Narratives and counter-narratives on “marriage of convenience”.
Conjugality and (il)legality in Portuguese migration policies and in couples’ experiences.

Marianna Bacci Tamburlini

Orientadora: Prof. Doutora Marzia Grassi

Tese especialmente elaborada para obtenção do grau de Doutor em Sociologia, na especialidade de Sociologia da Família, Juventude e das Relações de Gênero

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Ano 2016
Solo tus etiquetas me dividen

Gloria Anzaldúa, 1999
Abstract

This thesis explores the interaction between the mobility and conjugal trajectories of married couples involving migrants in an undocumented position and the state regulation of residency rights in Portugal. In a context in which securitarian approaches prevail in European Union migration policies, family reunification is increasingly controlled and framed as a potentially fraudulent channel to evade migration restrictions and obtain residency documents. Namely, residency and nationality applications based on conjugal motives are the object of growing institutionalized suspicion. In 2007, the Portuguese government introduced a specific crime denominated as “marriage of convenience”, defined as a marital act that is contracted for the “exclusive purpose” of gaining residency rights (Law 23/2007). The implementation of this legislation by state authorities is based on the assumption that conjugal motivations may be investigated on the basis of institutional criteria capable of differentiating “genuine” marriages from “fraudulent” relationships.

The research focuses on the underpinnings and repercussions of restrictive regulations, weighing institutional paradigms and practices against couples’ experiences. A qualitative case study was developed on the basis of interviews with both state representatives and married couples involving subjects in an undocumented or precarious residency situation. The thesis argues that the current mobility and intimacy control policies, notwithstanding the resistance enacted by some couples, impact in a discriminatory way on the opportunities and constraints faced by specific social categories. The empirical data indicates that restrictive migration policies (re)produce the stratification of subjects along gender, socioeconomic and national origin lines by regulating residency opportunities. The fundamental categories of illegality, marriage and migrant imposed through “marriage of convenience” policies reveal narrow and normative definitions, and thus consolidate a particular way of life and social profile as a condition for full citizenship recognition. This selection process fails to recognize the inherent complexity of transnational lives and relationships, and reinforces underlying unequal power relations by criminalizing marginalized social profiles.

Keywords: Undocumented migration, Illegality, Conjugality, Gender, Mobility
Resumo da tese em Português

No contexto das políticas migratórias de carácter securitário desenvolvidas nas últimas duas décadas no seio da União Europeia, os canais de entrada e permanência nos estados membros foram sendo progressivamente limitados e regulados. A reunificação familiar tornou-se um dos canais mais utilizados no âmbito dos pedidos de autorizações de residência (Eurostat 2014) e contemporaneamente alvo de vigilância institucional. As relações familiares dos sujeitos que cruzam as fronteiras da UE são questionadas pelas autoridades alegando que os/as migrantes com um estatuto legal irregular ou precarizado poderiam falsificar-las para obterem um título de residência e direitos de livre circulação na União Europeia. Neste âmbito, aprovaram-se legislações que assentam numa visão criminalizadora e preveem requisitos específicos para os casais nos quais pelo menos um dos parceiros tem uma situação de residência “irregular”. No Estado português produziu-se uma tipificação de crime específica punível com penas de prisão de 1 a 5 anos (Lei 23/2007), que define o “casamento de conveniência” como um ato que tem por “único objetivo” adquirir direitos de residência. Com base na referida legislação, os casais que pretendem ter os seus direitos de residência reconhecidos através do seu vínculo conjugal são submetidos a um escrutínio institucional cujo propósito é averiguar se a sua intenção é a de contornar as leis migratórias.

O enfoque da tese é o de captar a interação entre a regulação dos direitos de residência por parte das instituições estatais e as trajetórias migratórias e conjugais dos/das sujeitos/as em mobilidade. O objetivo é interrogar as normas que se alicerçam nos discursos, políticas e práticas institucionais relativas ao “casamento de conveniência” com base nas experiências e perspetivas dos casais submetidos à vigilância das suas práticas e percursos de vida. A análise desta articulação visa estudar as repercussões sociais desta interação em termos de desigualdade social, explorando como a regulação pública da conjugalidade e da mobilidade interagem com as hierarquias pré-existentes.

Com base em teorias críticas sobre as migrações indocumentadas (De Genova 2002), o direito à mobilidade é abordado como um processo institucionalmente regulado como um privilégio social, a partir da delimitação estatal de fronteiras materiais e/ou simbólicas. Num
contexto global de acessos desiguais à mobilidade, o tema da conjugalidade pode ser abordado teoricamente como um processo transnacional. Observa-se que a dinâmica conjugal atravessa, e é atravessada, por estas fronteiras contemporâneas, permitindo examinar as relações de poder contidas nestas articulações. A partir de uma releitura crítica dos conceitos-chave *ilegal, casamento e migrante* que se articulam na abordagem institucional baseada na noção de “casamento de conveniência”, questionam-se os mecanismos de inclusão e exclusão social inerentes na regulação contemporânea das fronteiras.

O trabalho desenvolvido, com o apoio de uma literatura multidisciplinar concentrada na relação entre as políticas públicas e os processos que alimentam as desigualdades sociais, contribui para um espaço de debate que se articula entre a sociologia da família e das migrações. Nomeadamente, o fenómeno dos controlos institucionais é investigado como um processo de reprodução da ordem social através da classificação e regulação dos laços familiares em âmbito migratório (Wray 2006, De Hart 2006, Grassi 2006, Kraler et al. 2011). Com o intuito de captar a influência dos múltiplos fatores de estratificação social que emergem na regulação estatal das migrações e nas práticas conjugas, a análise assenta, como suporte analítico, em uma perspetiva de género e interseccional (Hondagneu-Sotelo 2011, Kofman 2002, Gregorio Gil 2009, Yuval Davis 2011). A vigilância das relações conjugas é ainda interpretada como um processo incorporado no que se constituiu como uma batalha estatal contra a “ilegalidade” (De Genova 2002, Grassi e Giuffré 2013) e em dinâmicas mais vastas de exclusão social dos/das migrantes (Kofman and Sales 2001). Com base numa perspetiva de equidade social, a análise apresentada questiona as políticas públicas que tendem a selecionar os/as migrantes segundo a sua “desejabilidade” e conformidade a modelos prescritivos de “integração” assentes nos interesses de estado (Sayad 1999, Mezzadra 2012, Palidda 2010) e em modelos normativos de família (Kofman and Kraler 2006).

As reflexões reunidas nesta tese fundamentam-se em uma recolha de dados qualitativos, que permite captar a interação entre as práticas dos casais e a regulação institucional através de uma investigação empírica. Após uma análise documental no âmbito legislativo, no período de 2011 a 2014, foi desenvolvido na zona de Lisboa um estudo de caso focado na interação entre os casais e o Serviço de Estrangeiros e Fronteiras. O estudo inclui uma observação direta e entrevistas em profundidade focadas nas experiências e perspetivas de sujeitos/as
envolvidos/as em diferentes níveis dos processos institucionais, totalizando um total de 36 participantes. Por um lado, foram contactados/as representantes de entidades estatais e não estatais que tinham uma atividade profissional ligada às migrações em Portugal, incluindo principalmente funcionários do Serviço de Estrangeiros e Fronteiras e de Organizações Não Governamentais. Por outro lado, o destaque principal foi dedicado às entrevistas com casais heterossexuais nos quais um dos membros esteve numa situação de residência irregular ou precária anteriormente ao casamento ou união de facto, definidos como *inter-status couples* (Block 2009).

A seleção dos/as entrevistados/as foi determinada pelo estatuto legal assimétrico ao interior do casal, procurando diversificar as nacionalidades de origem. Esta escolha procura refletir uma perspetiva sobre a mobilidade que vai além da delimitação do estado-nação como categoria predominante na delimitação da investigação (Wimmer e Glick Schiller 2002). A análise pode de tal forma revelar lógicas e repercussões da classificação dos direitos de residência por parte do estado que são transversais à nacionalidade de origem dos protagonistas, como a classe social ou o género. Contemporaneamente, incluir indivíduos/as de várias origens geográficas permite captar eventuais discrepâncias no tratamento administrativo dos vários grupos segundo a sua área de origem. Com base nos dados empíricos pode-se depreender que a implementação das políticas de controlo da mobilidade e conjugalidade intervêm de forma discriminatória nas oportunidades e constrangimentos dos sujeitos entrevistados/as, segundo os perfis que lhes são atribuídos institucionalmente.

No âmbito dos serviços que regulam os pedidos de residência, os casais são objeto de práticas administrativas e investigativas que pretendem distinguish os casamentos “genuínos” daqueles classificados como “fraudulentos”. Nomeadamente, a observação, tanto do discurso como da implementação dos mecanismos de fiscalização, revelam os indicadores de “autenticidade” que fundamentam a seleção dos casais. Os critérios para obter a regularização dos documentos baseiam-se em definições normativas dos perfis sociais e formas de relacionamento legitimadas pelo estado, ligadas a noções estandardizadas da família nuclear ocidental e imaginários ligados ao amor romântico e “não instrumental” (Esteban 2011). Ao longo da investigação este binarismo de paradigmas e categorias institucionais é examinado frente à diversidade de práticas e percursos dos casais envolvidos nos controlos, expondo as
suas incongruências, e avaliando criticamente como constrangem os casais a adotar formas prescritivas de conjugalidade como pré-requisito para obterem uma validação institucional.

O discurso institucional que justifica os controlos do “casamento de conveniência” baseia-se principalmente num alegado objetivo de combater a “ilegalidade” associada às práticas migratórias, e de proteger elementos da população considerados vulneráveis. Em primeiro lugar, a pertinência das atuais políticas como combate à “ilegalidade” é questionada argumentando que a inconsistência e formulação restrictiva das próprias práticas estatais parecem constituir a base primária da precariedade legal dos e das migrantes. A conformação socioeconómica que assenta na exploração do trabalho precário, especialmente das pessoas que se encontram numa situação indocumentada, também contribui para estas formas de exclusão.

Em segundo lugar, o estudo revela que as políticas públicas reforçam imagens essencialistas com conotações de género muito marcadas, que provocam uma estigmatização de alguns grupos sociais. Exemplarmente, o discurso público referente aos casamentos inter-status, tende a reduzir a representação das mulheres envolvidas a potenciais vítimas ou criminais. Especialmente quando associadas a grupos socialmente marginalizados, as mulheres tendem a ser descritas pelas instituições como ingénuas, indefesas e/ou facilmente aliciadas por grupos criminais organizados que as exploram, representando as políticas restritivas como formas de “proteção”. Porém, o atual quadro legislativo promove ativamente a dependência legal entre os esposos e parece reforçar as relações de poder ao interior dos casais, especialmente quando são as mulheres a estarem numa situação de residência precária. As limitações derivadas da criminalização do casamento de conveniência associam-se às desigualdades e violência de género pré-existentes e podem aumentar a exposição das mulheres migrantes indocumentadas a abusos.

Em conclusão, os dados recolhidos demonstram que as políticas restritivas (re)produzem uma estratificação social baseada nos rótulos de género, classe e nacionalidade que são atribuídos por parte das instituições. As políticas atuais criminalizam os grupos marginalizados e agravam as condições de precariedade ligadas ao estatuto indocumentado, e não parecem responder às necessidades das pessoas envolvidas em situações abusivas e submetidas a dinâmicas de exploração socioeconómica. Contudo, as histórias recolhidas
indicam que as pessoas entrevistadas não são receptoras passivas das restrições, mas que em muitas ocasiões são capazes de mobilizar recursos para as superar e subverter. Dando conta da complexidade de motivações, práticas e percursos, a tese sugere uma leitura das suas escolhas conjugais e de mobilidade que desconstrói a visão dicotómica e policial que compreende as classificações institucionais, além dos rótulos de “legal” ou “ilegal”, ou “amor” versus “conveniência”.

**Palavras-chave:** Migrações indocumentadas, Ilegalidade, Conjugalidade, Género, Mobilidade
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INTRODUCTION

...desbordando las categorías claras y distintas, las promesas de pureza y separación; proponiendo nuevas geometrías posibles para considerar relaciones atravesadas y constituidas por diferentes diferencias.

Eskalera Karakola, 2004
Narratives and counter-narratives on “marriage of convenience”
In a context of ever-stricter regulation of human movement across the external borders of the European Union, individuals’ access to stable residency rights is determined according to a division between “legal” and “illegal” mobility flows. Amongst subjects labelled as migrants, such regulations tend to create a pool of individuals with an undocumented status, whose ability to secure residency or citizenship rights is considerably restricted. In such political context, migration related to family reunification -institutionally framed as a potentially abusive channel to circumvent restrictions - has been the object of increasing institutional anxieties and regulations. Specific legislative tools have been progressively introduced by member states to regulate family-related residency rights as part of a “battle against illegal migration” (Wray 2006, De Hart 2006, Kraler et al. 2011).

Against this backdrop, the Portuguese government introduced the specific crime of “marriage of convenience”, defined as a marital act that is contracted for the exclusive purpose of gaining residency rights (Art. nº 186, Law 23/2007). The consequent regulatory framework enables the state to place couples in which one of the partners is in an undocumented or precarious residency situation under specific institutional surveillance. Although according to family reunification legislation these marriages imply the right to apply for residency authorization or nationality, these applications may be obstructed on the basis of migration authorities’ suspicions. State authorities aiming to verify whether the couples are attempting to circumvent national immigration laws scrutinize their life trajectories, motivations to marry, and conjugal practices.

The institutional procedures aimed at the surveillance of conjugalities inevitably lead to discrimination in terms of the citizenship opportunities of inter-status couples, in which the two members have different legal status (Block 2012). The specificity of these couples is that by marrying, the partner with a precarious residency gains the right to apply for stable residency rights on the basis of family reunification with the other spouse, who has Portuguese nationality or permanent residency. Through a set of mechanisms of surveillance, state institutions in charge of implementing “marriage of convenience” controls impose normative notions of marriage, creating specific formulas of inclusion and exclusion according to pre-defined conjugal models. The securitarian paradigm within which such

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1 Although the label “undocumented” may be inaccurate in some cases, as it may include a diversity of legal
policies seem to be operating constitutes a basis for the criminalization and reduced access to residency rights of certain social categories. These institutional categorizations are based on individuals’ level of adherence to the model established by authorities regarding the practices of a “genuine” marriage or a “desirable” migrant (Mezzadra 2012, Palidda 2010).

Due to the deep implications of these administrative processes in terms of social exclusion and interference in significant life choices, we may affirm that the most fundamental parameters and values upon which democratic values rest are being challenged in the debate on migration (Dal Lago and Orton 2009). There is therefore a need for analysis of the exclusionary formulas through which migration is regulated by states, and of these policies’ underpinnings and repercussions in terms of equality. Unauthorized migrants are living and widely participating in all European Union countries, where their contribution and participation is crucial for the perpetuation of current economic and social structures. Yet in all member states, policies are put in place to deny or filter migrants’ access to full citizenship rights, often justified through the institutional association of “illegality”, “criminality” and “risk” with mobility processes.

The articulation of conjugality and unauthorized migration constitutes a particularly salient analytical focus to explore within broader contemporary citizenship and bordering processes, especially with regard to the reproduction of inequalities. Unpacking the regulations affecting transnational couples enables us to expose how public policies regulating matters that are generally regarded as private and intimate potentially imply double standards. While individuals in the dominant groups in society gain increasing autonomy in deciding how to organize and live their conjugal lives, subjects who do not fit into the normative profiles or migration priorities of the state are objects of scrutiny and selection. Emblematically, the guidelines of the Portuguese immigration police mention “marriage with pre-nuptial agreements, such as separation of marital property” and “marriages with indigents, prostitutes or persons with mental disabilities” as examples of “marriage of convenience” suspicion indicators (EMN 2012:11-12). Migration regulations appear to be embedded in broader processes of social discrimination, in which factors such as class and gender become crucial. Additionally, policing approaches inevitably introduce a double standard regarding the opportunities for self-determination of subjects, on the mere basis of the nationality and migration status they have been ascribed. Borrowing a medical metaphor, it is therefore
important not only to retrace how “marriage of convenience” has been constructed as a social pathology, but also to examine the processes through which it is “diagnosed” and “cured”.

Focusing on the articulation between marriage and migration is considered to be a way of shifting away from the prevailing public discourse justifying the proliferation of spectacular enforcements, detention centres and walls. These most visible and concrete enactments of “Fortress Europe”, invariably frame migration as an “emergency” and as an external process taking place at its frontiers. I deem important to think beyond this paradigm of exceptionality, and consider how the effects of mobility and its control are permeating our whole society, and the way it is institutionally ordered. This somehow reversed perspective fosters a deeper reflection on how exclusionary dynamics operate in conditions of “normality”, through routine administrative practices, by building more subtle -but similarly discriminating- social borders. For instance, migration law functions primarily through bureaucracy, which filters the access to rights in indirect, long-term and partly invisible ways, as hinted at in Henk Van Houtum’s article “Kafka at the border” (Van Houtum 2010). The more or less cumbersome bureaucratic path that applicants are obliged to follow to gain residency authorizations is acting as a mechanism of exclusion concealed by an apparent neutrality, and acts on subjects who are for the most part already living in the country, rather than attempting to enter it. Focusing on the particular configurations of conjugality, and the processes linked to everyday practice and relationships, may relativize the mediatized images of “emergency”, and thus contribute to a debate which potentially encompasses the roots of routine exclusion, beyond and within the constructed borders of the state.

RESEARCH QUESTIONS

The growing institutionalized interference in marriage and migration prompts a number of questions regarding the assumptions and implications of institutional bordering efforts.Namely, what are the repercussions in terms of social stratification processes of the recent criminalization of “marriage of convenience” in Portugal? What are the institutional understandings of “migrant”, “illegal” and “marriage”, on which such criminalization is based? By what criteria and procedures is the law applied, and are some social groups subject to more surveillance than others? What are the effects of the current institutional procedures in terms of opportunities for regularization and conjugal trajectories of the partners involved,
and to what extent their practices may challenge the current migration regime and conjugal norms?

This set of empirical research questions will be applied to studying the functioning and implications of “marriage of convenience” control, both at the institutional level and from the point of view of couples subject to control procedures. I will investigate which factors mediate the repercussions of an apparently neutral regulatory framework, to ascertain whether it is applied with differentiated procedures according to the social profile of couples. An overarching interrogation will examine the role of the state in shaping and constraining conjugal and mobility trajectories, based on the filtering of citizenship statuses. In this sense, my research constitutes an exploration of the effects of marriage and migration control as a process of social exclusion, intended as a set of dynamic, multidimensional processes “which prevent individuals and groups from participating in the rights that the members of a social and political community would normally expect to enjoy” (Kofman and Sales 2001:98).

POSITION IN RELATION TO PREVIOUS RESEARCH

An overarching theme of the dissertation lies in untangling how state institutions classify and interfere with mobility and conjugality, and exploring the effects on, and reactions of, the human beings involved in this process. Analysing the institutionalized demarcation of difference through migration regulations, may be seen as a step towards understanding the hierarchies embedded in wider contemporary social relations. I consider it useful to treat migration and illegality categories as specific ramifications of more complex power dynamics, intersecting with the effects of categories such as gender, nationality, and socioeconomic class. I work with the hypothesis that, rather than being inevitable, the naturalization of social hierarchies through the establishment of residency rights may be seen to attest to the persistence of power relations based on “otherness”.

To approach these conceptual challenges, my research builds on a vast range of scholarly literature areas, which influenced my thinking about mobility and the construction of borders, including both their administrative and social connotations. Thanks to the freedom involved in the PhD as an individual and relatively long-term research project, I had the opportunity to benefit from a variety of disciplinary contributions to serve my research objectives. During
my research I interweaved these inputs in order to question not only a contemporary social phenomenon, but also to reflect on the way in which it is approached at the academic level, and through which classifications it is studied. Although establishing a privileged dialogue with the literature pertaining to migration and family, the analysis exposed in this study might not fit neatly within strictly demarcated disciplinary fields.

It is worth acknowledging that in order to serve the context-specific interrogations sparked by my fieldwork, I stretched, mixed or adapted some of the most commonly-used research scopes and methods. Firstly, rather than looking at migration as a phenomenon in itself -and considering migrants as an object of study- I invert the perspective. In particular, I use the observation of couple’s practices to analyse migration control as a mechanism revealing the nature of institutions’ relations with a specific society. The way in which I conceptualize the case study is in this sense indebted to the reflections of the sociologist Abdelmalek Sayad. I consider particularly stimulating this author’s acknowledgment of the “secret virtue” of migration: for Sayad, this virtue lies on its capacity to mirror the limits of the state’s intrinsic essence, which is to discriminate between “nationals” and “others”. As the author himself suggests, to think about immigration is to think about the state, and the state “thinks itself” by thinking immigration (Sayad 1999a:6, my translation). Building on this line of thought, we may consider migration in general as a perturbing presence, challenging the state’s mythical homogeneity in the political, social and economic senses, as well as exposing the porosity of its margins.

In line with some earlier contributions in Portuguese literature (Grassi 2006), the scope of my reflection moved beyond the narrowest delimitations of “migration studies”, as it emerges in the academic context in which I am situated (cf. Machado and Azevedo 2009). In particular, it attempts to go beyond the study of social relations as if they were naturally embedded and contained within nation states (Smith and Guarnizo 1998, Portes et al. 1999, Levitt and Glick Schiller 2004). To this end, I found useful the literature on transnational families (Bryceson and Vuorela 2002, Yeoh 2015), which constitutes an emerging research area in Portuguese academia (Grassi 2006 and 2012, Grassi and Vivet 2015, Raposo and Togni 2009). I set to interrogate this body of work from a methodological perspective that seeks to overcome the predominant focus on nationally- or ethnically-delimited “target groups”. Without belittling the advantages of producing studies with a detailed knowledge of the participants’ backgrounds and origins, I would argue that nationality is often used by default as a founding category for migration studies. Specifically, it is a naturalized -but potentially essentialist-
procedure in migration studies, to choose categories which are seen to represent a specific national or ethnic “community”, as if they could be considered by default as a homogeneous group, or as a self-delimiting object of study. Formal nationality may correspond only partially to belonging and individual ties to a place, such as may be the case of children born in Portugal who are attributed the parents’ nationalities even though they may never have travelled to other countries. The present research is therefore not limited to migrants from one country or ethnic background: such option is considered a step towards building categories based on individual trajectorias and life experiences, rather than on the basis of birth or residency documents emitted by nation states. Moreover, by choosing the theme of conjugality I extend the logic of this choice further, expanding the fieldwork beyond the group of individuals framed as migrants to include individuals holding Portuguese or European nationality.

The research was designed with the conscious intention to avoid treating migrants as a separate section of society, but rather as social actors with practices - in this case, conjugal practices - which are interwoven with the actions and choices of formally recognized Portuguese citizens. This choice is based on the acknowledgement that social life takes place “across borders” (Levitt and Jaworsky 2007:129, emphasis added), but also that borders, material or symbolic, migratory or social, may have effects within national territories as well. In my approach, migrants and non-migrants are thus seen as differentiated by legal status, but possibly bearing similar processes of social stratification, based on transversal markers of difference such as gender and class.

I start from the appreciation that conjugal relationships between inter-status couples may be better investigated from a transnational perspective, since the couples are subject to legal regimes that go beyond the country in which they reside. In my usage, transnational defines a social space crossing nation states, and comprising of relations that go beyond their borders. The term may consequently be used to define a type of conjugality that is inevitably marked, to some degree, by simultaneous effects of laws of different states, or supra-national entities such as the European Union.² For instance, some of my research participants have two nationalities, one of a European country and one of a non-European country, making their perception through a single national and legal dimension unviable, as they are affected by

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² As will be thoroughly explained in the theoretical discussion, in this sense my usage stretches a more common definition of transnational social relations as requiring “regular and sustained social contacts over time and across national borders” (Portes et al. 1999:219).
overlapping sets of laws. In this sense, the complex legal trajectories of the couples that I involved in the research, highlight the paradoxes of state interventions that compress them within clear-cut and nationally-framed labels.

Consequently, as will be discussed in more detail in the methodological chapter, I looked for an approach that would serve my desire to look at social stratification processes beyond national categories. As a result, I chose to use as a delimitation of inter-status couples only their asymmetrical legal status, meaning the only characteristic that all couples shared was that their conjugal relation implied one spouse’s potential transition from one legal status to another in the context of current Portuguese regulations. I saw the option of choosing interlocutors through this minimal common denominator as a way to emphasize the complex and multi-layered issues involved in the construction of illegality, rather than focusing on alleged cultural factors or ideas of “mixedness”.

In order to grasp how mobility trajectories and opportunities could intersect or be compared to other systems of subordination, I used elements deriving from traditions of thought including feminist and postcolonial/decolonial studies (Segato 2012, Grosfoguel 2012). These critical inputs produced destabilizing but enriching effects on the research approaches I adopted, by exposing the limitations of simplistic and apparently “neutral” approaches to scientific methods and categories. As a result, I made an effort to produce a research grounded in the idea of a participatory approach to the construction of knowledge, that would be “available” to the subjects involved in first person in the social mechanism under observation (Segato 2012). During the research process I also complexified my gender perspective, moving beyond the depoliticized observation of differences between men and women’s mobility trajectories, to which the scope of migration-related studies is sometimes limited. This shift led me to unpack the gendered power relations involved in public policies, and how these are inserted in broader, intersectional asymmetries (Hondagneu-Sotelo 2011, Kofman 2002, Gregorio Gil 2009).

The delimitation of the interviewees is a response to braid issues of mobility, residency rights and transnationalism which are often only partially acknowledged in many studies pertaining to the sociology of the family. Often “migrant families” or “mixed families” are relegated to separate studies, as if their social practices were a priori distinct. I noted how transnational couples are erased from major studies in this area, unless specifically dealt with in sections dedicated to migration (Varro 2000). I wished to study the effects of the migration regime, but
to avoid basing my inquiry on the notions of “mixed” or “bi-national couples”, as I felt that these would make the articulations between class, nationality and gender less visible in my research context. To enter into dialogue with the specific subject of marriage in contexts of mobility, I attempted to provide a nuanced vision of conjugality involving partners with different legal statuses, while at the same time problematizing standard institutional definitions of marriage. Throughout my study, I referred to marriage based on its legally-sanctioned definition in Portugal, in order to describe the formal implications in terms of bureaucratic mechanisms. Yet, I challenge this legally clear-cut notion by questioning its naturalized association with normative notions of “love”, “family” and “authentic motivations”. As will be discussed, I did so by confronting the legal definition with a much broader signification emerging from the empirical data. I thus investigated the potential of grounding the study in an open-ended conception of conjugality (Luibheid 2015), in order to grasp the couples’ own representations of their relationship (e.g. tracing if, and to what extent, they considered it “conjugal”), rather than trying to categorize it through pre-packed definitions.

During the initial phase of my study, I identified the guidelines of state approaches to the theme of family reunification, and their underlying assumptions, in order to experiment with alternative perspectives. This review suggested how my open-ended approach could enter into a constructive dialogue with studies focussed on the discriminatory effects of “marriage of convenience” controls (Wray 2006, Charsley 2012, Muller Myrdahl 2010, Friedman 2010, D’Aoust 2013, Block 2009). These academic contributions tend to emphasise how laws can keep couples apart, and call for a recognition of equal rights to family and marriage. While recognizing and embracing the operative importance of such family-rights perspectives as advocacy tools for migrants’ rights, I believe the theoretical discussion may go further than “right to marriage” demands. I propose to stretch the discussion to a more radical questioning of the legitimacy of state interferences in family life through migration law, including a challenge to the state-imposed normativity in terms of authorized conjugal forms. This research frame might play a role in untangling crystallized equations based on state mentality, such as those linking rights of residency to specific (and increasingly limited) types of family relationships. Deconstructing state assumptions may open space for debates exploring the possibilities of autonomous recognition of residency rights for individuals, on a universal basis, or based on social participation or “stakeholder” parameters (Bauböck 2008).
Narratives and counter-narratives on “marriage of convenience”

As I will discuss along the next chapters, I also move away from treating marriages involving subjects classified as “non-European” as an “integration” issue (Fonseca 2005). The analysis of state policies allows us to observe how often this type of concern is selectively directed, particularly towards subjects who are ascribed by default a “different” culture (e.g. often non-Western), reflecting othering and ethnicized assumptions regarding their “integrability”. My case study attempts to overcome what I regard as utilitarian portrayals of family reunification as either a “barrier” or “facilitator” for social inclusion (Strik et al. 2013). Additionally, although I found the literature on the legal aspects of “marriage of convenience” regulations extremely useful (Demleitner 2004, De Hart 2006), and built on it extensively in the analysis, I consider this research perspective would benefit from a closer dialogue with studies looking at the messier sphere of law implementation at the micro level (Friedman 2010). In particular, collecting primary data allows us to perceive the gaps between formal policies and implementation, as well as the complexities and nuances visible only through empirical research. My study thus moves towards integrating in the picture empirical material on couples’ everyday experiences and direct interactions with the bureaucratic system. As a growing body of research attests (Charsley 2005, Riaño 2011, Roca Girona et al. 2012, Fernandez and Gudrun-Jensen 2013), this approach potentially sheds light on some relatively blind spots in this specific area of research, where most of the literature focuses on official policies and on administrative management, rather than on couples’ lived experiences.

A significant proportion of the studies on “marriages of convenience” regulations that I have quoted are concentrated in the northern European countries where, according to my interpretation, migration discourse has specific thematic connotations (Eggebø 2012, Muller Myrdahl 2010, Wray 2006). Notwithstanding the profound similarities with the Portuguese case in terms of increasingly punitive trends, anxieties around migration in countries such as Denmark, the United Kingdom, Netherlands or Sweden appear to have slightly different configurations. From what emerged in my literature review, islamophobic concerns, and the fears that migrants might import patriarchal or “backward” customs, appear to shape public policies in these countries to a larger extent than in Portugal (cf. Van Walsum 2011, Schmidt 2011). Building on previous studies, which cleared the way for the elaboration of my object of study (Grassi 2006, Raposo and Togni 2009), this thesis therefore sheds light on the particular articulations occurring in the contemporary Portuguese context, with an exploratory intention.

Setting my study in the context of Portuguese legislation called for a particularly nuanced analysis, to make sense of apparent contradictions in the country’s migration policies.
Creating a particularly stark contrast with its punitive legislation on “marriage of convenience”, Portuguese governments’ discourse on migration is otherwise mostly moderate and “humanist”, and presents a “benevolent” façade concerning migrants’ right to family. Understanding this local specificity requires a closer look at the gaps between the official narrative of state discourse and practice. Choosing to tackle Portuguese policies through a qualitative appraisal of couples’ counter-narratives, enables me to inquire the less visible barriers and the more subtle mechanisms of social hierarchization.

**SCOPE, OBJECTIVES, AND METHOD**

Inter-status couples have been chosen as protagonists of the case study because they may be seen to embody many of the contradictions and mechanisms of contemporary bordering, and provide particularly vivid examples of the prescriptive function of legislation and its categories. These relationships - and the way they are classified and recognized - constitute a space of interaction where power dynamics articulating through state, gender, and class are particularly visible. The processes involved in the control of the couples’ conjugal trajectories underline the need for reconsidering the impacts of state rhetoric and regulations on the lives of individuals who *cross borders* or, as we may rather argue, whose lives are *crossed* by borders. At the same time, rather than seeing these subjects as passive recipients of policies, the case study reveals the extent to which the couples’ practices are capable of subverting and producing infinite nuances in the imposed categories. The research participants’ representations and practices are discussed as active interventions shaping the outcomes of the contemporary regulatory complex. Their marriages may indeed be seen as a crossroads, contributing to challenge both the border and the neat administrative categories used to perpetuate the current social order.

The exploratory fieldwork, in dialogue with the above-mentioned literature on “marriage of convenience”, systematically revealed the tension between the monolithic institutional imaginary regarding illegality, and the mosaic of everyday practices of individuals engaging in mobility. The observation of this gap between categories and observed practices suggested a series of concrete research objectives. The aim of this study is to explore the limitations of state authorities’ binary portrayals of inter-status marriages as either cynical vehicles for immigration benefits, or as “genuine” relationships based on idealized romantic love notions.
and normative family expectations. A related goal is to contribute to a nuanced understanding of inter-status conjugalities, challenging the prevailing “marriage of convenience” narratives and control practices in the specific Portuguese context. In particular, I wish to emphasize why and how conjugal practices of subjects pertaining to specific social profiles are being constructed as problematic in the contemporary Portuguese administration context.

Alongside the more “empirical” objectives presented above, I consider important to situate my research within my broader interests. My academic and work trajectory has been driven by a desire of critically engaging, albeit from an inevitably privileged social position, with the power asymmetries on which social inequalities are constructed. I consider this a means to reflect on my own position in society and to enable transformative reactions, even if at an extremely small scale. This action-oriented spirit needs to be acknowledged, since it has greatly influenced my approach to the PhD research. By interrogating the social mechanisms in which the couples are embedded, my research also responds to a wish of contributing to ongoing conversations about citizenship, social stratification and the meaning of borders.

Understanding the premises through which human mobility has been converted into a social and political problem, and the ways in which migration control has been conceived and approached, is part of my theoretical effort. In this sense, my work is inspired by previous academic efforts to uncover the empirically and theoretically unsound aspects of current systems of migration surveillance (De Genova 2002, Sciortino 2004, Mezzadra 2012). Although grounded in a limited research scope tied to my case study, I wish to provide theoretical arguments for an admittedly policy-oriented demystification of the issue of “illegality” associated to migration. The overarching purpose of my academic engagement is to uncover the historically and institutionally situated production of “illegality”, and to unsettle normative discourses regarding human mobility and its categorization. This interrogation, rather than aiming at definitive answers, will hopefully lead to a broadening of the scope of the initial research questions. In particular, I believe that this perspective can offer insights into what the policies and practices observed in “marriage of convenience” control can tell us about how social relations are re(produced) in the wider political context, and identify possible spaces of resistance or negotiation.

To serve the above objectives, I needed to untangle the layered and dynamic social relations beyond the formally defined laws and norms, and chose to ground my theoretical reflections in a qualitative analysis. The case study has been developed to gain more focused insights into
how the construction of illegality intersects with small-scale socioeconomic stratification dynamics, in the Lisbon urban area. As a result, while in some facets of the reflection I will take into account the possible interactions of the migration regime with the global effects of neoliberal economic frameworks, the empirical material was collected in a restricted setting, and its interpretation may not be automatically generalized. The arguments that will be presented here are framed in the specific context of Portuguese legislation, economy and history, and deeply tied to the characteristics of the research participants.

Due to the complexities of the theme, and logistical and ethical constraints such as the need to maintain standards of anonymity, the group of interviewees has a relatively limited scope in numerical terms. Between 2012 and 2014 I developed various sets of interviews with 26 individuals engaged in heterosexual marriages or civil partnerships in the city of Lisbon, and followed their process of regularization and conjugal trajectory. In some cases I met these participants several times in order to update the data and consult them regarding its analysis, during the fieldwork period. My research is thus mainly based on interviews focused on the micro-level interactions of couples with the state administration, as well as observational and documental data collected in Portugal. This fieldwork has enabled me to capture the inconsistencies between the discourse and practice of the regulatory system, by inserting in the picture the discontinuities, ruptures, and shifts emerging from the counter-narratives of individuals who are dealing with its tangible implications. This approach is seen as a way to produce richer investigations on the underpinnings and repercussions of polarized institutional formulas, taking into consideration the perceptions, representations and reactions of the actors involved. The qualitative study enabled a deeper insight into the specificities of each couple’s trajectory, reflecting the diversity and nuances of their experiences rather than producing generalized typologies.

**CONTENTS**

My argument will unfold in four chapters and a concluding section. Although they are all conducing to a set of central arguments, I opted to provide contextual information on the broader research in all of the chapters, so as to make each one of them legible as a stand-alone section. Each will have some concluding reflections that briefly summarize its contents, in order to allow the conclusive chapter to be more synthetic.
Chapter One will outline the methodological structure of the thesis, tracing the ways in which I defined the epistemological framework and methods for the research. This section will be an opportunity to expose my reflexive trajectory, acknowledging my position as a researcher, and the limitations and opportunities derived from my angle of observation. I will also delineate how I responded to the challenges deriving from interview contents that touched on the intimate sphere and could potentially leave interviewees at risk of legal prosecution. With the aim of reducing ethical hazards and enabling an engaged interaction with research participants, I involved my interlocutors in several informed choices regarding the disclosure of their stories, so as to avoid contributing to possible legal sanctions and stigmatization. These epistemological and ethical underpinnings have been crucial in defining the methods for the case study, which were designed as flexible tools, adaptable to the specificities of a field involving constant transformation. The chapter will argue for the appropriateness of producing a qualitative study, based on interviews with transnational couples and state representatives, to better fit my research objectives, while also providing a reasoned account of the specific procedures adopted in the fieldwork.

Chapter Two sets out the analytical background, acknowledging the main theoretical contributions which structure the dissertation. I will describe the particular ways in which I combined an overarching gender approach with a transnational and intersecting approach, focusing on bordering mechanisms. The bordering approach is used to reflect the resources and agency of the subjects involved, while at the same time taking into account the intersectional factors involved in the regulation of mobility and intimacy. I will make the case for looking at transnational conjugality with a bordering lens, to avoid reinforcing the “othering” mechanisms potentially implicit in adhering to categories based on state priorities. Subsequently, the discussion will focus on the binary perspectives based on dyads such as citizen-migrant, legal-illegal, and authentic-fraudulent marriage, exploring the margins of these concepts and their usage in both the academic and administrative spheres. The case will be made that using a dichotomist dimension to frame social experiences theoretically and bureaucratically, leads to an impoverished understanding of the inherently multi-dimensional factors at play in lived realities.

Through a systematization of what I consider the most salient contributions from different disciplines, I will frame the core concepts of migrant, conjugality and illegality in time, space and social context, proceeding to elucidate the specific usages that I deem appropriate to
approach my object of study. I will situate my work in a research current attempting to reject the criminalizing association inherent in the expression “illegal migrant”, a concept which, like nationality, has been often treated as a self-evident category both in state discourse and in academia (Sciortino 2004, De Genova 2002). At the same time, I will maintain a watchful attitude towards the automatic adoption of alternative labels such as “undocumented migrants” as if they were universally applicable and self-explanatory. Although I use this expression when necessary for my argument, I acknowledge that this and other classifications may comprise highly diverse legal situations and life trajectories. I will argue that such categories do not represent self-evident and universally recognized social groups, but instead conceptually reflect power relations and social stratification, based for instance on colonial relationships and its legacies, such as the global distribution of labour and resources.

Chapter Three will trace the conceptual and legislative underpinnings of conjugality and migration control from the point of view of institutional discourse and policy, with a specific focus on legislative processes at the national level. After outlining the specificity of mobility processes in Portugal, this part of the thesis sheds light on the proliferation of family-related migration restrictions in the context of migration policies in the European Union. The reasons and justifications adduced by state authorities to interfere in conjugal processes will be discussed as a background. I will then critically analyse the premises and implications of such policies, namely the association of the idea of “illegality” with migration phenomena in the specific context of national legislative processes in Portugal. The chapter will then proceed to observe how laws and regulations are put into practice, in particular how state representatives in administrative procedures apply normative notions of marriage “authenticity”. The current legislation is built on the assumption that narrow institutional concepts of what constitutes an “authentic” conjugal relationship may be considered a universal standard against which all marriages can be measured. This section of the analysis untangles how the bordering paradigms which led to specific regulations on “marriage of convenience” are based on securitarian logics and dichotomist categorizations, and how these regulations may be seen as additional ramifications of migration control and selection.

Chapter Four will set out the findings resulting from the fieldwork with inter-status couples, with the objective of weighing the declared objectives of institutional “marriage of convenience” control against its actual outcomes. The result will be an exploratory immersion into the conflictive and irreducible diversities of lived experiences, upon which policies tend
to impose clear-cut divisions, with an emphasis on how the experiences collected in the fieldwork potentially destabilize the categories on which state regulations are built. The group of interviewees included, for instance, couples that had already separated but had decided to maintain the formal bond of marriage to avoid the loss of residency rights for one of the partners. Other couples, notwithstanding a longstanding commitment, reportedly would not have married otherwise, but felt pressured to do so because of restrictive migration regulations which they felt as impediments to their commitments or their life projects. This diversity exposes the paradox of regulations that are based upon homogenizing categories, as well as the ways in which such laws have significant repercussions on couples’ options.

On the basis of the research participants’ perceptions and opinions collected in the interviews, I will set out to interrogate the administrative paradigms, clustering the discussion of the empirical data in three thematic sections. The first section will retrace how normative family models are imposed, through institutional “authenticity” measures that prescribe the “legitimate” family modes, eligible to gain residency authorizations. In this frame, only couples who fit into externally defined forms of relationship - including cohabitation, timing of commitments, mobility patterns, reproductive aspects and financial arrangements - are accepted as “genuine”. Conversely, I will emphasize how the complex and overlapping motivations involved in transnational conjugal relations potentially subvert these categorizations. Marriages may for instance be considered as political acts, romantic rites, economic opportunities, and/or mobility enablers, sometimes simultaneously, and in some cases may constitute “acts of resilience in the face of global inequalities” (Luibheid 2015). It will be argued that most practices observed may be seen as coherent plans to pursue specific life projects - with varying and overlapping motivations.

The second section of the chapter will measure the declared objective of curbing illegality against the actual obstacles to regularization of residency, highlighting the extent to which the production of illegality is produced by bureaucratic malfunctioning, inconsistent information and systematic discrimination. The couples’ narratives will be used to inquire into the gaps between an apparently neutral legislation, and its discriminatory application. Additionally, the interviews suggest to reflect on how subjects’ labelling as “irregular” migrants, and the exclusionary effects, are highly dependent on their previous social status and on the state’s arbitrary classifications.
The final section of Chapter Four will analyse the state authorities’ claims of “protection” towards vulnerable individuals, dissecting the functioning of related policies through a gender perspective. In particular, it will trace how women institutionally framed as poor, uneducated, and marginal are inserted in risk profiles both as potential violators of migration laws, and as probable “victims” of “marriage of convenience” abusers. The stories shared by women with first-hand experience of transnational marriages will be used to inquire as to whether these claims may provide a smokescreen for restrictive migration policies. I will then move on to discuss the outcomes of the current migration regime in terms of dependency, gendered violence and missed opportunities among the involved couples. In this sense, the research results will exemplify, on the basis of interviewees’ accounts, how policies are not living up to their alleged objectives, but rather are reproducing social inequalities. The discussion will thus be rooted in the acknowledgement of how intersectional factors (Crenshaw 1989, Hooks 2015 [1981], Yuval Davis 2011, Stolke 2003) influence the selection of applicants and determine residency outcomes, often regardless of the couples’ motivations and trajectories. I will suggest that the scope of the final reflections may be extended towards the society in which these specific bordering dynamics are embedded, reinforcing its gendered, class-based, material and symbolic power relations, concealed behind paternalistic formulas.
Narratives and counter-narratives on “marriage of convenience”
Narratives and counter-narratives on “marriage of convenience”
CHAPTER I

METHODOLOGY

*Foreignness does not start at the water’s edge, but at the skin’s*

Clifford Geertz, 1996
Narratives and counter-narratives on “marriage of convenience”
The research process has been an occasion to face a series of methodological constraints, provoking a deep reflection on the epistemological stances involved in social research. One of the pillars of the analysis presented in this dissertation is a perspective considering borders not only as material and territorial signs of delimitation, but also as imaginary lines shaping social relations at various levels simultaneously (cf. Van Houtum et al. 2002). My starting point is the idea that academic production also plays a role in bordering, since it inevitably involves both classification efforts and their problematization, contributing to particular configurations of social order. The border, in all its connotations, is thus considered a fertile analytical space to inquire into social relations, while also exposing contradictions and gaps in our forms of knowledge production. As Henk Van Houtum comments in his reflections on bordering, “it is precisely in the unfamiliarity of this in-between and beyond-space that we are challenged to unbound our thinking and practices” (Van Houtum 2005:3).

This chapter will be an opportunity to explore the underpinnings of the various methodological tools I have employed. The structure of the text reflects the constant search for equilibrium between on one hand the methods considered most effective, feasible, or commonly used in the given academic context, and on the other hand epistemological issues and ethical concerns that can arise from the use of these methods. After a short introduction tracing the genesis of the research and its scope, the chapter will be divided into two sections, in which I will describe the project’s development.

The first section will debate the epistemological premises and research devices chosen to investigate the theme of conjugality and human mobility, discussing the main issues encountered in the course of the study. Firstly, I will approach the theme of reflexivity and situated gaze, based on the acknowledgment of my social position as a researcher. Secondly, I will describe how I dealt with the challenge of producing validated scientific knowledge, while at the same time renouncing pretensions of “truth” and universality with regard to concepts, categories, and the interpretation of data. Thirdly, the evolving definition of the object of study will be presented as a consequence of the epistemological positioning. Lastly, I will share some reflections on the balancing of structure and agency that I have attempted to maintain in my analysis of social relations.
The second section of the chapter will be dedicated to the research design and methods used, describing in detail the choices involved in the design of the fieldwork, such as the interaction with case study participants and the procedures adopted for the qualitative study. Firstly, I will outline the forms of contact with state and civil society representatives, then I will provide some details regarding the main corpus of data, deriving from the collection of interviews regarding direct experiences of transnational conjugalities. Researching a theme associated with intimacy and “illegality” has originated a wide range of challenges, which will be duly acknowledged and discussed. Since the social profile of participants will be discussed in the description of empirical data in Chapter Four, this section will only focus on the process leading to the assemblage and delimitation of the group of research participants. Namely, I will explain step by step what motivated the choice of the theme of transnational conjugality, how I defined which particular couples I would involve in the interviews and how I dealt with the ethical and practical issues arising in the fieldwork.

