz.
- Senado de la República de Chile. (1994). Boletín N° 1256-10 05 de Jul. Acuerdo relativo a la Convención Internacional sobre la protección de los derechos de todos los trabajadores migratorios y de sus familiares, adoptada por las Naciones Unidas y suscrita por el Gobierno de la República de Chile.
- Solé, C. (2000). Derechos y deberes frente al racismo y la integración de los inmigrantes en la sociedad receptora. *Sociedad y Utopía: Revista de ciencias sociales*, (16), 119-132.
- Taylor, C. (2009). *El multiculturalismo y la política del reconocimiento*. México: Fondo de Cultura Económica.
- Thayer, L. E. (2016). Migración, Estado y Seguridad. *Polis, Revista Latinoamericana*, (44), 109-129.

- Thayer, L. E., Stang, F., & Dilla, C. (2020). La política del estado de ánimo. Derechos limitados, institucionalidad débil y reconocimiento parcial en las políticas migratorias locales en Santiago de Chile. *Perfiles Latinoamericanos*, 28(55), 171-201.
- Weil, P., & Crowley, J. (1994). Integration in the theory and practice: A comparison of France and Britain. *Journal of West European Politics*, 17(2), 110-126.