SECTION 1- EPISTEMOLOGICAL APPROACH

The search for appropriate analytical frameworks to approach the theme of “marriage of convenience” discourse and practice in Portugal resulted in the adoption of a transnational approach (Levitt and Glick Schiller 2004, Bryceson and Vuorela 2002), as well as the incorporation of contributions stemming from bordering (Van Houtum et al. 2002), civic stratification (Kofman and Kraler 2006) and intersectionality theories (Crenshaw 1991, Hooks 2015 [1981], Yuval Davis 2011). The transversal analytical lens I use to link such theoretical articulations is based on a gender perspective. Gender, considered as more than a simple category, is used as an encompassing theoretical tool to reflect on the (re)production of knowledge and power. For instance, the academic literature emphasizing the processes of subordination enabled by gendered opportunities and interpretations of society have inspired my interpretation of similar hierarchization mechanisms involving migrants. This perspective emphasizes the dynamic development of social differentiations, and goes beyond just “adding women”, or “adding migrants”, to the picture (Hondagneu-Sotelo 2011, Mahler and Pessar

3 The specific analytical lenses used to analyse the data will be described in the following chapter, which will argue for the appropriateness of a transnational and intersectional approach and propose the notions of bordering and civic stratification as both methodological supports and as objects of study.
Narratives and counter-narratives on “marriage of convenience”

2006). The standpoint I adopt rather entails acknowledging the gendered relations of power and social constructions implied in the mechanisms under observation in the case study. I intend to observe how conjugality interacts with mechanisms of inclusion and exclusion based on other social categories, including nationality, migration status and socioeconomic class. In particular, the gender perspective enables us to understand the ways in which women, both migrant and non-migrant, are treated as inherently vulnerable subjects by government institutions, and the ways in which socioeconomic status influences this process. Gender is used in this sense as an encompassing methodological support influencing all phases of the research, from the epistemological framework to the research design and the interpretation of data. This combined analytical model enhances the research in various aspects. Firstly, it allows us to explore a specific articulation of transnational conjugality and mobility in the Portuguese context with new empirical data. It also enriches the research by providing flexible research tools to deal with the complexities of the case study. For instance, it emphasizes transversal social hierarchization produced across and within national borders, by unpacking social categories that are institutionally treated as static and universal.

THE EVOLUTION OF THE OBJECT OF STUDY

My research is embedded in a critical perspective on the selective paradigms that regulate the access, settlement, and citizenship rights of subjects engaged in transnational mobility. The PhD project originally stems from the desire to study the underlying mechanisms of restrictive migration policies and the repercussions of these policies in the everyday lives of individuals. In particular, one of my founding motivations in approaching the theme of migration control was a discomfort felt in the observation of the essentialist and criminalizing public discourse on “undocumented migration” in the contemporary European context. Against this backdrop, my participation as a team member in a previous project studying migratory trajectories, “illegality” and gender in Italy and Portugal, 4 in which I was engaged from 2010 to 2013, constituted an opportunity to frame the research problem I wished to focus on.

Engaging directly with the constellation of issues related to undocumented lives during a year-long period of fieldwork in the area, and articulating theoretically with a

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4 International research project “Migratory trajectories from Africa, illegality and gender” coordinated by Marzia Grassi at the Institute of Social Sciences ICS-University of Lisbon (PIHM/GC/0046/2008).
multidisciplinary team, I came to define a narrower object of study. In particular, the empirical observation of the institutional limitations imposed to transnational couples encouraged a focus on the interplay between processes of international mobility, conjugal behaviours, and normative frameworks through a qualitative study. Since the control of conjugal ties as a basis for residency rights had recently been scaled up in Portuguese migration legislation, with the 2007 introduction of “marriage of convenience” as a crime, I decided to produce a case study of the mechanisms and repercussions of such policies in this delimited geographical context.

The theme of the responsibility of researchers in the critical and reflexive selection of the object of study, in contemporary migration studies in particular (Sciortino 2004, De Genova 2002), had a crucial influence in the research design. This perspective warns against the effects of the inaccurate usage of essentialist and stigmatizing depictions of subjects categorized as migrants. Reading critical scholarship which condemns the over-generalizing and homogenizing depiction of marginalized groups (Yuval-Davis 1997, Stolke 2006, Thompson 1992, Sayad 1999) also provoked some perplexities regarding the application of categories in my own approach to fieldwork. I thus problematized the idea of researching “undocumented migrants” as a “target group”, questioning whether they could be distinguished a priori as a group with common characteristics (De Genova 2002). This assumption appears to be weakly grounded, due to the variety of experiences encountered by individuals who are characterized in this way. Additionally, treating issues regarding individuals in mobility as inherently “different” and anomalous would constitute a reinforcement of the “state mentality” (pensée d’état) with which migration is theorized and acted upon (Sayad 1999a). Following Sayad’s logic, the methodology will be based on a perspective considering migrants as integral parts of the social fabric, rather than as a sector of social actors with inherently differential participation.

Progressively, rather than focusing on the effects of migration flows on a particular society, the research approach shifted towards seeing mobility as an integral and unavoidable element embedded in contemporary society. In this sense, observing the construction of “marriage of

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5 For similar reasons, the option of determining the target group according to criteria linked to nationality was also excluded. As will be discussed in the next sections, the notion of “migrant” itself may be unpacked, exposing it as an historically and socially framed category. As will be further argued, neither of these concepts was sufficiently encompassing to think about the proposed object of study, which included relations that went beyond the nation state as a delimitation.
Narratives and counter-narratives on “marriage of convenience” policing through the particular lens of transnational couples’ experiences was seen as a tool to observe institutional devices of social bordering. To respond to the challenge of not reinforcing “state mentality”, I shifted my attention away from the normatively framed conjugal practices of migrants classified as “illegal”. The analysis would rather be based on the stories of transnational couples and their conjugal trajectories, studying the process of their institutional framing.

REFLEXIVITY AND SITUATED KNOWLEDGE

The proposed interpretation of reality contained in this dissertation is not aimed at an aseptic, apolitical, “neutral” theoretical exercise. Rather, it aims to contribute at creating new interrogations, questioning the underpinnings of the current naturalized paradigms of social stratification implied in mobility control. This undertaking required a reflection on the conditions in which I am producing knowledge in an academic framework, with the valuable support of epistemological theories from a range of disciplines. Namely, the contributions on the necessity to engage in a reflexive investigation derived from various branches of sociology (Blázquez Graf et al. 2010, Bourdieu 1992), gender and cultural studies (Gil Araujo 2010, Said 1999a), anthropology and philosophy (Harding 1993, 2010, Glick Schiller, Sayad 1999a, Morin 1989). Most importantly, in order to adapt to the development of the fieldwork I left my inquiry porous and open-ended. As described by the sociologist Dorothy Smith in her approach to “institutional ethnography”, this involves a project being “open to being changed, expanded on, improved as research goes forwards and as new regions of the relations that rule us are brought under ethnographic scrutiny” (Smith 2005:3).

During the choice of my object of study, an important initial step was to focus on how I would position myself with regard to the research I was developing. This effort pushed me, for instance, to acknowledge and reflect on how my identity, social and political location would affect the research process. This implies inquiring as to the ways in which my position influences the questions I ask and the answers I find, as well as the way I collect and analyse data. As Pierre Bourdieu commented, “sociology may be seen as an extremely powerful tool for self-analysis, which can enable each one of us to better understand what we are, providing us with a comprehension of our own social conditions of production and the position we are occupying in the social world” (Bourdieu 1987:115-116, my translation). As feminist
epistemologists in particular have emphasized, “knowledge claims are always socially situated” (Harding 1993:54), meaning that researchers need to be particularly cautious of producing generalizations, and recognize the perspective from which they are speaking.

Based on this framework, I felt the need to explicitly express my own characteristics as a white, young, European, middle-class woman. These characteristics may be seen as some of the constitutive features shaping my social life as well as my academic involvement. All of these attributes symbolize privilege and/or oppression in the context of the relations I experience and observe, and it is important to recognize how this situates me in the multiple structures of inequalities implied in the society in which I participate (Cf. Gonzalez and Bacci 2015).

Yet the researcher’s location, as well as her insider/outsider status, may not be considered as fixed categories, but are rather negotiated in the research process, depending on the researcher’s “multiple and shifting positionalities” (Cukut Krilić 2011:161). In the context of my case study, the fact that I was a non-national researcher, albeit one from a country belonging to the European Union, and thus benefiting from “free circulation”, embedded me in a mix of outsider and insider statuses, which had a series of repercussions on the development of the fieldwork. Conducting my research in a country, Portugal, where I have only lived for the last six years, I felt that I was perceived by research participants as a distinctly non-Portuguese citizen, and characterized as an external observer. This ambivalent perception played an important role in filtering the attitudes of interviewees, and had an effect on the amount and type of information that I was given.

On one hand, although often classified as a foreigner or expatriate, interlocutors never classified me as a “migrant”. I felt I was generally viewed as being in a privileged social status, inclusively because of my representation as a researcher, which often appeared to turn my “foreign” origin a secondary aspect. On the other hand, the simple fact of having to navigate the processes of adaptation to Portuguese society and, similarly to most of the couples, face the local administration and bureaucracy, in many occasions promoted a sort of

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6 These epistemological reflections, and their articulation with processes of institutional (re)victimization, derived in part from my inspiring research secondment at the UnCuyo-University of Mendoza, Argentina. In particular, I am indebted to Patricia Gonzalez Prado from the gender violence research team, with whom I had the pleasure to collaborate in the context of the project GENDERCIT-Gender and Citizenship funded by the Marie Curie Actions of the European Union’s Seventh Framework Programme -FP7/ 2007-2013, which is being coordinated in ICS-UL by Marzia Grassi for the period 2012-2017.
intrinsic solidarity. This attitude, and the fact that most of these interlocutors tended to see me as a more neutral observer because I came from abroad, appeared to facilitate their sharing of critical views on what they perceived as the most disturbing practices of the state institutions in charge of marriage and migration control.

Conversely, when I interacted with institutional representatives in my role of researcher, at times I had the impression that they were trying to convince me of the effectiveness of policing techniques in deterring criminals and protecting vulnerable citizens. During some interviews I felt that the implicit assumption was that I, as a European citizen, had a vested interest in the “safeguard” of the Schengen space. This expectation was highly beneficial when collecting material, as it allowed me to register their “off-the-record” comments, which offered extremely valuable insights into how they gave meaning to their role, and on what happens in the interstices between discourse, law and practice.

The aforementioned issues inspired a deeper reflection on my position as a researcher. I observed in what ways I was inserted in a broader context of institutional use of knowledge and scientific policies that tend to construct internal hierarchies between disciplines, methods, and different career levels or places of enunciation. I consider that to strive for this awareness is crucial, due to the close relationship between knowledge and power relations. As the philosopher and sociologist Edgar Morin articulates, this link may be seen as not just a product of social inequalities, but also as a producer of them (Morin 1989). In this context, the what is legitimated as “scientific knowledge” should be carefully assessed as a potential tool which, through bordering mechanisms, reproduces social hierarchies and defines the boundaries between belonging and non-belonging human beings. According to this perspective, scholars are not neutral observers producing objective data, and need to be explicit about their positioning in the research relationship.

In particular, the fact that the PhD research is funded with a state scholarship could be seen as an interference with the researcher’s autonomy of judgment concerning state-driven migration policies. The potential impact of this suggests the necessity for a thorough reflection on whose interests were served by my investigation. This type of research potentially reinforces the state’s control devices, by exposing irregular migration processes, and possibly feeding into

7 As analysed in chapter two, the concept of bordering will be used to comprise the multilevel socio-political processes producing categories of difference which take place wherever a specific border has impacts, is represented, negotiated or contested (Kolossov et al. 2014).
the justification of policing practices. These pitfalls may be reduced, at least in part, by acknowledging the material context and power relations in which I am working, and by making explicit my critical stance towards the underpinnings of securitarian approaches to migration.

The contextualization of the research also comprises acknowledging the impact of temporal factors, determined by the fact that I am studying a contemporary phenomenon, with all the limitations this can imply for a broader visualization of trends and long-term evolutions. Additionally, it is important to consider that the empirical and theoretical materials that have been used inevitably comprise only a portion of those available, due to limitations in time, language skills and financial and human resources. Lastly, I am aware that a limited geographical domain and perspective circumscribe this research, reducing the possibility of generalization by exposing me to phenomena and literature mainly produced in the “Western” world.

One of the additional issues concerning the production of knowledge, arising as I started to write, has been the choice of the language of the dissertation. I fully acknowledge the limitations of writing in English, which is not universally understood in the location of my case study, although this choice was based on pragmatic considerations. Namely, I am interested in using this research as a platform for dialogue with scholars who have critically engaged with my topics in other geographies, most of whom are using English as an international “bridging” language. Yet, this choice does not entail that I uncritically accept English as the dominant language in my research area, since I deem the European system of publication considerably biased in this sense. I have responded to this challenge by producing texts and presentations exposing some of the reflections presented here in other languages, in order to broaden the scope of dialogue on my research themes. Additionally, I have made an effort to refer to literature written in other languages, namely French, Spanish, Portuguese and Italian. This diversity of reference material often allows us to reach out to alternative epistemologies and research “traditions”, as well as geographically diverse case study locations. Moreover, with the aim of contributing to a broader diffusion and hopefully an enlarged debate regarding public policies towards human mobility, in the future I aim to

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8 These include Gonzalez and Bacci 2015, Bacci Tamburlini 2013b, 2014, and 2010.
produce materials in a more widely accessible format, going beyond the academic sphere and written production.

**RESEARCH PROCESSES AND “TRUTH”**

The epistemological grounds of my research work are strongly informed by a sense that it is crucial to enlarge the space of debate on public policies between researchers and research participants. In particular, my study has been developed within a theoretical framework that acknowledges that the set of values and interpretations of “dominant” groups are often legitimimized and naturalized as coinciding with “authentic” and/or universal explanations of the social world. As several theorists of feminist and postcolonial epistemology have argued with regard to women and populations who underwent colonial processes (Gregorio Gil 2009, Blázquez Graf 2010, Said 1989), dominant knowledge practices may be seen to disadvantage subjects categorized as migrants in several ways.

Firstly, as sometimes happens in sociology of the family studies and broader social science inquiries, this may materialize in the form of knowledge producers excluding migrants altogether from the picture, or overlooking the variables linked to legal and migratory status, and transnational social processes, from the representation. For instance, in the Portuguese context, issues regarding migrants seem to be exclusively addressed in separate publications, such as Migration Observatory reports, or relegated to specific disciplinary areas, such as migration studies (Fonseca 2005, Peixoto 2008, Costa 2008, Machado 2006). This observation is not meant to argue that this specialization is in itself problematic, but rather that other research areas could also benefit from embracing the complexity of transnational processes in the analysis of local social dynamics. Furthermore, treating “migrant families” as separate entities, functioning with inherently different dynamics, may also fabricate essentialist interpretations that overlook internal differences and often portray whole families

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10 Emblematically, in an accurate overview produced by Anália Torres for a Sociology of the Family course at ISCTE-IUL, in which she refers the work of the main “Western” sociologists, with an emphasis on the Portuguese context, I found no reference to aspects concerning transnational processes, migration or legal status (Torres 2010). The same happens in previous overviews of the sociology of the family I had the opportunity to consult (amongst others, Wall 1993). With this comment I do not mean that researchers have not studied these themes, but rather that these are often treated in isolation from the analysis of the general development and social dynamics related to families in Portugal.
as “migrant”, regardless of whether such a characterization is accurate. A balance between an awareness of migration-related factors in the analysis and the incorporation of subjects classified as migrants into the generic study of families would be an appropriate response to these challenges, producing more accurate reflections of complex social dynamics, and avoiding the invisibilization of specific parts of the population.

On the other side, I argued that interpretations of transnational processes associating mobility to “difference” might also feed into myths of national homogeneity. For example, Maria Baganha and João Carlos Marques in a chapter dedicated to “cultural diversity” in Portugal, state that the “Portuguese [people] seem to be adapting well to the loss of their long tradition of cultural homogeneity” (Baganha and Marques 2001:80, my translation). This type of statement, although made in the context of a text arguing for inclusive policies towards migrants, represents Portugal as a culturally homogeneous country and treats migrants as culturally different by default. Conversely, as suggested by Nina Glick Schiller (2008:4), it may be argued that “to posit that it is migration that introduces diversity into the territory of a nation-state is a stance that excludes from analysis the many sources of difference within a national population as well as the shared commonalities of native and migrant”.

Additionally, the ways in which actors who cross borders are involved in migration-related studies appears to be denying them epistemic authority, by ignoring their point of view on social processes. Often, the researchers appear to be treating them as mere informants, providers of raw information and lived experiences (Thompson 1992, Blázquez Graf et al. 2010), but seldom are they solicited to participate in the analysis of their practices. As well as reproducing uncritically the system of power in which it is inserted, migration-related research may additionally contribute to maintaining the status quo by generating knowledge that is not useful for those who find themselves in subordinated positions (Smith 2005). A similar warning applies to the production of theories regarding migrants, which represent them as passive, infantilized and with reduced resources to develop their life trajectory based on autonomous choice. Often these generalizations reduce them to dichotomist representations as either “victims or villains” (Anderson 2008).

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11 An emblematic case is the labelling of children of migrant parents as “second-generation migrants”, as if it were a genetically transmitted characteristic.

12 Some sociologists explicitly argue that social science research should aim at producing knowledge that is useful to the people whose standpoint was considered as a point of departure for the study (Smith 2005, Eggebø 2013).
Other representations that might, paradoxically, overlook perspectives rooted in migrant’s interests are those framing incoming flows as significant because they serve state priorities. As exemplified by a consistent academic production in Portugal, migration is often depicted as a beneficial process for the country. The most voiced advantages include the fundamental role of incoming flows in terms of demographic “input” into an ageing society (Rosa et al. 2004), as a necessary “workforce” input, and as a tool to balance state budgets through migrants’ active contribution to social welfare systems (cf. Peixoto et al. 2011). Although this type of research provides very useful counterarguments to depictions of migration as a burden for receiving countries, if not coupled with studies questioning the imposition of state interests it may overlook the production of power hierarchies inherent in the selection of migrants on the basis of their usefulness. These may reinforce paradigms in which “states should then be ‘open’ to the migrants they need or want, and ‘closed’ to the undesirable ones” (Geiger and Pécoud 2013:4).

Considering these premises, I faced the challenge of how to produce “knowledge” on these issues within an epistemological framework which would be effective but at the same time embrace the contradictions and complexity intrinsic in empirical data. The construction of the project assumes the arbitrariness of methodological choices and the impossibility of producing an absolute “scientific truth” which transcends the researcher’s social, political, geographical and historical positioning (Segato 2012). As noted by Linda Thompson in “Feminist methodology in family studies”, the separation between the subject and the object does not lead to objectivity, while a closer connection between the two may reconcile subjectivity and objectivity (Thompson 1992). The proposed approach, in sum, aims to detach from positivist notions of objectivity in which knowledge claims are made “from nowhere”, are held to be universally valid, and are interpreted through the dominant paradigms without acknowledging them (Haraway 1988).

Interestingly, during the development of the research, several fellow students and researchers asked which techniques I would use to verify the level of reliability of interviewees’ accounts, considering several of them were in an undocumented situation, and allegedly willing to conceal their stories. This type of questionings in my view risk reinforcing a positivist stance

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13 See for example Maria Baganha (2005).
14 As will be discussed, unauthorized migration flows in particular may be seen to cover the need for unskilled and poorly paid labour, with subjects whose unstable legal position hinders their ability to negotiate acceptable working conditions (cf. Machado 2011).
Narratives and counter-narratives on “marriage of convenience”

on the production of knowledge and on the notion of “truth”, which I attempt to overcome. The approach I chose, given the above-mentioned epistemological approach, is conversely to treat the accounts of the research participants in a form that enables to disengage from the notion of an “authentic” version of facts. I additionally acknowledge the inevitably multi-layered subjective perceptions of social relations, aware that I am proposing one of the possible analytical narratives regarding the data I collected. The empirical material is inevitably influenced by the social position of both the researcher and the research participants, making the concept of “truth” highly inadequate to measure its usefulness. Moreover, what may be perceived as contradictions, omissions or inconsistencies emerging in the narrations of interviewees are seen as integral parts of the object of study, and can constitute useful elements for the analysis. A crucial element in my object of study is to explore how individuals depict their situation and react to it. This awareness pushed me to aspire to a flexible epistemological model, which would allow me to adapt to the conditions in the field, rather than trying to establish an “authentic” narrative on the object of study. Such deconstruction is of particular importance for my research project, since it is partly grounded in interviews with individuals who are framed as “illegal”, and by association, are linked to notions of concealment and fraudulence.

As a consequence, I chose not to collect data under the principle of uncovering the accuracy of what was being said by individual actors. Rather, I accepted that the collection of different perspectives could enrich the appreciation of the context and the critical reading of interactions between actors. In this sense, I made use of Clifford Geertz’s conception of research as an interpretative science in search for meaning, somewhat removed from the investigation of a supposed “truth” with a policing perspective (Geertz 1973). The dissociation from the institutional frames of “authenticity” versus “fraudulence” allows a more radical questioning of why and in what ways individuals are submitted to such processes in the first place.

\[15\] In his theorization of “thick description”, Geertz comments: “believing, with Max Weber, that man is an animal suspended in webs of significance he himself has spun, I take culture to be those webs, and the analysis of it to be therefore not an experimental science in search of law but an interpretive one in search of meaning” (Geertz 1973:5).
CHALLENGING THE RESEARCH CATEGORIES

The literature review, especially the studies related to reflexivity in academic work, made me increasingly aware of the pitfalls involved in excessive generalizations, and the need to recognize complexity and diversity inside groups (Gregorio Gil 2009, Segato 2012, Bowker and Star 2000). In this sense, I adapted some arguments that have been made by feminist scholars regarding the representations of women, to representations of migration. As proposed by the philosopher Sandra Harding, this amounts to avoiding the essentialist stereotypes associated to “the woman” as if it were a homogeneous category, by exposing the multiple internal differences and specificities such as class, ethnic origin and sexual orientation (Harding 2010). This way of proceeding, adapted to the phenomena involved in human mobility, seeks to enable the research to overcome the dichotomist and ethnocentric discourse on migration (Sayad 1999a). For instance, in the case of “marriages of convenience”, public discourse evokes on one hand illegality, criminal networks, fraudulence and deceptive intentions of migrant spouses. On the other, it adopts notions of legality, security, protection, love and “family interests”. Such binary discourses may be considered a tool to maintain social order, on one side promoting the criminalization of migratory practices, and on the other side the imposition of normative integration models. To look beyond these opposing imaginaries, enables a critical stance on both stigmatizing and “humanist” institutional readings, and avoids reinforcing a policing perspective viewing migrants as either perpetrators or victims. More complex depictions of the experience of migration, including its productive and creative aspects, would be beneficial to a deeper understanding of social processes beyond narrowly delimited categories (Beck Gernsheim 2011, Bennafla and Peraldi 2008, Wievorka 2008).

In particular, the forms chosen for the academic classification of human beings and practices constitutes an epistemological and, as added by De Genova (2002), necessarily political choice. The production of academically legitimated studies reproducing state mentality feeds into categorizations of migrants as “others”, reinforcing the current paradigms of securitarian intervention. This suggests an increased awareness -on behalf of researchers- of the risk of supporting such categories, and consequently producing weakly grounded discourse and practice on behalf of the state and its institutions (Düvell et al. 2008). I have paid special attention to exploring the articulation between the main concepts used by state institutions in “marriage of convenience” discourses and practices. As confirmed by the empirical data,
these are structured in public discourse as dichotomies, opposing “migrant” and “citizen”, “real” versus “fake” marriages, and “legal” versus “illegal”. One of the biggest challenges in such a process of questioning was the attempt to unpack the same categories, which I had used as pillars of the research project. I wish to explore in particular the construction of such categories, and the ways in which the underpinning concepts, terminology and classifications play out in migration-related legislation and discourse.

It should be acknowledged that generalizing academic categories might also potentially contribute to the construction of (il)legality and to justifications of social exclusion and inclusion practices, by reinforcing essentialist perspectives. For instance, as Nicholas De Genova comments, “undocumented migrants do not comprise an objective nor intrinsically self-delimiting domain for study”, and to use this category unquestioningly implies a reinforcement of exclusive social dynamics (De Genova 2002:422). Similarly, to use uncritically ready-made categories such as “marriage of convenience”, would have meant abiding by the institutional system of selection, which validates the notion of “convenience” associated to a migratory advantage as a measurable and self-defining notion. Additionally, the idea of describing marriages as “fake” implies a dichotomist reading that fails to reflect the complexity of couple relationships, as well as constituting an imposition onto individual conjugal choices and practices. Limiting the study to couples that were institutionally classified as having engaged in “marriages of convenience” would have implied an endorsement of such premises, and of the possibility of clearly delimiting and classifying marital intentions. The fact of choosing, conversely, to study the conditions of the creation of such a category, its application, and its repercussions, derives from an epistemological stance considering territorial and social borders and all their ramifications as constructions, which can be observed as on-going processes rather than static social facts.

Moreover, in the course of the research I considered it important to avoid framing the practices of migrants as strategies to obtain residency documents, as doing so would reinforce the current policing paradigms and imply an uncritical acceptance of institutional categories. Exposing the details of the means by which couples sought to overcome administrative

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16 The process of scrutiny of such categories, which involved testing their validity against the backdrop of the empirical data, will be thoroughly described in conceptual analysis in chapter two.

17 This resulted, for instance, in an effort to avoid reproducing stigmatizing and criminalizing categories such as the ones referring to “illegal migrant”, or “marriage of convenience”, except when describing and analysing institutionalized classifications.
obstacles could additionally be seen as an ethical dilemma. While on one hand it could serve the objective of producing accurate accounts regarding the capacity of subjects to challenge/subvert normativity, it could at the same time reveal practices that could potentially become targets of institutional repression, thus reinforcing institutional control. Additionally, I was conscious of the potential dangers of data being generalized and manipulated out of its context, providing backing for criminalizing discourses. I therefore attempt to present data in a form that exposes the nuances of actual social interactions, while making an effort to process and disseminate only the data, which is strictly necessary to the development of the analysis and discussion.

Balancing structure and agency

Often researchers focusing on structural aspects of migration portray those framed as undocumented migrants as inevitably, and passively, subjugated to exploitation and lack of access to human rights (Machado 2011). The relative lack of significance attributed to migrants’ own agency in such accounts induced me to search for more nuanced readings. By focusing exclusively on the final outcomes of restrictive policies in terms of infringements of human rights, I would fail to acknowledge the processes of vulnerabilization that take place through bordering mechanisms, and contribute to the processes of stigmatization and/or victimization which I aimed to deconstruct (Bennafla and Peraldi 2008, Gregorio Gil 2009). Conversely, the desire to investigate complex and multi-layered interactions suggested the importance of considering both exogenous factors and individual agency in shaping migrants’ experience and trajectories, taking into account the interaction between agency and structure (Findlay and Li 1999).

However, I had the opportunity to sift through a vast literature that offers a more complex and subtle consideration of migrant resources and autonomous choice, by exploring their practices and interactions with the migration administration system.18 Scholars from a range of disciplines warn against considering migrants as a passive category (Sigona 2012:51), and

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18 This approach may dialogue with Sayad’s proposal to put at the centre of the analysis the migrant subject, at the crossroad of two systems of interaction: on one side the one linked to variables of “origin” such as social characteristics, and on the other the outcome variables (ie. the determinants depending on the society of settlement or residency) (Sayad 2004 [1999]).
seek to put in evidence their capacity of subversion (Rubio Grundell 2015, Beck Gernsheim 2011). Critiques of the notion of a monolithic power totally dominating subjects suggest, for instance, that the logics emanating from the subjects who are being marginalized in such systems should also be included in the picture (Mignolo 2011). Rather than only exposing their practices as if they bore unquestionable and univocal significations, I seek to access to the logics and motivations of the research participants, embracing their inherent contradictions.

In my analysis of the construction of migration status and (il)legality I acknowledge that “people may reproduce and/or contest hierarchies of power and privilege”19 through practices and discourse (Mahler and Pessar 2003:813). This enables us to trace how the joint effects of migration regimes and intersectional factors do not unilaterally determine outcomes for subjects. As Carmen Gregorio Gil asserts, it is necessary to valorise the strategies for change enacted by migrants, and to avoid contributing to their victimization in our academic interpretation (Gregorio Gil 2009). Such acknowledgement may serve as a response to the dangers of paternalist readings of the situation of migrants, which may potentially feed into state justifications for their control/protection (Gregorio Gil 2009). On the other hand, as observed by the human geographer Rachel Silvey, understanding spatial mobility exclusively in terms of “transgressive, agency-driven, potentially empowering moves” may overlook the relations of power involved (Silvey 2005:142). Veena Das proposes to acknowledge subjects as “simultaneously powerful and vulnerable” (Das 2010:137), basing our attentiveness to lived experiences. Her work has been an inspiration to explore the nonlinear ways in which bordering is “woven into the patterns of life” (Das 2010:141), dislocating the oppositions expressed in the victim/perpetrator and agency/oppression binaries.

Civic stratification theories (Morris 2003, Kraler and Bonizzoni 2010), drawing attention to the (re)production of social hierarchies through the enactment of bordering systems, have been useful supports for the data analysis. Although dedicating a considerable weight to the institutional determination of opportunities and constraints, the exposition will aim at counterbalancing what I see as a potentially miserabilist view of subjects engaging in

19 Sarah Mahler and Patricia Pessar (2003:813) argue: “Conceptualizing gender as a process yields a more praxis-oriented perspective wherein gender identities, relations and ideologies are fluid, not fixed”. Yet, migration status, just as the sociologist Myra Ferree and colleagues describe for gender, is also a structure, a set of “institutionalized social relationships that by creating and manipulating the categories of gender, organize and signify power at levels above the individual” (Ferree et al. 1999:xix).
international mobility as being passive objects of inequalities. Namely, I wish to complement a critique of current policies with a balanced acknowledgement of my research participants’ active contributions to the (re)production of and/or resistance to state restrictions. To render this approach operative I chose to adopt the inspiring suggestions by the anthropologist Rita Segato, who theorizes her method as an “anthropology on demand”. This approach proposes to “produce knowledge and reflection as a response to the questions that are asked by whom would be, in other formulas, our ‘objects’ of observation and study” (Segato 2012:121, my translation). My approach to the fieldwork and analysis of the interviews thus constitute an effort to expose and relativize the barriers between the researcher and the involved subjects, considering them all as participants in the investigation. This way of proceeding enables a reflexive evaluation of the tendency of certain engaged research to position itself as a tool for the empowerment of individuals or groups represented as “voiceless”. As Arundhati Roy critically observes, “there is no such thing as the voiceless, there are only the deliberately silenced, or the preferably unheard” (2006:330)\(^20\). We might infer from this logic that a researcher should not be positioned as a vector for someone else’s claims, substituting her voice for the one of the groups involved, but has rather a responsibility to work on the underpinnings and mechanisms of the silencing process.

The fieldwork helped me to register how the individuals framed as the most precarious, passive and “vulnerable” due to their social and economic positioning, managed in most cases to activate resources to pursue their life projects, overcoming to some degree the obstacles set by restrictive migration policies. I therefore increasingly recognized the couples’ agency in adapting to and contesting normative systems of marriage and migration control, rather than focusing exclusively on their difficulties. Considering exclusively the subjugation and constraints affecting migrants would have made me overlook the subtle, but inherently provocative and disruptive, aspects of transnational lives. My approach therefore moves away from a representation of migrants as inherently incapable of self-determination, and as passive victims of punitive migration measures. Conversely, it implies seeing all subjects as inhabited by both the “capacity to aspire” (Appadurai 1994) and the strength to subvert those regulations, which do not fit their needs - albeit to different degrees depending on structural

\(^{20}\) In this sense Spivak criticizes what she calls the “benevolent attitude” with which “First World academics appropriate the ‘oppressed’ of the Third World”. In her view this attitude negates them as subjects and agents of their own story (Spivak 1994, my translation). Conversely, according to Chakrabarty, it is advisable, as attempted in subaltern studies, to “produce historical analysis in which subaltern groups are seen as subject of history” (Chakrabarty, 2000: 15).
and contingent constraints. This balance between agency and structure in the fieldwork design and development, as well as in the interpretation of data, was aimed at avoiding the pitfalls of victimization. At the same time, I maintained an effort not to romanticize the experience of interviewees as completely free actors in the social arena, as this would entail a lack of acknowledgement of the deep hierarchies of power in which they are embedded.

SECTION 2- METHODS

The epistemological framework and the specific object of study, in interaction with the situation observed in the field, pushed me to choose the most appropriate research methods, which I will present in this second section of the chapter. I will account for how the means and modes of data collection were defined, why I have chosen to use particular interview techniques, and how I selected whose experiences I would collect, as well as detailing the procedures through which I developed the interaction.

In the first phase of my research, I considered that the understanding of social processes involved in the articulation between migratory trajectories and state control could benefit from a deeper insight into the practical functioning of the border (Mezzadra and Neilson 2013), and therefore decided to intertwine the micro, meso and macro levels of observation in the analysis. This multilevel analysis comprises the formulation of norms through legislation, the practical application of these laws, and individuals’ reactions to this system, with my argument being built across these observation strata. Based on the observation that regulatory activities related to migration operate on multiple scales and in several institutional settings, the analysis oscillates between different layers: macro – such as the creation of borders and of securitarian and selective paradigms of migration management; meso – such as the local application of laws; and micro – such as the specificities of couples’ interactions with institutions in Lisbon.
QUALITATIVE APPROACH

From a theoretical point of view, the literature review provided precious tools to gain a critical understanding of state policies in the context of “marriage of convenience” policies. Yet, partly because of their disciplinary backgrounds, many of the analyses I accessed on marriage and migration made limited use of empirical data, or focused exclusively on public policies (Bonjour and De Hart 2013, Beck-Gernsheim 2011, Wray 2006, Van Walsum 2011). This appeared to compress the diversity of trajectories and practices of the human beings involved in the process of application and institutional control, potentially limiting the understanding of both the repercussions of the process and its inner functioning.

In order to contribute to the discussion on bordering processes, I introduce the perspectives of couples that have experienced surveillance and categorization mechanisms, linking these perspectives to the enactment of current policies. I explore both how the state control of marriage in the context of mobility is developed, and how subjects involved in transnational conjugalities navigate it. I studied the functioning and repercussions of the “marriage of convenience” system adapting the concept of “interface” (Pussetti and Barros 2012), focusing on the interaction between policy makers, implementers and transnational couples, both at the level of discourse and practice. However, it should be noted that this analysis is not directed towards an evaluation of the quality of the relation of administrators and police officers with the couples, or the experiences of “undocumentedness”, as if these were static phenomena. Rather, the focus is maintained on the processes feeding into the production of (il)legality and social hierarchies.

Given the focus on such processes of social stratification, this research uncovers the ways in which migration surveillance devices operate in a specific context and the ways in which subjects contest and/or perpetuate such a social system. The research process did not involve quantitative estimates, whether on irregular migration flows or “marriage of convenience” incidence rates in Portugal. This option was based on the concern that abiding by a quantitative approach could potentially contribute to a framing of migration as a problem to be diagnosed and solved. My qualitative and empirical approach was devised as a tool to study and question the articulation of discourse and practice regarding “marriages of convenience”, acknowledging its framing in broader social and economic stratification dynamics. I considered a qualitative approach would permit a broader understanding of
representations and perceptions of illegality, enabling the research to go beyond the formal aspects of legislation and public discourse and begin unpacking the securitarian paradigm.

The option of relying on qualitative techniques has been operationalized through a first exploratory phase, including the collection of documental data, field observations, and exploratory interviews, which provided a thematic track for the first literature review. The methodological approach of the study, as well as the theoretical reflection has been constructed in dialogue with the empirical situation observed. The central phase of the investigation was dedicated to the fieldwork in the city of Lisbon, based on interviews with transnational couples, which were complemented by dialogue with functionaries of the border and immigration police, and with representatives of NGOs working in migration issues. I chose to collect empirical data through in-depth interviews and then frame this data in a transversal analysis, so as to grasp the points of interaction with local, national, and European dynamics. My initial motivation to conduct this research germinated as a result of interaction with subjects who were experiencing the border as a device of inclusion and exclusion, and whose access to full citizenship was subordinated to their residency status. My interest in the issues surrounding contemporary policies regarding (il)legal migration does not therefore have its origins in pre-defined theories, but rather in the doubts, paradoxes, contradictions and inequalities that emerge in such interchange.

**DATA COLLECTION PRACTICES: OSCILLATING BETWEEN THE EMPIRICAL AND THE THEORETICAL**

The fieldwork initiated in 2012 with an exploratory phase, involving an observation of the context in Portugal, as well as 4 initial interviews. This phase was followed by deskwork researching the theme of “marriage of convenience” in Europe from a theoretical point of view (De Hart 2006, Wray 2006, Beck-Gernsheim 2011, Foblets and Vanheuele 2006, Charsley 2012, Riaño 2011), through which my intention to contribute to this area with an empirical study was reinforced. This first thematic review also served a comparative purpose,

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21 Considering that an initial research option was to produce a comparison with the Italian context, the exploratory phase also included three months of fieldwork in Rome in 2012, during which I collected interviews with couples, NGO and police representatives. Although this comparative project has subsequently been put aside, the observation of a second context in the European Union provided interesting hints on the peculiarities of the Portuguese system.
in that it enabled me to analyse the collected information against the backdrop of research conducted in other legislative contexts. The initial phase of the analysis equally drew on migration and conjugality studies produced in Portugal (Grassi 2006, Raposo and Togni 2009).

The following phase, started in the winter of 2012-13, involved the progressive recruitment of available couples, and the building of a dialogue with them. This long time-frame and the intermittent character of my contacts with the couples implied a constant alternation between fieldwork and theoretical work, which would constantly feed into each other. The flexibility with which I designed the interviews allowed me to adapt them progressively, adding and dropping themes depending on their adherence to the evolution of my theoretical positioning. This oscillation made the development of the structure of the interviews particularly influenced by the theoretical advancements of the thesis. At the same time, this dialectic allowed me to constantly ground my exploration of the literature in the observation of social relations in the field. The long time frame of the research also favoured the observation of the object of study from different angles, including the institutional approach and the couples’ perspectives, as well as a more reflexive perspective examining academic categorizations.

My multidisciplinary background heavily influenced my point of observation and the particular ways in which I combined theories and methods. The synthesis I produced may in some ways constitute a limitation of my work, since at times I articulated my research with scholarly traditions, which I am only partially familiar with. At the same time, I would argue that such openness benefits the investigation, especially in its exploratory potential. For instance, it permits a fresher perspective on certain concepts and paradigms, which in specific fields may have crystallized, and makes it possible to connect different study areas with more agility. Although I primarily employed sociological tools of analysis and ethnographic practices for the collection of data, the research benefited from the inputs of several other fields, from critical legal theory to philosophy. As Pierre Bourdieu suggests in his case against “monotheism” in the choice of disciplines/schools/methods, the vigilance of researchers might be best applied to “the conditions of use of analytical techniques and to ensuring that they fit the question at hand” (Bourdieu 1992:227), rather than to disciplinary rigidity. For instance, I considered that my study would benefit from interweaving the insights of both the sociology of the family and migration studies (Kofman et al. in Kraler et al 2011), rather than maintaining a forced separation. Therefore, my mixed references were mostly a consequence
of the nature of the object of study, and the challenges that the fieldwork posed to my analysis.

Regarding the development of the research, it is worth mentioning that my project initially involved data collection in two national contexts, Italy and Portugal. This option was gradually put aside, in line with changes of my object of study and of the analytical framework chosen. This evolution resulted from a realization that, for the analysis of the production of social categorization implied in “marriage of convenience” policies and practices, the comparative structure would better be applied not to different nationally-bound settings, but to the different and intersecting effects of categories based on legal status, gender, socioeconomic class and nationality on the access to autonomous citizenship rights.

The exploratory stage of the research implied an overview of the available, although scarce, quantitative and qualitative data, in order to frame the regulation of migration and marriage in Portugal. This implied a documental analysis, including data extracted from European Union legislation and reports, Portuguese government memoranda, and other administrative sources. The Portuguese sources included publications of specific state agencies, such as the National Statistic Agency (INE) and the Border and Immigration Police (SEF). Additionally, I used European Migration Network (EMN) and Immigration Observatory (OI) materials to complement the scholarly literature on family reunification, conjugality and migration, which I refer to in detail in the following chapters. This initial exploration of the available information was used as a basis to identify the solidity of the data supporting and justifying public discourse and policies, and to trace the evolution of public policies over time.

The documental data was subsequently re-interpreted throughout the fieldwork, which included interviews and direct observation. The latter involved a scrutiny of the functioning of services implementing marriage and migration controls. I followed some of the couples throughout the development of the thesis, when possible sharing everyday activities as well as accompanying them to administrative services during their regularization process. Such long-term interaction with some couples enabled a deeper insight into opportunities and constraints, which did not emerge explicitly in the interviews. These occasions provided me with hints for new topics of discussion, and enriched the observation of bureaucratic interactions, deepening my understanding of the differential treatment by state institutions and how it is linked to the bureaucratic perception and categorization of subjects. This allowed me
to observe the live interaction and the conditions in which they experienced and “embodied” bordering procedures (Silvey 2005, Mountz 2004).

The fieldwork also involved following a “marriage of convenience” trial during 2014. I had the opportunity to attend because a SEF officer involved in the investigation of the case provided me with key data regarding the process. Although these trials are supposedly open to the public, information regarding dates and locations of the tribunals are in fact difficult to access through publicly available means. Due to this “internal” channel of information, I was able to obtain the trial number, necessary to enter the tribunal, and attend 5 sessions, during which I listened to the depositions, as witnesses, of 13 Portuguese women allegedly involved in “marriages of convenience”. Since I had no occasion to ask them the consent to use their depositions I prefer not to quote directly their depositions, although they have deeply affected the way in which I looked at the institutional policies. The considerations ripened after the trial fed into my problematization of the state instrumentalization of the “vulnerability” of women to promote harsher migration policies, which I will discuss in Chapter Four.

I also considered it appropriate to familiarize myself with the bureaucratic processes by experimenting them in first person. I approached the administrative services as a European Union citizen wishing to apply for a residency permit for my partner - a non-European national - on the basis of a civil partnership. This included making an appointment, waiting in the line, asking for information at the desk, and in general using these public premises as an ordinary citizen. I believe that this particular experience was helpful in terms of understanding the power relations involved in the interaction, and how these operate beyond purely legislative measures. With these visits, I also wished to overcome the logocentrism of much of the academic production I was involved in, for instance by introducing first-hand and embodied impressions in the way I was perceiving social relations. The personal experience made it possible to perceive, although at a reduced intensity due to my inherently privileged

22 To verify the actual level of public access, I tried to obtain information by contacting the main tribunal by telephone and email, but received no information on the trial dates and locations. Unsurprisingly, I was the only person present in the public at the hearings I attended, except for one or two family members accompanying the witnesses. I perceived that I was looked upon with deep curiosity by the staff, which allowed for some informal conversations during the breaks, in which I disclosed my academic interest and seized the opportunity to listen to some of the informal comments of attorneys and solicitors. I also had the opportunity to interview the translator. Although these informal commentaries are not directly included in the thesis, they also shaped my analysis.
positioning as a EU citizen, the embodiment of borders seen as “fluid, daily, personal interactions” (Mountz 2004:325-326).

LIMITATIONS AND ETHICAL ISSUES LINKED TO INTIMACY AND “ILLEGALITY”

Working with interlocutors who are currently in an “undocumented” situation exposed me to key ethical issues, since I planned to collect sensitive information that could potentially hinder the subjects’ regularization or legal status. Due to the themes treated, including actions liable to penal prosecution, the research methods have been adapted to a cautious ethical framework, to avoid infringing the rights of research participants (Anderson and Ruhs 2010, PICUM 2015, Düvell et al. 2008, Van Liempt and Bilger 2009).

The fieldwork was planned with awareness of the challenges involved in contacting individuals that in some cases had less visibility and much-reduced negotiating power over the representations regarding them. Additionally, I had to deal with the inevitable ambiguity of working with research participants who are depositaries of various markers of “vulnerability”, such as insecure legal and socioeconomic status, stigmatized nationalities, or generically living in disadvantaged and gendered power relations. The process of selection and editing of the collected voices, and of the themes that would eventually be exposed in the dissertation, as well as the thesis’s interpretation, introduce non-explicit power relations towards the subjects, which should not be overlooked (Blázquez Graf 2010). I responded to this challenge during the analysis of the interviews by soliciting the opinions and inputs of the research participants who were available, inquiring whether my reflections and conclusions made sense to those who had lived the experience in the first place.

As a response to ethical concerns regarding informed consent, I devoted great care to explaining in depth the scope and aims of my research before starting the interviews. Believing that there needed to be a previous agreement on the use of data, I provided detailed information on the possible academic uses of the stories collected (cf. Wright 2007). I made an effort to hold each interview in a place and for a duration that the interlocutor deemed safer and more comfortable. The interviews were conducted in three sets of locations, depending on the choice of the interlocutors and anonymity concerns. The encounters in public spaces mostly happened in cases where the interlocutors considered the home or work address as sensitive personal information. Most of these took place in cafés, while only three chose to
convene in the space of an NGO that borrowed us a room. The remaining half of the meetings was organized at the participant’s home. In some cases this was aimed at an increased level of privacy, as the interviewees feared stigmatization in case their stories were overheard. I gained permission to record and transcribe all interviews, except in two cases, in which the information shared was deemed more delicate in terms of the possibility of penal prosecution. In one case, we chose not to produce a recording at all, and in the other I deleted the sound file after having annotated the data I needed for the analysis.

My interactions with law enforcers also required a reflection on ethical implications. I decided that I would not use information provided “off the record”, by which I mean comments that my interlocutors had explicitly asked me to omit from the thesis. When discriminatory or inconsistent acts performed by state representatives while carrying out their duties emerged in the couple’s interviews, the functionaries’ identities or workplaces are not disclosed. This option responds to the need of making stratification mechanisms visible, while at the same time avoiding sensationalist and blaming divulgations. I seek to avoid the depreciation of specific functionaries based on their practices (cf. Eggebø 2012, Pussetti and Barros 2012\(^\text{23}\)), as I perceive these practices as mostly stemming from the institutional framework, rather than from mere individual choices or un-professional attitudes. Although this thesis collects a range of critical visions on the bureaucratic system, the objective is not to evaluate the contingent aspects relating to the “quality of service”, but rather to study the production of “illegality”.

Granting anonymity has been a basic feature of my approach to interlocutors, due to the fact that I am operating in a context in which the main protagonists of my research may suffer unintended consequences of my research. After gathering the data, I scrutinized and edited it to avoid possible elements of identification of the interviewees. I used pseudonyms to identify the interviewees, and deleted from the transcript any reference that could potentially identify them. The anonymization included the substitution of a range of data to make the information more generic, including the insertion of years instead of precise dates, countries of birth instead of cities, and very broad areas of activity instead of workplaces or professions. These

\(^{23}\) As Chiara Pussetti and Vítor Barros put it, we may expose the “inner contradictions of political discourse and programs - not necessarily seeing in them conspiracy or social control theories. It means analyzing the systematic construction of social support projects and the justifications they are based upon - it doesn’t mean doubting their good intentions. It means studying the explanations and attitudes of the social field professionals in a historical-political context of power relations at various levels - it doesn’t mean denouncing whatever type of incompetency or bad faith” (Pussetti and Barros 2012:9, my translation).
precautions were activated for both Portuguese and other nationals, since both groups could be subjected to illegalization and stigma because of their practices. To guarantee confidentiality, I only interviewed individuals with whom I could communicate directly, without the need for interpreters. As suggested by Franck Düvell, “research in irregular migration must be conducted and disseminated in a way that prevents enforcement agencies from identifying the whereabouts of individual or collectives of irregular immigrants. Research must also avoid disclosing information that facilitates enforcement agencies’ planning and operations” (Düvell 2008:28). Notwithstanding these safeguards, the perception of the stigma surrounding undocumented status, as well as the fear of sharing sensitive information with an unknown person, probably prevented several potential interviewees from participating. However, it is worth noting that the participants who did interact with me appeared to feel very secure, and shared even more information than I expected or solicited.

The diffusion of data was similarly subjected to scrutiny, in terms of content and presentation. When reproducing interviews, I complied fully with the recommendations of interviewees regarding which information I was allowed to publish. In this sense, I carefully avoided the disclosure of data, which could lead to a stigmatization of specific groups when it was not strictly necessary for the concluding analysis. In particular, this choice was based on the perceived need to minimize the potential abuse of the data collected (PICUM website), which in the case of the present case study could have been based, for instance, on government control motivations.

Due to the socially sensitive theme of this research and its association with practices criminalized as fraudulent and “illegal”, the possible uses of the data produced have been a constant concern throughout the research process. Notwithstanding the critical perspective presented in the body of the thesis, I acknowledge the possible manipulation of uncontextualized excerpts of data to sustain simplistic affirmations in the media and in institutional discourse. In dealing with such issues, the research involved an effort to balance between two extreme positions. On one hand, avoiding the controversial theme of migrant “illegality” would implicitly overlook processes of subordination and marginalizing mechanisms, as well as the point of view of the subjects who are directly involved. On the

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24 An example of this is the use by the EMN, in a report on the abuse of family reunification, of the data presented by Marzia Grassi in her paper on “marriage with the passport” (Grassi 2006), as supporting evidence for statements on “illegal” practices of migrants and the problematization of “marriage of convenience” (EMN 2012a:9).
other hand, exposing practices constructed as “illegal” processes risked reinforcing stereotypical visions of migrants and thus contributing to the justification of governmental control. Collecting data with a constant attention to maintaining an equilibrium somewhere between these two potential pitfalls might contribute to what De Genova calls a critical perspective that is not “complicit with the naturalization of migrant ‘illegality’” (De Genova 2002: 423). The careful recounting of the complexities and fluidities of social interaction that emerge in the field is, I believe, a potential antidote to the misuse of the data, as it undermines the stereotypical and criminalizing framing of migration issues.

THE INTERVIEWS: THEMES AND PARTICIPANTS

To enable a reading of the complex social relations in focus in the case study, as well as to foster dialogue and shared reflection, this dissertation is primarily based on a combination of observation and interviewing. The interview is seen as a research tool enabling a mutual analysis and comparison of the explanations given by the researcher and the research participants of the social practices in which they are involved (Saltalamacchia 1992). The selection of interviewees was determined by the specific articulation of the research problem with my epistemological concerns. The interviews, which took place with 36 interlocutors, were conducted with three groups. These included 24 members of heterosexual couples interviewed in the urban area of Lisbon, Portugal, between 2012 and 2014. The couples were all characterized by the two partners each having a different legal status, in that, at the moment of marriage, one had European or Portuguese nationality or a stable residency status, while the other was undocumented or in a precarious legal position. As will be more thoroughly analysed in the description of the interviewees in chapter four, most couples were aged between 25 and 35, and had undergone controls regarding their conjugal relationship in the context of “marriage of convenience” policies, albeit to varying degrees. Apart from members of transnational couples, who were the main interlocutors, NGO workers and government institutional representatives were also consulted in additional interviews, as will be explained in the following sections.

25 The 24 individuals where inserted in 17 different couples (the gap in the number is due to some of the individual interviews having occurred with separated partners).
The encounters were envisaged as moments of dialogue regarding the interpretations of migratory regulation systems and mobility practices, enabling an instance of joint construction of interpretations. I deemed useful to adopt the suggestions put forward by Jean Claude Kaufmann in his description of the comprehensive interview technique (Kaufmann 1996). The focus on the ways and intimate reasons for the person to think and act in a certain way are used in this framework to gather evidence of the social processes at work, and to develop a sociological explanation (Kaufmann 1996). Through reconstructing lived experiences, and enabling an instance of shared elaboration, this tool makes accessible the “particular, the marginal, the ruptures, the interstices, and equivocations, which are fundamental elements of social reality”, enabling us to capture “the thickness of the social in its diversity and its multiple contradictions” (Digneffe 1997:206-210). For instance, this approach gave me the opportunity to uncover how couples engaged in marriage with a range of overlapping and variable motivations. This allowed me to account for the nuances which were otherwise made invisible by the institutional selection founded on polarized categories of “real” marriages, based on love and family motivations, versus “fake” marriages, based exclusively on migratory interests.

The exploratory interviews aimed to capture the “context of discovery” (Arce 2000), leading to the identification of the central themes for the main interviews. This preparation also served the purpose of testing the potential “perturbing effect” of certain questions (Foddy 1996), of crucial importance due to the intimate aspects of some sections of the interview relating to “illegality” and conjugality. After having reflected thoroughly on these aspects, I decided to base the interaction on a minimally directive approach, so as to promote flexibility in the dialogue with research participants. The non-directive parts of the interaction were invaluable for accessing different definitions of both (il)legality and conjugality, as well as for introducing new themes, which I had not anticipated. This approach allowed for a considerable space for improvisation, making it possible to follow the reactions of the participants to different themes, to offer them space to develop their narrative when they appeared to be more interested in speaking about particular phases of their trajectories, and to avoid interruptions as much as possible. In all interviews I introduced questions not only on

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26 Apart from seizing the exploratory potential of interviews carried out during the previously acknowledged project on migratory trajectories, “illegality”, and gender, I also carried out three tailor-made short exploratory interviews in Lisbon, and two in Rome, complemented by encounters with privileged observers, as will be acknowledged below.
the facts regarding conjugal trajectories and their control, but also on how individuals perceived themselves and their position in this process. Situating the claims of both couples and state representatives in relation to the social roles they attributed themselves helped me in framing their declarations, disengaging from the pretension of reaching a “true” version of facts (Kaufmann 1996).

Amongst the themes explored in more detail in interviews with couple members was their relation with Portuguese institutions operating marriage and migration control, as well as the aspects of their conjugality, which the interviewees felt that the regulations had the greatest impact upon. Additional central themes concerned representations and self-perceptions regarding (il)legality and the “fake” versus “real” marriage binary categories. The perceived effects on their social inclusion of being labelled as undocumented/”illegal” migrants were equally investigated. In particular, one of the themes on which I consistently solicited comments was the effect of legal status dependency, that is, whether, and in what ways, relationships are re-elaborated in articulation with the linking of residency rights to marital status.

The analysis of the interviews, presented in Chapter 4, followed a thematic logic. After having transcribed the recordings, I read through the material and verified, in light of the information gathered in the literature review, which contents could be used to answer the broad research questions. In the following phase, I selected the excerpts that better served the purpose of exemplifying the arguments. In the final discussion, I bridged the analysis of the empirical data with the theoretical framework, considering the possible implications for further debates and investigation.

The institutional interviews aimed to trace the perspectives and practices of public functionaries of the SEF working in the implementation of marriage and migration control. Namely, I conducted an in depth interview with the SEF’s Deputy Executive Director José Van der Kellen, and two employees of the Núcleo de Investigação Criminal (Criminal Investigation Unit) in Lisbon. I also had a brief informal conversation with Feliciano Barreiras Duarte, Deputy Secretary of State for Parliamentary Affairs, in the context of a conference dedicated to family reunification in Portugal. Through these consultations, I aimed
to gain some familiarity with the logic and practices followed by “gatekeepers” (Iacovetta 2006, Pellander 2014).  

The form of contact with institutional representatives was based on a snowballing technique. As a first step, in 2013 I received some exploratory indications from the Border and Immigration Police Deputy Director Luis Gouveia at the presentation of a report on family reunification by the Portuguese Observatory on Migration28, and asked for his business card. Gouveia put me in contact with José Van der Kellen, with whom I arranged an interview to gain a general overview of conjugality control in the framework of policing activities in Portugal and Europe. At my request, Van der Kellen then gave me the contacts of functionaries in charge of the criminal investigations of marriages of convenience. In particular, I obtained two interviews with officer Joaquim Costa Sousa, of the criminal investigation unit. This enabled me to verify which criteria were used to select couples suspected to be marrying because of migratory aims, and to collect data on the modes of investigation.

The interviews with the representatives of migration control authorities touched on two sets of issues. Firstly, the interviews covered the justifications of restrictive “marriage of convenience” policies. Secondly, they aimed at the reconstruction of the procedures followed in the authorities’ interaction with couples. The objective was to understand the selection criteria by which couples were judged to be either genuine or fraudulent. Additionally, the interviews served the purpose of reconstructing the actual practices of investigation followed to ascertain whether suspicions of fraudulence were valid.

The narratives of these state representatives were extremely helpful for interpreting documental data, filling the gaps in information regarding national statistics, and, most of all, capturing the logics of selection and investigation regarding “marriage of convenience”. In some cases, the allegations of these actors would appear inconsistent with data collected through other sources. For instance, the representatives of the border police stated, during the interviews, that there were no specific obstacles for undocumented migrants in reporting crimes at police stations, claiming they would not risk being identified and notified as

27 According to Iacovetta (2006:xii), gatekeepers include those who decide on admission requirements and regulations, as well as on the multitude of reception, citizenship, and regulatory activities that are related to immigration.
28 “Family reunification – a barrier or facilitator of integration?” Project seminar 1st March 2013, CNAI, Lisbon.
Narratives and counter-narratives on “marriage of convenience”

“irregular residents”. As will be described in the empirical section, this contradicted the evidence I collected later with couples and NGO representatives. Yet these claims, contextualized, served the purpose of better understanding the underlying logics and interpretations of the SEF functionaries, as a pivotal element of the “marriage of convenience” control mechanism.

A series of civil society actors, including social workers, NGOs, and associations engaged in migration issues were consulted in the initial phase of the PhD to frame the main issues. These included representatives of Comunidária, Solidariedade Imigrante, Olho Vivo and GTO-Grupo Teatro Oprimido.29 To complement these views, I also interviewed André Studer, a lawyer specializing in migration law, and Professor Afzal Ahmad, employed intermittently as a translator in the Lisbon tribunal, who both shared with me their perspectives regarding the discourses and practices of migration control in Portugal.

Most of the actors in this area were contacted personally in spaces of activism for migrant rights, such as rallies, demonstrations, and festivals, or at migration-related conferences. The views shared with me by some of these professionals were crucial in helping me formulate my object of study, and during a later phase of my research, I came back to some of them to discuss specific subjects that had emerged during the couple interviews. For instance, I would use these interviews to verify if the themes I identified as pivotal in my analysis were widespread amongst the population these employees were in contact with.

However, the collection of data has consciously avoided an intensive use of association and NGO networks as a research instrument. The choice not to resort to these actors as main sources of information was informed by two main motivations. Firstly, most of them are solicited constantly as “informants”, by media and academics, therefore reducing the time and energy they have to devote to their main occupations, which they identify as their service and support to the population. More than one of the contacted NGO representatives complained about the excess of researchers and students who contacted them to obtain information, claiming they had to refuse a lot of academic-driven solicitations in order to be able to perform their everyday tasks. Secondly, relying on information directly provided by the civil

29 All of these organizations work generically with migration-related support services and lobbying for migrant rights, with no specific focus, except Comunidária, which is an association focusing on the issues of women migrants. I interviewed the following representatives: Magdala Gusmão for Comunidária, Timoteo Macedo for Solidariedade Imigrante, Flora Silva for Olho Vivo and Anabela Rodrigues for GTO-Grupo Teatro Oprimido.
society representatives easily causes a repetition of the same discourses, and an inevitably filtered account of issues affecting migrants.

Additionally, I was concerned that relying on professional intermediaries to contact research participants would put me in touch with the most recurrently studied faces of migration. Although it is rarely acknowledged in their methodological descriptions, I observed that, even in cases of direct empirical investigations, some researchers rely uniquely on NGOs as a vehicle to select and contact interviewees amongst the population. This approach potentially leads to two sets of shortcomings. Firstly, especially in the case of associations based on humanitarian aid logics, the population who reaches their support may be seen as a limited sample in terms of social profile. This potentially confines the access of researchers to the most “disadvantaged” or “dependent” individuals, which may feed into victimizing readings of migration processes. As the coordinator of Comunidária commented herself, underlining the biased view that a researcher relying exclusively on NGO data would obtain, “It is the worst cases that arrive here.”

Moreover, the narratives of individuals framed as “beneficiaries” receiving support from an organization may be biased by their desire not to upset the social workers/volunteers working for it, and may replicate the official discourse of the organization. Since NGOs need to justify their budget, and promote their own activities in the context of fundraising efforts, they may have a vested interest in underlining the need for support of the migrant population, rather than their autonomous choices and trajectories.

Due to the attempt to overcome victimizing perspectives on subjects crossing borders, which are seen as a potential façade to justify control and surveillance, the methodological strategy mainly focused on data collected through alternative sources. Additionally, the diversification obtained by contacting the couples one by one, rather than gathering them with the assistance of an NGO, although more time-consuming and demanding, is seen as a choice coherent with my methodological approach. This approach aims to reflect both the constraints and the wide range of resources, capabilities, desires, and life trajectories of subjects crossing borders. By doing this, it contrasts with the essentialist depictions prevailing in public policies, in which migrants are characterized either as deceitful and fraudulent and therefore preferential targets of policing measures, or as vulnerable, passive, and in need of protection.

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30 Interview in Comunidária (2012): “Aqui chegam os casos piores.”
The dialogue with transnational couples was designed to uncover the inner functioning of institutional migration management as it is lived by the subjects who depend upon it for the recognition of their legal status. In line with this consideration, the selection of the specific case study involving couples emerged because marriage is seen as a moment of transition of migratory status and nationality, which inevitably disrupts (il)legality and nationality as static and clear-cut categories.

The main corpus of data derives from a set of interviews and a two year intermittent interaction with couples living in Portugal. As mentioned, before the marriage one partner was undocumented, whereas the other had a formally recognized permanent residency or Portuguese nationality. The specificities of my research theme, associated with the sphere of intimacy and “illegality”, exposed the need to build relations of trust before being able to conduct full interviews. This involved a time-consuming process of getting to know the participants’ and their trajectories over several encounters, culminating in the completion of the fieldwork in 2014. The collection of empirical data was limited to legally sanctioned conjugal unions, including marriages and civil partnerships. In total, I interacted with a total of 26 individuals, who were involved in a wide range of conjugal situations in terms of duration, family conformation and effects of the marriage on the legal status, as will be further explained in chapter four.

As expected, the difficulties inherent in finding available interviewees, due to the intimate character of the interview and to the stigmatization of transnational marriage, ended up constraining the pool of possible candidates. When there was margin for choice, I did not give priority to “representativity” of the general population, but rather at providing comparative insights in terms of intersectionality of various factors (gender, nationality of origin, socioeconomic status), in order to produce hints for further research in specific social sectors. The (dis)continuities which emerged in the experiences of actors across this diverse spectrum also provided a more convincing grounding for the investigation of social stratification, which will be discussed in the presentation of the empirical data.

Another factor that was accounted for in the search for candidates was my interest in including both cases that would fit the institutional “risk profiles”, and others that were

31 As an exploration of possible comparisons, I additionally spoke to two individuals, a man of French nationality and a woman of Italian nationality, who had both intended to marry in Portugal in order for a non-EU national they had met to obtain documents through Portuguese family reunification channels, but later relinquished the idea.
expected to be more easily classified as “genuine couples” according to the migration authorities’ indicators. This differentiation of the research participants was based on institutional criteria of selection, which emerged in the exploratory work, to ascertain whether the couples’ profiles led to different bureaucratic outcomes. Amongst the possible contacts, I selected some couples because they enlarged the range of education levels and socioeconomic statuses, or fitted in the “risk profiles” because of their nationalities, or because they had a considerable age gap or no common children. I also maintained an equitable representation of male and female individuals in the “undocumented partner” group, to allow for an appreciation of gendered representations in the risk profiles. Most importantly, I included diverse legal and migratory trajectories: these included partners whose marriage had enabled different consequences for their legal status, including the acquisition of residency papers, Portuguese nationality, or no change at all.

An additional choice concerned the possibility of defining a “target group” based on the criteria of nationality, as is common practice in migration studies and was the case in other studies in Portugal concerning transnational conjugality (Raposo and Togni 2009, Grassi and Vivet 2014). The predominance of studies delimited by nationality (Machado and Azevedo 2008) suggests that it is commonly assumed that migration studies may be based on such classifications by default. However, the exploratory work, and a careful assessment of this option against the backdrop of my research questions, suggested that using nationality as a predominant criteria would imply two sets of shortcomings.

Firstly, I consider that choosing only one nationality would hinder an intersectional understanding of social stratification processes. Like all other human beings, migrants bear a complex subjectivity marked by multiple and intersecting characteristics, representations and (self-)perceptions. From this perspective, nationality, migration status and (il)legality may be seen as only partial facets of their complex, layered subjectivities and lives. Consequently, combining nationality with other characteristics could be considered as beneficial to the intersectional and comparative approach, making the inclusion of individuals of various origins a precious input.

32 As will be described in detail in chapter three, the criteria on which spouses are evaluated on the “authenticity” scale include nationality, age gap, existence of a common language, socioeconomic status, and social profile of the neighbourhood of residency.

33 Additionally, as proven by a study on academic production in Portugal, most of the scholarly literature available is based on the nationality of origin of the subjects, in order to explore the issues of specific “ethnic” or national “communities” (Machado and Azevedo 2009).
Secondly, I was concerned that the delimitation of interviewees based on national origin or ethnicity would contribute to the naturalization of commonly used migration categories. Studies adopting such an approach without contextualizing the construction of such categories risk treating individuals un-problematically as migrants and/or members of a specific “ethnic community”, regardless of the length of their residency in Portugal, acquisition of nationality, place of birth, or sense of belonging. For instance, the use of the label “second-generation” migrants naturalizes the categorization of children of migrants as “others”, excluded from the national community (Ferreira 2014). This othering process inherently gives support to current differential policies in their regard, which include the obligation to file for legal residency after they reach the age of majority, and to present documents - including criminal records - from a country of “origin”, which in some cases they have never set foot in.

The literature review confirmed this initial decision, and coupled it with an avoidance of “ethnicity” as an alternative criteria, in light of the critique of “methodological ethnicity” (Glick Schiller 2008:1). With this expression, Nina Glick Schiller negatively appraises migration scholars’ naturalized reliance on the “‘ethnic community’ as both the object of study and the unit of analysis in migration research” (Glick Schiller 2008:1-3). In my interpretation, this may be related to the further critique of “methodological nationalism”, problematized as “an ideological orientation that approaches the study of social processes and historical processes as if they were contained within the borders of individual nation-states”. Glick Schiller considers this process inherently political, in that it presents the nation - a historically and socially built entity - as something “objective” (Glick Schiller 2008:3). As will be discussed in the theoretical framing of the dissertation, this pitfall may be overcome through a transnational method and/or object of study (Bryceson and Vuorela 2002, Grassi and Vivet 2014).

I decided to select the couples by conjugal and residency status and to include a wide range of geographical origins, in order to avoid the possible stigmatization of specific groups by associating a single nationality with a study on “marriages of convenience”. Consequently, although the final group ends up including individuals representing some of the nationalities with the most numerous residents in Portugal, this was not a priority in the research design. I believe that a challenge for many studies on undocumented migration is to be able to tackle issues linked to residency status without contributing to an “othering” mechanism. The couples selected for my research involved both individuals categorized as citizens and non-citizens, therefore involving different statuses and relations with state institutions. As will be
reiterated along this thesis, using this alternative criteria of mixed legal status was seen as a strategy to limit the exoticization and simplistic categorization of marriages involving migrants. Moreover, this approach aims to expose the limitations of the category of “migrant” itself, in line with the arguments of Nicholas De Genova (2002) and Giuseppe Sciortino (2004). For instance, it enables us to question the naturalization of different administrative paths of marriages involving migrants as consequences of the migrants’ “cultural” background, and the categorization of migrants as actors with inherently different modes of social interaction.

I intentionally chose to include in my research marriages falling outside the paradigm of prescriptive, family-oriented motivations. I therefore included couples that based their marriage on political reasons, solidarity, or relationships of proximity, such as friendship. Firstly, this served a methodological purpose, since, as defended by Veena Das, we may reckon that “methodologically one can best detect agency at moments of resistance or at moments of transgression” (Das 2010:137). Secondly, considering the social sciences as a space for constructive visibilization of difference, I saw this option as a tool to include accounts, which are seldom exposed in mainstream discourses, such as transnational marriage as a tool for dissent and social transformation. As a response to the “love” versus “convenience” dichotomy prevailing in public discourse and state policies, this was meant to introduce alternative examples and counter-narratives, contributing to more nuanced considerations in the debate on borders and conjugality. The fact of exposing complexity is thus perceived in itself as an instrument to unpack the dichotomist view on legality-illegality and “real” or “fake” marriages, which can be considered incongruous both as analytical and as administrative/political categories.

The research has inevitably been influenced by the contingencies in which the research took place. For instance, the timing and conditions of my fieldwork led to the lack of non-heterosexual couples amongst the interviewees. This was partially due to the temporal framework of the interviews. Same-sex marriage has been legal and same-sex non-national partners eligible for residency rights in Portugal since 2010. However, since I began the search for interview candidates shortly after this change, there were relatively few formalized couples with the necessary requisites in terms of legal status. Amongst the few potential interviewees, the only couple that had accepted moved to a country other than Portugal during

34 These authors will be framed in the theoretical discussion in chapter two.
the research period. We initially planned an interview via video call, but they later decided not to participate.

The choice of limiting the data collection to the urban area of Lisbon was mostly due to practical reasons, including the fact that the governmental and civil society entities with which I wished to communicate are based in the capital city. Additionally, the higher concentration of citizens of a wide range of national origins in the city made it easier to contact an extended pool of individuals who could potentially participate in the study. The greater population and physical size of the capital city also facilitated both maintaining the anonymity of research participants.

Initial contact, as anticipated in the above paragraphs, was mostly established by myself personally or through word of mouth. When not directly approached, each couple was reached through different intermediaries, initially including my acquaintances, colleagues, friends and previous research networks, but then involving also other individuals who became aware of my research and put me in contact with potential research participants. To reduce the biases that could derive from conducting interviews with a socially homogeneous group, each couple derived from a different contact, and generally did not know the other couples involved. In only one case I resorted to a “snowballing” process, in which one couple gave me the contact of a second one. In most of the other cases, I made the first contact though acquaintances who knew about my project and had some friend or relative who had married a citizen in an undocumented or precarious residency status in Portugal. The acquaintance would introduce my project to the couple and ask them if they would be available. The fact that my fieldwork was developed over more than two years allowed me to leave space between interviews, during which time an increasing number of people got to know about my research and would put me in contact with acquaintances who could provide me with more information and interviews.

Generally, I proposed a first instance of interaction to potential interviewees, whether by phone, email or personal encounter, so as to provide more details on the confidentiality measures adopted and the scope of my study. This initial meeting served the purpose of getting to know each other and establishing an atmosphere of trust. I would reassure the potential participants of the anonymity of the information provided, and explain that I was

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35 For a discussion on the location of cities on plural scales in interaction with global and local hierarchies of power in the context of neoliberal global capitalism, see Glick Schiller (2008:6-7)
working on an individual study project, not linked to state surveillance institutions. I would also specify that I was not interested in judging the morality of their actions, or in detecting their “true” motivations in getting married, but rather in better understanding their trajectories and their experiences with institutional control.

During this first interaction, we would schedule the recorded interview. I adapted my plans in order not to disrupt their work and free time routines, and to enable them to choose a format that would make them feel comfortable. This always included asking for an explicit verbal authorization regarding the use of an audio recorder. After the interview had taken place, I provided interviewees with my contact details in case they wanted to complement, correct or delete information they had shared with me. I subsequently met most of them in more informal encounters in which the conversation would flow freely, and we would broaden the dialogue. I also asked if they wished to be contacted again in the later phase of data analysis to continue the dialogue on the interpretation of the interviews. Some of the participants maintained contact and followed the evolution of my work, giving feedback and keeping me updated on the evolution of their stories.

These extra interactions offered more space for interpretative questions on the functioning of the selection for being investigated as a possible “marriage of convenience” and regularization process. This occurred by sharing openly my doubts regarding the interpretation of specific elements of the empirical data with some of the interview participants and soliciting their participation in the interpretation of data. This enabled extremely rich interactions and contributed to the pleasure involved in my contact with the protagonists of this dissertation. The dialogue also served the purpose of avoiding treating them as simple informants from whom I only wished to extract useful information, and could only provide information about their “experiences”. As André confirmed in his interview, he had initially treated my request for an interview with suspicion, because he didn’t “like to be submitted to information-looting”. In my view, his critical stance suggests that sociological research needs to take into account the relationship with participants beyond their role as “informants”.

An additional challenge I perceived was to even out as much as possible the hierarchical implications of being a researcher with postgraduate education. On more than one occasion I

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36 André, Interview 13, original text: “não gosto da sensação de me submeter à pilhagem de informação”.
was described by intermediaries facilitating the contact as the “scholar” or “the lady from the university”, and therefore often positioned in a privileged position of enunciation regarding the issues I was studying. In some cases, the participants expressed insecurity during the initial contact regarding the “correctness” of what they might say in the interview. In these cases, I felt the need to explicitly state that their knowledge was inherently legitimate, and there were no “wrong” answers, as we would build knowledge in cooperation. In general, though, I felt that when we met in person, the explanation I provided of my way of collecting information, as well as the informal setting and open structure of the interview, put the participants at ease in this respect.

Depending on their conjugal situation and on the logistical possibilities, some subjects participated in the interviews as a couple, and others individually. Initially, this was planned to capture potential discrepancies between how the partners perceived and reacted to legal conditionings, as well as to trace relations of dependency and power inside the couple. Subsequently, both types of interview emerged as sources of crucial insights. In the couple interviews, I had the opportunity to benefit from the interaction of the partners, often allowing me to gain a richer understanding of topics that would have otherwise remained undiscussed. In many cases, they would stimulate each other to touch on more intimate or delicate themes, remember details or episodes forgotten or omitted by their partner, or correct each other’s claims.

In the cases when a litigious separation had taken place, conversely, I interviewed only the member of the couple with whom I had established the first contact. I perceived in most cases that the absence of the partner enabled a broader exploration of the emblematic episodes and emotions implied in the interviewee’s life trajectories, rather than a focus on “facts”. The one-to-one sessions appeared to promote more relaxed interactions, with no interruptions from the partner, which in the couple interviews were very common and often fragmented the narratives. The individual interviews were also particularly precious as spaces of reflection on the gendered implications of the mechanisms of dependency inherent in the marriage regulations (Therborn 2004), which turned out to be a powerful analytical lens with which to analyse the whole set of data.

Developing the interviews for the previously quoted project on gender and illegality in migratory trajectories (Grassi 2012) was a convenient preparation for the PhD research work. This experience allowed me a greater familiarity with the constraints and opportunities of
fieldwork, and constituted a very useful training in interview techniques. It also provided me some experience in approaching and working with individuals who were institutionally framed as “undocumented”. For instance, it made me aware that some individuals might be concerned about expressing their views and sharing with me aspects of their lives that were classified as “illegal” under current legislation. In this respect, the fact of having previously participated in some situations, such as queuing at the offices of the border and immigration police, and having become familiar with several individuals in similar precarious residency situations, helped me to become acquainted with the issues and challenges involved.

Regarding the effects of the investigation on the participants, several interviewees expressed gratitude for having taken part in the interview, adducing a range of reasons. In some cases I was told that the interview opened a space for reflection on moments of their past for the first time. Some were relieved about having had the opportunity to unburden themselves of stressful memories that they had never had the chance to share with someone. A few interviewees affirmed that, by reconstructing their trajectory and all of their achievements, they had realized how many resources they had, and felt empowered by this newly-acquired awareness. Others, referring to the work of public diffusion of data, which they expected, a dissertation would imply, claimed they believed in the political potential of publicly exposing the ways in which bureaucracy actually worked, and the infringements of what they considered their rights. This was the case for André, who affirmed he agreed to be interviewed because it is “important to analyse the administrative practices on marriage of convenience, to expose the biases in the treatment of couples involving foreigners, as they introduce a double standard, between what is required from Portuguese couples and from others”37. In another case, conversely, an interviewee was more sceptical regarding the usefulness of academic work as a social transformation tool. When we finished the interview, and I was commenting on why I thought it was important to collect these stories, he commented with a hopeless smile: “but this is useless, it will change nothing!” 38

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37 André, Interview 13: “[é] importante decompor as práticas administrativas sobre o casamento de conveniencia, para expor os enviesamentos no tratamento de casais com um estrangeiro, que introduzem um duplo padrão, entre o que é exigido aos casais portugueses e aos outros”

38 Kabeer, Interview 16: “isto não serve pra nada, não vai mudar nada”
CONCLUDING REFLECTIONS ON METHODOLOGY

The specific articulation between the epistemological framework, the theoretical underpinnings and the stimulations derived from the fieldwork influenced both the framing of the object of study and the approach to its investigation, leading to consistent evolutions since the initiation of the research project. This chapter has described the reasoning and implications underlying my approach to the object of study. I have discussed the inevitable ethical and practical dilemmas involved in researching undocumented migration issues, acknowledging the challenges encountered in terms of specific ethical issues linked to the investigation of intimacy and “illegality”. Yet, I have argued that these can be reduced by adopting a case-specific ethical framework, and a research approach conscious of the researcher’s position in society at large, through the consistent recognition and disclosure of the epistemological and political dimensions of research choices.

The first part of the chapter exposed the context in which the thesis was developed, my social position as a researcher, and my relation to the research participants. Subsequently, I called for a balanced acknowledgement of structure and agency in the analysis of the power relations inherent in marriage and migration discourses and practices. I also proposed a reflexive and situated perspective as a form of overcoming positivist notions of scientific “truth”. The themes aroused have included the questioning of universalist and essentialist assumptions on “migrants”, which underpin their categorization in the context of securitarian paradigms of migration management. It has been argued that treating currently used categories as unquestionable, as well as the lack of acknowledgement of the power relations that these categories imply, risks reinforcing the social hierarchies based on residency status by naturalizing them. The methodology of this research is based on the assumption that reducing the above-mentioned hazards requires a continuous practice of reflexivity and adaptation. In this sense, the approach to the epistemological, ethical, and practical challenges described represents the exploration of possible paths, and should not be seen as a closed process.

The second part of the chapter described the methods that I judged appropriate to investigate the object of study. I traced how the choice of developing my analysis based on empirical data originated in my desire to complement the studies available on the sociology of the family and
Migration in the Portuguese context. The case study was designed to expose the underpinnings of restrictive policies on marriage and migration, the practical application of such paradigms in the context of the Portuguese migration regime, and the ways in which subjects living in transnational conjugalities interact with such mechanisms. Due to the complexity of the object of study, I decided to use different disciplinary perspectives and different levels of analysis. These combine insider perspectives of individuals and couples involved in transnational conjugalities, with the perspectives of Portuguese state institutions and their representatives. The qualitative approach has been considered a way to gain insight into the complexity of such social processes, capturing the repercussions of mechanisms of mobility and conjugality control.

The preparation of the fieldwork required a thorough reflection on how to delimitate the group of interviewees, and on how to manage the collection of interviews. Specifically, the decision to select interviewees based on their conjugal and residency status, avoiding the prioritization of national origin criteria, has been presented as a response to a set of challenges. Firstly, it was seen to question the naturalization of the distinction between migrants and citizens. Secondly, it served the purpose of making intersectional factors of social stratification visible by including different geographic origins in the picture. Thirdly, this choice was designed to avoid essentialist interpretations of the data produced, by disconnecting the study of practices associated with illegality from specific cultural backgrounds or national origins. Being an analysis of an on-going process, both in terms of legislative change in the Portuguese context, and of the evolution of what is considered (il)legal, this research has been envisaged as an exploratory study. By producing contributions rooted in the fieldwork, its aim is to suggest paths of analysis that can be developed in future research.
Narratives and counter-narratives on “marriage of convenience”
CHAPTER II

EXPLORING THE CHANGING NOTIONS OF MARRIAGE, MIGRATION AND ILLEGALITY

It is not only that people move across borders, but sometimes borders move across people.

Franck Düvell 2006
Narratives and counter-narratives on “marriage of convenience”
In an attempt to overcome conceptual rigidities and grasp the dynamic functioning of the regulation of citizenship as a mode of interaction with state institutions, this chapter will interrogate the concepts on which the migration regime is based, by exploring their margins. This thesis inquires the role of marriage and migration regulations in determining particular forms of social order. Engaging with the notion of “marriage of convenience”, introduced into Portuguese legislation in 2007, allows to inquire the interaction between institutional control and subjects’ practices as a reflection of broader bordering processes. The decision to undertake fieldwork in this area was sparked by an initial curiosity on how “convenience” was defined in the context of migration policies. Namely, the choice of the object of study stemmed from a will to inquire how institutions drew a line separating “genuine” marriages from the rest, and which were conceptual underpinnings of such policies.

Pierre Bourdieu, in his essay on reflexive sociology, draws our attention towards the “social work of construction of the pre-constructed object”. Namely, Bourdieu defines the object of research as “a constructed category in itself”, and argues this process of construction should be unpacked, as the point where “genuine rupture is situated” (Bourdieu 1992: 229). I adapted this line of thinking by considering the state-led problematization of migration as analytically rich in itself. This enables me to argue how the concept of “illegal migrant” or “marriage of convenience” should not be uncritically adopted as social categories, but must be taken as objects of inquiry themselves; they are institutionally designed labels. The angle given to my thematic literature review reflects the assumption that the aforementioned categories are an expression of state definitions, rather than social groups in themselves (Karakayali and Rigo 2010).

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39 As Bourdieu suggests, “to avoid becoming the object of the problems that you take as your object, you must retrace the history of the emergence of these problems, of their progressive constitution” and we should thus avoid taking for granted the problems, by recognizing that social reality is based on the collective work of construction (Bourdieu 1992:238-9, emphasis in original).

40 The observations of Howard Becker regarding deviance have provided hints regarding the construction of such problematization on behalf of the state authorities and on possible methodologies to study this process. In his book ‘Outsiders. Studies in the sociology of deviance’ (1963), he notes how deviant behaviour is created by society, and no single criterion may be used to decide definitively what forms of conduct are deviant and what are not: “Social groups create deviance by making the rules whose infraction creates deviance, and by applying those rules to particular people and labelling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of its application by others” (Becker 1963:8-9). As Becker exemplifies in his study, we can grasp the construction of deviance by studying the setting in which one group confers the label to another, or attempts to do so. The adoption of such a perspective led me to frame my research at the point of interaction between the “deviant” agents and the institutions in charge of defining who is deviant and who is not.
The institutional framing constitutes the point of departure for the debates discussed in this section. The operative categorizations of migrant, (il)legal and marriage are derived from the Portuguese legislation, namely the 2007 “foreigner’s law” and the Civil Code. Namely, these legislative texts categorize foreigners as citizens that do not hold Portuguese nationality, “illegality” as any act attempting to circumvent the law, and marriage as a “contract established between two persons that intend to constitute a family through a full communion of life”\(^{41}\). The three definitions are based on allegedly self-explanatory notions (e.g. about what is a family), which I deem necessary exploring. Building on previous contributions in this sense (Kofman and Kraler 2006, Rodriguez García 2006, Schmidt 2011, Grassi 2006, Grillo 2011), I use this opportunity to uncover the incongruity of narrow institutional definitions, linking it to my observations on the complexity of social dynamics involved in transnational marital choices.

The present chapter considers historical, geographical and other contextual specificities of the conceptualizations of conjugality, migration and (il)legality, in order to interrogate the assumptions on which state classifications are based. This contextualization, rather than aiming at an exhaustive and definitive positioning of the concepts, is grounded in the questions that arose during the case study and aims at providing a more nuanced understanding of whether, and how, these concepts may be operative in explaining the specific social interactions encountered. I aim to interrogate theories with a pragmatic intention, and focus on peeling away the various constructions around these key concepts. The debates will thus be frequently linked to context-specific issues encountered in the case study or in the observation of broader European Union policies, to bridge the theories presented with empirical references.

The empirical research allowed to observe the production of institutional categories and how it moulds the interactions of transnational couples with the institutional system. I will introduce this conceptual chapter by briefly tracing the ways in which the perplexities shared by interviewees regarding the institutional classification of their conjugality and residency status stimulated my specific theoretical approach. First and foremost, the aforementioned conceptual investigation reveals the shortcomings of normative binary notions opposing notions such as “genuine”-“fake” conjugality, migrant-citizen, and legal-illegal. Such

\(^{41}\) Art. 1577º of the Portuguese civil code: “marriage is a contract celebrated between two persons who intend to constitute a family through a full communion of life” (my translation from the original: “Casamento é o contrato celebrado entre duas pessoas que pretendem constituir família mediante uma plena comunhão de vida”).
dichotomies, pervasive in mainstream literature and reiterated in public policies⁴², will be problematized, both as legal categories and as socio-political conditions.

The literature review presented in the following sections is used to reveal the fluidity of the definitions of marriage and conjugality, and call into question the rigid definitions of “eligible” relationships in the context of the institutional recognition of residency rights. I will retrace how such definitions are based on allegedly universal and self-evident equations linking “romantic love” and “marriage”. Grounding the theoretical exploration in evidence collected during fieldwork also enables me to explore how rigid categories related to citizenship and nationality serve as exclusionary tools. Although Portuguese legislation equates “foreigners” to migrants, as if unquestionably demarcated by formal criteria, my interviews provide interesting spaces of debate, which question such labels. The conceptual analysis also exposes how non-linear and heterogeneous mobility trajectories cannot be properly understood through the binary categories of legality and illegality.

The analysis is based on critical scholarly contributions stemming from a range of academic disciplines, including legal and sociological theory, social anthropology and gender studies. Drawing on a broad spectrum of theoretical perspectives has been critical to my work as it enables greater flexibility in analysing the complex social interactions characterizing the field of study of conjugality and mobility. Bringing together different areas of study in my analytical articulation assists me in deconstructing univocal and universal understandings, exposing their contingency and fluidity, and recognizing the overlaps and intersections involved in their application. I also acknowledge that many of the theoretical contributions I employ stem from research conducted in other (non-Portuguese) geographical spaces - while it is possible to argue that this might reduce my appreciation of some local specificities, I feel my approach provides an interesting comparative basis for reflecting on my case study.

Lastly, notwithstanding an interest in acknowledging non-“Western” views, it should be noted that the majority of references cited derive from scholars originally from or located in research settings in Europe and the United States, and thus reflect a particular and partial perspective on the themes of human mobility and family. However, I consciously attempt to introduce perspectives deriving from literature of different linguistic areas, which often lack interchange. The conceptual outcomes of this thesis may be seen as exploratory opportunities

⁴² For a study of the historical construction of the “Marriage of convenience” concept in Europe see Betty De Hart’s 2006 article in the European Journal of Migration and Law.
that open up space for future re-elaborations, rather than proposing closed answers to the research questions.

Due to the complexity of the empirical material in terms of diversity of social profiles and migratory trajectories represented in the group of interviewees, I found useful to engage with a broad spectre of theoretical perspectives, and combine different contributions, which allowed to maintain a certain flexibility in the approach to the fieldwork. The following paragraphs will present the rationale behind the selection of the transnational and intersectional analytical frameworks as the main tools orienting my research and case study. Subsequently, I will outline the use of terminology and conceptually frame the case study within wider academic debates, as well as introducing the main elements on which the arguments of the dissertation will be grounded. Each section will briefly explain the shortcomings of what may be considered “conventional” conceptions -in which I define those perspectives that have been used as a basis for policies- and select a current of thought or an alternative definition which I see as better serving the purposes of the current analysis.

A STANCE FOR A TRANSNATIONAL APPROACH

A growing body of literature exposes the challenges that transnational processes pose to geographically delimited research frames (Glick Schiller 2008, Bryceson and Vuorela 2002, Vertovec 2004, Baubock and Faist 2010, Smith and Guarnizo 1998). The fluid and complex articulations between mobility and conjugality that I observed in the field call for analytical tools which enable a subtle comprehension of overlapping levels of interaction, as well as changing configurations of time and space. The insights provided by a transnational lens proved to be powerful tools to deconstruct rigidly demarcated categories in the studied context. A transnational perspective permits me to recognize the social significance of state borders while at the same time critically interrogating allegedly “objective” categories related to territoriality, such as “citizen” and “migrant”. As suggested by Peggy Levitt and Nadya Jaworsky in their analysis of migration scholarship over the last two decades, “even as the
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political and cultural salience of nation-state boundaries remains strong”, social life takes place “across borders” (Levitt and Jaworsky 2007:129, emphasis added).

Additionally, as argued by the sociologist Ksenija Horvat in her paper dedicated to border theory, understanding migration in a transnational context can “greatly help us in decomposing the modern myth of the nations as trans- and a-historically stable political and cultural units and ‘natural’ patterns of organization of humanity” (Horvat 2013:106). Other authors, such as Nicholas de Genova and Nathalie Peutz critically assess the consequences of organizing sovereign power and framing individual rights by territory in their analysis of deportation systems as global mechanisms of control (De Genova and Peutz 2010).

As Nina Glick Schiller claims in her influential article “The transnational migration paradigm”, although “the concept of transnational migration was developed in the 1990s as part of an effort to move migration studies beyond the bounded nation-state bias that pervaded much of that decade’s approach to the migrant experience”, it had historical antecedents (Glick Schiller 2012:30). In her view, although historically “international migration never stopped, and borders moved, dominant social theories emphasized stasis and social cohesion” (Glick Schiller 2012:31). The proponents of such framework defend that territorially defined approaches to social sciences fail to acknowledge that transnational links never ceased to exist, as cross-border social relations have been observable since borders became enforced (Portes et al. 1999). As will be outlined in Chapter 3, this is particularly true in the context of Portuguese history, due to phenomena such as the colonization processes, long-distance and cross-border participation in political processes, and commercial ties. The transnational research approach proves particularly useful in analysing the articulation of migration, conjugality and illegality, and its consequences for social organization, within the country, and beyond it. Although the case study materials have been collected in one specific geographic context, the transnational approach enables an interpretation of this context beyond the nation.

Notwithstanding the increasing acknowledgement of transnational dynamics, academic production on migration is still mostly limited by territorially demarcated analytical scopes, which consistently limit the breadth of analysis by disregarding the social processes.

43 In this sense, Abdelmalek Sayad could be considered a predecessor of transnational views, with his insistence on displacing the perspective beyond national borders to understand migration as a total social fact (Sayad 1999b).
transcending the nation states or taking place across and within them. As elucidated by Ulrich Beck and Elisabeth Beck-Gernsheim in a paper dedicated to marriage and migration, when family research remains fixed to the container model of the nation-state, it becomes increasingly unable to understand and explain the situation of families in today’s interconnected world\textsuperscript{44}. This occurs, in their view, because it conceals the experiences and processes of a vast range of subjects, and also because “when universalism builds its concepts from the vantage point of the majority society and implicitly claims their universal validity, this kind of approach inevitably succumbs to misinterpretations and distortions” (Beck and Beck-Gernsheim 2010:401). To overcome these shortcomings, the two authors propose what they call “a ‘cosmopolitan turn’ in research on the family” (Beck and Beck-Gernsheim 2010:801). Within this thesis, I aim to approach the study of a specific social configuration without adhering \textit{a priori} to fixed definitions of what is a migrant or a family, and to trace the effects of transnational dynamics in their changing definitions.

\textbf{MOBILITY AND BORDERING AS ALTERNATIVE FRAMEWORKS}

As discussed in the previous section, the narrow binary conceptualization of “immigration”/“emigration” may be insufficient to account for the complex trajectories and interactions involved in transnational conjugalities and state control. I therefore choose to build on the framework of mobility and bordering, seeing these as more flexible tools to analyse my case study. The geographer Tim Creswell provides a very broad definition of mobility by stating that researching in this analytical framework allows us to gain a better understanding of the “universal but always particularly constructed fact of moving” (Creswell 2011:551). As Nina Glick Schiller puts it, “the term mobility has emerged to group together a wide range of people who move from one locality to another for varying time periods and reasons that include pleasure, business, trade, politics, economics, and family reunion” (Glick Schiller 2012:26). Studying mobility also implies adopting a paradigm that explores the movement of people and the broader social implications of those movements, seen as not

\footnote{\textsuperscript{44}“The longer that family research clings to the container model of the nation-state, the more it will be unable to understand and explain the situation of families in today’s interconnected world. This is true in a twofold sense. On the one hand, the relationships and lifestyles of a significant segment of the population are excluded from view and purview. On the other hand, when universalism builds its concepts from the vantage point of the majority society and implicitly claims their universal validity, this kind of approach inevitably succumbs to misinterpretations and distortions” (Beck and Beck-Gernsheim 2010:801).}
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necessarily linear and unidirectional. In this sense “the usual view at migration as involving border crossing between two sedentary (state) entities no longer is theoretically adequate” (Horvat 2013:106).

Mobility as an analytical frame allows a more far-reaching perspective on human movement, uncovering the systematic nature of migration, and its linkages to parallel phenomena, avoiding binary interpretations opposing stillness and movement. As Noel Salazar and Nina Glick Schiller see it, this permits us to overcome what they define as “methodological nationalism”, which “counterpoises concepts of internal and international movement and native and foreigner, and consequently normalises stasis” (Salazar and Glick Schiller 2014). The two authors argue the “regimes of mobility” framework “addresses the relationships between mobility and immobility, localisation and transnational connection, experiences and imaginaries of migration, and rootedness and cosmopolitan openness”, exposing what they define as social fields of differential power (Salazar and Glick Schiller 2014: 183). Additionally, as suggested above, the stereotypical representation of migratory flows, including its “novelty” and its depiction in terms of “emergency” may be put into perspective if we see mobility in terms of broader historical developments.

I also make use of the analytical approach defined as bordering to assess my fieldwork data. Inspired by critical/postmodern approaches, such a perspective considers borders as processes producing categories of difference in socio-political space; these categories are relational, rather than given and static. Bordering is thus to be seen as a unending process, a starting premise which allows for the discontinuities and ruptures such processes involve: as Vladimir Kolossov and colleagues note, “the growing inter-disciplinarity of borders studies has also moved the discussion away from an exclusive concern with geographical, physical and tangible borders to those which are cultural, social, economic, religious and, in many cases, invisible, but with major impacts on the way in which human society is bordered, ordered and compartmentalized” (Kolossov et al. 2012:3). Border making should therefore not be seen as an exclusive prerogative of the nation-state or state actors, since a range of actors may create, shift, and deconstruct borders. Additionally, “borders acquire double meaning as state boundaries and as symbolic social and cultural lines of inclusion and difference, material and imagined, physical and cultural” (Kolossov et al. 2012:7), therefore they are not only of spatial nature. As Horvat emphasizes, “borders themselves have become moving objects, either as extraterritorial administrative points of control (e.g. Frontex) or as tools of social segregation and exclusion within a given territory” (Horvat 2013:106). In this context,
bordering is seen as a multilevel process, that can take place not only at international policy level, through physical borders and visa regimes, but also wherever a specific border has impacts, is represented, negotiated or contested, such as in everyday forms of transnationalism (Kolossov et al. 2014).

The bordering approach can be used to understand the links between social and political transformation, conceptual change and subjective experiences enacted in different social fields such as in family and gender dynamics, or the variable understandings of borders (Anzaldúa 1999 [1987], Kolossov et al. 2012). Using bordering as an analytical tool helps to capture multiple processes of othering, intersecting this process with political and socioeconomic issues more commonly studied in the context of mainstream migration studies. As noted by Paulo Novak in a geopolitical case study, territories defined by boundaries are not homogeneous containers, but rather “situated and gendered”, and “the attempt of boundaries to ‘contain or mould the spatial properties of events’ cannot be taken for granted, in other words, but needs to be considered, in contextually specific ways, as a dynamic b/ordering process” (Novak 2011:743). Novak thus argues for the need for “dwelling at the intersection between this ambiguity, i.e., the ‘inescapable materiality’ of boundaries and the “fluidity of territories and identities created by them” (Novak 2011:743). Novak specifies how “the contact between boundaries’ state-centred linear (and legal) inscription of space and the “qualities” of territories and populations which fill and transgress such space, generates, in situated and contingent, but also very concrete ways, governmental practices of classification, definition, and regulation; symbolic and institutional discourses; enforcement attempts; acts of compliance, resistance or transgression (…) economic opportunities whose manifold effects reverberate across multiple scales of discourse and action” (Novak 2011:744).

Similarly, the conceptualization of “migration regime” may be useful in giving a nuanced and multilevel interpretation of contemporary mechanisms influencing mobility. As Giuseppe Sciortino puts it, the latter may be defined as an agglomeration of laws, “emergency” solutions, and practices that do “not necessarily form a coherent, nor planned, system” (Sciortino 2004:32). As Tsianos and colleagues specify, the concept of ‘migration regime’ makes it possible to include a multitude of actors whose practices relate to each other but are not ordered in the form of a central logic or rationality; rather, migration regimes imply a space where practices may be negotiated (Tsianos et al. 2009). The authors propose that we should “relinquish thinking of the border in terms of a solid line. Instead, we have to think of highly differentiated ‘border zones’; secondly, we suggest abandoning wall-like metaphors of
the border in favour of a border seen as a highly perforated system or regime” Tsianos et al 2009:2). The authors argue that control is not as hegemonic as it appears from some accounts, but rather is itself challenged by “fluid, clandestine, multidirectional, and context-dependent forms of mobility” (Tsianos et al 2009:2-3).

To situate this debate in contemporary terms, it may be useful to refer to the policies of securitization of European Union borders. Although EU member states do have a degree of autonomy in defining migration policies, there is a growing acknowledgement of convergence, or “Europeanization” (Block and Bonjour 2013). On the basis of border regime theory, the concept of Fortress Europe may, for example, be relativized, to expose the gap between institutional rhetoric on migration control, and the actual dynamics taking place. A nuanced perspective uncovers the porosity of borders, acknowledges the extent to which the exponential increase of border securitization does not correspond to a decrease in mobility flows; rather, these processes tend to intensify their dangerousness. In this sense, the militarization and externalization of borders, and the consequent radicalization of risks involved in migration, may be seen as a consequence of European governments’ policies, rather than an inevitable response to menacing flows of people.

The empirical material collected for this thesis, as well as previous research in Portugal confirms that, regardless of the restrictions, individuals find their ways to overcome administrative obstacles, resisting bordering attempts (Bacci Tamburlini 2013b and 2014, Grassi 2012). Additionally, the data collected enables us to take into account the fact that labelling migrants as “illegal” bears an economic convenience for many economic areas of the European Union45. Rather than circumscribing to a theoretical debate regarding freedom of movement based on moral grounds or state interests, these reflections suggest the need to centre the debate on the responsibility of the state to avoid breaching the human rights of subjects who are crossing its borders and residing in its territory. As Nicholas De Genova (2010) mentions while speaking about protests in USA, undocumented migrants claimed their rights of residency through cries of “acá estamos y no nos vamos!”- “We are here and we won’t leave!” -symbolically reclaiming the inevitability of their presence. Borrowing Mae Ngai’s expression, their slogan underlines the paradox of restrictive policies, since their inclusion in the nation was “a social reality” but a “legal impossibility” (Ngai 2004).

45 In this sense, we may argue that undocumented migrants constitute a workforce with a “comparative advantage” from a capitalist perspective, because they receive lower wages, frequently have no contractual protections and cannot claim pensions or social benefits, pay for health services or pay taxes.
INTERSECTIONALITY AS A TOOL TO EXPLORE COMPLEX SOCIAL HIERARCHIES

The literature review and my fieldwork demonstrate the need for analytical frameworks that allow for the tracking of marriage and migration’s constitutive interconnections with gender, national origin, and class. Each of these later articulations is reciprocally reinforcing factors in the field of transnational conjugalities. As observed by Sarah Van Walsum and Thomas Spijkerboer, these analytical articulations are of particular importance when analysing the ways in which immigration law produces its repercussions in the European context. In their perspective, for instance, women engaging with mobility control have to face simultaneous exclusion mechanisms linked to gender, sexual orientation, ethnicity, immigration status and class (Van Walsum and Spijkerboer 2007:2).

As the sociologist Nira Yuval Davis puts it, intersectionality theory is interested in “how the differential situatedness of different social agents constructs the ways they affect and are affected by different social, economic and political projects” (Yuval Davis 2011:4). Intersectionality constitutes a powerful tool to analyse social stratification, as it goes beyond a simple addition of categories of social difference, tracing the mechanisms, which make them mutually constitutive. In this approach there is no fixed hierarchy, so no analytical lens is predetermined as the central governing category through which subjects can be appraised. Rather, the approach of intersectionality considers the simultaneous and interconnected effects of all of the factors (Crenshaw 1989). Civic stratification literature (Morris 2003, Kofman and Kraler 2006, Kraler et al. 2011) has complemented this framework, and proved useful both as an analytical support, and as an object of study. The notion of stratification, more often used in migration-related analysis, refers to a demarcation of difference through unequally distributed rights, which in my study refers, for instance, to differential rights to family reunification.

This approach may be combined with the contribution of authors studying transnational power relations as shapers of mobility. Doreen Massey, for instance, employs the notion of power geometry to highlight “how different social groups and different individuals are placed in very distinct ways in relation to migration flows and interconnections” (Massey 1994:149). I found it useful to approach spatial mobility according to this concept, looking at power relationships developed in different social groups with regards to mobility, determining who may move and who may not (Massey 1999). Such angle permits to “re-imagine place in a way [that is] i) not bounded ii) not defined in terms of exclusivity iii) not defined in terms of an
inside and an outside, and iv) not dependent on false notions of an internally-generated authenticity” (Massey, 1999: 40).

As Vladimir Kolossov summarizes in a study produced for the European Union-funded Borderscapes project, “power geometry is not only about who moves and who does not but also about who is in a position of control in relation to movement. Who is allowed to be where? Who is part of the community or not?” (Kolossov 2012:8). Sarah Mahler and Patricia Pessar’s contributions enrich this perspective by identifying what they call “gendered geographies of power” in an influential paper entitled “Transnational Migration: bringing gender in”. Their approach describes how “gender operates simultaneously on multiple spatial and social scales (e.g. the body, the family, the state) across transnational terrains. It is both within the context of particular scales as well as between and among them that gender ideologies and relations are reaffirmed, reconfigured or both” (Mahler and Pessar 2003:815, emphasis in the original). Geographies of power entail the construction of gender ideologies simultaneously in multiple transnational spaces, including the various modes in which subjects express their agency. Mahler and Pessar claim that the cultural and socio-political dimensions of power constrain and enable women to maintain, create, and sustain various kinds of transnational familial ties that are shaped by the intersections of class, ethnicity, and the socio-political particularities of their transnational spaces. Adopting this multilevel approach allows us to look at the relational and fluid definition of illegality and morality, as it is situated in geographically and historically defined contexts. For instance, I will consider the interaction between the supposed role of migration in “restructuring” gender relations (Phizacklea 1998) and the extent to which this transformation is influenced and/or hindered by legal status. This dissertation will adopt the perspective of seeing gender, just as ethnicity and class, as a construction according to which hierarchies of inequality and parameters of difference are constructed (Brettell 2012:8). Gender is seen as a relational analytical tool, through which we can observe different social roles and power relationships in their dynamic construction. In line with the proposals of authors such as Eleonore Kofman and Albert Kraler.

It is important to specify that the use of the term ethnicity will be used to expose the construction of otherness, rather than as an objective category, in line with the authors suggesting it may become a politically correct substitute for “race”. As indicated by the anthropologist Annamaria Rivera in her reflections on racism, when a group is perceived as “ethnic” the internal differences are diluted, and this is the basis for generalizing and essentializing processes. As she critically observes, everything that concerns others becomes ethnic”, whereas “we are crossed by class, power, gender and generation lines; the others only experience ethnic divides: ancestral, impenetrable by history, made of roots, traditions, and blood. Ethnic is their very own human substance” (Rivera 2009:63, emphasis by the author).
Narratives and counter-narratives on “marriage of convenience”

(2006), gender will be used throughout the study as an overarching analytical lens, in order to account for the different ways in which gendered social roles are relevant in the context of marriage and migration control.

Inspired by post-colonial, decolonial and feminist scholarly contributions, my analytical perspective built on the work of authors observing “othering” processes inherent in social stratification (Grosfoguel 2012, Sayad 1999, Gregorio Gil 2009). According to Homi Bhabha, othering may operate through “essentialist claims for the inherent authenticity or purity of cultures which, when inscribed in the naturalistic sign of symbolic consciousness, frequently become political arguments for the hierarchy and ascendency of powerful cultures” (Bhabha 1994:58). Borders serve the purpose of reifying power by erasing “territorial ambiguity and ambivalent identities to shape a unique and cohesive order” as observe the geographers Henk Van Houtum and Ton Van Naerssen. In their view, such “(b)ordering rejects as well as erects othering”, with processes which “create new or reproduce latently existing differences in space and identity” (Van Houtum and Van Naerssen 2002:126). The two authors thus describe contemporary bordering and ordering practices as going beyond the spatial sphere, involving the discursive differentiation between “us” and “them”, and the institutionalisation of such distinctions, based on the production of migrant “otherness”.

Interestingly, the lens of “othering” to analyse subordination mechanisms constitutes a natural analytical bridge between different disciplinary and theoretical traditions. This notion was shared by scholars from a range of backgrounds, from postcolonial reference authors, such as Franz Fanon or Edward Said, to feminist scholars from Simone de Beauvoir to Nira Yuval Davis, to migration specialists such as Abdelmalek Sayad or Saskia Sassen. My analytical framework aims to draw on the possible synergies between these traditions of thought, which in my perspective may be seen as mutually enriching. As an example, a parallel may be suggested between the reflections of two scholars who worked at different times in France. In the first phase of my research I made use of the observations made by Simone de Beauvoir on the condition of woman constructed as the “inessential other”, whose being, legitimated by

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47 For instance, Gloria Anzaldúa theorizes that othering is the process of establishing a person as unacceptable based on a certain criterion that fails to be met. For Anzaldúa, poet and writer of Mexican-USA descent, author of Borderlands/La Frontera. The new mestiza (1999 [1987]), braiding words in English and Spanish constitutes a way to transpose in language what she theoretically expresses as the “borderland” embodied by individuals who live in “borderlands” and constitute themselves “a crossroads”.

48 The authors add “Borders do not represent a fixed point in space or time, rather they symbolise a social practice of spatial differentiation” (Van Houtum and Van Naerssen 2002:126).
her reproductive role, depends on the recognition conceded to her by man (De Beauvoir 1949). I find that her analysis may be used to analyze the “productive” role of migrants, and to the processes through which they are made to depend on the legitimation of the state. This links with Abdelmalek Sayad’s reflections on the heteronomy of migrants, always defined and classified from the outside, and therefore subordinated. As Sayad himself observed, there is an evident parallel between “immigrants” and “any other dominated group” (2004 [1999]: 256), based on the forms through which inferiorization is built and internalized. The unpacking of the aforementioned othering and subordination processes constitutes the backbone of my analysis, and enables to establish interdisciplinary connections, which enriched the analysis. In my opinion, this approach captures the articulation of conjugality and mobility regulations as power relations, as will be discussed in the analysis of the case study.

SECTION 1- CONJUGALITY IN DEBATE

A growing problematization of marriage practices in the context of mobility has been observed in most European Union countries in the past decade. This led to the development of policies targeting what has been constructed as the “marriage of convenience”/sham marriage, a term which seeks to define marriages enacted exclusively with the aim of securing a permanent residency title (De Hart 2006, Grassi 2006, Wray 2006, D’Aoust 2013, Eggebø 2012, Block 2012). In the framework of these recently-introduced policies, I conducted fieldwork in Portugal in order to understand the specific conditionalities transnational couples are facing when they seek to formalize their marriage and subsequently obtain residency rights.

Before introducing the theoretical debate regarding conjugality in relation to state policies, it is important to underline that what characterizes the interviewees is the fact that the partners initially had different residency rights, and were therefore subject to different relationships vis-à-vis the state. In this sense, these conjugalities coincide with the definition of “inter-status marriages”, according to Laura Block’s definition:

“[Inter-status marriages] are characterized by the difference in initial residency statuses and/or citizenship of the two spouses respectively in one given political entity before the marriage. The marriage oftentimes enables the spouse with the more
precarious residency status (i.e. a temporary one or none at all) or foreign citizenship to improve his/her situation in the political entity in question by means of the marriage due to family reunification policies” (Block 2009:9). 

Although making use of Block’s definition, I maintain the expression “transnational conjugality” in part to connect with the conceptual framework of transnationalism. Moreover, this allows me to encompass each couple’s broader conjugal trajectory, before and after marriage. The term “transnational conjugality” also maintains a connotation of transition, to reflect the fluidity observed in the fieldwork, in terms of legal and conjugal status of the participating couples. Transnational conjugalities as I define them encompass a range of motivations and trajectories, and reflect a process through which we may appraise the repercussions of legal and social borders within states rather than merely at physical borders. The relatively open definition of “transnational couples” allowed me to gather a sufficiently diverse group of research participants, with different trajectories but with comparable bureaucratic experiences.

However, it is crucial to specify that along the chapters the adjective transnational will be “stretched” beyond its most common usages. The conceptualization I propose goes beyond a delimitation of transnationalism as referring only to “occupations and activities that require regular and sustained social contacts over time and across national borders for their implementation” (Portes et al. 1999:219), because this is not necessarily the case of all the research participants in the Portuguese case study. The adjective transnational is thus used to define a social space intersecting and bringing together relations beyond the nation-state, defining a type of conjugality, which is inevitably marked by distinct legal regimes.

Given the specific conceptualization I am using, it is crucial to note that the category of transnational conjugality used in this dissertation does not coincide with the generic notion of “marriage migration”, intended as migration caused by conjugal ties, since in some cases the decision of one of the spouses to enter into Portugal did not coincide with the timing of the couple’s marriage or civil partnership. Although migration regulations potentially treat all applicants as if migration were the reason for their marriage, often the decision to live in Portugal was independent from the conjugal relation, or was a mere consequence. Avoiding the simplistic equation and unilateral causality relation suggested by the expression “marriage

49 Other authors use the terms “cross-border” (Friedman 2012, Williams 2010), or “mixed citizenship marriages” (Lopez 2015), with similar definitions.
migration” may contribute to denaturalizing the implicit reference to migration motivations as constituting the basis of marriage.

It is also important to distinguish the characteristics of the interviewees from the concepts of “mixed couples” (Ferreira and Ramos 2011, Roca Girona 2011), or “bi-national marriages” (Riaño 2011), which are commonly used in migration studies, demography and sociology. In fact, the partners I have been talking to had different legal statuses at the time of their marriage, but were not necessarily from different countries of origin or nationality. Additionally, I wished to distinguish the concept of transnational conjugality from the notion of mixed-marriage, finding that when not accompanied by a reflexive effort on the use of the “mixed” category, this type of focus potentially introduces problematic equations between culture and nationality. In particular I aim to avoid the focus on the alleged cultural or social differences between spouses of different national origin based on questionable assumptions about “mixed marriage” either as an obstacle or as a support for “integration” 50.

Throughout this thesis I will also use institutional categorizations of conjugality, with the purpose of unpacking them and comparing them to observed social practices. I thus selected a priori an apparently homogeneous group of couples that had their marital status institutionally recognized, regardless of their actual relationship at the moment of the interview. In this sense, the meaning of marriage and civil partnership (União de facto) 51 adopted in this text refers merely to state-sanctioned acts recognized as such in migration legislation 52. This enables me to look into the legally sanctioned definition of conjugality, capturing the institutional interpretations. Although using the legal definition of marriage served an analytical purpose, the thesis then moves towards a reconsideration of the category. On the one hand, it does so by tracing the interpretation and definitions of research participants. On the other, it pushes the analysis beyond the juridically defined aspects, to encompass the underlying social processes and relationships, as suggested by Anália Torres (Torres 2002).

Terminological clarifications are crucial in that they are interlinked with administrative classifications of human relationships, and deeply interfere in the allocation of rights, as well

50 The notion of integration will be discussed in the description of Portuguese migration policies in chapter three.
51 As stated above, in this dissertation the categorization of conjugality will be based on national legislation, referring to family, marriage, civil partnership. The purpose of this is to emphasize the extent to which these rigid categories are not able to deal with difference.
52 It should be noted that this notion of marriage is reinforced in academic understandings of marriage in the field of migration (Fonseca 2005:35), which do not question its validity.
as on processes of “othering”\textsuperscript{53}. The observation of state interventions on family life led me to investigate the normative notions of “love” and “marriage”, putting them in dialogue with my empirical material. The combination of critical literature with more “mainstream” readings made the social, political, or material inequality of some social groups evident, based on power differentials and subordination mechanisms. My analysis draws in particular on different currents of thought to critically inquire into the institutional determinations of what constitutes a “legitimate family” as a means for inclusion or exclusion from citizenship rights, and how restrictive marriage regulation intervenes in the process. The following subdivisions will provide an overview on changing definitions of family and conjugality, and will serve as a comparative backdrop for the discussion of transnational conjugalities in relation to mobility. Rather than providing an exhaustive review, this review will weave together contributions from various disciplines, which have shaped my approach to the empirical data.

\textbf{Family and Conjugality: Changing Conformations in “Western” Societies}

According to the latest edition of the Stanford Encyclopaedia of Philosophy, ‘Marriage or domestic partnership’ may be defined as institutions “regulating sex, reproduction, and family life”, and refer to “a legal contract and civil status, a religious rite, and a social practice, all of which vary by legal jurisdiction, religious doctrine, and culture”\textsuperscript{54}. This perspective focuses on specific conjugality forms as a relation between state and subjects, and positions marital practices as historically and spatially variable (Brake 2012:1). However, to trace the standard family imaginary on which institutions in Portugal and elsewhere appear to be regulating what is considered as family in a mobility context, it is useful to consider more idealized (and hegemonic) notions of marriage and family. For instance, a narrower, and allegedly universal, conceptualization of the family is described in George Murdock’s 1949 definition. According

\textsuperscript{53} The exploratory work in Portugal convinced me that using unquestioningly the expression “marriage of convenience” in a research study would reinforce the naturalization of this category, and its definition based on the idea of “fraudulent conjugal motivations”. This process of deconstruction also implied careful decisions regarding the perspective from which to observe the empirical data, making sure I maintained a focus on the processes, rather than on “fixed categories”.

\textsuperscript{54} According to the online edition of the Merriam Webster dictionary, consulted in February 2015, conjugality is a union representing a special kind of social and legal partnership between two people, suggesting a variety of relationships could be included. However, a Portuguese language dictionary such as Houaiss gives a more restricted definition and refers both to the “union of man and woman” and to marriage as a basis for the creation of the family (Houaiss, 2002).
to Murdock the family is “a social group characterized by common residency, economic cooperation, and reproduction. It includes adults of both sexes, at least two of whom maintain a socially approved sexual relationship, and one or more children, own or adopted, of the sexually cohabiting adults” (Murdock 1949, cited in Tierney 1999:453). Murdock additionally states that “the nuclear family is a universal social grouping. Either as the sole prevailing form of the family or as the basic unit from which more complex forms are compounded, it exists as a unique and strongly functional group in every known society” (Murdock 1949:2).

Except for the criteria of heterosexuality (which was partly overcome by a 2010 law recognizing same-sex marriages), the criteria evoked in public discourse and in migration regulation appear to resonate with this narrow definition. An exemplary declaration reflecting this idealized notion of family is the foreword to a report on family reunification by Roberto Carneiro, director of the Portuguese Migration Observatory from 2002 to 2014: “the natural habitat of life and human development is the family. It is the first of all communities, where we become humans and cultivate humanity (…). [Family is] a public good, of superior nature, whose protection is a priority obligation of society and the state” (cited in Fonseca et al. 2005:11, my translation).

Universalistic and idealized definitions of the family have been increasingly challenged by researchers in many areas, who recognize the widely different experiences of family life that are obscured by this normative family model (cohabiting, nuclear, with children). These include anthropologists such as Melford Spiro, observing on the basis of an ethnography of Israeli Kibbutz communities how the same functions described by Murdock are performed outside of the family framework (Spiro 1954). As the Portuguese family sociologists Karin Wall and Sofia Aboim acknowledge, it is since the second half of the twentieth century that studies reflecting the plurality of forms of conjugal organization gained ground in the field, exposing the need for micro-sociological studies to grasp this diversity (Aboim and Wall 2002, Aboim 2004). A growing number of scholars also emphasize how “the common ‘human nature’ does not seem to guarantee any universal manner of making family, neither on the biological, nor on the normative level, and even less on the plan of values or of meaning” (Saraceno 2012:13, my translation). In the same line of thought, in her book The way we never were-American Family and the Nostalgia Trap, Stephanie Coontz suggests that family has always been defined first and foremost by its economic needs (Coontz 1992). She argues that the modern imaginary of the “breadwinner-homemaker model” has little historical basis,
surging in North America only in the 1950s and building the myth of the nuclear family as the correct family structuration.

Feminist, postcolonial and critical sociology theorists have also debated “the family” as a unit of analysis altogether, focusing instead on the underlying structures of race and class, gender, generation, sexuality, and challenging the ideology of “the monolithic family,” which considered the nuclear family with a breadwinner husband and a full-time wife and mother as the only legitimate form. However, this normative model has a specific continuity in the state perception of migration dynamics, as “family related migration has so far been largely seen as a feminised form of migration (…) This perception of family related migration unwittingly reinforces the male-as-breadwinner model and at the same time, constructs family members as social and economical dependants of the sponsor, firmly placing family migration in the reproductive sphere and sharply separating it from the economic” (Kraler 2010:10-11). In this sense, by reading some elements of families as “naturally” dependant, public policies produce specific results.

Drawing on Pierre Bourdieu’s analysis, family might be considered as “a well-founded fiction, but a fiction with real effects”, and “a powerful, performative discourse, which has the means of creating the conditions of its own verification and therefore its own reinforcement” (Bourdieu, 1996: 20-25). Similarly, post-modern contributions have been useful in family studies, in that they challenge the supposedly universalistic claims of social theory typologies (cf. Stacey 1996), stressing instead locality, temporality, multiplicity, difference and particularity of contemporary social processes. This research is thus based on a perspective, which considers the study of transnational conjugal forms as a consequence of observations made during fieldwork, rather than on the basis of conceptualizations based on set standards and theories.

There is an on-going debate amongst social sciences scholars studying the historical trends affecting conjugal arrangements as to whether, and in what direction, western societies underwent a shift with regards to the role of family. Authors such as Anthony Giddens underline the declining status of marriage as a social institution (Giddens 1992), while others, while recognizing its growing malleability and re-elaboration, emphasise that conjugality persists as a “primordial relation” on which the organization of family and social relations are based, whether or not formalized in marriage (Aboim 2004:1).
Stephanie Coontz adds to the debate by arguing that the decline of the centrality of marriage and childrearing resulted in a variety of family structures. As summarized in a literature review on family policy, Coontz argues that these core family relationships now define less of a person’s social identity, exert less influence on people’s life-course decisions, and are less universal, exclusive and predictable than ever before (Coontz 1992). An increasing amount of scholars observe that most of the conventionally legitimized “prerequisites” for legal recognition of conjugal links, such as cohabitation and child-rearing, increasingly take place outside marriage. Although speaking about the United States, William Axinn and Arland Thornton for instance observe how “the expectation that sex, heterosexual cohabitation, childbearing, childrearing, and a gender division of labor are defining elements of marriage has changed” (2004:150). Other more recent studies indicate the same trend in Portugal, although with different intensity (Wall and Gouveia 2014, Wall and Amâncio 2007).

Other scholars, such as Chiara Saraceno, affirm “there is nothing less natural than family”, calling on sociology to aid in its deconstruction as an institution of “natural” conformation and exposing the variety of its forms and meanings in time and space. Saraceno highlights the weakening of marriage as the exclusive foundation of couple relationships and procreative choices, as well as the “multiplication of ways in which procreation and parenting may occur”, as amongst the main changes within families in the European context in recent decades (Saraceno 2012:13, my translation).

At the same time, as underlined by the sociologist Anália Torres, “notwithstanding sociological interpretations individuating common trends in the evolution of family and conjugality along the 20th and 21st centuries, we should not assume that this process translates into a homogeneous logic regarding the expectations and modes of experiencing conjugality” (Torres 2002:569, my translation). Torres warns, for instance, that although “based on the observation of a significant part of so-called developed societies, it could be said that feelings became determinants for conjugality”, we should not generalize this observation since “this does not mean in any way the elimination of the diversity of logics inherent in family and marriage” (Torres 2002:569, my translation). A growing number of studies provide evidence regarding the changes in subjective interpretations of conjugality and focus on the processes mainstreaming the notion of “love” as a fundamental aspect of conjugality. The social construction of the romantic “love feeling” associated with conjugality is seen by sociologists of the family such as Sofia Aboim as a marker of the modernization process of Western
societies (Aboim 2006:801, and 2003). As Ulrich Beck and Elizabeth Beck-Gernsheim argue in their book *The normal chaos of love*, “marrying for love has existed only since the beginning of the industrial revolution and was its invention” (Beck and Beck-Gernsheim 1995:172).

The sociologist Jean Claude Kaufmann also underscored how more rational and material components are crucial in the choice of a partner in view of marriage, although these are underestimated because they are incompatible with the “dominant view establishing that couples are formed based on love” (Kaufmann 1993:8, my translation). Ulrich Beck in a 2001 interview quotes Kaufmann, saying that a couple is not defined by two people having sex, or being married, or living together, but rather when they buy “one washing machine”, since this symbolizes the moment when the reorganization of everyday life, and the different standards about everyday life occur (Beck 2001).

While focusing on the subjective level may contribute to nuanced understandings of marriage, acknowledging the plurality of feelings, expectations and representations involved, this approach may overlook other types of structural inequality, such as those linked to migratory status. As Barbara Ehrenreich and Deirdre English (2005 [1979]:276) affirm for the USA context, we have entered a “post-romantic world, where the old ties no longer bind, all that matters is you: you can be what you want to be; you choose your life, your environment, even your appearance and your emotions. The old hierarchies of protection and dependency no longer exist, there are only free contracts, freely terminated”55. Yet, as will be shown in the case study, the freedom of the conjugal contract is far from being a possibility in the context of transnational conjugalities, which are heavily shaped by migration management processes. Although some authors argue that contemporary European couples may have more space for negotiating their intimate relations, analysing the case of migrants exposes the extent to which there may be a double standard introduced by state restrictions.

With the purpose of appreciating the range of differences that may apply to couple’s relationships in the context of mobility, the only definition of marriage adopted in the context of the case study is the legally sanctioned notion of marriage, including the typology of civil partnership, recently legally recognized in Portugal. The sphere of conjugal relations explored

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in the interviews encompasses the trajectory of the couple before the formal act of marriage, and the consequences of the formal act in cases of separation (i.e. the effects on residency status).

**CONJUGAL FAMILY AND “ROMANTIC LOVE” MENTALITY AS GENDERED SOCIAL REGULATION MECHANISMS**

Social science literature has long conceptualized the family as a tool for social control, where gendered power asymmetries are reinforced. As early as 1884 Friedrich Engels critically observed that the patriarchal family was implicitly accepted as the oldest family form and “identified with the present-day bourgeois family, as if the family had really undergone no historical development at all” (2004 [1884]:28). The scholar, in his well-known treatise “The origin of the family, private property and the state”, argued that monogamous marriage, enforced by the state to varying degrees, was in fact a tool for controlling women and ensuring the paternity of their children (Engels 2004 [1884]). In *The Subjection of Women* John Stuart Mill had already interpreted the family and its accompanying gendered differences as the repressive product of a non-egalitarian, conservative society. He further claimed that the inequality of women in the family hindered their equality in the wider social world, and argued for the need for reforms of marriage legislation whereby it could be reduced to a business agreement (Mill 2010 [1869]). Similarly, scholars of anarchist background such as Emma Goldman identified the economic aspects involved in conjugal trajectories. As Goldman infers in her essay “Marriage and love”, “the popular notion about marriage and love is that they are synonymous, that they spring from the same motives, and cover the same human needs. Like most popular notions this also rests not on actual facts, but on superstition”. As she provocingly continues, “marriage is primarily an economic arrangement, an insurance pact” (Goldman 2007 [1910]:91).

In the aforementioned essay, Goldman observes that marriage inevitably places women on an unequal footing with men, both socially and legally, calling attention to the subordination involved in gendered marriage rules, since a woman pays for marriage “with her name, her privacy, her self-respect, her very life, ‘until death doth part’ ” (Goldman 2007 [1910]:91). Moreover, according to Goldman, the “marriage insurance” condemns women to “life-long dependency, to parasitism, to complete uselessness, individual as well as social. Man, too,
pays his toll, but as his sphere is wider, marriage does not limit him as much as woman. He feels his chains more in an economic sense” (Goldman 2007 [1910]:91).

With related arguments, later scholars challenge the notion of the family as a necessarily “beneficial” social sphere\(^\text{56}\), as it was depicted by functionalists considering the isolated nuclear family as crucial for the economic and social wellbeing of the broader state system (Parsons and Bales 1955). According to authors pertaining to the post-structuralist current, the relation between state and citizens through the control of intimacy has been seen as an articulation of hierarchies of power and opportunities. For instance, for Michel Foucault, family serves to locate and confine sexuality, seen as a “primary technology of power,” and this mechanism needs to be interpreted in the context of broader power relations (Foucault 1978).

In parallel, representatives of different feminist currents have made strong contributions to critical theories of the family. These inputs are useful in analysing current regulations of marriage and mobility, by focusing on the forces and relations of reproduction\(^\text{57}\), and on gendered assumptions regarding the role of women. One of the pioneering thinkers in this sense, Alexandra Kollontai, claims that the isolated family unit is a product of the capitalist system, and that “to become really free the woman has to throw off the heavy chains of the current forms of the family, which are outmoded and oppressive” (Kollontai 1977 [1909]:64).

Later feminists also challenge traditional dichotomies between private and public, raising questions about family boundaries and showing the close connections between the internal life of families, and the organization of other life spheres such as paid labour, welfare and legal systems, and other institutions. In \textit{The Second Sex}, the philosopher Simone de Beauvoir underlines the disempowerment of women implicit in formal marriage, which, in combination with social norms, is taken to encourage choices leading to women’s dependency on men. Later feminist sociologists highlight how Western states have historically supported the patriarchal nuclear family model, with a breadwinner husband and dependent wife and children, through, for instance, welfare state systems (Baker 2001). Similarly, women's

\(^{56}\) For a systematization of feminist analysis of conjugality, Barrie Thorne’s (1992) reflections on the contributions of feminism to the sociology of the family may be used as a basis, which may in part be adapted to the case-study in a mobility context.

\(^{57}\) Examples are the work of Marxist feminists such as Margaret Benston (1972) and Kate Millett (1970) or radical feminists such as Shulamith Firestone (1972).
economic dependency exposes them to physical, sexual or psychological abuse by their husbands and other male partners (Gordon 1988, UN women 2015). This results in women having unequal opportunities to exit from marriage, giving husbands/male partners considerably more power and bargaining advantage within the marriage, as the economist Amartya Sen argues (Sen 1989). Ulrich Beck adds that we should acknowledge inequalities inherent in families as institutional structures:

“We are living with a rhetoric about the crisis of family life, but the family is not the cause of the turbulences and historical conflict between men and women. It is the surface upon which this conflict becomes visible (…). Our type of ‘individualized society’, as I call it, tells us to seek biographical solutions to systemic contradictions. The tension in family life today is the fact that equality between men and women cannot be created in an institutional family structure, which presupposes their inequality” (Beck 2001:264).

Sociologists of the family such as Anália Torres have produced studies on the families in the Portuguese context with a gender perspective (Torres 2001, 2002). In a 2007 book co-edited with Karin Wall, the authors underline the key role of gender constructions as a structuring element of social representations of the family, pointing to the gaps between men’s and women’s representations (Wall and Amâncio 2007). Additionally, given the gendered division of labour and the fact that the types of paid work mainly performed by women is less remunerated than men's make it more likely that married women, rather than their husbands, will downgrade their careers, choose part-time work, or stay home to facilitate child-rearing when the spouses' careers conflict (Wall and Amâncio 2007, Brake 2012). Adding to the inequality related to unpaid domestic work (Benston 1972), women are also paid consistently lower salaries even when covering the same functions than men and have been disproportionately affected by the economic situation in Portugal, where their gross earning gap compared to men has been widening (Eurostat 2015)58.

Feminist scholars have enriched these analysis by reconstructing the ways in which race, class and ethnicity have situated women differently in relation to the means of production (Davis

58 According to Eurostat data between 2008 and 2013 for instance, Portugal registered the biggest increase in salary gaps between men and women in the European Union, reaching a disparity of 13% in the so-called “gender pay gap” indicator (Eurostat 2015).
Narratives and counter-narratives on “marriage of convenience”

59 As will emerge in the analysis of migration policies, the observation regarding the exploitation of women’s labour, the pay gap, the disproportionate effects of the “economic crisis” are all relevant aspects to analyze the links of “status” (conjugal and migratory) as a cause of dependency in the couple, but also in broader social hierarchies.

60 This section draws on the systematization produced by Elizabeth Brake 2012, in the Stanford Encyclopedia of Philosophy (Brake 2012).
The normative romantic mentality uncovered by feminist theorists is deeply interlinked with notions of “authenticity”, positioning romantic love as the premise for marriage. The critical reflections made in reaction to monolithic universalist and depoliticized visions of the family, presented hereafter, are extremely relevant to my case study on transnational conjugalities. This because they target not only the institution of marriage itself, but also the imbalances provoked by its gendered implications, crucial for understanding contemporary transnational dynamics. Eileen Muller Myrdahl notes in a study on migration policies in Norway how “in its idealized version, heterosexual romantic love signals an interior landscape of affect, one that is independent of the social, economic, or other attribute of the individuals. This independence is not incidental: it signals the ‘trueness’ of the love, as well as the autonomy-the liberal, modern personhood- of each individual in the couple” (Muller Myrdahl 2010:103).

As will emerge in chapter 4, my fieldwork exposes the political implications of constructions of “love”, since the romantic love imaginary has implications for the selection of couples deserving institutional recognition.

**FAMILY MODELS AND MIGRATION REGULATIONS**

This study of marriage in a mobility context has allowed me to reflect on conventional assumptions regarding conjugality in a specific geographic and historical context. As will be discussed more in detail in the following chapters, institutions in Portugal define implicitly and explicitly a series of requisites to circumscribe what is considered a legally sanctioned marriage (and civil partnership). On the one hand, these include factors for recognition of the couple as “genuine”, such as cohabitation, children in common (used a proxy indicator for the existence of sexual relationships as well as “family motivations”), and visible signs of a “romantic liaison” between the spouses. On the other hand, bureaucratic practices expose a series of negatively appraised markers that fuel the suspicion that the marriage is not “legitimate”. These include the precarious or undocumented legal status of the “foreign spouse”, evidence of economic transactions between the two, or what has been defined as a “disadvantaged” socioeconomic background of one of the two spouses. These indicators serve as a guide for how institutions determine what can be legitimated as conjugality in a mobility context. This section aims to frame this conceptualization of marriage in contemporary Portuguese migration control institutions in terms of wider debates regarding marriage,
relating to definition, social function and the repercussions of its regulation through migration policies.

As observed by contemporary scholars such as Ralph Grillo, family in its broader sense may be seen as a “social construct entailing beliefs, values and ideas by reference to which its members are identified, organized and bound together”, constituting a fundamental basis of social order. Grillo, who has been studying its cultural and geographic variations, considers the concept of conjugality and family central in defining the construction of contemporary transnational relationships in the European context, and argues it should not be overlooked (Grillo 2008). The author argues that “under conditions of migration” family becomes a site of debate and a “powerful kaleidoscope through which to examine the tensions” inherent in contemporary societies (Grillo 2011:77). According to the gender and migration scholar Eithne Luibheid, to gain insight in these mechanisms it is advisable not to begin with any specific definition of "family" but rather to critically track how nation-state immigration laws, policies, practices, and discourses produce changing configurations of what counts as family (Luibheid 2015).

State categorizations regarding marriage and family have been cyclically proposed in the context of western countries as ahistorical and ethnocentric concepts, both in the academic field and in the development of family migration control policies (Kofman and Kraler 2006, Wray 2006, Leinonen and Pellander 2013, Block 2012). In particular, as the Australian legal scholar Nora Demleitner observed in her study on migrant conjugality and family reunification, terms such as “spouse” or “family” are frequently used as if they were self-explanatory and universal (Demleitner 2003), thus excluding conjugal models that do not conform to such normative definitions. Scholars in the field of sociology have increasingly acknowledged how the concept of marriage is undergoing continuous change and needs to be contextualized in time and space. As will be analysed in the following paragraphs, a body of literature stemming from different areas of study, calls for a revision of the concepts regarding the categorization of human relationships, supporting an open-ended insight into its fractures and inner contradictions.

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61 For a specific study of this point in the Portuguese context, see the work by Karin Wall and Rita Gouveia, which focuses on the attribution of “family meaning” to subjects who are part of the network of proximity vis-à-vis the individual but are not related by kin, such as friends (Wall and Gouveia 2014).
Considering the above-mentioned historical, geographical and multidisciplinary evolution in the conceptualization and perception of conjugality suggests to reconsider the unstable grounds of state prescriptive intervention vis-à-vis family relationships. The imposition of normative family configurations has consequences on the power asymmetries, which have historically differentiated men and women’s position in the conjugal space. As will be argued in the chapters dedicated to the case study, similar dynamics are reiterated in the policies on marriage in a migration context. Particularly, this acknowledgement will constitute a theoretical support to question the appropriateness of “marriage of convenience” state policies based on normative definitions and “stereotypical solutions” (Kofman and Kraler 2006:12).

A number of scholars have deconstructed the requirements used institutionally and in public discourse to determine which marital forms are eligible for state recognition (Wray 2006, Rodríguez García 2006, Block 2012, Grassi 2006). Some scholars employ an intersectional perspective to account for the reciprocally reinforcing effects of racism, economic subordination and gender in determining migration conditions (Gregorio Gil 2009, Yuval Davis 2011). Other authors focus on a critical appraisal of the broader role of marriage and migration regulation in defining the relationship between states and citizens, as well as the construction of social discrimination, including its economic and gendered implications (Block 2012, Friedman 2006, 2010, Kraler et al. 2011, Riaño 2011).

Additional contributions, which critically assess the role of state regulation, derive from the area of legal studies, where the juridical grounds of marriage regulations have long been problematized. A number of theorists have argued for the abolition or restructuring of state-sanctioned marriage as a whole, by eradicating any special legal marital status or rights, and relegating spousal agreements to existing contract law (Garrett 2009, McElroy 2002). Interestingly, supporters of what some call “marriage privatization” encompasses thinkers from a range of backgrounds, from liberal to anarchist, working from different disciplinary perspectives. One of the arguments invoked is that a politically liberal state should not prescribe the arrangements in which its “competent adult members seek love, sex, and intimacy, so long as they are compatible with justice” (Calhoun 2005 cited by Brake 2012:1). Specialized legal theory has also been developed questioning marriage/civil partnerships’ association with legal benefits, seeing it as discrimination between recognized spouses and non-formalized couples (Vanderheiden 1999). Moreover, there is an on-going debate as to whether the state should impose its understanding of marriage on those who hold a different understanding, or allocate benefits on the basis of marriage. For instance, Nicola Barker, from
the perspective of the legal studies, argues that “the purpose and function of relationship recognition should be deconstructed and separated from ideology and romantic mythology about what families and relationships are and should be” (Barker 2006).

Martha Fineman adds how “the institution of marriage has traditionally served as the societal mechanism for providing economic benefits and protection” (2001:1). Thus, marriage may be rejected it as a necessary institution to accomplish societal objectives, which can be reached through other policies. The legal scholar argues it is possible to overcome marriage as the “repository for dependencies” by rethinking “the position assigned to the family in larger society that incorporates implications of the changed family form and essential family function” (Fineman 2001:240). This is reinforced by the sociologist Judith Stacey, based on her observations of family normativity in the United States:

“Either we can come to grips with the postmodern family condition by accepting the end of a singular ideal family and begin to promote better living and spiritual conditions for the diverse array of real families we actually inhabit and desire. Or we can continue to engage in denial, resistance, displacement, and bad faith, by cleaving to a moralistic ideology of the family at the same time that we fail to provide social and economic conditions that make life for the modern family or any other kind of family viable, let alone dignified and secure” (Stacey 1996: 11).

Stacey’s reflections may be borrowed to define a critical stance towards normative attitudes of transnational conjugalities, as will be considered in the discussion of empirical data. In view of the arguments I have outlined here, marriage and migration regulations in particular may be seen as a symptom of institutional attempts to force the complexity of family arrangements into fixed categories, establishing a double standard. On the one hand, there is an increasing acceptance of what has been defined as postmodern families, with tailor-made solutions and progressive institutional acceptance and incorporation (e.g. same sex marriage, and modification of marriage contracts). These changes facilitate recognized citizens’ autonomy in determining their own trajectories. On the other hand, as my fieldwork in Portugal

62 According to the psychologist Kenneth Gergen, observing families in the USA, the adjective postmodern refers to the growing complexity of emerging family forms. Gergen notes that, in part because of new technologies, family members are exposed to multiple values, attitudes, opinions, lifestyles, and personalities and have become embedded in a multiplicity of relationships (Gergen 1991, cited in the United Nations University review on postmodern family), which in turn leads to increased doubt, uncertainty, and insecurity (Stacey 1990).
confirms, transnational partners have to deal with highly normative marriage procedures, which curtail their possibilities of self-determination.

The range of critical arguments listed above is useful for analysing the contemporary social status of migrants in relation to family arrangements. It supports an analysis combining the observation of (gendered) “dependency” dynamics within couples. On the basis of the above theorizations it can be argued that conjugal classification rationales, which appeal to controversial value judgments about love and convenience, are an inadequate basis for the state regulation of marriage in mobility. The historically problematic aspects of family in promoting inequality, and the fluidity and variety of its forms, also suggest the need for a thorough re-consideration of the ways in which the state attempts to intervene in regularization opportunities and migration rights (which currently depend on a narrow and idealized conceptualization of family). As will be appraised in chapter 4, critical literature on the family emphasizes that the practices of intimacy and formalization of relationships vary across history, geographical and political entities, making the notion of “genuine” marriage a highly problematic category.

The above literature review has put the normative use of marriage in perspective, freeing space to rethink the naturalized and crystallized equations between marriage, love and family, and allowing a more radical discussion of its repercussions. To do so, I will start my theoretical study from the observation of the most rigid definition of marriage, as it is expressed in law. My analysis will unfold on the basis of a delimitation of the research participants, all members of transnational couples, who had their marital link recognized by the Portuguese state. The operative category I use is relational, since it depends on the legislative framework but also on the couples’ wish to establish a formal wedding contract, regardless of their relationship and motivations. Observing both aspects of the interaction makes it possible to appraise the gaps between neat institutional categories and the nuances of relationships. I go on to consider conjugality both as a volatile and variable concept in its subjective redefinitions, and as an instrument of power when used by institutions to regulate social life. Rather than aiming at a definition of what constitutes conjugality, I consider the case study as an occasion to observe the functioning of the state’s notion of conjugality as a tool for inclusion and exclusion, embedded in broader social regulations.
SECTION 2- “MIGRANT”: AN OTHERING CATEGORY OR A USEFUL ANALYTICAL TOOL?

Although scholars from a range of disciplines have attempted to reach a comprehensive definition of the notion of “migrant”, there are gaps in its conceptualization. These gaps have direct repercussions on institutional approaches, as well as epistemological and political implications that should not be overlooked. For instance, in Portugal, according to institutional websites and official documents of SEF (Serviço de Estrangeiros e Fronteiras)- Immigration and Borders Service, the administrative construction of the “migrant” is based on clear-cut definitions. Individuals who reside in the country and who have not acquired Portuguese nationality are defined as “immigrants” or “foreigners”, that is, individuals administratively categorized as non-citizens. This notion envisages migrants as a group automatically not “belonging” to the realm of citizens, an assumption that a growing number of social and political theorists have called into question (Sassen 2009, Smith and Guarnizo 1998, Glick Schiller 2005).

The following two sections gather some reflections that, in my opinion, contribute to a de-naturalization of commonly used classifications, both in academic studies and as a basis for public policies. With the aim of situating the use of the categories adopted throughout the dissertation within broader debates, I will therefore critically discuss the concepts of “migrant” and “migration” as they are commonly used in the academic and public policy spheres, outlining the alternative approaches that will structure my analysis. Regarding the academic use of the “migrant” category, this subsection will rely on the analytical frameworks of mobility and transnationalism, rather than immigration-emigration paradigms in use in some academic production in Portugal (Machado 2002, Pires 2003). This constitutes an attempt to go beyond “migrant” as a naturalized social classification.

The concept of “migrant” emerged as a site of pivotal contestation vis-à-vis normative classifications during my fieldwork. This category was a source of constant querying by my interlocutors, triggering questions, which trouble the apparently self-evident use of the word. My interlocutors questioned who is defined as a migrant, what are the criteria that enable you to stop being considered one, for how long is this category applied, and why it is only applied to specific categories of human beings in mobility. Departing from such unsettling questions,
my research inevitably engages with the consequences of the use of the term migrant, and questions its empirical and political justifications.

Questioning the term “migrant” had potentially disruptive effects on the theoretical and methodological grounds of my dissertation. Namely, I felt the need to consider whether the “undocumented migrant” category I had used to build my research project was really necessary/useful to understand the social dynamics encountered in the case study, and if there were alternative options. Although I continued to use the category, I gained a reflexive attitude, trying to distinguish in which cases I could have substituted this term for another. The exploratory interviews conducted in Lisbon exposed the limited explicative potential of the category of “migrant”, if used in isolation from other markers of social hierarchy when accounting for the complex interactions involved in transnational conjugalities. For instance, in some cases the non migrants I interviewed were equally affected by specific policies and to separate them from migrants would have erased the possibility to understand transversal dynamics. One of the outcomes of this re-elaboration was to adopt an intersectional approach, which incorporates a broad range of social factors.

Intersectional thinking helped me to realize that in order to make visible the various grades of citizenship recognition in the Portuguese state system, I needed to account for other factors such as gender and socioeconomic status. I also acknowledged that although residency status and transnational trajectories counted, a considerable part of the dynamics observed also affected the socially marginalized sectors of Portuguese nationals. Conjugal relations end up embedding non-migrants in the interaction with migration authorities and regulations, making the clear-cut distinction between them and their partners inappropriate when studying the repercussions of the surveillance system as a whole. My initial observations of the dynamics of the Portuguese migration regime, exposed how the category of “migrant” may not always be the predominant explanatory factor determining outcomes for subjects.

Thus, I decided to adopt different definitions of “migrants” to see if they adapted to my case study, exploring the margins of the category. For example, I made use of the description presented in the document “Who counts as a migrant?” published by the Oxford Migration Observatory (Anderson and Blinder 2014:3). This paper refers to migrant as “individuals who are subject to immigration control” – a definition that allows for both partners engaged in transnational conjugalities be included in the classification, regardless of nationality. As Anderson and Blinder summarize, other institutionalized interpretations could be linked to the
country of birth, length of stay in a country other than that of birth, or simply holding foreign nationality (Anderson and Blinder 2014). Yet, much of these definitions result in some shortcomings, arbitrarily including or excluding individuals.

As noted by the anthropologist Manuel Ruiz on the basis of his fieldwork in Spain, researchers in this area have a responsibility to acknowledge the “migrant” as a construct (Ruiz 2010). Ksenija Horvat reinforces this critique from a sociological standpoint, affirming that “who, or what, is the norm against which the immigrant is conceptualized as another subject, an Other, no longer is a self-evident realm” (Horvat 2013:106). In fact, institutions often appear to cast migrants from another nation-state as “ethnics” (Glick Schiller 2012), “others”, “them” (Anderson 2013) as if the category of migrant were self-explanatory, and identities were singular and indivisible.

Building on the questionings provided in the above-cited literature, in the present dissertation I consider individuals who cross national borders and reside in a given country as integral parts and participants of the social fabric, rather than as inherently differentiated subjects with distinct social practices. This choice is based on the recognition of the need to deconstruct restricted readings of belonging implicit in the current use of the category migrant, which is a necessarily othering category (Sayad 1999, Sassen 1999, Rivera et al. 2000). However, in making this decision, I also acknowledge the risk identified by Manuel Ruiz, who argues that “scientific” classification inexorably produces the reality (and difference) it intends to classify (Ruiz 2010: 28).

As the anthropologist Annamaria Rivera warns us, based on her observation of the Italian context, the association of notions of ethnicity and class with the definition of “migrant”, ends up including in the category individuals “who are not legally defined as such (i.e. poor ethnic minority individuals)” (Rivera et al. 2000:149). Conversely, as Rivera notes, “there are foreigners who are never ‘immigrants’, such as North Americans, Swiss, or European union citizens” (Rivera et al. 2000:149). In this respect, her comments appear to echo Sayad’s position, when he argues “the immigrant of whom we speak is not more than the immigrant such as he has been constituted, as he is thought and defined” (Sayad 2004 [1999]:253). These reflections will be recalled in the analysis of the interviews in chapter 4, pointing out the arbitrariness of categories, which determine institutional approaches towards individuals of different nationalities, often reproducing north-south global hierarchies.
Adding to this reflection, Bridget Anderson provides interesting insight into how immigration and citizenship policies work within public debate to produce 'us and them' categories, explicitly criticizing these as “dangerous politics of immigration control” (Anderson 2013). Anderson argues that there are many parallels between the constructs and policies intended to affect the “good” citizen versus the “failed” citizen on the one hand, and the “good and bad” migrant on the other. For instance, she compares contemporary migration management with historical attempts to control the mobility of the poor in Europe, noting how migration policies may reflect broader instances in the relationship of the state with specific (subordinated) groups.

Within this framework, migrants are easily represented as disruptive outsiders who threaten the social fabric. At the same time, they are also depicted as either well-behaved, passive, hardworking subjects ready for assimilation, or as innocent “victims” of exploitative networks, that need to be “saved” by a humanitarian state. However, their institutional treatment reveals how these apparently polarized portrayals often overlap. Michel Agier critically evaluates the implications of such essentialist institutional views in an edited volume collecting accounts of displacement and migration policies spanning various continents. For Agier, the depiction of refugees and undocumented migrants as embodiments of binary conceptions underpins moral judgements associating these groups to suffering and vulnerability, as well as guilt and undesirability. These two images underpin the management of borders marked by an overlap between assistance and control, and by a spirit of “emergency” (Agier 2012).

An emblematic example, which will be analysed in the empirical section, is constituted by the essentializing representations of women on behalf of state institutions: regardless of whether they are migrants or not, they are represented as both victims and abusers of the migration system. Women are depicted on the one hand as potential victims of criminal networks (and thus as preferential targets of “protection measures”), and on the other hand as objects of government control in the context of marriage of convenience surveillance systems. It is therefore crucial to understand such representations in order to gain insight into the processes of inclusion and exclusion, and their repercussions on the life trajectories of the subjects involved.

Despite the aforementioned problematization of the concept of “migrant”, the term will still be used in some specific sections of this dissertation for analytical purposes. Namely, this
concept will be useful both in describing the experiences of individuals in mobility, since in some cases they adopt the term in first person to describe their existential condition, as well as to grasp the conceptions which underpin institutional practices based on current legal categories. The option of considering migrants and non-migrants as interacting parts of the same social context allows to reveal the workings of transversal inclusion and exclusion mechanisms (e.g. along class and gender) habilitating a critical stance on the production of inequality.

To set aside the ethnic lens and focus on the mutually constitutive relationship between the concepts of migrants and non-migrants, and between both of them and the institutional setting, I draw on the definition of the term transmigrants. As Peggy Levitt and Nina Glick Schiller put it, transmigrants living within a transnational social field are affected by social expectations, cultural values, and patterns of human interaction shaped by more than one social, economic, and political system (Levitt and Glick Schiller 2004). Essential to the concept of transmigrant is thus a multiplicity of engagements that the mobile subject sustains in the home and host societies simultaneously. The fact that in this context a vast range of legal ties and social determinants place individuals in infinite points on a continuum regarding their interactions with institutions, suggests that legality and migration status are in fact marked by continuous transitions, and should be seen as fluid conditions.

Since what Levitt and Glick Schiller call transnational social fields connect migrants and non-migrants across borders, geographical movement is not a necessary condition in order to be considered a transmigrant. “Non-migrants also adapt many of the values and practices of their migrant counterparts, engage in social relationships that span two settings, and participate in organizations that act across borders” (Levitt and Glick Schiller 2004). Most importantly, the authors underline how research based on clear boundaries between the experience of migrants and non-migrants does not accurately capture the experience of living in a transnational field because it implies a separation in reciprocal socialization and social networks that may not exist (Levitt and Glick Schiller 2004). Furthermore, the concept of transmigrant troubles the underpinnings of current restrictive and exclusionary policies developed by governments to classify migrants as non-citizens: the following paragraphs will provide a selection of views on citizenship which will frame the analysis of the case study.
The “migrant” category as a mirror of selective citizenship models

The unpacking of the institutional usage of “migrant” as a social category, allows insight into the discriminatory relationship between the state and specific social groups. Already in the 1950s, at the beginning of the modern human rights movement, Hannah Arendt’s analysis of statelessness pointed out the difficulties that non-nationals had in accessing human rights, most of which are still relevant today (Arendt 1973 [1951]). Far from being a purely terminological issue, state classification of some subjects as authorized migrants leaves a whole category of human beings -who do not fit in such category- in a condition of relative "rightlessness," with a precarious legal, political and human standing (Gundogdu 2015). Historically, it should be noted that “the mobility of those with less social and political power has been heavily restricted by the groups in more privileged positions” (O’Connell Davidson and Howard 2015:1). Unequal mobility rights have progressively been naturalized, that is, represented as irrevocable and unquestioned social relations, despite the fact that they constitute one of the structuring causes of power hierarchies in contemporary societies (Ruiz 2010:28). Labelling some categories of human beings as migrants may thus be seen as one of the ways in which the mechanisms of social ordering operate.63

As exemplified by Nina Glick Schiller, the social and cultural reproduction of inequality is legitimated through racialization, religion, gender differentiation and national identification (Glick Schiller 2012). Moreover, she defends that the social relations deriving from such othering processes “rest on and build unequal control of force and resources” (Glick Schiller 2012: 37). As Saskia Sassen also notes in her book “Guests and aliens”, it is outsider status, and not race, religion or culture that marks immigrants and leads to “the experience of a difference” (Sassen 1999). Paraphrasing what the geographer Vladimir Kolossov, we could state in this sense that the notion of othering as a process of demarcation of difference is as relevant to the construction of invisible borders between groups, as to visible state borders (Kolossov 2012). In this sense, an uncritical use of definitions relating to migration risks overlooking the political underpinnings of mainstream perspectives, which frame migration hierarchies as inevitable.

63 As a comparison, we may reflect on mobility restrictions for slaves, peasants and women, promoted by state policies across time and space. For instance in Portugal, during the dictatorial regime that ended in 1974, married women were not allowed to leave the national territory without their husband’s permission.
Several scholars call for a reflection on how the category of “migrant” lays bare the inner contradictions and margins of the notion of citizenship. Similarly to what Abdelmalek Sayad suggested with regards to migratory dynamics in France, in the context of this selective labelling, citizenship has lost its initially progressive connotation, and risks becoming one of the most powerful tools of social exclusion (Sayad 2004 [1999]). Although on one side citizenship may be considered an inclusive model, “when seen from out of the border, it becomes a tool for institutionalized exclusion and inequality” (Eggebø 2012:10).

Some authors consider exclusionary migration policies as expressions of a paradox of democratic legitimacy. In this view, there is a tension between the state’s responsibility regarding human rights protection, and the exclusion of non-nationals as a safeguard of “national interest” and “sovereignty” (Benhabib 2004). By exercising this sovereignty, the state defines who its subjects are and, by creating laws, inevitably establishes inclusion and exclusion devices, differentiating insiders from outsiders and their consequent rights and duties. Even though international conventions such as the Universal Declaration of Human Rights of 1948 recognize equal personhood regardless of citizenship status, contemporary formulations of institutional inclusion and exclusion are strictly tied to the principle of territorial sovereignty.

A vast number of studies warn against the risks of narrow conceptualizations of citizenship, which envisage nation-states as exclusive (and territorially bound) spaces for participation and the enactment of rights and duties (Soysal 1994, Sassen 2009). In this sense, the general tendency of sociological studies to assume a convergence among nation, state and society may be criticized (Wimmer and Glick Schiller 2002). Jacqueline Bhabha contributes to this debate by exploring, in an article in Human Rights Quarterly, the debatable correspondence between territory and population in the European context, emphasizing the consequent issues of exclusion inherent in drawing a line between Europeans and non-Europeans (Bhabha 1998). Likewise, examining migration from the perspective of critical legal theory, Enrica Rigo confirms that the forms of citizenship of migrants, especially if undocumented, troubles conventional assumptions about citizenship as a territorially delimited category (Rigo 2011).

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64 As Miguel Vale de Almeida describes in his book A chave do armário. Homossexualidade, casamento, família (2009), it is necessary to revise the concept of citizenship and its related policies, which tend to mould the notion of citizen on the basis of a naturalized and standardized belonging to a nation state, excluding the “other”, the exotic, the different.
As Saskia Sassen reminds us regarding the Western context, most of the scholarship on citizenship has claimed a necessary connection to the national state. Yet, a historical consideration of both the institution of citizenship and that of national state sovereignty in the western world reveal that “the institution of citizenship has multiple dimensions, only some of which might be inextricably linked to the national state” (Sassen 2009: 277). Namely, Sassen argues that the nation-state is not the exclusive site for the enactment of “the organization of formal status, the protection of rights, citizenship practices, or the experience of collective identities and solidarities” (Sassen 2009:278). The sociologist observes how over the last decade globalization contributed to destabilizing of existing political hierarchies of “legitimate power and allegiance”, and affirms that these developments “raise a fundamental question about what is the analytic terrain within which we need to place the question of rights, authority and obligations of the state and the citizen” (Sassen 2009:288).

In a study on how gender, ethnicity, class and national status influence the understanding of citizenship, Nira Yuval Davies and Pnina Werbner further nuance this argument, providing reflections that are particularly appropriate with regards to family and migration policies. The authors argue for the “recognition that both as a political imaginary and a set of common-sense assumptions and practices, modern citizenship is inserted into a social field, an arena of competing, heterogeneous and partially overlapping discourses. Within this field, freedom, autonomy and the right to be different – central credos of democratic citizenship- are pitched against the regulating forces of modernity and the state and subverted by discourses of ‘culture and tradition’ – of nationalism, religiosity and the family” (Yuval Davies and Werbner 1999:1).

These critiques above triggered alternative visions of citizenship, such as the transnational approach exposing the existence of post-national or de-territorialized forms of citizenship, enacted in locations that exceed the boundaries of the territorial nation-state (Smith and Guarnizo 1998). For instance, the sociologist Yasemin Soysal observes that the advent of supra- or post-national institutions requires recognition of a nation-transcending citizenship, arguing for a model of post-national membership that derives its legitimacy from universal personhood, rather than national belonging (Soysal 1994). Nina Glick Schiller argues for the recognition of “transborder citizenship”, enabling us to go “beyond legal definitions of citizenship into the subject of social and cultural citizenship and the multiple experiences of living within plural systems of laws, customs and values” (Glick Schiller 2005:48). According to this vision, the concept of citizenship should not be the object of fixed interpretations in
time and space, but rather able to capture variations and nuances of belonging, and the state should not be seen as the exclusive site for its subsistence (Modood 2010).

Other scholars have attempted at creating fluid definitions of citizenship based on subjective agency, in order to overcome the mentioned shortcomings of conventional citizenship perspectives. For the sociologist Rainer Bauböck, it is difficult to explain the boundaries of the concept of citizenship, but he considers the center of the concept as related to equal membership in a self-governing political community of “stakeholders”, seen as those who have a stake in the polity’s future because of the circumstances of their lives (Bauböck 2008). Sassen considers in particular the social presence of undocumented immigrants as the illustration of a condition akin to ‘effective’ citizenship and nationality, which might be a basis for legitimizing what she considers ‘informal’ practices of membership (Sassen 2009:283).

As Castles and Miller remind us, citizenship in its common definition establishes a relation of belonging between an individual and a state, but should also be seen as an active recognition of equal rights in a political community sustained by institutions granting these rights (Castles and Miller 1993). These ideas have led to definitions of stakeholder citizenship as a non-transcendent and pluralist notion, as argues the sociologist Tariq Modood based on his work in Britain. In Modood’s understanding, citizenship should not be read as a monolithic identity that is completely apart from or transcends other identities important to citizens. On the contrary, it may be seen as a multi-logical concept, in which diverse instances, which may even be in contradiction, find the same degree of legitimacy (Modood 2010).

As will emerge in the fieldwork, citizenship as Portuguese institutions formally recognize it, continues to reduce the possibilities and recognized forms of belonging to the frame of the nation-state. The analysis of the material collected through fieldwork inevitably questions the prescriptive notions of citizenship articulated in the context of the nation state, suggesting the need for a more dynamic and open-ended perspective. This approach aims to reflect the complexity of local and transnational social relations, and is based on claims of equal access to human rights, evoked by Sassen when she speaks of citizenship as an “enabling condition” (Sassen 2009).
STUDYING MIGRATION DISCOURSE AND POLICY: CONTROL AND SELECTION

The observation of mobility-related phenomena constitutes a way to uncover the inner functioning of Portuguese society with regards to internal and external bordering processes. Several prominent authors have approached the study of human mobility as a “total social fact”, a process that has implications throughout society, including in the political, economic and legal spheres (Mauss 1966). When it comes to framing and explaining international migration phenomena, there is no single approach widely accepted by social scientists. Since migration research is intrinsically interdisciplinary, this section will braid together contributions from diverse areas. As Stephen Castles and Mark Miller argue in their influential book “The Age of Migration” (1993) human mobility may be seen as one of the major forces actively reconfiguring the political, economic, social and cultural landscape in the contemporary world. The authors argue that “international migration is a constant, not an aberration, in human history. Population movements have always accompanied demographic growth, technological change, political conflict and warfare. Over the last five centuries mass migrations have played a major role in colonialism, industrialization, the emergence of nation-states and the development of the capitalist world market (…). International migration has never been as pervasive, or as socio-economically and politically significant, as it is today” (Castles and Miller 1993:283). As reinforced by the migration scholar Sandro Mezzadra, in a comment about the Italian edition of Castles and Miller’s book:

“Being a form of collective action and a force of social transformation, migration is a movement that doesn’t only involve the individuals who migrate, but rather operates on society as a whole, creates new social and cultural spaces, (…) modifies the configuration of labour in the countries of settlement, making viable the refinement of new exploitation devices, but also feeding new movements of uprising against the latter” (Mezzadra 2012, online edition, my translation).

This observation emphasizes the importance of embedding migration research within analyses of broader social transformations. As Sayad suggests, migration should be seen as a social phenomenon that concerns both migrants and the “autochthones” of the arrival and origin societies (2004 [1999]). Focusing on issues regarding immigration and emigration is useful in that they mirror the discontinuities of the imaginary coherence of the “autochthonous
population” (Sayad 2004 [1999]). Speaking of what he defines the “specular function” of migration, Sayad states it is a privileged site for rendering overt what is latent in the existence and functioning of the social order (2002 [1999]). Homi Bhabha contributes to this perspective by characterizing the practices and identities of the subjects crossing borders as “counter-narratives of the nation”, disturbing “those ideological manoeuvres through which ‘imagined communities’ are given essentialist identities” (Bhabha 2003 [1990]:300).

As Giuseppe Sciortino points out in a critical essay on European migration sociology, social historians have underlined how “Europe has always been, before and after industrialization, a continent on the move (…), documenting how spatial mobility has been an integral part of the life cycle of a wide variety of social strata as well as a key feature of the economic and social fabric of European societies” (Sciortino 2014:253). Notwithstanding the historical empirical evidence certifying widespread human mobility, some degree of this essentialism is reflected in mainstream migration studies, and in most contemporary migration regimes in the European context. As Sciortino appraises, European sociologists failed to acknowledge these historical aspects, “helping to reproduce a view of the current migratory situation as both a new challenge and a historical anomaly, and contributing to keeping alive the largely imaginary vision of the European past as characterized by stable, endogenous, and homogenous communities⁶⁵, where nearly all individuals spent all their lives within the radius of a few kilometres from their place of birth (…). Most of the classical frameworks on the structure and evolution of European societies marginalized both migration as a (basic) process and diversity as an enduring structural phenomenon” (Sciortino 2014:254).

Notwithstanding the fact that migration is one of the most universal and longstanding human practices, in contemporary “Western” countries we are witnessing increasing efforts of channelling and controlling it, in a context of surveillance. However, acknowledging the historical and geographical variations of such relations may serve the purpose of unpacking this paradigm. As Sciortino suggests, during the economic depression following the first World War, European policies started reflecting “the notion that diversity could be a security risk”, building the perception that “the political loyalty of all those social figures that did not fit neatly within the boundary of the state container could not be taken for granted” (Sciortino

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⁶⁵ As some postcolonial scholars such as Dipesh Chakrabarty argue, an imaginary Europe is also built into the social sciences, through the naturalization of concepts such as sovereignty (Chakrabarty, 2007) or, we may add, citizenship.
These observations are still valid when observing contemporary citizenship policies, which lead to exclusionary policies through restrictive interpretations driven by anxieties over what is being constructed as security (Baubock 2008). Michel Foucault’s work, particularly his notions of governmentality and discourse (2007 [1978]), and later studies building on his contributions (Palidda 2010) have been crucial in reading the relations of power inherent in such securitization processes.

European Union member states tend to regulate human movements with growing and increasingly globalized surveillance mechanisms, as if such movements originated in an imaginary “external” space. Saskia Sassen underlines the misleading assumptions about migration, which support control and securitization policies, leading policy-makers to treat immigration as autonomous from other major international processes, and as a domestic rather than international issue (Sassen 1993). This leads to governments justifying securitization policies, increases in administrative barriers, and the criminalization of certain groups of migrants, based on a construction of a migration “emergency”. The observations made by Castles and Miller are still relevant today, when they comment “never before have statesmen accorded such priority to migration concerns. Never before has international migration seemed so pertinent to national security and so connected to conflict and disorder on a global scale” (Castles and Miller 1993:283). State discourses overlook not only the inevitability of human mobility, but also the fundamental role migration plays in the functioning of Western economies, as well as the positions of subordination into which migration discourses push large sectors of the world’s population.

As argued by Eleonore Kofman and Albert Kraler, especially since the late 1980s, European migration policy has come to be seen as being essentially about controlling migration and preventing unwanted flows. The two scholars observe how since the late 1990s the shift from a strict migration control agenda towards a “migration management” approach led to a reappraisal of economic rationales for more liberal migration policies, although this shift does

66 In this sense Sciortino, paraphrasing Lucassen’s work, reminds us that the First World War was a turning point for Europe in that, “the pressures deriving from the exigencies of nationalizing the working classes in a context of conscription and mass warfare brought, among other things, to the introduction of an endemic systematic preferential system on the basis of the distinction between citizen and foreigner” (Sciortino 2014:255, citing Lucassen 1998).

67 The processes of securitization, often linked to migrant criminalization processes, have been critically assessed by various authors. Saskia Sassen for instance contributes to the deconstruction of the migrant invasion panic, reminding us that migrations are not indiscriminate and uncontrolled flows, but rather selective processes in which “only certain people leave” (Sassen 1999:2).
not signal an end to migration control itself but rather a move from control to “selection” (Kofman and Kraler 2006:5).

As observed above, “Western” states generally tend to naturalize the restrictions to the entry and settlement of subjects classified as foreigners, treating this selection as a “natural” right deriving from national sovereignty. Some scholars refute the idea of states having the legitimacy to subordinate whole classes of individuals based on the framing of undocumented migration as a “problem” (De Genova 2002, Kofman and Kraler 2006), arguing against the production of social anxieties associated with human mobility. Other authors build a stance for open borders based on egalitarian motives and an acknowledgement of global inequalities (Pécoud and Guchteneire 2007). As the political scientist Joseph Carens puts it, “citizenship in Western liberal democracies is the modern equivalent to feudal privilege- an inherited status that greatly enhances one's life chances. Like feudal birthrights privileges, restrictive citizenship is hard to justify when one thinks about it closely” (Carens 1987: 252).

Public discourse also intervenes in producing rhetorical underpinnings for the establishment and reinforcement of “security” apparatuses. On the backdrop of selective migration policies, governments represent themselves as benevolent entities. As such, they may “concede” entry and recognition to aspiring citizens on the basis of “deservingness”, as Sébastien Chauvin and Blanca Mascareñas observe regarding the European and North American contexts (Chauvin and Mascareñas 2014). Concomitantly, governments use the imagery regarding “uncontrolled flows” to reiterate, in the eyes of the electorate, their indispensability as institutional filters to guarantee what is depicted as national security and sovereignty, as well as a balanced economy. Some authors underline how the consideration of migration as a manageable problem, rather than as a human characteristic has paved the way to the legitimation of top-down, imposed “solutions”.

From the 1970s and 1980s onwards, European policies have focused on the control of human mobility based on this paternalist model, weaving together “compassion and stigmatization” (Bennafla and Peraldi 2008). This explanatory model exposes how the humanitarian and securitarian approaches may be complementary and serve the same socioeconomic interests. Nonetheless, this framework has been the basis for the development of migratory regimes operating through mechanisms of classification, selection and stratification, which filter, as far as possible, welcome from unwelcome outsiders (Kofman and Kraler 2006). Such mechanisms may be seen as an embodiment of global power imbalances, producing an

The discourse on “integration”, as it is expressed in policies in the European context, emerges as one of the aspects which may be seen as deeply intertwined with the “deservingness” and “desirability” system of hierarchization (Palidda 2005, Rivera et al. 2000). In this paradigm the prevailing institutionalized image of migrants is profoundly paternalist, as will be discussed in the case study in chapter 4. Similarly to what Alessandro Del Lago describes regarding a case study regarding refugees in Italy, in public discourse they are mostly depicted as suffering, disadvantaged human beings, incapable of autonomous political action for the recognition of their rights, and in need of benevolence (Dal Lago 2010). This depiction of the state as a benevolent entity, feeds into “integration” paradigms reinforcing the idea that migration needs to be managed. Additionally, researchers working specifically on gender have underscored how processes of “integration” may be gendered (Boyd and Grieco 2003), and how related policies tend to reproduce inequalities through stratification mechanisms (Kofman et al. 2013). I consider the notion of inclusion/exclusion more apt to expose both institutional and subjects’ agency in determining outcomes, and overcomes the “sending-receiving” binarism, as well as the problematic notion of “host” country as the pivot of inclusion norms. Additionally, the focus on inclusion is coherent with the choice not to treat migration as a separate issue, isolated from other processes of social stratification. As the postcolonial theorist Sneja Gunew observes, there is a short distance between conceptualizing the need to solve the “migrant problem” to seeing the migrant as problem (Gunew 1990:114, emphasis in the original). Describing migration in itself as a problem risks to erase the responsibility of nation states and the role of broader political and economical logics in determining marginalization and infringement of human rights, as will be analysed in the following paragraphs.

SOME IMPLICATIONS OF THE GLOBAL LABOUR MARKET IN MOBILITY PROCESSES

The case study reveals the importance of acknowledging the role of labour market and economic factors in determining the policy options of the Portuguese government, which we might broadly define as a “pragmatic” approach. As I will argue in chapter 3, the
socioeconomic conditions and opportunities of insertion in the labour market emerged as fundamental lenses through which to verify the risks and opportunities attached to legal trajectories and transnational conjugalities. Although this dissertation does not focus on economical interpretations of migratory trajectories, I deem it necessary to acknowledge the economic factors at play in human mobility, since they inevitably constitute an important aspect of the state regulatory mentality. In particular, insertion in the labour market emerges, both in my case study and previous research conducted in Portugal (Grassi 2006 and 2009, Grassi and Giuffré 2013), as an important determinant in the construction of (il)legality. In this section I will outline some theoretical inputs in order to frame the rationale of Portuguese state interventions from this point of view.

Scholarly interpretations of human migration have historically considered economic aspects as preponderant in determining the choice of migrants, such as in the so-called “push and pull” factor theories (Lee 1966). Although economic issues continue to be taken into account as underpinnings of migration policies, these theories have now been reviewed, debated and complemented. Already in 1979 Michael Piore, in his book “Birds of passage”, provided an alternative analysis of “conventional economic theory” on migration, going beyond a focus on the behaviour of migrants to a consideration of the entire social, economic, and political structure of western countries. Scholars such as Alejandro Portes, studying migration in the American continent, contribute to a more expansive perspective by inserting in the analysis the interests of migrants’ countries of origin. Portes asserts that “cyclical migrations work best for both sending and receiving societies. Returnees are much more likely to save and make productive investments at home; they leave families behind to which sizable remittances are sent” (Portes 2007: 272).

By explaining the economic advantages of migration in terms of nation-states’ interests it may be argued, however, that such theories risk downplaying the implied subordination of large sectors of the migrant population. In particular, these theories risk overlooking the structural disadvantages, such as the exploitative labour conditions and the difficulty of regularization processes, as well as the social costs of remittance systems. The focus on remittances as means for development risk overlooking the structural barriers- particularly those rooted in immigration policies and gender inequities- faced by transnational families, as depicted by Leisy Abrego in her book “Sacrificing Families” (Abrego 2014). In this perspective, the study of mobility should not ignore the effects of neoliberal restructuring as a (re)producer of inequality. As emerges in the Portuguese case, these economic policies reinforce the
stratifying effects of ethnicity, gender and residency status, in a process, which, once again, goes beyond the migrant/non-migrant divide.

Notwithstanding the importance of nation states’ role in shaping the regulations directly impacting on the life opportunities of transmigrants, we need to recognize the global and multilevel processes determining economic power relations in which nation states are embedded and which increasingly occur across geopolitical borders. For instance, Sandro Mezzadra (Mezzadra 2007) describes the strategic management of migration in Italy as a tool to maintain a pool of cheap labour. Mezzadra interprets migrant detention camps not as a way to control individual subjects, but rather as a type of ‘decompression chamber’ functioning to disperse the pressure on the labour market. In this sense, Marxist scholarly traditions may assist us to move beyond explanations of social problems as due to the incapacity or unwillingness of individuals, by considering to what extent these issues are effects of broader unbalances in society. Borrowing from this type of perspective, the current management of mobility may be seen to create a set of unequal social relations through exploitative labour relations. As an example, it should be noted that the expansion of the transnational division of labour, long beneficial for “Western” economies, has not been coupled with a parallel upgrading of rights recognition for migrants. Similarly, I find some contributions from postcolonial studies useful in identifying the economic underpinnings of unequal power relations in contemporary mobilities.

Studies regarding mobility should therefore be rooted in an acknowledgement that the global economic system is reducing the opportunity for social and economic equality and justice on transnational lines; there are many economic, social and cultural subordination mechanisms between and within states (Grosfoguel 2012). Concluding with Saskia Sassen’s considerations, “perhaps we need new ways to think about the process we call immigration. The category itself, with its strong emphasis on the concept of national borders, seems inadequate. The forging of strong economic and geopolitical relations between countries of unequal development and unequal job opportunities tends to promote labour migration from poorer to wealthier countries. Until policy-makers understand this basic fact, and abandon the notion that immigration control is a police matter, attempts to "stem the flood" will continue to fail” (Sassen 1993:1). In order to analytically embrace the complexity suggested by the

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68 While international entities such as ILO (International Labour Organization) have, from the 1990s, promoted the development of conventions for an harmonization of human rights for citizens and non-citizens, these have been ratified by a restricted minority of countries worldwide (only a handful amongst Western countries).
above literature review, I have identified alternative frameworks to approach my case study, as will be described in the next paragraphs.

SECTION 3- INSTITUTIONAL FRAMINGS OF UNAUTHORIZED MIGRATION: SECURITY AND EMERGENCY

As described above, mainstream state discourses frequently evoke images of emergency and risk associated in the context of human mobility (Bacci Tamburlini 2013b and 2014). These all too common discourses frame the “plethora of immigration and border controls as unproblematic and place them outside of the bounds of politics” (Sharma 2015:1). From the perspective of nation-states, migration is frequently perceived as a worrying phenomenon, due to its alleged growth in intensity and the claims linking mobility and international organized crime (Ghosh 1998). In this perspective, undocumented migration fails to be understood in its complexity, as it is often treated as a contemporary occurrence, concerning exclusively “Western” countries.

As an introduction to the debates on “illegality”, I will present an overview of the literature, which problematizes undocumented migration as presented in institutional discourses. Some authors call into question the framing of undocumented flows as a “problem” generated outside of the purview -and responsibility- of the nation state (De Genova 2002, Donato and Armenta 2011). This allows states to treat unauthorized flows as “emergencies”, distracting attention from their political responsibilities in creating legalization processes in the first place.

As the sociologist Franck Düvell (2006) has commented, it is undeniable that “illegal immigration” in the international setting is a central theme in state concerns, at the social, economic and security policy level. These policies are closely linked to the construction of the notion of “threat” associated with migration as a potential destabilizing force in society. For instance Khalid Koser observes how “policy on irregular migration is driven by the perception

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69 This section draws in part on a research conducted in the context of the previously quoted project “Migratory Trajectories from Africa, illegality and gender”, coordinated by Marzia Grassi at the Institute of Social Sciences, University of Lisbon.
70 Ghosh also refers to the human trafficking issues related to this phenomenon (Ghosh 1998).
(whether accurate or not) that countries risk being ‘overwhelmed’ by large numbers of irregular migrants who embody a threat to states and society” (Koser 2005:2). As will be appraised in the case study, this institutional approach naturalizes the legitimacy of policing migration, presented as the protection of citizens from threat. Some authors, observing the nexus established by various governments between illegal migration and security policy, assert that migration laws may be seen as the “last bastion of national sovereignty” (Dauvergne 2008:47), and therefore manipulated for political interests. As the scholar and activist Grazia Naletto observes in her book “La sicurezza di chi?” (Whose security?), based on the Italian context, the instrumental use of the theme of security legitimizes racism and hides the underlying issues of economic and social unbalance.

As Cecilia Menjívar and Daniel Kanstroom efficiently synthetize, policies in Western countries are presented as bastions against the potential threat of undocumented migration, such as the impact that unauthorized migrant labourers allegedly have on “unemployment rates, the availability of finite social and economic resources for all who need them within a territory, and the impact of migration on the social and cultural fabric of the nation” (Menjívar and Kanstroom 2015:1). In contrast, policies to “rescue” migrants represented as victims, such as refugees, or trafficked persons are represented as humanitarian actions (Agier 2012), as if they were not part of the same transnational economic system. This binary interpretation underpins different legislative measures applied to these allegedly distinct types of migration: on one side are the unauthorized migrations which are considered “involuntary” (such as in the sphere of trafficking and refugees), and on the other side the so-called “voluntary” unauthorized migrations, such as in the case of mobility justified by economic reasons. In the first case, we can recognize a rhetoric linked to concepts of vulnerability, invoking the custody and protection of migrants seen as victims. In the second case, the segment of migrants who move with economic motives is prevalently seen as a population sector to be managed and controlled, based on what are considered national interests.71

71 Framing migrations in terms of curbing “illegal” networks does not acknowledge the responsibility of restrictive border regimes in creating illegalization and exposing migrants to dangerous migratory conditions. Defining migration flows through imprecise and overlapping notions of smuggling and trafficking (often defined as “modern day slavery”) as has been done regularly by European Union politicians. This approach often contributes to the moral justification for the use of force and policing, allegedly against smugglers and exploiters, but with evident repercussions on the insecurity of travel options for migrants. The policy framework allegedly ‘protecting migrants’ translates into deterring them from moving, or rescuing and returning them through expulsion measures: it “allows people to be seen as ‘vulnerable to traffickers’ or ‘at the risk of enslavement’ when they move without the state’s blessing” (O’Connell and Howard 2015). Nandita Sharma
In this framework, the rhetoric that developed at the academic, institutional and media level denotes different concerns depending on the political and social positioning: on one side, issues regarding mobility are framed in terms of “migrants’ human rights” and discourses focus on the vulnerability of specific groups, often “migrant women” (Gil 2009, Yuval-Davis and Werbner 1999). On the other side, public discourse evokes the urgency of solutions to “integration problems”, introducing in the discourse elements of social alarm linked to international criminal network’s activities, and constructing representations regarding the uncontrollability of migration flows (Menjívar and Kanstroom 2015, De Genova 2015). In both cases human mobility is not seen as an inevitable product of globalization, and historically and geographically widespread, but rather as, at best, an “issue” that needs to be solved, and, at worst, a symptom of social decay that must be controlled and eradicated.

THE CONSTRUCTION OF “ILLEGALITY” IN THE CONTEXT OF MIGRATION REGIMES

The observation of the institutional discourses on “illegality”, inspired me to contextualize institutional politics within broader dynamics of social regulation on the national and transnational level. As Nicholas de Genova observes, “it is impossible to contemplate the real social and political condition of migrants outside of the larger contexts that produce specific predicaments of “illegality”. Migrants only become ‘illegal’ when legislative or enforcement-based measures render particular migrations or types of migration ‘illegal’—or in other words, illegalise them” (De Genova 2015:1, emphasis in original). Building on these considerations, the following section will provide an overview of the literature exploring social constructions of “illegality”, considering the epistemological and political implications of terminology, and observing the institutional applications of such concepts.

Unauthorized migratory flows are frequently described as phenomena with causes that go beyond the policies and practices of the state itself. Conversely, authors such as Anderson and Ruhs, in their paper “Researching illegality and labour migration” identify the genesis of illegal migratory processes in the efforts of states to control human mobility and regulate
citizenship (Anderson and Ruhs 2010). Giuseppe Sciortino observes in this sense how the adjective “irregular” should be used to describe the effects of political regulations, rather than migration flows in themselves (Sciortino 2004:21). As reinforced by Serhat Karakayali and Enrica Rigo in an essay on legalization processes in Europe, unauthorized migrants “do not represent social groups but instead conceptually reflect relations of migration” (Karakayali and Rigo 2010: 129). In their book “Illegal Migration and Gender in a Global and Historical Perspective” Schröver and colleagues reinforce this argument, stating that following a rigorous approach, migrants should not be called illegal, while their activities could occasionally be defined as such (Schröver et al. 2008). Stephen Scheel adds that these categorizations “are not only constructions and historically contingent but also correspond to certain constellations of migration policy” (Scheel 2011:1).

Authors from various disciplines affirm the structural aspect of unauthorized migration, seeing it as an inevitable consequence of border control and the limited access to citizenship granted by the nation-state (Sciortino 2004, Anderson and Ruhs 2010 a, b, Grassi and Giuffré 2013, and Gutierrez 2010). As articulated by Hector Gutierrez based on his analysis on the US-Mexico border, illegality may thus be seen as a phenomenon rooted in the historical and political contradictions inherent in citizenship access regulations (Gutierrez 2010). Unauthorized mobility originates in the effort to control human mobility by state authorities, and should be thus seen as a dynamic process (Anderson and Ruhs 2010a, 2010b). The meaning of illegality therefore shifts across time and space, and is a “fluid construction”, a “result of increased state control over mobility” (Schröver et al. 2008:10).

Michael Bommes and Giuseppe Sciortino argue for a “naturalistic” study of irregular migration as a “particular feature of modern society”, devoid of policy and humanitarian concerns. The approach these authors propose potentially answers questions regarding the “structural preconditions for mass-scale irregular migration systems and social consequences of irregular statuses created and legislated” by states, as well as improve our understanding of the actual impact of irregularity on a variety of social interactions (Bommes and Sciortino 2011:15). This approach enables a deeper knowledge of the forms of resistance and strategies enacted by migrants to manage this status. As Bommes and Sciortino conclude “these are the

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72 In this sense, Schröver and colleagues expose the need to adopt a historical and global perspective to look at illegality, collecting in their edited volume a range of contributions from studies on migrant domestic workers in the Middle East (Moors and de Regt 2008) to Corrie van Eijl’s historical account of “illegal aliens” policies in the Netherlands, from 1850 to 1940 (van Eijl 2008).
type of questions left unanswered when irregular migration is defined as a social pathology to be ‘cured’ rather than as a phenomenon to be understood” (2015:15, emphasis in original). De Genova further underlines the risk of considering laws out of their historical context, falsely presuming them to be unchanging and neutral (De Genova 2015). As argued by Balibar and colleagues in the introduction of their volume “The borders of justice”, justice (like law) is “socially embedded” and is therefore mutable according to geographical locations and disciplinary perspectives (Balibar et al. 2011).

My exploration of the Portuguese context highlights the importance of understanding the legal framework, as well as its underlying justifications and assumptions, as malleable and socially embedded processes. Based on this perspective I explore the margins of legality, arguing that its clear-cut demarcation is not empirically sustainable, and may not comprise the dynamics observed in the field. For instance, as will be confirmed in the following chapter on state approaches to illegality in Portugal, variations in the legislative system take place with considerable frequency, emphasizing the variable limits between legality and illegality.

(IL)LEGALITY AND THE TRANSNATIONAL DIVISION OF LABOUR

As analysed in the section on migration and the labour market, and further discussed in chapter 3 in the description of Portuguese legislation, the case study suggests that the migration regime in this context serves the economic interests of the country: as several interviewees remarked, they are not treated as illegal when it comes to paying taxes or contributing to the local economy. From a theoretical point of view, it is important to acknowledge that so-called “illegal migration” may be seen as a structural element of

73 It should be noted that treating migration as a social problem of external genesis also leads to escalating attempts regarding the governance of migration expressed, for example, in the migration management policies promoted by the IOM, the International Organization for Migration. One of the proponents of the governance approach, Bimal Ghosh, in 2000 proposed what he denominated NIROMP- New International Regime for Orderly Movements of People (Ghosh 2000). In his book Ghosh affirms that, “[f]ears have been expressed that a breakdown of the migration system, already under heavy strain, could spell political and economic disaster, creating in its wake a major setback in human progress” (Ghosh 2000:6). Ghosh speaks of “massive, largely unpredictable, and painfully poignant human flows”, which put countries of arrival “under strain” to cope with (Ghosh 2000:6). The author creates an alarming depiction of what he defines a “huge migration potential” which in his view could be “overwhelming” (Ghosh 2000 :11). Notwithstanding the weak empirical basis for these declarations (the data collected by international organizations indicate that the majority of human flows are amongst countries of the global south), this type of alarmist perspective seems to inform at least part the securitarian configurations of migration policies in European countries. This leads to an escalation of securitization and militarization of borders, such as those we have witnessed in the recent years at the borders of the European Union, with a proliferation of material and symbolic walls.
contemporary nation states migratory systems as a tool to grant a pool of (cheaper) labour to western countries. As Stephen Scheel points out regarding migration policy is closely intertwined with the “active production and differentiation of labour markets through a proliferation of legal (non-)statuses” (Scheel 2011:3). As mentioned, the construction and reproduction of migrant “illegality” has been interpreted by authors such as Nicholas De Genova and Igor Machado as an instrument of governmentality, allowing states to take advantage of a subordinate labour force without having to commit to obligations deriving from citizenship status (De Genova 2002, Machado 2011). In a later contribution, De Genova defines immigration laws as part of an effort to make particular migrations into “disciplinary and manageable objects”, “tactically supplying and refining the parameters of labour discipline and coercion” (De Genova 2005:228). Nandita Sharma critically affirms that “far from eliminating or even severely restricting the movement of people, what neoliberal reformulations of immigration and refugee policy have done is to prevent the vast majority of migrating people from making claims on the state (in terms of social services) or on employers (in terms of minimum wages and standards of work). That is how a ‘cheap’ and ‘disposable’ labour force is created” (Sharma 2015:1). Authors such as Salvatore Palidda additionally expose the “business” inherent in illegal migration in Europe, focusing on the range of intermediaries, state apparatuses and civil society entities who gain economic benefits from managing what is being framed as a problem (Palidda 2010).

Similarly, Nicholas De Genova and Nathalie Peutz in their edited book Deportation Regime describe deportation, as an expression of state power, as well as an economic enterprise, and a result of processes of globalization which have undermined nation-state sovereignty (De Genova and Peutz 2010). Tsianos and colleagues reinforce the argument speaking of an “institutionalised border porosity that evolves through relations of power”, and stating that “the (detention) camps represent less the paradigmatic incarceration milieu in the age of authoritarian neo-liberalism than the spatialized attempt to temporarily control movement, i.e. to administer traffic routes, to render regulated mobility productive” (Tsianos et al 2009:8). The authors add that “it is the untenable myth of ‘zero migration’ that, above all, undermines the “Fortress Europe” metaphor. The “erection of metaphorical and actual walls in Europe and elsewhere doesn’t seem capable of repressing migration movements” (Tsianos et al 2009:2). In fact, a growing number of authors consider the notion of “Fortress Europe” as a misleading image, underlining the actual porosity of borders which characterize the European Union, notwithstanding the investments in the securitarian apparatus (Scheel 2013, Sharma
2015, Tsianos 2009, Mezzadra and Neilson 2013). As Scheel proposes, instead of representing borders as “impenetrable walls”, approaches focusing on the autonomy of migration “emphasizes migrants’ capacity to render borders porous, as well as the related productivity of border controls that are not geared towards the exclusion, but the differential inclusion of migrants”, although he recognizes that it is necessary not to downplay the repressive power of border controls (Scheel 2013:279). Godfried Engbersen proposes the expression “Panopticon Europe” to describe the constant surveillance (Engbersen 2001). Sandro Mezzadra and Brett Neilson, in a paper dedicated to “border as method” provide an analysis of such differential inclusion mechanisms (2013), exposing the economic convenience of maintaining some sectors of the population in subordinate positions, similarly to what Machado observed in Portugal (2011).

Other authors underline further aspects of what may be called the political economy of illegality, identifying its roots in national policies. This is well illustrated by the work of sociologists Douglas Massey and Chiara Capoferro, based mainly on the observation of US migration regulations. As they put it “the imposition of tighter restrictions in the face of a persisting supply and demand for immigrant labour has led to the emergence of undocumented migration as a universal phenomenon throughout the developed world” (Massey and Capoferro 2007). As Tsianos and colleagues argue, the control of (il)legal migration flows “allows global capital to thrive on labour and life conditions which are in a state of transition, and most importantly, are primarily unregulated and informal. With this global temporal regime of labour, the moving and changing workforce is rapidly embedded into capital’s productive structure” (Tsianos et al. 2009:9). Regarding the Portuguese context, several authors have underlined the links of the production of illegality with economic dynamics regarding the division of labour, including in the informal economic sector and the welfare systems (Grassi 2003 and 2012, Machado 2011, Peixoto 2011), which will be appraised in chapter Three.

**NAMING AND FRAMING (IL)LEGALITY**

A review of the current literature on “illegality” in a context of mobility exposes the problematic use, in the academic and institutional language of Western countries, of a rigid distinction between “legality” and “illegality” as two irreconcilable opposites, and as
indisputable and immutable categories (De Genova 2002, Sciortino 2012). Conversely, the experiences of research participants in my previous study on transnational conjugality, suggest the need for a critical stance on the category of “illegality” (Bacci Tamburlini 2013a). This section will present some of the debates regarding the conceptualization and terminology used in this area, both at the level of public policies and in scholarly approaches.

As mentioned, I have based my analysis on the assumption that the delimitation of practices that are considered “illegal” depends on the state’s regulation, and is historically and context-specific. I will analyse, in the chapter addressing my empirical material, the trajectories of the research participants. In particular, the focus will be on how their paths emphasize the role of institutions in determining priorities and requisites, and in generating obstacles for specific categories of migrants in their regularization process. Binary institutional classifications proved inadequate in describing the nuances and dynamicity of transnational mobility phenomena in Portugal (Bacci Tamburlini 2013, Grassi 2012, Raposo and Togni 2009). The fluid transitions between “legality” and “illegality” are evident in each of the life histories collected during my fieldwork. Individuals experienced different legal statuses according to a range of factors linked to their life cycle, national origin, labour contracts and changing laws; moreover, individuals may shift from one status to another several times during their life-course.

Both academic and institutional discourses observed in Portugal also frequently ignore the historical permeability between “legal” and “illegal” categories, as has also been observed in other European contexts (Menjívar and Kanstroom 2015:3, Chauvin and Mascareñas 2014). Moreover, the expressions used in the European governmental and media sphere to define unauthorized mobility flows often utilize criminalizing imageries, without problematizing either the origins, or the diversity of experiences enclosed in this category.

A current of thought which is gaining ground in the academic sphere and in part of European civil society criticizes the use of the expression “illegal” when discussing migratory processes, due to its criminal connotations (PICUM 2014, Düvell et al. 2008). Moreover, a report by the UN Special Rapporteur on the Rights of Non-Citizens recommends that “immigrants, even those who are in a country illegally and whose claims are not considered

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74 This section of the theoretical framework is based on the analysis developed in the context of the project “Migratory Trajectories from Africa, illegality and gender” (PIHM/GC/0046/2008), carried out from 2009 to 2011 at the Institute of Social Sciences, University of Lisbon, coordinated by Marzia Grassi.
valid by the authorities, should not be treated as criminals” (2003\textsuperscript{75}). Organizations such as PICUM- Platform for International Cooperation on Undocumented Migrants- advocate the abandonment of criminalizing or judgemental expressions when defining migrants in the European context.

The use of expressions with a negative connotation to describe mobility flows that do not fit into predefined categories, or that do not correspond to state preferences, is thus more and more discouraged\textsuperscript{76}. Yet, stigmatizing categories continue to be extensively used at the administrative level, including in some European institutions (Council of Europe 2006, European Parliament 2009). Similarly, the variety of expressions used in Portugal, described in detail in chapter 3, calls for a reflection on legal categorizations, and the need for a critical stance on the use of terms (Bacci Tamburlini 2013, Grassi 2006, Grassi and Giuffré 2013, Machado 2011).

This suggests that, rather than adopting a clear-cut binary perspective, there is an imperative to study the variations and hybrid situations of legality as points on a continuum, with the aim of capturing the complex and fluid borders between these two constructions. This analytical approach aims to overcome evaluations based exclusively on the formal aspects of legislation and its declared objectives, to appraise the ways in which they are applied in practice, and to explore the ambiguities, discontinuities and paradoxes of the migration regime as a continuously changing and relational process (Grassi and Giuffré 2013). This dissertation considers the category of undocumented migrants as that fraction of population “differentially produced by the state itself” (Domenech 2013:11).

A growing number of authors take a critical stance on the use of the term “illegal” when referring to individuals or migratory flows, proposing alternative expressions such as “irregular” (Sciortino 2004\textsuperscript{77}), “unauthorized” (Donato and Armenta 2011), or “undocumented” (De Genova 2002). Others propose to continue using the expression “illegal”. Marlou Schrover and colleagues claim that, despite its disadvantages, replacing the term “illegal (…) will not help, since any new term will acquire a similar connotation in the


\textsuperscript{76} For more detailed information on terminology, overviews are to be found in Khalid Koser’s work (2005), in the glossary on PICUM’s web site and on the webpages of the International Migration Organization, as well as in the text by Franck Düvell and colleagues (2008).

\textsuperscript{77} Sciortino describes irregularity as something taking place out of the “established procedure” (Sciortino 2004).
light of how the topic is generally discussed” (Schrover et al. 2008:10). The authors thus advocate for a shift in focus away from the general criminalizing approach to migration in academia and institutional policy. While I agree with the intent to produce transformatory approaches that go beyond terminology, I consider that “illegal” is an inaccurate description of migrants’ complex trajectories.

With the objective of proposing some useful elements for the analysis of illegality, here I will discuss a selection of scholarly contributions that have been useful in interpreting the empirical data. The terminological debate is currently on-going, and a contribution in this field requires the awareness of the role that academic work itself plays in the construction of illegality. It is crucial to acknowledge the weakness of some of the assumptions we use in our research, and that the choice of categories is not neutral, as Bourdieu suggests in his observations on reflexive sociology (1992). In this sense we should for instance contrast the trend of considering migrant categories at the academic and institutional level as naturalised and self-evident categories, delimiting a homogeneous group of people.

Nicholas De Genova additionally puts into question whether such “undocumented migrants” may be considered an acceptable object of study, and that in its place we should focus on the processes of illegalization. De Genova argues migrant “illegality” is ultimately sustained not only by legal interventions, but is also the “ideological effect of a discursive formation encompassing broader public debate and political struggle, including much social science scholarship” (De Genova 2015:43) While acknowledging these reflections, and although I felt concerned about undesired stigmatizing effects in choosing my research participants and object of study, I maintained the purpose to study the particularities of the illegalization processes.

Leisy Abrego’s study on flows of San Salvadorans in the United States, provides hints that enabled me to overcome my concerns in this area. Abrego suggests focusing not on “illegal migrants” as a group, but on “illegality” itself, as the condition of immigrant’s legal status and deportability (Abrego 2014:7). Several studies confirm how the construction of migrant illegality is deeply embedded in the construction of citizenship (Sassen 1999, Schrover et al. 2008:9, Machado 2011, Gutierrez 2010); thus investigating this process is an occasion to reflect on broader dynamics of inclusion and exclusion. The historian Mae Ngai, in her case study on the construction of illegality in the United States, similarly focuses on the processes of illegalization, tracking the historical construction of the “illegal alien” as a new legal and
political subject without rights and excluded from citizenship (Ngai 2004). The author sees “illegality” as historically specific and socially, politically and legally produced, stating that immigration restrictions, particularly national-origin and numerical quotas, constitute a re-mapping of the nation, for instance by creating new categories of racial difference (Ngai 2004).

In this context we carry, as researchers, the responsibility of problematizing the categorization of migrants as illegality-bearers, as this feeds into criminalization processes and social stratification in public policies. In particular the terminology and choice of our object of study should be thus seen as choices to be approached with thoughtfulness, to avoid reiterating essentialized and meaningless categories, producing misleading research results (Düvell 2006) and creating weakly grounded discourse and practice. As Khalid Koser notes in his 2005 review for the Global Commission on International Migration (GCIM78) scholars and policy makers are confronted by confused terminology and classifications regarding irregular migration, since these are flawed by “unclear concepts and very inadequate data” (Koser 2005:4). Several scholars agree on the need to criticize the inaccurate use of language in this area, by both institutions and academics, because of its repercussions on inequality. As Igor Machado observes in Portugal, discourses about illegality end up (re)producing social stratification (Machado 2011).

Additionally, empirical work demonstrates that there is a great variety of nuances applicable to “illegality” that escape rigid categorizations (Vianello 2006). The analysis of the case study suggests that in specific contexts, notwithstanding the institutionally assigned status, there are other factors, including historical and socioeconomic backgrounds, as well as individual trajectories, that need to be taken into account if we wish to avoid purely theoretical studies of the production of “illegality”. The Portuguese case study material confirms an institutional tendency to regroup different cases in simplified institutional typologies that are ultimately reflected in the laws. There are, inclusively, situations that are not contemplated in the law, creating unresolved cases, legal limbos and transition legal spaces that have relevant repercussions on individual’s lives and opportunities. To refer to such spaces of uncertainty, some authors choose to refer to “semi-legality” (Kubal 2012), or “semi-compliance” (Ruhs and Anderson 2010) or “liminal legality” (Menjivar 2006).

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78 The GCIM, Global Commission on International Migration, was launched by the United Nations Secretary-General and a number of governments in 2003, and provides recommendations to the United Nations Secretary-General, governments and other stakeholders on policy approaches to migration.
The analysis of the case study will focus on the implications of administrative notions of “illegality”, defined as processes that are framed by the state as circumventions of migration norms. Throughout the dissertation I chose to use the term (il)legality as a way to reflect the fluidity and ambivalence of this notion. Recognizing the nuances and nonlinear aspects of its construction is a way to counter the banalization of stigmatizing labels. A perspective that avoids binary appraisals enables me to collect nuanced interpretations emerging from the couples’ interviews. I base my reflections on the production of “illegality” on the research participants’ own views in relation to their experiences and self perceptions, as well as on social representations imposed on them. The expression “illegal” has been inserted only when used by them, or if analytically useful in problematizing its usage, namely in the bureaucratic illegalization processes. Illegality is used, for instance, when describing the approach of police officers dealing with “marriage of convenience” investigations, which define their work as an activity aimed at the “prevention of illegality”.

CONCLUDING REFLECTIONS ON THE THEORETICAL APPROACH

This section described the conceptual and analytical path chosen to delimitate and understand the interaction between contemporary human mobility and conjugal practices on the one hand, and institutional intervention on the other. As I have discussed, the difficulty in applying narrow institutional conceptualizations to the complex and fluid social dynamics of mobility and conjugality emerging in my case study has served as a driver for a reconsideration of my analytical framework. In particular, the processes observed in the field simply do not fit in dichotomous notions of “genuine” versus “fake” conjugality, “migrant” versus “citizen”, or “legal” versus “illegal”. What motivated and guided my exploration of the cited literature was thus a desire to identify theoretical tools, which would permit a flexible and empirically sensitive approach.

In this chapter I have defended the use of a transnational approach to studying mobility and citizenship, in order to overcome what has been called “methodological nationalism” (Wimmer and Glick Schiller 2002). Referring to the transnational lens enables us to de-naturalize the nation state as the sole locus of belonging and access to fundamental rights. I consider it appropriate to use conceptualizations of mobility and border regime to
complement this perspective, since they recognize the nuances of the relations of power and their multiple layers. The literature on bordering, transversal to diverse research areas, has been particularly useful as an overarching theory, in that it considers the border not only in its physical and symbolic aspects, but also as an epistemic framework (Anzaldúa 1999 [1987]). Similarly, the intersectional approach helps to account for simultaneous and mutually constitutive factors including gender, class and national origin in shaping the relation of subjects with marriage and migration controls, and the interconnected inclusion and exclusion processes. I have argued that combining these frameworks serves to acknowledge the social and legal ties that go beyond the nation state, embracing the complexity of concomitant factors influencing the lives of the subjects involved.

In the subsequent sections I examined debates linked to the concepts of transnational conjugalities, migration and “illegality” as they articulated in my research, while at the same time critically interrogating them as naturalized academic classifications and categories of institutional policy. As will be discussed in the case study analysis, uncovering the problematic aspects of these conceptualizations surpasses a solely theoretical interest or an issue of “political correctness”. These categorizations produce important repercussions on individuals’ lives, (re)produce power relations, and reflect broader social inclusion and exclusion mechanisms. A selective review of the literature was used to argue that recognizing the complexity and nuances enclosed in these conceptualizations may pave the way to a deeper understanding of contemporary social dynamics involved in transnational conjugalities.

The fieldwork conducted in Portugal led at first to a questioning of the state regulation of conjugality through standardized notions of marriage, stimulated by the perception that these criteria were scarcely applicable to the couple trajectories I was collecting. I observed how state institutions tend to compress “authorized” forms of conjugality in a naturalized, ahistorical and universal concept based on narrow imaginaries of romantic love and nuclear families. This overlooks the fluidity of the concept of marriage, in terms of historical developments and diversity across time, space and subjective experience, as underlined in a diverse range of research fields. In the literature review I suggested that the state regulation of conjugality may be seen as a tool for maintaining social order, and emphasized its profoundly gendered implications in terms of asymmetrical power relations. I have therefore decided to study transnational conjugalities as a relational concept, built in relation to state constraints.
and definitions, rather than study it as an “intimate” relationship with effects on broader social relations rather than focusing on “integration” and “cultural difference” issues.

Additionally, I proposed a critical stance on the unquestioning use of “migrant”, as it constitutes a potentially stigmatizing and essentialist category, built on the basis of a naturalized distinction between belonging citizens and subjects arbitrarily defined as “others”. On the basis of the literature review, I underscored that the term “migrant” is embedded in a global hierarchy of residency rights that is rarely used in referring to nationals of the global north, and often overlaps with notions of ethnicity and social class. In my approach, the concept of migrant is indispensable for framing the research problem, but unable to encompass the ruptures and continuities which emerge amongst individuals classified as migrants and non migrants, and even amongst individuals across time and space. In my perspective, reducing the empirical and theoretical research to “migrants” would therefore be insufficient and misleading. Consequently, although I do not reject the notion of “migrant” altogether, as it is analytically useful for understanding mechanisms of institutionalized stratification, I argue that it is not a necessary or useful category to analyze all social interactions involved in transnational lives and mobility.

My angle on the above literature also confirms that the dichotomy between legality and illegality is of little use in reflecting the nuances and dynamicity of migration phenomena, especially in their transnational aspects. The theoretical overview problematizes the use of illegal as a notion attached to migration, based on the acknowledgement that the delimitation of borders is a historically and politically situated process – I propose an analysis that looks beyond dichotomous readings of “legality” and “illegality”. The discussion concerning terminology is necessarily political, given the risk of supporting essentialized categories and misplaced policies through an uncritical use of language in this field (De Genova 2002). In this thesis I thus treat these terms as complementary elements shaping the relationship between the state and (non)citizens, as well as the broader dynamics of inclusion and exclusion. This analytical approach considers the implications of the transnational division of work and power relations as deeply intertwined with human mobility and its regulation through the politics of “(il)legality”, which will be untangled in the next chapter.
Narratives and counter-narratives on “marriage of convenience”
CHAPTER III

PORTUGUESE MIGRATION POLICIES AND LEGISLATION IN THE EUROPEAN CONTEXT

Institutionalized rejection of difference is an absolute necessity in a profit economy which needs outsiders as surplus people. As members of such an economy, we have all been programmed to respond to the human difference between us with fear and loathing and to handle that difference in one of three ways: ignore it, and if that is not possible, copy it if we think it is dominant, or destroy it if we think it is subordinate. But we have no patterns for relating across our human differences as equals. As a result, those differences have been misnamed and misused in the service of separation and confusion.

Audre Lorde, 1984
Narratives and counter-narratives on “marriage of convenience”
SECTION 1- MOBILITY IN PORTUGAL: A BRIEF FRAMEWORK

This chapter aims to describe selected elements of the current mobility regulations in place in Portugal, contextualizing the contemporary national legislation and its implementation in a broader temporal, geographical, political and economic perspective. Although I adopt a transnational perspective, suggesting that the study of the implications of human mobility needs to stretch its field of observation beyond the dynamics occurring in a single nation-state, national legislation continues to have deep repercussions on the subjects living within its territory. The power relations revolving around transnational conjugality are indeed transversal, and linked to global dynamics of social stratification, yet national governments’ decisions regarding border production and management still have a considerable influence. Notwithstanding the influence of pre-existing structural inequality and couples’ own agency, institutional migration discourse and policy have the power to produce classifications of what does and does not count as eligible conjugal ties, and as prerequisites for residency rights.

Building on the suggestions of sociologist Abdelmalek Sayad, rather than studying migration in itself, this section will aim to reflect on the processes that institute it as an object of knowledge, discourse and control, uncovering the links with the production of a national social order (Sayad 1999a and 2004 [1999]). The focus on such ordering is fundamental to reveal the power relations implicit in this process, since it is from this location that migrants are juridically and socially defined as such. In this case study, I have considered the construction and regulation of borders as an object of study which may provide material for reflection on the construction and perpetuation of social (im)balances in a contemporary European space. The overarching question arising in the case study focuses on why, and how, migration has been converted into a social and political “problem”, marked in contemporary Europe by processes of othering, criminalization, and hierarchies of exclusion and inclusion. A more focused reflection has been dedicated to an investigation into why and how transnational conjugalities have been problematized, and into an attempt to frame this within wider mechanisms of family and migration control (Kraler and Bonizzoni 2010).

The chapter will be formed of three parts. First, it will briefly contextualize historical Portuguese attitudes towards and regulation of migration, acknowledging both the important implications of the country’s colonial past, and the influence of its entry into the European
Union. This section will include an analysis of the state approach to migration, appraising the concepts of “integration” and “humanist” approaches to mobility in government discourse and practice. In order to contextualize the case study, I will then proceed to outline Portuguese migration policies, in particular those referring to the construction of “illegality”. This overview will reconstruct how “illegality” and its typologies are described and regulated by law, both in theoretical terms and in the actual legislative production. The chapter will conclude by depicting the law and its implementation in the specific area of conjugality, tracking in particular the construction of “marriage of convenience” as a political and juridical issue. The legislative regulation on this issue, devised by the state to manage marriage in a context of migration, will be analysed by inquiring into the state’s justifications for its criminalization.

COLONIALISM, GLOBAL INEQUALITIES, AND CONTEMPORARY MOBILITIES

The contemporary migratory specificities of the Portuguese context may in part be explained by the country’s geopolitical positioning and socioeconomic background, intimately linked to its historical development and international relations. A fundamental element of these relations is Portugal’s former colonial occupation of territories stretched over three continents, which has determined a consistent part of the country’s mobility patterns up until the present. The resulting “socio-historical link”, as various Portuguese academics, including Maria Baganha or Fernando Luis Machado define it (Baganha et al. 2004, Machado 1999), has had

Baganha and colleagues affirm that the “presence of immigrants in Portugal until the end of the XX century was relatively weak and the majority of movements occurring could be directly attributed to our colonial past, to our historical and cultural relations, as well as our economical relations” (Baganha et al. 2004:24, my translation). Concerning the outgoing movements of population from Portugal, which are extremely useful to frame contemporary migration phenomena, Bela Feldman-Bianco comments: “still one more interrelated layer depicts the face of an emerging Immigrant Portugal in the early nineteenth century, when massive contingents of poverty-stricken Portuguese, in their attempts to escape to the New World (mostly to Brazil) were confronted with intense surveillance at Portugal’s territorial borders. At least up to the 1950s, colonial officials defined emigrants as second and third class citizens and illegal migration as a crime. And while deriving revenues from their emigrants’ remittances, the impoverished imperial metropolis viewed emigration as a necessary evil” (Feldman-Bianco 2007:44). Although I will not enter in detail into these debates, it is interesting to note how Feldman-Bianco’s research underlines the twofold nature of border control, which historically has also served the purpose of avoiding outflows, rather than inflows, enabling a questioning of current institutional rhetoric on “illegal migration” as a phenomenon generated outside of the national space. We may add also a class component to this reading of mobility politics, just as Bridget Anderson observes with regard to England: “Examining the way in which first rulers, and then the state, have coerced the poor (…) into mobility and immobility, offers opportunities for developing a new politics of migration” (Anderson 2011).
long-standing impacts in terms of international mobility between Portugal and the territories which were part of its colonial network.

On one side, we can observe historical fluxes of citizens with Portuguese nationality towards the colonized territories, which occurred mainly during the colonial period but persist, in fluctuating proportions, to the present day (Ribeiro Sanches 2006, Grassi 2009 and 2012, Emigration Observatory website 2015). Decolonization conflicts and the following geopolitical readjustments led to specific flows in the opposite direction: it has been calculated that as Portuguese colonial rule ended, more than half a million Portuguese citizens from the so-called PALOP countries, labelled as “retornados”, moved to Portugal.

On the other side, alongside flows outward from and “returning to” the colonizing nation, this relationship has also led to more sustained incoming flows of non-Portuguese citizens. In particular, for decades following the decolonization process, citizens proceeding from the colonized territories constituted the vast majority of the incoming population. As the sociologist José Marques reminds us, to understand the nature of this influx and its implications in terms of residency status, we need to consider that a substantial proportion of the individuals treated as foreigners were born in what was administratively considered

80 The website provides updated figures on the numbers of Portuguese nationals who have registered as residents in other countries, systematizing the data from a wide range of sources.
81 As Rui Pena Pires and João Maranhão remind us, of these approximately 500,000 nationals, an estimated 59% had been born in Portugal, while the remaining 41% consisted of individuals born overseas to Portuguese parents, along with individuals of African origin with Portuguese nationality (Pires and Maranhão 1984). Some of these had acquired Portuguese nationality because the colonial administration considered the “overseas territories” as part of the same nation-state.
82 PALOP (Países Africanos de Língua Oficial Portuguesa) countries are those African countries that adopted Portuguese as their official language, namely Guinea Bissau, Angola, São Tomé and Príncipe, Mozambique and Cape Verde. It should be noted that Portuguese literature on migration appears to have a strong focus on Portuguese-speaking areas of the world (Machado and Azevedo 2009). This bias, although evidently partly based on “logistical” and specialization motivations, may give rise to epistemological concerns. Working from the point of view of literature studies, the scholar Emily Apter warns us on the pitfalls of academic reproduction of colonial or post-colonial logics through the unpolemized choice of objects of study. Apter calls our attention towards the risk of perpetuating post-colonial geopolitics by following the same linguistic (and cultural) lines traced by empires (Apter 2006). In the case of migration studies, this might translate into using former “colonial spaces” as a naturalized object of study. This thesis has been designed so as to encompass a broader range of geopolitical relations, by choosing to represent migration policies and practices which go beyond the former colonial space. Although this section briefly outlines the “colonial” link with Portuguese speaking countries, such as Brazil and the PALOP countries, acknowledging post-colonial dynamics in the stratification of migrants, the scope of the study goes beyond this sphere. This broader perspective enables us to capture power dynamics in an intersectional perspective, considering the interaction between colonial legacies and other subordination structures based on gender and global inequalities, for instance structures based on neoliberal agendas.
“Portuguese Africa”, and had subsequently lost their Portuguese nationality\textsuperscript{83} after the fall of the colonial regimes (Gois 2008). In the 1960s and 1970s, the Portuguese government started promoting the arrival of migrants from PALOP countries, aiming at filling the gaps in the construction industry workforce left by the migration of local workers. After the fall of the authoritarian “Estado Novo” regime, and the following decolonization process, this influx grew, suggesting that the historical relation with formerly-colonized countries is a particularly important characteristic of the Portuguese migratory framework. In the Legispedia website, where migration laws are complemented by explanations and interpretations provided by the Border and Immigration Service (SEF), this is stated in very explicit terms:

“Portugal maintains special relationships with Portuguese-speaking countries. This derives (…) also from the recognition (…) that our identititarian geography encompasses the Portuguese-speaking countries. From this follows the special treatment for the CPLP [Community of Portuguese Language Countries] countries’ citizens, within the limits established by our insertion in the Schengen space.”

(SEF website, my translation)

On this basis, nationals of Portuguese-speaking countries have historically obtained preferential treatment in the regularization of their legal status, and have thus found it easier to acquire citizenship. Until the 2007 so-called “foreigners’ law”, which partly eliminated this positive discrimination, migrants coming from such countries had specific advantages over other foreigners when applying for more stable residency statuses. For example, to gain citizenship, they needed only six years’ residency instead of ten, and faced fewer prerequisites. The law still contains some special opportunities to obtain visas for businessmen, scientists, researchers, athletes, journalists, artists and agents of culture from CPLP countries (Art. nº 5, Law 23/2007). Some bilateral agreements favour in particular Brazilian citizens, who still have access to a special “status of equality” (Estatuto de Igualdade).

Authors such as Maria Baganha (2005) criticize such positive discrimination measures as inappropriate, considering that in Portugal there has been a very slow acknowledgement of the evolution of the migratory flows in its territory. Arguing for a regulation of these flows

\textsuperscript{83} Decree-Law nº 308-A/75 established that the original Portuguese nationality would be substituted with the nationality of the country of birth or the nationality of parents.
Based on notions of “national interest”, she notes that the promulgation of laws based on the type of migration typical of the 1990s was misplaced, because after its entry into the Schengen zone in 1995 the country was destined to receive more and more migrants from Eastern Europe (Baganha 2005:34). As will be critically discussed in the following sections, the national regulation of mobility has in part followed economic rationales, aiming at importing a cheaper labour force and granting regularization opportunities selectively on this basis, thus causing unequal repercussions on mobile subjects. Although understanding this rationale is crucial to appraising state interventions on mobility flows, I will adopt a stance which aims to overcome such “state mentality” (Sayad 1999b). The anthropologist Igor Machado observes, in his critique of the underlying perspectives of state convenience, the construction of “hierarchies of otherness” (“hierarquias de alteridade”) (Machado 2011:130). These are based on the bilateral - and often geopolitical and economic - relations between the state from which the immigrants originally came from and the host country, determining different levels of access to document regularization for citizens of different countries. In the Portuguese case, alongside the economic advantages of maintaining economic interdependence with formerly colonized territories, this type of policy also appears to denote a condescending colonial attitude, behind the rhetorical façade evoking a common identity.84

Although colonial dynamics continue to influence the geopolitical and migratory relations of the Portuguese state (Vale de Almeida 2008), the flows concerning the country have become influenced also by dynamics of inequality and human mobility involved and perpetuated in globalization. These have increasingly shaped the global division of labour (Castles and Miller 2013), and continue to influence the movements in and out of Portugal, causing a growing differentiation of its migratory network.

84 Following from “lusotropicalist” interpretations of Portuguese colonialism (cfr. Castelo 1999, Almeida 2008), sections of Portuguese academia still argue that the Portuguese population has acquired a sort of immunity to racism, such as it is expressed in other European countries. Along these lines, some authors claim that “the existence of systematic inequalities between the Portuguese and the PALOP citizens cannot be taken simplistically as certain evidence of discrimination by Portuguese society towards these foreign citizens based on their African heritage” (Baganha and Marques 2001:82, my translation). Yet, studies on everyday lives of subjects born in African countries and living in Portugal reveal subtle racism and discriminatory practices in contemporary Portugal (Grassi and Giuffré 2013). We may affirm, as the Mozambican writer Mia Couto critically argues, that “colonialism did not die with independence. It changed of turn and of executors” (“O colonialismo não morreu com as independências. Mudou de turno e de executores”, Mia Couto, 2003). As Miguel Vale de Almeida observes, while postcolonial dynamics led, for instance, to a shift from chauvinistic and expansionist rhetoric to humanist and universalist discourse resulting in “post-lusotropicalist” narratives, Portugal’s central position was left untouched (Vale de Almeida 2008:8).
As already discussed, from a transnational perspective the idea of framing mobility in clear-cut categories of immigrants and emigrants may be seen as misleading, in that it does not reflect the fluidities and non-linear trajectories of human beings crossing international borders. The following paragraphs nonetheless present a bird’s-eye view of “conventional” and quantitative readings of the main migration flows concerning contemporary Portugal, in order to allow terms of comparison with other countries and provide some background regarding the intensity and geographies of the flows.

As the sociologist João Peixoto (2004) argues, a substantial part of the literature oversimplifies the historical development of Portuguese migration flows by stating that Portugal transited from being a country of emigration to one of immigration, overlooking the continuities in outbound flows of Portuguese nationals. Beatriz Padilla and Alejandra Ortiz add that “it can be asserted that emigration has been a constant phenomenon in Portuguese society throughout the 20th century and the 21st century, so that even when emigration is not specifically mentioned, we can be aware that it exists” (Padilla and Ortiz 2012, my translation). As Peixoto confirms, the Portuguese situation is anomalous because of such “persistence” of emigration flows (Peixoto 2004). It may nonetheless be said that Portugal has ceased to be a nation with residual immigration and significant emigration, but has rather progressively become the site of growing migratory inflows, consolidating its role as a nation of immigration, albeit one with relatively high emigration levels. This has resulted in changing demographic balances, which are particularly relevant in contemporary Portugal, as the net population is decreasing.

As confirmed by SEF data, 2010 was the first year since 1980 that the variation rate of “foreign population” was a negative figure. The decrease in “third country” residents was due mainly to a reduction in incoming flows, and an increase in “voluntary return” of migrants to what are considered their “countries of origin” (SEF website 2014). This trend is coupled with a growing number of Portuguese nationals leaving the country, mainly in search of economic opportunities (Pena Pires 2015, Eurostat website 2014). The exit of both Portuguese and other countries’ nationals from Portugal increased significantly starting from 2009, coinciding with the beginning of what has been defined as “the economic crisis”, and the austerity policies
imposed by the so-called “Troika”, constituted by the International Monetary Fund, European Commission and European Central Bank. 85

In terms of registered incoming flows, due to the previously described historical context, Angola, Brazil, and Cape Verde featured consistently as the main countries of origin of registered migrants into the country until the 1990s, when a significant number of entries from Eastern Europe - mainly Ukraine, Romania, Moldova, and Russia - began. In the same period, migration originating in Asian countries, including China, India, Pakistan, and Bangladesh, intensified. The report published by SEF with 2014 data on non-European nationals registered in Portugal underlines a high, although decreasing, representation of “Portuguese-speaking country nationals” (45.5% of the total), of which the most numerous are Brazilians (22%), Cape Verdeans (10%) and Angolans (5%). Ukrainian and Romanian nationalities are also significant, comprising 10% and 8% of the total respectively. Regarding the male/female ratio, in 2013 SEF registered the presence of more women in the country than men, amounting to 51.5% and 48.5% of the migrant population respectively. 86 The reported number of registered migrants -out of a total population of around 10,400,000 (INE website 2015)- is approximately 395,000 (SEF 2015), of which the great majority reside in the urban areas of Lisbon, Setubal, Porto and Faro.

The figures presented may provide a rough picture of the human movement involving Portugal as an origin, transit or destination country, which may be useful in comparative terms. Yet, the official data presented for incoming subjects need to be critically assessed, since these quantitative data do not take into account the large numbers of unauthorized or unregistered subjects residing in the country, and may not capture the fluidity of human movement and of residency recognition processes which are the object of this thesis. For instance, statistics only consider one nationality, failing to register individuals with dual nationality, or who are in transition regarding their legal status. Additionally, children of foreign nationals born in Portugal are often registered as foreign citizens, even when they

85 As analysed by Rui Pena Pires on the Emigration Observatory website, according to Eurostat data Portugal currently has one of the highest negative net migration balances in Europe. For instance, in 2013 the difference between entries and exits (including Portuguese nationals and citizens from other nationalities) from the country amounted to 36,000 individuals, resulting in a decrease of the registered population (Pena Pires 2015, Eurostat 2014).

86 Relatório de Imigração, Fronteiras e Asilo (RIFA) report by SEF (2015:11-12)
have never set foot in what the authorities consider their “country of origin”.

87 The relevance of unpacking the institutional system of classification also stems from the necessity to understand in which ways the migration regime is creating a pool of residents which are stuck in a legal limbo, as they have never migrated but are nonetheless considered “foreigners” and “unauthorized”. The sections below will seek to provide a nuanced description of the processes leading to the institutional approach towards unauthorized mobility flows, exposing the discourses underpinning the construction of “illegality”.

PORTUGUESE MIGRATION POLICIES: BETWEEN “HUMANIST” AND PUNITIVE APPROACHES

In Portugal, the Ministry of Internal Affairs (Ministério da Administração Interna) is the main institution responsible for the execution of policies related to mobility, although some issues, namely refugees and the regulation of the labour market and social security, are overseen by other entities, as part of a wider network for the management of migration. A network of National Centres for Immigrant Support (CNAI - Centros Nacionais de Apoio ao Imigrante) allows individuals to access information regarding their legal status, access to health, education, administrative services, social contributions and employment rights and opportunities in one single office. Regarding police structures, the Immigration and Borders Service (SEF) “executes the immigration and asylum policy of Portugal, following the statements laid out by the Constitution, the Law and the Government”.

This institution is in charge of the administrative management of residency documentation, as well as being responsible for investigation of what are categorized as migration-related crimes. This section will analyse the general positioning of Portuguese institutions, while recognizing that the state apparatus is not homogeneous and policies may be implemented differently at different administrative levels.

A general overview of contemporary Portuguese institutional discourse reflects approaches ranging from the more utilitarian, in which migration is seen as a mere workforce or demographic input, to more security-based perspectives aimed at controlling and investigating migrants in order to curb “clandestine” processes. Analysis of Portuguese state interventions on migration flows reveals two parallel processes emerging in recent decades, which could be

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87 Although the latest legislative developments establish mechanisms for minor age citizens’ regularization, for example through registering in the education system, after they turn 18 they are required to undergo an administrative process to acquire the right of residency or Portuguese nationality.

88 From the SEF web site, consulted on May 3rd 2014.
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broadly characterized as “hardening” and “softening” trends. The tendency to promulgate new laws, progressively regulating and limiting migration flows that were previously left virtually uncontrolled, coexists with a mitigation process characterized by the facilitation of bureaucratic processes and the adoption of protection measures targeting some segments of the migrant population.89

The facilitation of regularization, as will be briefly outlined in the section on the political economy of migration, is based on a consideration, by governments of all political backgrounds, of migrants as an important “resource” for Portugal, evoking their function in demographic and economic terms. Salvatore Palidda (2010) underlines the ambiguities of the utilitarian paradigm depicting migrants as resources, describing it as an inherently ambiguous discourse, since the acceptance of the presence of migrants/workers is not coupled with their full recognition as fundamental rights-holders and as citizens. What seems to be prevailing in the contemporary perspectives of control and selection of migration is a logic based on cost-benefit paradigms.1 As Eduardo Domenech observes, securitization and management of migration operate in a complementary fashion to the functioning of current global neoliberal economic and labour relations (Domenech 2013:3). This socially unequal order operates through the establishment of stratifying implementations, and the intentional introduction of a

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89 The historical systematization of laws adopted during this process provides some elements for a global picture of the developments in the management of migration flows (Bacci Tamburlini 2013). The main points of basic legislative acts regulating the entry, stay and repatriation of foreign citizens in Portugal may be summarized as follows: A 1975 Decree-Law (nº 308 A/75) regulates the legal situations in the context of the independence of African Countries of Portuguese Official Language, granting the possibility, for those of Portuguese descent, to maintain or obtain Portuguese nationality. In 1981, the so-called “Nationality law” (Lei da Nacionalidade), establishes the transition from purely ius soli criteria -conceding nationality automatically to children born in Portugal- to a partial recognition of ius sanguinis, which links the nationality of children to their parents’ (Law nº 37/81). Decree-Law nº 59/93 regulates the implementation the communitarian law of the Schengen Agreement at the national level, increasing border controls and restrictions to the issue of work permits. Under this law, some facilitations remain valid for citizens from countries of official Portuguese language, who can receive visas with less pre-requisites than other foreigners. Decree-Law nº 244/98 establishes that minors born in Portugal receive the same legal status as their parents. The decree also establishes access to family reunification for those residents who have lived in Portugal “legally” for at least one year. Law nº 4/2001 and Regulatory Decree nº 9/2001 regulate residency authorizations, and the pre-requisites and limitations of work permits, establishing a validity period of one year, renewable to five years. Work contracts are accepted as a basis to obtain this authorization. Penalties are introduced for employers that employ migrants with an irregular legal status. Decree-Law nº 34/2003 regulates migration flows through work permit quotas, which are to be linked to labour market demand. In 2003, European Council Directive 2003/86/CE establishes the nuclear family as a minimum threshold for family reunification, thus confirming that the partner and children of residents are eligible for reunification. Law nº 2/2006, so-called new “Nationality Law”, facilitates the procedures for the acquisition of Portuguese nationality and for residency authorizations. The ius soli principle is reinforced, determining that citizenship is granted to children born in Portugal, whose parents have been living here legally for at least six years, and the legal scope for the deportation of migrants in irregular positions is limited. Law nº 23/2007 extends the right of access to permanent residency status, and introduces the “long-term residency” status (or “European Blue Card”). It establishes the possibility for the regularization of minors through their registration in the schooling system, as well as for their parents.
system of advantages and disadvantages for migrants who are considered less or more desirable (or “useful”).

The securitarian approach to migration flows as a “problem” to be managed appeared in Portugal in parallel to its entry into the European Union. Pressure from European Union institutions and member states incentivized an increasing surveillance of migrants, with investments in policing structures, identity recognition technologies, and the adoption of border externalization policies. As an example, Portugal started investing in migration control outside its borders, especially through bilateral agreements with countries perceived as migrants’ origin or transit states, such as Cape Verde and Moldova (SEF 2014:37). At the same time, increasing resources have been dedicated to inclusive policies (e.g. on nationality acquisition for minors) and national “integration” plans, which are internationally considered amongst the most inclusive in Europe (MIPEX website 2014).

This multifaceted approach is visible in official Portuguese migration policy, which, as enunciated by the government, is developed on the basis of four principal pillars “1- The regulation of migration flows; 2- The promotion of legal migration; 3- The fight against clandestine immigration; 4- The integration of immigrants in host societies” (Ministry of Internal Affairs website 2013, emphasis added).90 The general position of Portugal regarding its migration policy can be thus summarized, in the formulation of the foreword to the 2003 law:

“Portugal, aware of its history and of the fact of having been, during many years, an emigration country, and as a signatory of the European Convention on Human Rights, has to assume policies with a humanist character at the level of the hosting and integration of immigrants that reside in our country (...) It is important to recognize that any responsible immigration policy has to go through the refusal of extremist models. Acknowledging the inevitability of immigration, it is necessary to make sure that the conditions to make this phenomenon happen on a legal basis are in place. This is the real challenge faced by the European Union and of all its member states: fight illegal migration promoting legal immigration. In fact, legal regulation and social integration of immigrants constitute positive factors for the country’s development.

90 Website of the Ministry of Internal Affairs, Portugal, accessed May 2015.
Besides, we recognize the important role that they play in our economic and social development.”

(Law Decree nº34/2003, my translation)

The official discourse that emerges from this foreword, beyond the evocation of humanist ideas, still seems to suggest an approach to migration based on a balance between European institutional pressures for restriction of “illegal” migration and a logic based on cost-benefit paradigms,\(^91\) rooted in the acknowledgment of the fundamental importance of mobility for the country’s “development”. As the 2010 SEF annual report makes clear, “an analysis of Portuguese legislation reveals that over the course of the past two decades immigration policies in Portugal have emphasized framing immigration in the country as a long-term or permanent process and that a substantial part of legislative efforts are aimed at inserting and integrating immigrants, from the perspective of a long or permanent stay” (SEF 2010:2).

At first sight, Portuguese policies seem to have made notable progress in providing flexible regularization opportunities. This makes it, compared to older European Union member states, one of the regimes which are most conducive to regularization opportunities and which have the least “policing” attitudes. During my study, I acknowledged the efforts of successive Portuguese governments to maintain some crucial guarantees at the legislative level, such as access to health care or education for some categories of undocumented migrants, while these have been progressively reduced in most other countries of the EU. Nonetheless, while these relatively progressive stances should be recognized, a deeper analysis reveals that this apparently “benevolent” surface may obscure some profound contradictions.

“INTEGRATION” POLICIES: CRITICAL PERSPECTIVES ON INTERNATIONAL RANKINGS

Overall, the Portuguese institutional framework regulating migration is widely considered one of the most conducive to “migrant integration” in the European Union. For instance, in 2014 the country was ranked in second position (amongst 37 countries, mostly European) in the

\(^{91}\) For instance, at the 2014 meeting of the Migration Observatory of the High Commissioner for Migration (ACM) in Lisbon, Pedro Lomba, representative of the Ministry for Regional Development, underlined the importance of migration for the economic and demographic balance of Portugal (May 21\(^{st}\) 2014, Gulbenkian Auditorium, Lisbon).
classification produced by the Migrant Integration Policy Index (MIPEX), which evaluates policies relating to family, employment, education and citizenship access, amongst other criteria (see Figure 1).

Figure 1. Integration policies in Portugal (MIPEX 2014)

As has been widely publicized by both the government and the High Commission for Migration in Portugal, the 2014 MIPEX report positively evaluated both labour market and nationality access, as well as family reunification opportunities. Also, the 2009 UNDP Human Development Report recognized the efforts of the government in terms of foreign national “integration”, in particular the provision of health service access regardless of the legal status.

The Migrant Integration Policy Index collects data on integration policies and laws in 37 countries, mostly European, in areas such as political participation, labour market access, access to education and health, and family reunification. In the 2010 edition, Portugal was classified in second position after Sweden.

It should be noted that the relatively low score in the “health” indicator may be explained in the context of an overall deterioration of the public health system in Portugal after the introduction of so-called “austerity” measures imposed on the country. The cuts in public spending have had a negative impact on the quality of the health service and hindered access for the overall population, regardless of residency status. For more detail on the methodology and legal underpinnings of the policies, refer to the MIPEX website, or annual reports.
of migrants (UNDP 2009:56). Additionally, as underlined by a report by the European Union’s Agency for Fundamental Rights (FRA), Portugal is, together with Malta, the only country whose legislation does not impose imprisonment or fines on migrants “illegally entering” its territory or not holding valid documents (FRA 2014). These policies have been complemented by an easing of regularization channels, the introduction of national integration plans which aim to facilitate access to the labour market, and the de-bureaucratization of the procedure for nationality acquisition.

As I will discuss in the following section, we should be cautious in considering the effects of the above-mentioned policies, since formal laws may be in place but applied unevenly and with varied efficacy. Without overlooking the efforts of the Portuguese authorities in granting better conditions for migrants in some areas, this thesis aims to underline the shortcomings that still characterize the discourse and implementation regarding mobility, as well as the paradoxical effects of supposedly progressive legislation promoting migrant “integration”.

As Floya Anthias and colleagues remind us, integration may be seen as a highly normative process, based on divergent assumptions. In an apparent contradiction, integration can be used “as an instrument of power and domination over migrants but also includes within it concerns with social inclusion” (Anthias et al. 2013:2). Additionally, the focus on “integration” tends to portray migrants either as passive recipients of an integration plan designed by a “benevolent” state, or as responsible for their own adaptation to local settings.

Due to its specificities, Portugal is a particularly interesting space for exploring the nuances and contradictions of porous borders, and the ambivalence of “benevolent” policies. As a nuanced appraisal of “benevolent” policies, I found useful the concept of “control with a human face” used by Eduardo Domenech to describe the more subtle mechanisms of selection of migration in Latin American countries, which he argues are less “spectacular” and “atrocious” than the mediatized controls in the Global North (Domenech 2013:2).

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94 Although Portugal is an exception in the European Union in formally protecting equal access to the health system, this provision is unevenly applied, as studies conducted in recent years have confirmed (Topa et al. 2013).

95 Regarding this institutional profiling, Eduardo Domenech points out how the classification of who is considered an “undesirable/bad” migrant shifts according to time and space: in a study on immigration policies in South America from the second half of the 19th to the beginning of the 20th centuries, he lists how “marginals” and “infractors” were defined in line with the parameters of the moral and penal discourse of the time (Domenech 2015:25-26). These included individuals classified as “adulterous”, “prostitutes”, “traffickers”, and “subversives”. In many cases, the regulation included the exclusion of those “not apt for work” (i.e. mentally
Speaking specifically about South-South migration characteristics, his interpretation may be used in part to describe Portugal’s policies, as it is one of the countries with the most permissive regulations in the highly policed space of European border control. Domenech describes control with a human face as control on irregular migration concealed behind human rights discourses, which are a useful means of gaining legitimacy for its implementation. This approach, rather than eliminating restrictive or coercive forms of control, displaces them. In his perspective, these ideas and practices are not conducive to “obtain[ing] greater results of promoting migrant’s human rights, but rather to guarantee[ing] a more effective administration of migratory flows” (Domenech 2013:2).

“Integration” perspectives are also questioned in this thesis, in that they continue to be partially identified with the concept of assimilation, a process by which migrants strip themselves of their cultural and subjective markers and are expected to be absorbed into the mainstream96 (Rivera et al. 2000). The concept may be seen in itself as a particularly ethnocentric and depoliticizing view of migrant inclusion mechanisms, implying that only subjects who fit into normative profiles may be recognized by the state. Similarly to other European Union countries, in Portugal the government tends to develop policies including migrants with differential policies according to their categorization as more or less “useful” or on the basis of their “integrability” in the country (Machado 2011). As Castles and Miller remind us, the institutional approach which emerged as dominant is that of individual paths based on integration contracts and citizenship tests. As they warn, this type of assimilationist policy may perpetuate marginalisation and reflect the difficulty faced by Western countries in confronting racism as a heritage of colonialism (Castles and Miller 2013).

The Portuguese case study also suggests a reassessment of the limits of “integration” as an explicative concept, and as a political tool. The idea of “integration”, as it is applied, appears to suggest a responsibility of the migrant to adhere to the dominant norms in the settlement country, failing to acknowledge the possibility of a more reciprocal exchange with the local

or physically “ill”), and/or those that could constitute a burden for the state (Domenech 2015:26). The increasingly restrictive practices adopted from the 1920s onwards included the presentation of certificates of “good behaviour” and proofs of having worked legally for the past 5 years, which could be differentiated depending on the country of origin of the foreigner, determining “exclusion formulas” of those individuals who did not conform to the construction of the “good migrant” (Domenech 2015:26). These definitions, although less politically correct, are in their substance impressively similar to the contemporary frameworks of selection based on the institutional profiling of subjects to determine which are authorized entry and residency.

96 The expression “host society” is avoided in this thesis because it considered to diminish the status of migrants to receivers of generous reception rather than as a priori rights holders.
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Society. This is reflected, for instance, in the additional requisite for the acquisition of Portuguese nationality, once all other formal requirements are satisfied, of “proofs of effective ties with the Portuguese community” (“Prova da ligação efectiva à comunidade Portuguesa). I argue in particular that such policies demand a unidirectional approximation of migrants to a “host” society, opening up possibilities for the state to select what types of groups it intends to favour.

Such an approach recalls the observations made by Bridget Anderson on polarized representations on behalf of states, dividing individuals into “good and bad migrants”, categories which are not conducive to inclusive policies (Anderson 2008). Current policies not only differentiate between desirable or undesirable migrants, and on that basis restrict entry to the country, but also contribute to a stratification inside territorial borders, for instance determining the selection of who might be regularized and be entitled to a legally stable existence, with the ability to claim welfare rights. As will be discussed in chapter 4, this essentialist view of the borders of belonging to the nation-state implies a pervasive selective power affecting the inclusion of subjects who do not conform to hegemonic social norms. Examples of this can be seen in the discourses which have been produced by European Union governments on the so-called “refugee emergency” of 2015, often evoking the need to “select” incoming subjects (Sigona 2015).

SECTION 2- PORTUGUESE APPROACHES TO UNAUTHORIZED MIGRATION IN THE EU CONTEXT: CONSTRUCTIONS OF “ILLEGALITY” AND SURVEILLANCE

To understand the functioning of the production of “illegality”, this section will proceed to outline the Portuguese approach in the European context, then critically assess the resulting legislative framework. Specific aspects such as the intimate links between the construction of “illegality” and state interests, for example in the economic sphere, will be exposed in this framework. Subsequently, the section will provide a discussion of current legislation and practices.
Narratives and counter-narratives on “marriage of convenience”

As argued in the theoretical chapter, unauthorized flows have been categorized as “illegal” practices in a process which developed in parallel with the creation of national and regional borders. As observed by Eleonore Kofman and Albert Kraler, especially from the late 1980s, European migration policy in general came to be seen as being essentially about controlling migration and preventing unwanted flows. The authors note how “since the late 1990s the shift from a strict migration control agenda towards a ‘migration management’ approach led to a reappraisal of economic rationales for more liberal migration policies, although this shift does not signal an end to migration control itself but rather a move from control to ‘selection’” (Kofman and Kraler 2006:5), which occurred in part through the labelling of certain sectors of the migrant population as “illegal”.

This historical development coincided with the development of the common European space, in a bordering process based on the Treaty of Amsterdam in 1997, and consolidated in the European Councils of Tampere in 1999, Seville in 2002 and Aja in 2004 (Vacchiano 2011:188). The progressive introduction of free movement within Europe corresponded with gradual tightening of restrictions on the entry and settlement of subjects with a non-European nationality, to serve the economic objectives of the EU member states. It is thus useful to list some of the European policies and regulations which have had a particular importance in determining migrants’ regularization opportunities, as well as their broader social inclusion or exclusion based on legal status.

The Schengen Agreement, in vigour since 1995, was the first binding treaty regulating the borders of the European Union, although at the time the concept of illegal flows was still not clearly defined. In 2003, the Dublin II regulation instituted a database for the collection of “illegal migrants’” fingerprints at European level. It also introduced criteria and mechanisms of asylum attribution to individual member states, which had important implications in reducing migrant’s mobility rights. In the same year, the Directive on long-term residency established minimum rights for individuals residing in a European state for longer than five years, granting additional rights in areas such as employment, social protection, and freedom of movement. Since then, the fight against so-called “illegal migration” has become one of the top agenda items in the European Union, with an escalation in surveillance of borders over the

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97 The Council Regulation 2003/343/CE, establishes a European Union database of fingerprints and affirms that the State in which an asylum seeker initially entered the EU will be competent to examine their asylum application. This measure caused some controversy, due to the fact that it limits the mobility of migrants, for whom the EU border countries are often not the final desired destinations.
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last decade (Ambrosini 2013). In 2004, with the creation of FRONTEX (the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union), the institutions concretized an effort aimed more explicitly at the control and surveillance of migrants, adopting more of a policing approach to human mobility. Four years later, the so-called “Return Directive”\(^98\) was conceived as a response to similar perceptions regarding the need to control migration flows, instituting repatriation mechanisms, while at the same time fixing maximum limits for administrative detention of irregular migrants, and other protection measures.\(^99\)

In this framework, institutions use expressions such as “clandestine” or “illegal migrants”, and often promote more restrictive policies regarding migration. In 2006, the European Commission, adopted a communication entitled “Policy priorities in the fight against illegal immigration of third-country nationals”. The official objective was to balance the security objectives and the basic rights of individuals during all stages of the process of unauthorized migration. In this document, the Commission provides a definition of illegal migration, linking it explicitly to the phenomena of human trafficking and smuggling, in a process which contributes to a criminalization of irregular migration, by associating it with “organized criminal networks”:

“The term ‘illegal immigration’ is used to describe a variety of phenomena. This includes third-country nationals who enter the territory of a Member State illegally by land, sea and air, including airport transit zones. This is often done by using false or forged documents, or with the help of organised criminal networks of smugglers and traffickers. In addition, there is a considerable number of persons who enter legally with a valid visa or under a visa-free regime, but “overstay” or change the purpose of stay without the approval of the authorities; lastly, there are unsuccessful asylum seekers who do not leave after a final negative decision.”

(European Commission 2006:1, emphasis added)

The historical analysis reveals how, parallel to introducing further restrictions, the EU has also produced policies and regulations to defend the rights of subjects crossing its borders. For


\(^{99}\) Article 8 states: “It is legitimate for Member States to return illegally staying third-country nationals, provided that fair and efficient asylum systems are in place, which fully respect the principle of non-refoulement”.

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instance, the European Union Agency for Fundamental Rights is one of the most active institutions defending the rights of migrants, at least at the institutional level. With an explicitly de-stigmatizing terminological aim, it advocates the use of the expression “migrants in an irregular position”, in opposition to other entities which use the expression “illegal migrants”. In terms of policies, the FRA supports the adoption of the 1990 International “Convention on the protection of the rights of all migrant workers and members of their families”, which is yet to be ratified by any European countries. The EU also regularly produces reports which attempt to provide a balance to member states’ restrictive practices, for instance by promoting dignified conditions for migrants in member countries, and also provides resources for migration-related “humanitarian” projects.

Yet this human rights-based facet of European policies, does not impede the progressive hardening of border controls, nor does it thoroughly acknowledge the inequalities deriving from migratory status, and it therefore ends up being complementary to the securitarian approach. European institutions end up playing an ambivalent role in creating common policies (Acosta 2009). On one hand, they push states to develop migration laws for an efficient control of migration flows, with a restrictive intention, and on the other hand they contribute to mitigating the national policies that restrain migrants’ rights, pushing members to meet human rights standards and protect of individuals and groups categorized as “vulnerable”. Such aspects are not mutually exclusive, and often coexist in the same institutional reasoning, as themes such as human trafficking and “at risk” migrants are intertwined with security concerns and policies.

A close analysis of such perspectives and the laws that arise from them reveals how such a juxtaposition contributes to the vision of the European space as a territory to be “protected” from uncontrolled flows, while at the same time promoting “humanitarian” safeguards for the potential victims of trafficking and abuse processes. The control policies implicit in such an approach are presented as mechanisms of protection for migrants, with the aim of preventing their exploitation and trafficking (Sciortino 2004). This makes it possible for governments to justify measures such as administrative detention and expulsion as necessary and desirable

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100 For a critical assessment of the “human face” of control, confront the work by Eduardo Domenech (2015), Didier Fassin (2005), and Karine Bennafila and Michel Peraldi (2008).
101 Some ambivalent aspects can also be observed in the even wider context of the United Nations. From this forum, there have emerged both proposals of protective measures, as in the “Convention on the protection of the rights of all migrant workers and members of their families”, as well as the development of a discourse on migration based on notions of criminality control and security, such as in the Palermo Convention of 2000.
measures. Such observations reveal how producing an analysis of contemporary policies based only on the formal aspect of laws, overlooking the underlying articulation of transnational power relations and internal social hierarchies, may be reductive. In both the policing and the tutelary paradigms, as will be argued in this thesis, there is a lack of acknowledgement of the responsibilities of states in the (re)production of illegalization. This is particularly visible in the area of family and migration policies, as will be demonstrated in the next section.

European Union agencies add even more complexity to the picture, contributing in discrepant ways to the creation of a common migration policy. This results in a fragmented framework, in which each institution appears to produce distinct approaches to “illegal” flows. On one hand, European binding legislation has given impulse to a homogenization of migration policies of member countries, particularly with regard to the Schengen Area regulation, control and militarization, and the creation of common requisites for long-term residencies. On the other hand, there is still no homogeneous juridical corpus which we may define as a common “European immigration law”. Moreover, due to the flexibility granted in the application of European regulations at the national level, the policies are put into practice with differing intensity by member states, and are interpreted in divergent ways by various institutions at the national level. This means that migration ends up being regulated by multilevel, overlapping and sometimes contradictory legal spheres, making member countries’ policies significantly diverse (Bacci Tamburlini 2010). Nonetheless, European policies should be recognized as an important element in shaping national migration policies towards regular and irregular flows (Dauvergne 2008, Grassi and Giuffré 2013).

Notwithstanding the binding regulations produced by European Union institutions to regulate migration, the study of the specific Portuguese context demonstrates how states still have considerable autonomy in defining specific public policies that influence migrant individuals in an irregular position. For instance, upon Portugal’s adoption of the European family reunification directive, existing Portuguese norms, which were more favourable to migrants in their provision of constitutional protection of the right to family life, remained intact. Furthermore, in the case of administrative detention measures, Portugal maintained standards that were less punitive than those allowed by the European norms. Namely, while the

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102 This section draws on the chapter “Illegal migrants in the law”, by Marianna Bacci Tamburlini, Martina Giuffré and Marzia Grassi, published in the “Migratory trajectories from Africa, illegality and gender” 2012 report, as well as from the chapter in “Vite (il)legali” (Grassi and Giuffré 2013) by Marianna Bacci Tamburlini.
directive established a maximum detention period of eighteen months, Portugal maintained its limit at two months, unlike several other Member States who set their threshold at the maximum allowed by the directive. However, in other areas, Portugal seems to have been more influenced by what Saskia Bonjour and Laura Block define as the “europeanization” of family migration restrictions (Block and Bonjour 2013). This is the case for “marriage of convenience” regulations, which are particularly punitive if compared to the general Portuguese migration legislation. As some authors have observed in other contexts, this focused surveillance on marriage might be caused by specific anxieties linked to the “privatization” of citizenship acquisition, through which the state risks losing direct control over regularization access (D’Aoust 2010, Block 2012), as well as over the management of “illegality”.

FRAMING AND MEASURING “ILLEGALITY”: STATE PERSPECTIVES IN PORTUGAL

The process of defining “illegality” in a migratory context appears to gain analytically rich nuances in the Portuguese case, where the classification and criminalization of migrants appears to be developing through relatively subtle apparatuses (Bacci Tamburlini 2013, Machado 2011), with a balance between restrictive and flexible migration policies. A twofold discourse enlacing stigmatization and compassion (Fassin 2005, Bennafla and Peraldi 2008) is reflected in various degrees in the discourses justifying policies on “illegality”, whether restrictive or aimed at the “protection of vulnerable sectors of society”.

In this context, the institutional approach to migration appears to be based on the dichotomy of “risk-vulnerability” and “assistance-security”, similarly to what Chiara Pussetti and Vítor Barros observe on the migration social assistance framework in Portugal (Pussetti and Barros 2012:2). The 2013 SEF annual report summarizes the subtle mix of rhetorical devices that underpin the policing of migration, by stating the following:

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103 The directive establishes explicitly the faculty of member states to introduce or maintain national measures which are considered more favourable to migrants, as long as they are compatible with the norms of the European regulation.

104 As will be discussed further in this thesis, while in some policy areas (such as access to education and health services, de-bureaucratization efforts, and the softening of regularization conditions for minors) Portugal is at the forefront in guaranteeing access to rights for undocumented migrants, there are still gaps in granting equal access in the implementation. More examples, in a comparative perspective, are available in the FRA’s 2014 report on undocumented migrants in Europe (FRA 2014).
“The prevention and repression of criminality associated with migratory phenomena constitute a fundamental action in the safeguard of social peace and citizens’ security, so as to avoid human victimization and exploitation. In this context, and considering the growing concern with the facilitation of illegal immigration and human trafficking, the SEF conducts actions focused on fighting illegal immigration and illegal labour networks. The significant complexity of this type of criminality should be underlined, considering a range of factors such as the organization, transnationalism of the phenomenon and the fragility of victims.”

(SEF 2013:20, my translation, emphasis added)

One of the alleged main motivations of governments in promoting restrictive laws, officially aimed at curbing unauthorized migration flows, is in fact “illegality prevention”. The underpinning justifications invoke the necessity of ensuring state sovereignty and control over the border, interwoven with the evocation of security and national defence purposes. This strict adherence to the “battle against illegal immigration” discourse is therefore ascribable to the securitarian perspective, just as observed in the EU context.

Yet the observation of official discourse suggests a deeper inquiry into what exactly the Portuguese government is referring to when presenting its policy on “illegal migration”. My analysis of institutional attitudes reveals a range of nuances in the terminology used to define the groups that, for one reason or other, escape from the norms or control established by the state. In Portugal, the website of the Ministry of Internal Affairs defines “illegal entry, stay or transit” as acts “unauthorized by the law” (Article 181 of the Foreigners Law – Lei de Estrangeiros, nº23/2007). In the Portuguese framework, illegal entry comprises all entries by foreigners who do not meet the requirements established by law, thus defining the “illegal” situation as a residual category.

105 As some postcolonial scholars argue, an imaginary Europe is built into the social sciences, through the naturalization of concepts such as sovereignty (Chakrabarty 2007). In the case study, citizenship appears to be also interpretable in this way.

106 The reflections collected in this sub-chapter stem from my participation in the above-mentioned international research project “Migratory trajectories from Africa, illegality and gender”, coordinated by Marzia Grassi at ICS-UL. Some sections have been shared in the CIEA conference of African Studies in 2010 (Bacci Tamburlini 2010), as well as in a book chapter in the publication derived from the project (Grassi and Giuffré 2013).

107 Although the criteria to define “illegal” migration are not listed in the law, which appears to consider it in part a self-explanatory category, the situations liable to cause an individual to be categorized as such include entering the country without a valid visa or a valid document, being registered in the policing information network known
It is worth underlining how in this context illegality is not described as an inherent characteristic of individuals, but as an illicit act: currently Portuguese laws refrain from using the adjective “illegal” to refer to human beings as such, using the term only to describe their position facing the state system. Until 1996, the laws on extraordinary regularizations used the expression “clandestine immigrants”, but subsequent laws dropped this expression. This change is also reflected in the titling of laws: older legislative acts define the “regime for the entry, stay, exit and expulsion of foreigners” (“Entrada, permanência, saída e expulsão de estrangeiros do território nacional”). Subsequent laws adopted non-criminalizing language, substituting the word “expulsion” with “repatriation” (“afastamento”). This terminological shift was accompanied by the establishment of more accessible legislation for migrants, such as the effort to de-bureaucratize residency procedures.

According to Eurostat data, currently Portugal has high rates of acquisition of nationality and residency, if compared to the rest of the European Union (Eurostat 2014). Nonetheless, SEF estimates indicate the presence of numerous unauthorized migrants in the country (SEF 2014). In the materials I accessed, I found no consistent public official estimates on the number of illegal residents in Portugal. The SEF activity report for 2014 provides some indirect data from document checks effectuated by police, stating that out of 168,742 foreigners who had their papers checked, 2,397 were found to be in an irregular position, of whom 158 were apprehended for irregular residency (SEF report 2014:17). Additionally, during the year 2014, 816 foreigners were forcibly expelled from Portugal due to their irregular residency situation (SEF report 2014:17).

Data regarding regularization requests in amnesties were also used, in the past, as an indirect indication of such data, albeit with the recognition that they were partial figures, mostly because not all migrants in an irregular position are able or willing to present a regularization request. An analysis of the justifications used as a basis for some laws suggest that some other figures do exist, even if they are not publicized. Otherwise, it is difficult to reconstruct what would have led the Portuguese government, in 2003, to assert that:

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as the SIS (Schengen Information System), or other irregularities such as overstaying (staying in the country after travel documents have expired) or engaging in non-authorized professional activity (SEF Report 2011).

108 There are some exceptions in some specific areas of the law, such as in article 42, Law nº 23/2007, where there is a reference to “clandestines”, as non-authorized passengers on flights directed to Portugal.


111 The SEF describes some reasons for irregularities, including non-authorized labour activities, overstaying, and the lack of registration on entry into Portugal (SEF 2006:38).
"Following the new local regime of residency authorizations established by the Law Decree n.º 4/2001, of the 10th of January, the number of legalized foreigners has increased substantially, reaching at the end of the present year around 346000 individuals. In parallel, the illegal immigration flow not only did not decrease, but, due to this flexible legislation, increased largely."¹¹²

(Law Decree N.º 34/2003, emphasis added)

However, notwithstanding attempts to put a figure on total unauthorized migrant numbers, the phenomenon by definition escapes precise measurements. Furthermore, what is institutionally categorized as “illegal” includes a great variety of individual trajectories and levels of contact with state institutions, and therefore different levels of likelihood of being registered and controlled (Grassi and Giuffré 2013). Various authors criticize institutional data regarding irregular flows as unreliable and easily manipulated (Sciortino 2004, Machado 2011). On one hand, the state and its institutions apparently are resistant to a full public awareness resist a full acknowledgement of the scope of the irregular migration phenomenon, and the fact that it constitutes a structural element of the migratory system. On the other hand, institutions claim to be defending national sovereignty, at least formally, by promoting control measures. These are portrayed as necessary measures, to combat the uncontrolled increase in the number of immigrants irregularly residing in the territory of the state. The focus on estimated figures as a justification for restrictive measures, common to most European countries, may be seen as a strategic and depoliticizing use of statistical tools as “neutral” data in support of control policies, distracting attention away from the access to full citizenship rights. Additionally, as the anthropologist Francesco Vacchiano argues regarding his fieldwork in Italy, this process may be considered a “construction of evidence” in the context of citizenship rights. As he describes, this concept refers to the “social and political process through which representations are manipulated and reconstructed in such a way that they make “evident” and “justified” a determined arrangement of things” (Vacchiano 2011:182, my translation).

INSTITUTIONAL PRACTICES AND (IL)LEGALIZATION PROCESSES

The above-mentioned discourses on illegality filter into Portuguese government regulations, making the production of legislation intimately linked to rhetorical devices evoking imaginaries related to international crime and trafficking. This process is reflected in a progressive increase in the number of regulations on the entry, stay and residency of non-EU citizens through national migration laws, and a consequent fluidity regarding the definition of “legal” migration. This process was influenced by apparently conflicting standpoints, of policing and humanist characters, cohabitating in the spirit of the laws in varying proportions. Although governments of different political positions have discursively favoured one or the other of these two pillars - often depending on the historical and political context in which the laws were promulgated - the twofold structure of general migration policies was maintained in substance.

One aspect that is considered a specificity of the country’s “humanist” approach to migration is the limited recourse to deportation compared to other European countries\textsuperscript{113}: even though legislation includes the possibility of expulsion measures for undocumented subjects, these are enforced in a smaller number of cases than in other European countries. As mentioned above, Portugal is also one of the countries in the European Union not imposing imprisonment or fines on migrants “illegally entering” its territory. Although it is important to recognize these formal achievements, this paper seeks to draw attention towards the actual outcomes of formal provisions, arguing that such classifications should not necessarily be taken at face value.\textsuperscript{114}

A historical characteristic of the migration regulation system put in place by Portuguese governments was the consistent use of mass amnesties, which were denominated “extraordinary regularizations”. These allowed irregular residents to apply for a residency authorization if they met the necessary requisites contained in the law, enabling individuals who had already been working in Portugal, or had been living there for long periods, to

\textsuperscript{113} For the sake of contextualization, it is important to note that in recent years, according to the National Statistics Institute, the inflow of migrants has consistently decreased, while migrant’s “voluntary returns”, and the emigration of Portuguese citizens rose consistently, due to a range of factors including the declining economic vitality of the country.

\textsuperscript{114} A growing critical literature is questioning the institutional concept of integration in itself as a particularly ethnocentric and depoliticizing view of the inclusion mechanisms of individuals with transnational trajectories (Kofman et al. 2013, Chauvin and Mascareñas 2014, Gregorio Gil 2009).
legalize their situation (SEF EMN 2012:2). Such interventions granting a sort of *a posteriori* recognition of migrants were routine in Portuguese migration policies, notwithstanding their supposedly “extraordinary” nature. Up until 2007, six rounds of “extraordinary regularization” took place - in 1992, 1996, 2001, 2003/4, 2005, and 2007. Although it enabled some to gain stable residency rights, in this system migrants endured a total uncertainty regarding the timing and modality of a possible regularization, due to the fact that the requisites -such as the periods of residency required for eligibility- varied from amnesty to amnesty. This underlines the limitations of a policy “conceding” rights rather than systematically recognizing them.

The semi-routine use of amnesty policies received pungent criticism from a growing number of scholars, who argued that such practices insert migrants into an arbitrary government-led system. Making regularization dependent on the government’s decision of whether or not to launch a regularization campaign, rather than on structured and permanent mechanisms, is considered a deliberate choice, aimed at the control of the migrant population (Machado 2011, Sassen 1999, Galliano 2008). As Nicholas De Genova contends, regularization processes do not eliminate the field of illegality, but rather tend to underline the exclusion of those who do not meet the criteria for eligibility (De Genova 2002). Additionally, the recourse to this “emergency solution” does not address the roots of illegalization, and instead further naturalizes the legitimacy of the state’s power to differentiate nationals from foreigners.

The extraordinary regularization policy was eventually dropped as a structural “legalization” procedure when the law changed in 2007, to avoid indiscriminate mass regularizations and allow case-by-case regularization opportunities (Bacci Tamburlini 2013b). However, access to the regularization opportunity structure remains unequal. For instance, due to the asymmetric distribution of work opportunities between men and women in different sectors of the labour market, regularization programs have gendered repercussions. Another example is constituted by the “minimum economic means”, required by applicants for family reunification or residency authorizations, which may constitute an obstacle to the regularization of individuals in less advantaged socioeconomic situations. As will be demonstrated in chapter 4 on the basis of empirical data, apparently neutral laws that seem to establish equal criteria for all in fact have intersectional “selective” effects in their practical application.

The laws as they are formulated are not capable of taking into account the complexities and fluidity of migratory processes and transnational phenomena, causing misunderstandings based on rigid categorizations which further feed into legalization processes (Codini 2008). For instance, migration legislation often fails to comprise migratory trajectories involving multiple countries and thus different legal frameworks, causing misunderstandings in terms of recognition of civil status and criminal records. The periods of transition (e.g. when waiting for the results of residency renewals) also constitute a challenge for applicants. In Portugal, an individual with an expired document is generally not considered an illegal resident, during the process of renewal or if there is an on-going regularization request. Even though during these shifts the migrant is not officially undocumented, he/she will often be excluded from the rights attached to a “fully legal” status, such as the freedom to leave and re-enter the country.116

The phenomenon of institution-driven illegality may be thus studied as a social and political construction, observable in Portuguese practices at the macro- and micro-level. The observation of the structure of regularization opportunities suggests that a conspicuous source of illegality can be found in state policies that are not conducive to regularization,117 and the constant variations in categories and laws may push individuals into “illegality” regardless of their behaviour. The situation which arose in the aftermath of Portuguese decolonization, in which subjects formerly recognized as Portuguese citizens suddenly lost their right to residency, constitute an emblematic example of this. The observation of implementation standards during my case study also indicate significant variations depending on the office, police station, or geographical area in which couples reside or file their regularization papers. Additionally, there is a confusing variety of institutional practices, and the requisites are often equally non-homogeneous, as will be analysed on the basis of empirical data in chapter 4.

Additionally, the current securitarian paradigms portray the origin of “illegal” phenomena linked to migration flows as originating in an external space, in obscure transnational criminal networks, overlooking in what ways elements of the state itself, as well as Portuguese nationals, may be complicit in the exploitation of (il)legality. For instance, recent events in Portugal uncovered the occurrence of corruption at high levels of the government and the

116 This is the case during the residency authorization renewal period, in which the individual is not granted the full rights attached to the valid document.
117 For a discussion of the Portuguese case, see Bacci Tamburlini (2013), Grassi and Giuffré (2013), and Machado (2011), and for a broader analysis see De Genova (2002) and Sciortino (2004).
migration control authorities, commonly denominated the “Golden Visa scandal”.118 In 2013, 11 public servants were detained on charges of bribery in the course of an investigation into the systematic illicit allocation of residency papers. These included the former President of the Institute of Registration and Notary Affairs (Instituto dos Registos e Notariado – IRN), and high-ranking public functionaries from the Ministries of Justice and Internal Affairs. The former director of the SEF, Manuel Jarmela Palos, was also investigated in the course of the inquiries, and submitted his resignation in late 2014 (Diário Notícias November 18th 2014). This scandal exposed the existence of unlawful profit linked to the management of residency rights, in which state apparatuses were thoroughly involved, suggesting the need to reframe the debate on “illegality” in the context of migration, and move away from the view that it is a phenomenon exclusively linked to the practices of migrants themselves.

Mark Agrast and colleagues identified, as part of the the independent organization World Justice Project, a list of factors that characterize the “rule of law”. Although not specifically focussed on mobility issues, the rule of law index they developed is a useful tool with which to critically assess the role of the state in generating illegality on one side, and and failing to grant full and equal access to rights on the other side. The authors argue that the rule of law requires accountability to the law on the part of government officials, emphasizing that this was the original sense of the term, reaching back to the ancient Greeks. As will be useful to keep in mind when considering institutional approaches to migration administration in the Portuguese case study, this means that it is not legitimate for officials to violate or circumvent the law “at their convenience or whim” (Agrast et al. 2013:11).

Furthermore, on this reading, laws must be “clear, publicized, stable and fair, and protect fundamental rights”, which will be another criteria to consider in the analysis of the case study and the couples’ experiences. The authors state that a legal system that fails to promote human rights is not a rule of law system, arguing that “rights do not derive their legitimacy from laws: legal systems exist to safeguard rights”. This implies that “legal systems should

118 The case of Golden Visas is, an emblematic example of the aforementioned migrant “desirability” scale, as migrants with the financial capacities to “contribute” to the country are considered to deserve residency rights, even though they may be staying in the country for as little as 7 days per year. The “special regime” for investment activities, commonly known as the Golden Visa program, took effect from 8 October 2012, allowing the issue of temporary residency authorizations with no requirement for an entry visa. According to the annual report produced by SEF, in 2014 Portugal issued 1405 new residency authorizations of this type. According to the constructor’s confederation CPCI (Confederação Portuguesa da Construção e do Imobiliário), since its inception, “the Golden Visa program has been responsible for the attraction of 1.5 million Euros of foreign investment” into Portugal (Diário Imobiliário 2015), exposing the commercial rationale behind these policies.
not discriminate against any residents, deny them legal protection, or criminalize the exercise of rights”. Finally, laws must be enacted, administered and enforced through “accessible, fair and efficient processes” (Agrast et al. 2013:3). This interpretation allows us to critically assess state policies, and shift the focus from “migrant illegality” to the responsibilities of the state or the role of the representation and regulation of legality in establishing the legitimacy of the state. According to such a framework, current policies, although more “benevolent” than others in the European Union, should be thoroughly reconsidered, to reflect a more equal understanding of residency rights. However, in practice promoting the rule of law in the above terms does not always seem to be a high priority for states. Arguably, one of the reasons why states tend to maintain a monopoly of mobility rights and uphold such an uneven system might lay in the economic advantages of doing so, as will be explored in the following paragraphs.

ECONOMIC MANAGEMENT OF MIGRATION POLICIES: LABOUR MARKET AND (IL)LEGALIZATION PROCESSES

The analysis of the labour market in interaction with residency rights exposes further paradoxes in the state management of unauthorized migration. In the current Portuguese economic context, in which the majority of workers are being pushed to adapt to increasingly precarious and “flexible” working conditions, the requirement of fixed contracts to gain regularization is flawed by an inherent contradiction. On one hand the access to job contracts is restricted by the legislation itself, for instance by punishing employers who employ undocumented migrants, while on the other hand the discourses underpinning control evoke precarious financial status and/or dependency on social welfare as reasons to suspect the authenticity of migrants’ intentions. These policies expose one of the inconsistencies regarding the management of illegality in the context of neoliberal policies, particularly visible in the context of the “austerity” measures imposed on Portugal by the European Union and IMF. In the current system, migrants are expected to seek stable employment in order to be able to regularize, despite the fact that in the last decade “Western” countries have tended to promote “flexible” working models, which are pushing the economically active population towards precarious, unstable work patterns (Rivera et al. 2000: 151).
An atypical characteristic of the Portuguese system lies in the mechanism of attribution of residency authorizations on the basis of job contracts and social security contributions. The legislation establishes the possibility to file for regularization if holding a regular work contract (even if in undocumented status), and the migration authorities generally consider six months of social security contributions as a requisite to gain a work-based residency authorization. Consequently, as confirmed in a study on foreigners and social security conducted by João Peixoto, a majority of individuals enter themselves into the social security system and start paying contributions while still in an irregular residency situation, in part due to the incentives from the state in terms of regularization opportunities linked to these contributions (Peixoto et al. 2011). This mechanism implies an evident economic benefit for the state, and an unequal deal for undocumented migrants, who contribute significantly to social security funds but are excluded from social benefits such as welfare pensions. Such a process grants a unidirectional flow of capital towards public institutions, at no cost to the government. Additionally, the fact that a vast number of residents pay tax while they are still undocumented exposes the paradox of individuals who become “visible” to the state’s institutions in the context of tax collection, despite officially being “illegally” resident in the country (Grassi and Giuffré 2013, Peixoto et al. 2011).

Regarding the inclusion of non-EU nationals in the labour market as a path to residency regularization, it is important to note that the Portuguese government has acknowledged the unequal effects of the economic crisis on the migrant segments of the population, especially in terms of a higher proportion of unemployed individuals. An ordinance approved in 2009 establishes a special temporary provision reducing the prerequisite of minimum means of subsistence for the residency renewals of “involuntarily unemployed” migrants. In the foreword, the legislators explain that the rationale of this decision is based on the desire not to

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119 All workers are obliged by law to register into the social security system, and unauthorized migrants are included in this, but they may not receive social benefits until they obtain a residency permit. To register formally, the social security offices should require a regular residency document, but in practice they only ask for an identification document (Peixoto et al. 2011:42). Enrolment in the social security system may be used as a basis for “extraordinary” regularization, allowing individuals, after a special application and a selection interview, to acquire a residency authorization for work reasons (Law nº 23/2007). However, registration in the social security system can only take place if employers take a risk, since employing workers in an irregular residency position is punishable by law with fines (Peixoto et al. 2011). Therefore, the inclusion of unauthorized migrants in a secure path to legalization through this mechanism is dependent on an irregularity committed by employers, and on their goodwill.
allow the economic situation to disproportionately affect migrants’ rights to renew residency authorizations.\textsuperscript{120}

In order to appraise the economic facet of (il)legality, we should take into account also the fact that, similarly to other southern European countries, in Portugal the labour market is characterized by a substantial informal sector (Grassi 2006, 2009), in which vast segments of the migrant population are employed with no official contracts, often exposing them to higher risks of abuse and exploitation. The Portuguese state has acknowledged the risks of labour exploitation, and in 2012 introduced reinforced checks on workplaces, increasing penalties for employers that exploit migrant labourers, although in practice these are not applied homogeneously throughout all sectors of the economy.

Another trait of the Portuguese labour market, especially with regard to migrants, is that it is strongly segmented according to ethnicized and gendered structures (Peixoto 2008, Padilla and Ortiz 2012). Intersecting with an unequal distribution depending on ethnicity or nationality profiles, the sex of workers is also relevant for their work opportunities. A notable proportion of male workers are employed in construction work, while a high percentage of women work in the services sector. In particular, the sector of care services has been growing due to the increase in demand for specialized care for elderly people and children, while many women also work in the area of industrial and domestic cleaning (Wall et al. 2005, Peixoto 2008). Both construction and domestic services are sectors which are characterized by higher rates of abusive working conditions and fewer legal contracts, and in general have amongst the most precarious labour positions, determining unequal access to regularization opportunities. The observation of the Portuguese case study appears to reinforce the argument of authors highlighting the embeddedness of current migration policies in neoliberal agendas (De Genova 2002, Machado 2011, Ambrosini 2013). As Saskia Sassen (2005) observes in what she defines as the “global cities” paradigm, the development of the labour market feeds a demand not just for highly skilled workers, but also for low-skilled, casualized labour, and migration policies are geared towards the needs of this type of economy.

\textsuperscript{120} Ordinance 760/2009, specifying implementation of Law n° 23/2007.
SECTION 3- PORTUGUESE POLICIES ON CONJUGALITY AND MOBILITY IN THE EUROPEAN UNION CONTEXT

In a context of increasing surveillance of migration flows, family life may be observed as a “battleground of immigration struggles”, as in recent decades it has become a key mode of legal entry and stay in Europe (Bledsoe and Sow 2008). Granting migrants the right to family union has been considered a means of promoting their inclusion into receiving societies, but also as a potential threat to the national identity of those societies (Fonseca 2005, Ferreira and Ramos 2011). A growing body of literature has disclosed how the concept of marriage of convenience has been constructed in the European context (De Hart 2006), and to what extent this appears to be affected by gendered mechanisms (Block 2009) and essentialist visions of marriage and “illegality” (Schmidt 2011, Charsley 2012). As has been noted regarding policies in the United Kingdom, “transnational marriages have become an increasingly focal issue for immigration regimes, for whom these border-crossing family formations represent a significant challenge” (Charsley 2012). Some authors observed similar dynamics in the United States of America, where “federal immigration law” is seen to function “as a form of family law” (Abrams 2007:1624) and Denmark, where family reunification prerequisites may be considered a form of limiting incoming flows (Schmidt 2011).

In this framework, the issues regarding transnational families and the regulation of the acquisition of citizenship through marriage have stimulated growing attention from governments and from European institutions alike. Legislative measures resulting from the problematization of transnational conjugalities in the European Union started to be developed in the late 1990s. In 1997, a resolution of the European Council established the “marriage of convenience” as an act concluded between “a national of a Member State or a third-country national legally resident in a Member State and a third-country national, with the sole aim of circumventing the rules on entry and residency of third-country nationals and obtaining for the third-country national a residency permit or authority to reside in a Member State”  

An example may be found in the statements of the migration scholar Lucinda Fonseca in a 2010 interview, in which she claims “there is an important trend, the increase in mixed marriages, that involve spouses of different origins. This phenomenon is (…) a sign of integration” (Fonseca 2010:6).
Narratives and counter-narratives on “marriage of convenience”

(European Council 1997:1). The resolution further invited Member States to take action to control the phenomenon, and provided a list of factors which may provide grounds for suspicion of specific marriages, listed in Box 3.

Box 3. Factors of Suspicion of “Marriage of Convenience” (European Council 1997:1)

- The fact that matrimonial cohabitation is not maintained,
- the lack of an appropriate contribution to the responsibilities arising from the marriage,
- the spouses have never met before their marriage,
- the spouses are inconsistent about their respective personal details (name, address, nationality and job), about the circumstances of their first meeting, or about other important personal information concerning them,
- the spouses do not speak a language understood by both,
- a sum of money has been handed over in order for the marriage to be contracted (with the exception of money given in the form of a dowry in the case of nationals of countries where the provision of a dowry is a common practice),
- the past history of one or both of the spouses contains evidence of previous marriages of convenience or residency anomalies.

Currently, measures are in place in all European countries to control who enters the country or gains access to residency papers through marriage with a national citizen or with a migrant with recognized residency status. One of the latest documents produced as a . for member states, the “Handbook to address Marriages of Convenience”, further frames these acts by juxtaposing them with “genuine” marriages. The Handbook invites competent authorities to check for “factors expressing the effectiveness of a couple’s family life” (European Commission 2014:22), instilling in the evaluation clear-cut and normative family models.122

Several authors have underlined the risk that the control practices deriving from these regulations pose to fundamental rights recognized in national constitutions and international conventions. For instance, these measures may be seen as disproportionate if compared to the

122 For instance, “having a child from the marriage” is indicated as a strong "counter-indication" of abuse (European Commission 2014:23).
social risk they constitute, and also potentially contravene rights to family life, as protected in human rights conventions (De Hart 2006). Notwithstanding heavy criticism regarding its negative impacts on the social lives of transnational couples (Riaño 2011, Rodriguez García 2006, Eggebø 2012, Wray 2006, amongst others), the directive and its underlying policing logic remain unchanged, and constitute the founding elements of Portuguese policies in the field of marriage and migration control. The restrictive turn in national migration policies relating to family should therefore be interpreted in this context of developments in marriage surveillance dynamics.

“Marriage of Convenience” Discourses: Social Order, Security, and Criminalization

The following section will outline the justifications underpinning the criminalization of marriage and civil partnerships as paths to residency rights recognition, framing the Portuguese case study in the European context. At the level of EU institutions, an alarmist perspective characterizes the discourse on “marriage of convenience”. The “Handbook to address Marriages of convenience” and other documental sources consulted refer to the prevention of human trafficking, and an alleged link of “marriages of convenience” to organized crime groups, as one of the main reasons justifying the policing and restriction of marriage in a context of mobility (cf. European Migration Network 2012 a, b).

The inaccurate overlapping of the notion of “marriage of convenience” with illicit activities, with little contextualization, contributes to a stigmatization of transnational couples as a whole, by establishing an equation between marriages aimed at obtaining residency documents and international criminal networks. For instance, Europol, the European Union law-enforcement agency, reproduces this causal association between transnational conjugality and crime in the following terms, when describing its actions to curb “illegal migration”: “the focus in these cases is on the third country national as a perpetrator and as a client of an Organised Crime Group facilitating illegal immigration. The Organised Crime Group can be involved in facilitating the irregular migrant’s whole journey, including entry into the EU (…)

123 As described by Betty de Hart, the 1997 Resolution on the Combating of Marriages of Convenience (1997) describes “marriages of convenience” as marriages entered only for immigration purposes, ‘with the sole aim of circumventing the rules on entry and residency’, establishing that Member States should adopt measures to combat the phenomenon (De Hart 2006:252).
Narratives and counter-narratives on “marriage of convenience”

and legalisation of stay (e.g. *via marriage of convenience*)” (Europol 2014:2, emphasis added). As with much of the wider discourse on migration control, the rhetoric underpinning restrictive policies evokes justifications grounded in the safeguarding of “potentially vulnerable” subjects. The underlying assumption seems to be that these subjects are both incapable of managing their lives autonomously and prone to deviant behaviour. In Portugal, the immigration authorities similarly construct the necessity for marriage surveillance by associating it with criminal phenomena and social risk. As stated by SEF officers in a 2009 “marriage of convenience” trial:

“What is at stake is a matter of fundamental social relevance: the combat against ‘white marriages’ or marriages of convenience, which is intrinsically linked to the good management of migration flows, to the respect for the criteria that rule the international circulation of people, to the respect for internal security and public order (…). Marriages of convenience result in elevated social repercussions, their effects project beyond the juridical sphere of the spouses, pour out into society as a whole, and are, in this connotation, of interest to the broader community.”

(SEF 2009, my translation)

This alarmist vision has also been espoused by the SEF in its Annual Internal Security Reports. In Portugal, the specific data on undocumented migration and “marriages of convenience” are published in national security reports, in the section “crimes related to migration”. They are -symbolically- inserted amongst all the rest of the data on criminality, amidst indicators of murder and fraud (SEF RIFA 2014:20). In the report on 2014, for instance, SEF refers to “marriage of convenience” as “a tool for the abuse of the right to family reunification and for the facilitation of illegal immigration, assuming progressively more complexity due to its growing utilization by transnational networks that aim to promote the legalization of foreigners in the European space” (SEF 2015:64, my translation).

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124 The SEF deposition was providing evidence against a Brazilian woman, arguing her residency permit should be revoked on the basis of “marriage of convenience” allegations.

125 Cited in court decision of the Supreme Administrative Tribunal - *Supremo Tribunal Administrativo*, Process number 0718/09, July 14th 2009.
“MARRIAGE OF CONVENIENCE” STATISTICS AS AMBIGUOUS TOOLS

The form in which data on migration are presented exposes a view of family-related mobility as a process associated with criminality and social risk, aligned with the security perspective explicit in most European legislation on such matters (Kinney 2012). Some authors have discussed governmental anxiety arising from the high number of entries occurring through this channel, and from the difficulties encountered in limiting this type of flow, because of national and international protection of family rights (Kraler et al. 2011). Indeed, according to data on registered flows, family reunification as a whole (including family members other than spouses) is one of the main causes of authorized entry into Portugal. Family-related motivations are the leading cause of new residency authorizations (SEF 2014:12). The alarmist perspective is apparently in contradiction with the scarcity of reliable data on this phenomenon, as recognized in a recent European Migration Network report:

“Whilst the perception amongst policymakers, and the media in particular, indicates that misuse of the right to family reunification through marriages of convenience or false declarations of parenthood may be a widespread phenomenon, the evidence presented in this study suggests that, while marriages of convenience do occur, it is not yet possible to fully quantify it across all (Member) States in a comparable manner.”

(EMN 2012:1)

126 According to the SEF annual report 2014, there have been 8,346 new residency permits for family reunification, including for family members other than spouses. This figure excludes the residency authorizations of family members of European Union citizens and family reunifications for the so-called Golden Visa, amounting to 2,395 in 2014 (SEF 2014:12-13). Regarding the trend, residency authorizations for family reunification have constantly decreased since 2007 (Marques et al. 2014:55). To understand the relevance of marriage and civil partnership as a basis for residency rights, the figure of residency authorizations needs to be examined alongside the data on nationality applications. The 2014 SEF annual report states that 32,349 nationality applications were received, of which 18% were due to marriage or civil partnership of more than 3 years’ duration with a Portuguese national. Of these, the most common nations of origin were Brazil (1,946), Cape Verde (581), Angola (434), Ukraine (343), Guinea-Bissau (329), Moldova (306), India (218), Pakistan (106) and Morocco (101).

127 The mainstream media consistently support the alarmist perspective by presenting news on marriages of convenience in alarmist terms, for instance inflating the number of cases at the national level and their links to international criminal networks. Titles on this theme by national news agencies include for instance “A thousand marriages of convenience are undergoing trial” (Diário de Notícias, January 30th 2011), “Marriage of convenience networks recruit in Portugal” (Sic Notícias, November 11th 2013), and “Poor women are preferential target for marriages of convenience” (Jornal de Notícias, July 14th 2012).
Regarding government estimates of “marriages of convenience”, only proxy measures - such as the number of refusals of citizenship applications based on marital status - are available. Notwithstanding the media attention and political will to restrict the phenomenon as an urgent and necessary measure, and although the SEF states that “marriage of convenience” is amongst the most frequently detected crimes associated with migration,128 the data consulted shows that only 40 suspected cases were registered in the whole country in 2013, and 57 in 2014 (SEF RIFA 2014:24, 2015:20). Unfortunately, the SEF does not provide disaggregated data on the number of investigations which resulted in judicial actions, nor on the outcomes of trials, which would allow an appreciation of the level of legal sanctions applied. In 2011, the agency produced a specific survey, resulting in the following table, which displays the nationality of origin of investigated subjects (Table 3).

Table 3. Rejected applications according to SEF Regional Directorates (Source: EMN 2012 b:19)

<table>
<thead>
<tr>
<th>Nationalities</th>
<th>Total</th>
<th>Territory where the offence was committed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>NT</td>
</tr>
<tr>
<td>Brazil</td>
<td>52</td>
<td>4</td>
</tr>
<tr>
<td>Morocco</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Pakistan</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>Algeria</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>77</td>
<td>8</td>
</tr>
</tbody>
</table>

Arguably, these low and indirectly calculated quantities do not constitute sufficient grounds for either media alarm or government anxieties regarding the matter of marriage fraud as a “security issue” due to its links to international crime, or as a consistent source of “illegal” practices. In Portugal, we may thus observe a consistent disproportionality between the amount of government attention and the actual prevalence of the phenomenon of marriages.

128 Interestingly, the report adds that of 276 individuals accused of migration-related crimes the most common nationalities of origin were Portuguese (141) and Brazilian (43). 87 of the total accusations were related to marriage of convenience (SEF RIFA 2014:24). It should be noted that these data do not refer to the final judgment, and may be considered only as a proxy indicator for the total number of sentenced subjects. To my knowledge there is no publicly available data on incarcerations for this crime.
Narratives and counter-narratives on “marriage of convenience”

entered into for migratory advantages, as Helena Wray exposes in the case of the United Kingdom (Wray 2011:22). As Betty de Hart observes, these low numbers “raise the question whether expansive legal measures are really required for a relatively small number of proven marriages of convenience” (De Hart 2006:261).

Even in the analysis provided by SEF in 2012, the justification of restrictions is based on a generic “social relevance”:

“The lack of scientific studies on marriage of convenience and the little attention provided by the media indicate the small relevance of this phenomenon in Portuguese society, supported by the quantitative expression of detected crimes. However, the criminalization of marriage of convenience has a preventive relevance as regards the misuse of the right to family reunification, the violation of the rules for entry and stay of foreign citizens in national territory and of the law of nationality, and also on other possible transversal impacts on society (economic, social, cultural, security and well-being)”.

(EMN 2012:2, my translation, emphasis added)

The agency thus recognizes the low quantitative relevance of what it identifies as “marriages of convenience”, but at the same time introduces a “prevention” perspective, to “protect” Portuguese society from an alleged social risk. This approach is characterized by marked gendered rhetoric defining more specifically who needs state protection, as will be treated in the following paragraphs.

GENDERED CONNOTATIONS OF MIGRATION CONTROLS: THE “PROTECTION” DISCOURSE

In the European context, the connections between marriage and allegations of crime established by policymakers are far from being gender neutral, since women are specifically addressed as being potentially involved in illegal dynamics, either as victims or as abusers. The “Handbook to address Marriages of convenience” explicitly adopts a gendered connotation, by choosing to quote “women brought to the host EU country and forced to marry someone” as an example for “what is typically considered as trafficking in human beings” (European Commission 2014:13). Moreover, the above-mentioned Europol
notification affirms that “marriage of convenience” needs to become a concern of member state governments, stating:

“Europol has noted an increase in contributions linking marriages of convenience to trafficking in human beings (THB). In this scenario women are trafficked in order to be forced into a marriage of convenience. (...) The women targeted are often in vulnerable positions due to economic, societal or even medical reasons (mental health issues). They are lured to the country of destination on false pretences such as the promise of a well-paid job. They are then forced into a marriage with a third country national to enable the groom to obtain residence benefits and leave to stay in the EU. The third country national “buys” a wife from a broker. In some cases, the victims are kidnapped and brought to the country of destination against their will. The traffickers take away the women’s documents and hold them captive. The victims are also often sexually abused by the “husband” or otherwise sexually exploited. It is currently unclear whether these brokers belong to networks involved in THB or act as service providers to OCGs [Organised Crime Groups] facilitating illegal immigration.”

(Europol 2014:2)

The rhetoric of these documents provides an example of how obliquely the “protection issue” arises in specific discourses regarding marriages of convenience. Surveillance discourses link illegality, gender and criminal networks, blurring the definitions by making generalizing statements based on weak evidence. Namely, it should be noted that although this document is cited in the above-mentioned European Handbook as evidence confirming that “marriages of convenience include in many cases elements of trafficking in human beings” (European Commission 2014:8, emphasis added), the two-page Europol document does not cite any figures or empirical substantiation to produce such affirmation. Additionally, Europol’s statements regarding marriage are heavily gendered in its depiction of “typical” agents of “marriages of convenience” in this context. The agency’s statements constitute an

129 Although it is not the intention of this analysis to suggest that the phenomenon of trafficking is irrelevant, the analysis suggests a change of perspective, since presenting the policing of intimacy as a tool to overcome these infringements of human rights may be misleading. This is in part because such a perspective’s focus on “criminal networks” as the only causes of surveillance practices focuses attention only on the external factor detached from political choices, distracting attention from the responsibilities of states in providing more organic responses to violence and abuse. A more comprehensive analysis of the issue would be based on recognizing the role of illegalization and structural factors in making trafficking a profitable activity, and in reproducing vulnerabilization mechanisms by failing to provide appropriate entry and regularization channels for migrants.
Narratives and counter-narratives on “marriage of convenience”

emblematic example of the overlap between the protection and control approaches directed by default towards women, by warning policy-makers against the cases in which “the status of the bride shifts from a perpetrator to a victim”:

“Not all intelligence may be available to have a clear sight on whether the bride is an accomplice (facilitation of illegal immigration) or a victim ([of] trafficking in human beings). (...) Where possible, investigations should seek to clarify the status of the bride as accomplice or victim. It is however noteworthy that suspicions have been raised about EU nationals making false declarations as victims of trafficking in human beings in order to escape prosecution for the marriages of convenience they originally consented to.”

(Europol 2014:1-2, emphasis added)

The discourses underpinning policies are often based on a rhetoric regarding vulnerable groups of migrants, focussing on gender aspects to gain public support for the control paradigms. The definition of “vulnerable” which emerges from institutional discourse is loaded with an extended meaning, appearing to be using it as an indirect evocation of poor and/or marginal women, with a nationality associated with the global south. As observed by Collet, forced marriage and trafficking discourses in particular are often heavily gendered, and extensively used as justifications for restrictive legislation on family and immigration (Collet et al. 2008). Gender norms and perceptions are in fact important factors in contemporary debates about migration in Europe, and in justifying restrictive measures (Kofman et al. 2013, Anthias and Pajnik 2014).

The markers used to define such “vulnerability” most often include being female, of older age, low socioeconomic status and in socially problematized circumstances such as drug addiction or sex work. On one hand, my interviews with police officers confirm that, as in other European countries, local women marrying undocumented migrants may be seen as naive, vulnerable, and potential victims of fraud (Wray 2006:320). On the other hand, similar “protective” formulas filter into the representation of undocumented women as inherently

As Marlou Schrover comments with regard to the particular discourse on forced marriage, “the narrative of victimhood and the assumption that women are forced leads to protective measures, which sometimes help women, but also restrict them in what they can do” (Schrover 2006:1). For a critical discussion of the discourse and policies on trafficking and its gendered connotations, consult the work of Laura Agustín (2005), John Davies (2008), and Nick Mai (2011), and for a discussion on “mail-order brides” policies, Gwenola Ricordeau (2011).
weak, “easy preys” of criminal networks, and victims of patriarchal values imported from abroad. As Edith Kinney comments regarding human trafficking in the United States (Kinney 2012), the representations of “marriage of convenience” tend to construct ideal types of “victims and villains”.

This type of victimizing discourse has been criticized by a growing set of authors on the basis of fieldwork conducted in European countries. John Davies denounces the casting of foreign women as inherently weak and exploitable, which serves as a justification for increased control and does not respond to the women’s life and mobility agendas (Davies 2008). In particular, in a later critical intervention on the “policy construction of trafficking”, he and Benjamin Davies argue that “migrant women with secure mobility rights and supportive social networks can avoid or mitigate many trafficking harms” (Davies and Davies 2008:114).

As a growing number of international organizations are beginning to acknowledge, trafficking may be thus seen as “an institution mostly created and sustained by poor policy, that could be most appropriately addressed by better informed and more rational labour migration policy (Davies and Davies 2008:126). As will be argued further on the basis of empirical data, this critique could be stretched to much of the “marriage of convenience” regulation.

CONJUGALITY AND MOBILITY LEGISLATION: INSTITUTIONAL PROCEDURES AND “AUTHENTICITY” SCALES

Compared to much of the European Union, marriage in the context of human mobility is a recent field of legislative regulation in Portugal. In 2007, participating in “marriages of convenience” was introduced into the legislation as a distinct crime, under Article 186 of the National Immigration Law. Namely, whoever marries or establishes a civil partnership “with the sole purpose of earning a visa or a residency permit or defrauds the legislation” on the subject of nationality acquisition is punishable with a prison penalty of 1 to 5 years, or of

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130 The mediatization of marriage of convenience fits into the picture of victimization of women presented by state institutions. In most media reports, women are ascribed subordinate positions (even when they are investigated for having committed illicit acts) and men - often non-Western men of specific national origins which are the object of stereotyped representations - are attributed all the criminal responsibility. The trend is to present the Portuguese spouse as a semi-conscious victim of transnational criminal networks, or of individual migrants aiming to regularize their papers.

131 Decree-Law nº 237-A/2006 establishes the possibility to apply for nationality to partners living in civil partnership with Portuguese nationals for more than 3 years.
Narratives and counter-narratives on “marriage of convenience”

2 to 6 years if it is done in a “repeated or organized way”, and with the cancellation of any residency or social benefit rights acquired through the marriage.

This punitive approach towards “marriage of convenience” contrasts with Portugal’s generally open legislation towards family reunification. Unlike other European Union countries (cf. Block and Bonjour 2013, Kraler and Bonizzoni 2010), in Portugal legislation has progressively facilitated some aspects of residency acquisition. For instance, the 2007 law eliminated the labour restrictions for spouses living in Portugal under family reunification schemes, and reduced the time necessary to gain autonomous residency rights (Fonseca 2010). Additionally, it introduced the possibility to apply for nationality on the basis not only of marriage, but also of civil partnerships (uniões de facto). These developments appear coherent with the right to family recognized in Portuguese legislation. According to the 2005 modifications to Constitution of the Portuguese Republic, the right to family and marriage under conditions of full equality is a fundamental right under article nº 36 (Portuguese Parliament website 2015).

At the same time, the Portuguese government has pursued a restrictive shift through the criminalization of marriage. Public and political attention regarding specific “marriage of convenience” policies started in the 2000s, in the context of the above-mentioned process of securitization of migration and adaptation to European standards. Partners that intend to marry and obtain residency are increasingly submitted to investigation into the motives for their union, officially to rule out the possibility that the wedlock might be motivated by the obtaining of legal residency status for one of the spouses.

Judicial and police authorities, including the aforementioned SEF, the Public Prosecution Service, and the Criminal Police, are the institutions responsible for combating and preventing marriage of convenience. Civil registries are equally inserted in this “prevention” network, and are expected to inquire into the motivations for marriage of all inter-status couples. In case of a suspected marriage of convenience, the registrar is under a legal obligation to communicate their suspicion to the Public Prosecution Service, as well as to the SEF, which is requested to conduct an investigation. In such cases, the marriage proceedings are suspended until the investigation is completed. Conversely, if the marriage is found to be “legitimate”

133 Previous legislation already regulated some aspects, although partially. The 2003 Decree-Law established the revocation of residency rights on the basis of fraudulent marriage charges against the applicant (Art. 1 and 2 of Decree-Law nº 34/2003).
and the couple is not investigated, after formalizing the wedlock the foreign spouse gains the same residency rights as his/her spouse, and may also gain nationality after 3 years, provided his/her partner is a Portuguese national and he/she is able to provide proof of a “genuine attachment to the Portuguese community”.  

At present in Portugal, partners involved in either marriage or civil union must provide a series of documents when applying for residency authorizations on the basis of their conjugal union through family reunification schemes. As described in the ad hoc SEF report on family reunification (SEF 2012), these include proof of the family tie, identification documents, minimum means of subsistence proofs such as bank statements, and criminal record, among others (Portuguese Government, Articles 66 and 67 of the Regulatory Decree 84/2007).

A growing range of scholars have criticized the assumptions and appropriateness of “marriage of convenience” control practices from a juridical point of view, and with a focus on the fundamental rights of the subjects involved. As Irene Messinger notes in her study on marriage and migration control in Austria, the criminalization of “residency marriages”, and the practices of the migration police trying to evaluate the “authenticity” of marriages by home visits, interrogations, and interviews, violates the human rights to private and family life laid down in Article 8 of the European Convention on Human Rights (Messinger 2013:387). Messinger questions whether “the intense invasion into the private life of bi-national couples and their right to marriage [can] still be seen as proportional” (Messinger 2013:387). Additionally, as argued by Iris Haenen regarding forced marriage in Europe (Haenen 2014),

134 Law nº 37/1981. It should be noted that the “family reunification” legal framework does not distinguish whether the applicant spouse is already residing in the country, thus including all partners with “third country nationality” aiming to gain residency rights in Portugal in the same category (Act 23/2007). It is important to note, for the sake of contextualization, that since the introduction of same-sex marriages and civil partnerships in May 2010, same-sex spouses are currently eligible in terms of residency rights in Portugal. Furthermore, since the recognition of civil partnerships in May 2001, the government has established a generic equality in family law regarding the concepts of ‘marriage’ and ‘de facto relationships’. These forms of conjugality are consequently regulated by identical provisions in terms of regularization opportunities, although it remains to be investigated to what extent these regulations are evenly implemented.

135 Civil partnerships, or de facto relationships, are recognized under Act 7/2001, of May 11, with the following definition in paragraph 1 of Article 1: “legal situation of two persons who, regardless of gender, live in conditions similar to those of spouses, for more than two years” (EMN 2012:3).

136 Regulatory Decree 84/2007, of November 5, establishes in Section IV “Family Reunification” (Article 66 and following Articles) the necessary conditions for application, procedural steps, notification of approval and cancelation of residency permits (EMN 2012 :3).

137 Proofs include the marriage certificate or, in the case of civil partnership, the partnership certificate plus other documents confirming the civil partnership “for at least two years”, which may include “joint bank accounts, joint tax return evidence and other relevant means of proof”.
the exploitative configurations of marriage, as well as all the criminal activities regarding document falsification, can be adequately prosecuted with the existing legal instruments, making the formulation of “marriage of convenience” as a separate offense unnecessary. For instance, prior to the introduction of specific “marriage of convenience” legislation, the Portuguese Penal Code (as approved in the Decree-Law nº 400/82) already contained legal provisions pertaining to the falsification of civil status (Article nº 248) and the falsification of documents (Article nº 256), which could be used to avoid what police forces call the “misuse of the right to family reunification for residency permit purposes” (EMN 2012). Arguably, the repeal of the “marriage of convenience” legislation would not impede the prosecution of specific types of crime which are covered by other Portuguese legislation, such as gender-based violence, document falsification, and fraud. It would be thus appropriate to question from a juridical point of view whether other existing laws could be used to prosecute any marriage that would be considered a “marriage of convenience” under pre-existing legislation.

The close observation of institutional practices allows us to gain insight into how the state determines which couples are eligible for regularization. Understanding the standard procedures enables us to ascertain which features are rewarded in the state control of marriage practices. In its own account of its procedures, the SEF indicates that its practices include various types of investigation, with a great degree of arbitrariness:

“When examining an application for family reunification, SEF may interview the family reunification applicant, and his/her family members, and conduct any other inquiries deemed necessary, and when examining an application regarding a de facto partner of the family reunification applicant, SEF must ponder factors such as the existence of common children, former cohabitation, and the register of the partnership as well as any other trustworthy means of proof (Article nº 104 of Law nº 23/2007)”.

(EMN 2012:5, emphasis added)

In the framework of the case study, I developed a set of interviews with institutional actors such as immigration police and civil society entities in order to integrate the documental

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138 For more detail, see the report prepared by SEF (EMN 2012). It may be argued that previously existing legal tools were already sufficient to tackle the problem, considering the low numbers of detected cases.
Narratives and counter-narratives on “marriage of convenience”

data.\textsuperscript{139} These dialogues aimed at understanding the kind of controls that are in place, as well as the criteria of institutional selection determining “suspicion” versus “absolution” on behalf of the authorities. I was informed that the routine procedures include an analysis of the residency histories of the spouses, their past legal statuses and professional and economic background. Alongside a subjective interpretation of what they consider “suspicious” couples, officers operate on the basis of risk profiles, constructed by the SEF to determine which characteristics suggest that a couple are more “likely” to be engaged in a “marriage of convenience”, as listed in Box 4.

Box 4. Indicators of fraud related to marriages of convenience according to the SEF study “Misuse of the Right to Family Reunification: Marriages of convenience and false declarations of parenthood” (EMN 2012:12, emphasis added, and English language corrected).\textsuperscript{140}

- The spouses do not speak a language that is understood between both of them;
- There is no previous history of legalization (or attempt at legalization) of the concerned parties in the national territory;
- Interpreters are systematically used in [administrative] acts related to the marriage;
- The spouses are completely unfamiliar with each other (they have never met previously), or misinterpret each other’s personal information (name, address, nationality, job);
- The spouses reside in different countries;
- There is no communication of any kind between the spouses;
- The marriage was preceded by pre-nuptial agreements, such as on the separation of marital property;
- The spouses do not live together after marriage;
- [The applicant] has a change of address shortly after obtaining the residency card of an EU citizen family member;
- The spouses lack any shared cultural or social background;

\textsuperscript{139} As explained in more detail in the chapter on methodology, these research participants included officers of the criminal investigation unit and the deputy director of SEF, interviewed in several sessions from 2012 to 2015.
\textsuperscript{140} Some of the indicators that are considered by state authorities as a reason for additional investigation - such as spouses that do not share a common language or have significant gaps in age - derive from European directives, while others have been created by the SEF.
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- Accusations have been made that the marriage is one of convenience, or there are suggestions of physical/psychological abuse or blackmail which could indicate the existence of a marriage of convenience;
- The spouses have difficulty in reporting consistent facts of the relationship that may justify the will to marry;
- There is a significant difference in the ages of the spouses;
- The marriage was conducted by power of attorney;
- The marriage was conducted after the initiation of an expulsion procedure, or after decisions rejecting the application for a residency permit under other legal instruments;
- Marriages with indigents, prostitutes or persons with mental disabilities;
- The nationalities of the spouses match the risk profile as regards marriage of convenience

This long list explicitly exposes some discriminatory practices in the institutional selection of “genuine” couples, which will be discussed below. Through this differentiation based on couples’ characteristics, authorities in charge of marriage control construct what may be seen as “authenticity” scales, inserted in broader selective migration policies.

The functionaries’ perspectives: “problematic” social groups, class and nationality

In order to reconstruct the authorities’ implementation rationale, and verify possible selection patterns utilised by front-line employees, I interviewed the SEF’s National Deputy Director, José Van der Kellen. In response to my inquiries regarding the guidelines followed by functionaries, Van der Kellen commented that the services mainly rely on “the experience of functionaries”: “We have been here for 20 years, and we know which are the places where we will insist (...). For example, we know that a certain person lives in a problematic neighbourhood, a Portuguese woman for example... then, she goes and marries a guy that appears, coming from Pakistan, just like that. She has some [criminal] background. (...) All of this enables an investigation, whether preventive, or criminal.”¹⁴¹ (José Van der Kellen interview, March 2013).

¹⁴¹ José Van der Kellen, 2013: “há a experiência dos funcionários. Estamos aqui há 20 anos e sabemos os sitíos onde vamos bater (...) por exemplo, nós sabemos que uma determinada pessoa vive num bairro problemático,
Van der Kellen particularly emphasized certain factors that would be included in risk profiles, including couples in which the partners were “unemployed”, or whose “income is relatively low”, and “a priori, persons involved in nocturnal work”. When asked what concerns made this type of selective inspection of marriage justifiable, he commented: “The most preoccupying situation is that of women with economic difficulties, some [are] prostitutes, or drug addicts (...) These are persons that are enticed in exchange for money, to help the regularization [of foreign citizens]”.

The picture that emerges from the Portuguese case study confirms a differential approach towards specific, often marginalized, categories. As explicitly stated in the guidelines above, marriage with “indigents, prostitutes or persons with mental disabilities” is regarded as unconvincing a priori. The description of suspicion indicators exposes the factors which determine the level of inquiry to which couples are subjected. The main categories that emerge refer to economic factors, nationality of origin, and social characteristics of the couple’s relationship, as will be explored further in the following paragraphs.

As has been observed in the broader European context (Kofman 2002), socio-economic criteria, including labour market participation and financial resources, seem to be applied to national family migration policies in Portugal. According to SEF officers, couples in which one or both partners are in a precarious labour position are considered likelier to marry in order to obtain documents, or in exchange for money. Interviewed officers implicitly indicated marginalized social status of one of the spouses as a factor leading to suspicion, due to the supposed necessity of earning a living in less “transparent” and lawful ways. These suspicions reveal a normative vision of the type of activities which spouses may legitimately perform, for instance by classifying individuals engaging in sex work or drug use as inherently prone to “illicit” conjugality.
The nationality of spouses is also a factor in institutional discrimination, with enforcement officers targeting specific origins of spouses\textsuperscript{145}. In the interview, Van der Kellen indicated some specific geographic origins which enter into the SEF’s risk profile of “marriage of convenience”, such as “Hindustanis\textsuperscript{146} and people from the western African coast, for example Nigeria”. Van der Kellen added that “these people may be involved in other very complex and problematic criminal situations”.\textsuperscript{147} Additionally, the level of institutional appreciation of the spouses’ “shared cultural or social background” appears a debatable factor, easily linked with ethnicized readings of eligibility. When asked about data regarding the incidence of crime that may substantiate such risk profiles,\textsuperscript{148} Van der Kellen suggested to ask the SEF’s Criminal Investigation Unit, but the functionaries in charge there told me that they had no publicly available figures to support the risk profiles. However, the officer Leitão indicated during one of his interviews that the SEF bases its investigation in part on “statistics of abuse records” classified by national origin.

Such practices reveal a selection mechanism based on geographic origin, which needs to be further studied as an additional form of discrimination in the implementation of migration law, intersecting with gender and social class. As Helena Wray observes in a paper on marriage and migration control in the UK, the measures discussed above are ways to control the admission of those whose “defect is (…) their race or nationality, their immigration status or their socio-economic position; classic instances of intersectionality” (Wray 2015:1). The procedures enacted in Portugal reflect those observed in the broader European context. The institutional interviews I conducted expose the interconnected notions of social danger generated by the SEF, based on nationality, neighbourhood of residency, and professional background, which appear to feed into a criminalization of marginalized sectors of the population. In some cases the selection of couples seems to be based on a gendered and

\begin{footnotes}
\item[145] The present research has not been focused on racial profiling, although the results indicate that a specific investigation of this theme would provide insights in the declinations of both nationality-based discriminations and post-colonial legacies in the workings of institutional procedures.
\item[146] With “Hindustanic” the interviewee referred to individuals of hindi-speaking nationalities such as India and Pakistan, as he explained later on in the interview.
\item[147] José Van der Kellen, 2013: “Industánicos, e da Costa Ocidental Africana, como Nigéria (…) Estas pessoas podem estar envolvidas em outras situações criminosas muito complexas e problemáticas” (…).
\item[148] As already mentioned, although I do not intend to insinuate that at the authorities should not put resources into detecting cases of human trafficking or explotation, I argue that the overlap between discourses easily generates a stigmatizing and criminalizing effect regarding all couples who do not fit into the “genuine” profiles.
\end{footnotes}
paternalist model enlacing both compassion and stigmatization (Bennafla and Peraldi 2008), which resonates with the “vulnerable citizens” discourse at the governmental level.

Timóteo Macedo, President of the association Solim (Solidariedade Imigrante - Immigrant Solidarity), one of the NGO observers contacted during the research, commented on this type of profiling, denouncing the “permanent suspicion” on the part of Portuguese authorities, which is aggravated when they are dealing with particular nationalities. Macedo points out the discriminatory attitude, particularly towards Brazilians and people from “Muslim countries” with whom the mistrust reaches absurd levels. It is as though all these persons had less than legal intentions.” He adds that such policies lead to a “criminalization of affection”, denouncing the fact that the onus of proof of a loving relationship is being placed on migrants.

According to the preliminary data, Portuguese authorities seem to be creating standardized risk profiles and at the same time producing subjective frameworks on which to base their definition of a “genuine” couple. Police officers in fact stated that they also relied on their “instinct” to distinguish suspicious marriages, confirming an arbitrariness of the process due to a reliance on personal judgement rather than on objective indicators (Eggebø 2012). These judgements may be “based on little more than personal impression” (Wray 2006:312) by bureaucrats, whose decisions are informed by normative expectations. As Saara Pellander observes in her case study on “marriage of convenience” control in Finland, bureaucrats may hold their own essentialist views, expecting migrants to adhere to indigenous cultural norms, as well as gendered understandings of spouses’ “expected behaviours” in the immigration process (Pellander 2014:1). Pellander’s reflections on immigration administrators, using the analytical framework of moral gatekeeping, identify culture, gender, and temporality as central elements of the gatekeeping procedure (Pellander 2014:1).

**SELECTION PROCESSES: “GENUINE” COUPLES AND SOCIAL MODELS**

The imaginary of the “genuine relationship” adopted by state institutions appears to be constantly marked by an association with normative conceptions of family, as can be seen in

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149 An NGO activist reported cases of Brazilian women being refused permission to marry, or having it indefinitely delayed, because of the stereotypes about their nationality and “moral customs”, which, once again, has heavily gendered connotations.

150 Timóteo Macedo, interview quoted in an article entitled “Brazilian woman bought a Portuguese groom for 1550 euros”, Diário de Noticias, 19th of January 2010
the way that officers treat the “visible” markers of the spouses’ attachment as crucial to the “legitimacy” of their relationship. The case study confirmed how Eurocentric and normative considerations, for example concerning the age difference of the spouses, cohabitation, or reciprocal “dependency”, are considered as factors for the eligibility of marriages. For instance, standard institutional procedures expose how financially interdependent couples are favoured: as I verified in the fieldwork observation in the SEF offices in Lisbon, being able to prove common bank accounts or properties is amongst the most easily accepted “reliable” proofs of relationship. As observed above, factors that may be considered indicators of a “genuine marriage”, apart from bureaucratic requirements, economic requirements and consistent answers in interviews, may be “proofs of love”. These include, apart from evidence collected in SEF home “visits”, letters and pictures that show a romantic liaison between the couple or the existence of children, as well as the “behaviour” of the couple, which are all inevitably biased by subjective assumptions regarding what may be considered as “formal evidence” of a loving relationship.

Considering that different societies and subjects create infinitely varied conceptions of couple and/or sexual and affective relationships, the fact that a particular reading of conjugality is hegemonically considered as the “authentic” one places in “abnormality” all the forms that do not fit into this naturalized imaginary (Gonzalez and Yanes 2013:119). The governance of marriage migration, through the construction of “authentic” marriages portrayed as devoid of any material interests, rests on “western fairy-tale of ‘true’ romantic love” imaginaries (Muller Myrdhal 2010). These criteria may be highly arbitrary, such as in the case of the indicator “The spouses have difficulty in reporting consistent facts of the relationship that may justify the will to marry”. What functionaries may consider to be “consistent facts” could arguably be based on a profoundly hegemonic and narrow reading of human relationships. The categories used to classify and manage families that include migrant members may be seen as potentially misleading and discriminatory, as they tend to use normative definitions of marriage and love to determine access to residency rights. In this context, the family models implicitly promoted in migration policies in Portugal interact with the construction of illegality to produce gendered discourses and practices.

Similarly to what Helena Wray observes in the case of the United Kingdom, factors for refusal of regularization through marriage in Portugal may include discrepancies in the answers given by the partners to questioning, or deviations from a stereotyped view of
customary practices (Wray 2006:306). These normative practices make it hard for couple behaviours that are seen as “unusual” or “inappropriate” to be accepted by institutions as a basis for document regularization. For instance, non-exclusive cohabitation or non-cohabitation are seen as problematic aspects when it comes to assess the genuinity of a couple. In this context, individuals’ mobility rights are jeopardized because of discrepancies, in the view of immigration officials, between their moral and family customs and those practices seen as the local standard. The views imposed by institutional actors regarding acceptable forms of marriage expose normative attitudes towards family choices, which are not equally applied to the general population, and which contribute to creating a “double standard” regarding family opportunities. Because of the perception that officials have of their moral and family customs, some groups of migrants are required to undergo intensified scrutiny, as if there were a presumption of their inherent immorality and they had to live in constant justification of their practices (as Abdelmalek Sayad observes effectively in his book La double absence, 1999).

Considered as a whole, the procedures enacted under “marriage of convenience” control, rather than curbing abuse and exploitation and combating criminal networks, appear to be more conducive to a selection process. As Eleonore Kofman and Albert Kraler successfully summarize in their analysis of family and migration policies in Europe:

“Although physical controls at the border or within a country and related practices (detention, expulsion, deportation) remain important, contemporary migration management largely operates through allocating differential rights to different categories of migrants. It does so through various mechanisms (classification and selection, admission procedures, conditionality, and restrictions) and along various axes, notably along nationality, skill level and socio-economic status, and gender – if often only indirectly. (…) In this way, immigration regulations produce new forms of inequality, while frequently reinforcing “traditional” ones along the lines of class, gender and ethnicity and ‘race’ ”.

(Kofman and Kraler 2006:10)

For an analysis of the transformation of intimacy in modern societies, consult Anthony Giddens’s work (1993), whereas for a discussion of constructions regarding “the migrant family”, see Strasser and colleagues (2009).
Sarah Van Walsum additionally refers to the general selective purpose of marriage and migration restrictions, which aim to curtail entry, as well as selecting “desirable” applicants (Van Walsum, 2011). As observed by Garbi Schmidt in Denmark, specific family norms imposed on migrants and their partners may indeed be “instrumental in including or excluding particular groups of residents” (Schmidt 2011: 258), due to gender, nationality or socioeconomic situation, or to non-standard family practices. Chauvin and Mascareñas, in a study of undocumented migrant incorporation in Europe and North America, argue these “deservingness frames” are contributing to the construction of idealized models of “good citizenship” by European institutions (Chauvin and Mascareñas, 2014). A growing number of scholars warn that relying on restrictive standards to define “genuine marriage” is a way to exclude unwanted migrants, risking also the exclusion of marriages that “do not conform to majority norms” (Wray 2006: 311). Sara Friedman, in her studies focussing on China and Taiwan, delineates this articulation between state intervention, marriage and migration as “intimate politics” (Friedman 2006), arguing that it has a role in reinforcing the state and its sovereignty.

CONCLUDING REFLECTIONS: (IL)LEGALITY AND “MARRIAGE OF CONVENIENCE” REGULATIONS

The combined analysis of both the particularities of the institutional discourse and practice in Portugal, and the continuities with European Union policies, is a useful tool to locate the national migration regime within broader constructions of (il)legality and civic stratification in contemporary migration regimes. Furthermore, the observations collected on the Portuguese context constitute a fertile ground to produce insights into the implications of the current policies beyond the façade of integration policies. Portugal is generally regarded as having particularly “benevolent” policies towards migration, and as an example of good practice in integration policies regarding international migrants. Yet, the fact of Portuguese policies being positively evaluated internationally as being among Europe’s most efficient when it comes to “integration” should not hinder a critical consideration of the subjacent exclusionary and othering premises of its migration regime. First of all, the analysis has exposed the limitations of the utilitarian perspective of “integration”. Public discourse in Portugal regarding human mobility exposes pragmatic justifications for a management of
Narratives and counter-narratives on “marriage of convenience”

migration aimed at the wellbeing of the country and its inhabitants. Official discourse consistently refers to incoming flows as crucial for the development of the country, regardless of the political colour of the government in charge. In this paradigm, the legitimacy or illegitimacy of migrants’ residency is treated as a concession regulated according to the priorities, perspectives and interests of the state and depending on its contingent convenience, rather than being based on migrants’ fundamental right to equal citizenship.

The Portuguese “integration” discourse has also been shown to be invariably coupled with securitarian perspectives, evoking the objectives of promoting “legal” migration, and combating “illegal” migration. This rhetorical formula leads to the construction of binary categories, with individuals reduced to either “victims” depicted as inherently “vulnerable” and dependent subjects, or “villains” represented as abusers of the system aiming to circumvent laws and integration mandates. For instance, notwithstanding weak empirical evidence, the phenomenon of potentially “fraudulent” family reunification on the basis of marital relationships is presented as a security hazard for Portuguese society. The specific policies observed in the case study constitute a concrete example of broader trends of problematization and criminalization of transnational conjugalities. The justifications provided for the harsh legislative measures used to deal with such concerns are based on the alleged prevention of crime and “illegality” and on the “protection” of sectors of the population depicted as “vulnerable”. In this context, the “construction of evidence” (Vacchiano 2011) feeding social anxieties on “illegality” is functional to the maintenance of a securitarian status quo. This happens through the strategic presentation of information, enabling the authorities to build a risk-vulnerability or security-surveillance nexus, notwithstanding the fact that these equations are often weakly grounded in empirical data. Although this aspect should be further studied from a juridical point of view, my analysis further hinted at the existence of alternative juridical tools to prosecute crimes related to exploitation, fraud and abuse, potentially making the targeting of marriage through a specific criminalization redundant. Yet the Portuguese government proceeded to create a dedicated typology of crime on “marriage of convenience” in the 2007 Migration Law (Law 23/2007), establishing a range of provisions which restrict the access to conjugal relations as a regularization channel.

The underpinnings and practical functioning of selective logics enacted in the policing of transnational conjugality, have been explored from the standpoint of state representatives, exposing the ways in which the regulation of migration operates through a range of profiles
and classifications. The documental analysis, observation, and interviews conducted with members of the Border and Immigration Police (SEF) exposed the institutional representations of migrant subjects which are used in the implementation of this law. A gender perspective has enabled me to exemplify these mechanisms in a transversal optic, involving both those women classified as migrants and women holding Portuguese nationality who are labelled as “socially problematic”. A particular focus was dedicated to exploring how these women in particular are the object of essentializing representations on behalf of state institutions, depicting them as both potential victims and abusers. On one side, these subjects are depicted as the potential prey of criminal networks and/or deceitful husbands who might hide their instrumental motivations for marrying. This reinforces a view of women as ingenuous and defenceless subjects, thus as preferential beneficiaries of “protection measures”. I argued that this custodial attitude on behalf of the state erases their agency and restricts their right to autonomous conjugal choices.

The label of “vulnerability” also appears to make particular social profiles become preferential targets of government control in the context of “marriage of convenience” surveillance systems. Specifically, women from marginalized sectors such as those living in problematized social situations, or migrants coming from specific geographic areas, are categorized as more prone to criminal activities and thus easily enticed into “fraudulent” marriages in exchange for money. Although this profiling also fits into the above-mentioned paternalist discourse, since these women are seen as defenceless potential “victims”, and as the weakest link of what are presented as dangerous international organized crime networks linked to human trafficking, it also eventually leads to their stigmatization and prosecution. I therefore argued that state claims regarding the need to interfere with the inner functioning of marriage evoking a “protection” rationale should be evaluated with care, since they are being used as a justification to restrict migration, and interfere differentially with the self-determination opportunities of some sectors of society.

The wider observation in this chapter has similarly exposed the functioning of the state’s migration control system in interaction with pre-existing social inequalities, and its consequent hierarchization of opportunities and costs of migration and conjugal choices. The institutional focus on migrants, as potential perpetrators of illicit practices, draws attention away from the politics of “illegality” though which the state itself produces the undocumented status. “Illegalization” patterns additionally expose an inherent political economy of illegality, which reveals the convenience for the state in keeping migrants in subordinate and precarious
legal conditions. Additionally, the analysis of the case study acknowledges that formal laws may be in place but applied in inconsistent, unpredictable, and uneven ways. The differential access to regularization is further deepened by determinants including gender, class, and nationality, influencing the opportunities of entry and settlement according to institutionalized social profiles.

The analysis of institutional procedures reveals the extent to which the regularization process is potentially based on discriminatory and arbitrary considerations of the profiles of applicants and their partners. Administrative and policing staff operate on the basis of essentialized and standardized profiles, which are used by authorities to frame specific “typologies” of migrants, inevitably linked to socially constructed (and gendered) expectations on family and marriage. In particular, I described how subjects applying for the recognition of their residency rights through this channel are exposed to scrutiny regarding the truthfulness of their “marital intentions”, by authorities suspecting that they might be marrying to gain a migratory advantage, rather than for “genuine” family purposes.

In conclusion, the analysis of Portuguese governmental attitudes towards the regulation of conjugality and mobility reveals the complementary functioning of stigmatizing representations based on both compassion and repression (Fassin 2005). The Portuguese migration regime constitutes in this sense a particularly interesting setting to explore the ambiguous configurations of institutional bordering discourse and practice. Notwithstanding Portugal’s “benevolent” façade towards migration, the selective trends underlying national policies appear consistent with research conducted in other EU member states, which underlines the selective function of family policies. As Reinhard Schweitzer concludes, in his comparison of policies in a wide range of European Union member states, “while specific conditions and requirements for reunification vary considerably in both scale and scope, the underlying logic of stratification as well as the main arguments for unequal treatment are rather uniform across the EU” (Schweitzer 2014:2). The observed policies appear instrumental to the maintenance of an idealized social order, potentially reducing to stereotyped categories the complexity of life trajectories and conjugal forms observable in the field. The next chapter will proceed to a critical analysis of these discourses, unpacking their inner functioning through empirical data based on the perspectives of transnational couples.
Narratives and counter-narratives on “marriage of convenience”
Narratives and counter-narratives on “marriage of convenience”
CHAPTER IV

EXPERIENCING CONJUGAL TRAJECTORIES IN THE CONTEXT OF PORTUGUESE REGULATIONS

To survive the Borderlands
you must live sin fronteras
be a crossroads.

Gloria Anzaldúa, 1999
Narratives and counter-narratives on “marriage of convenience”
The Portuguese governmental discourse and policy on “marriage of convenience” emerging from the case study is embedded in the systems of classification and selection of migration flows in the broader European context. Within such a process of bordering, the state regulates the degree of access to authorized residency statuses and to the attached rights, contributing to symbolic and material inclusion and exclusion dynamics. These categories, built on the largely unquestioned notions of “migrant”, “undocumented” or “illegal”, assume that human beings’ trajectories can be encapsulated in single-issue labels which determine their right to live in a state’s territory. This section will provide an opportunity to account for the research participants’ broad range of life trajectories and perspectives, which may challenge these clear-cut classifications.

The empirical material was collected with two objectives in mind. Firstly, I wished to appreciate the functioning of the system of “marriage of convenience” control from the perspective of the actors who were treated as object of institutional surveillance. Secondly, I aimed at tracing the legal and social repercussions of such an institutional regulation system on the trajectories of transnational couples. In the discussion of empirical data I will keep track of how, and under what conditions, the regulations based on such selective paradigms may influence the legal status, as well as the consequent opportunities, autonomy, and life conditions, of individuals interacting with the Portuguese migratory system.

This chapter presents the interviews with the couples, which constituted the backbone of the case study. I will proceed by comparing the authorities’ declared objectives regarding “marriage of convenience” regulations to the outcomes in terms of regularization opportunities. The discourse used by the government to justify restrictive measures will serve as an expositive thread, and will be juxtaposed to the accounts of inter-status couples who have experienced the bureaucratic processes in Portugal. I begin by exploring the discourse of “marriage authenticity”, proposing a reflection on the dichotomy of “love” versus “convenience”. The following section examines whether the “prevention of illegality” goals of the law are achieved, exploring the perceptions of interviewees regarding their interaction with institutions at the administrative level. The final section will demonstrate the apparently contradictory (and gendered) implementations of conjugality control as a form of “protection” of social groups portrayed as vulnerable.
Every subsection will contain a summarized description of the life stories which I considered the most appropriate introductions to specific aspects of the case study. The stories will not be exhaustively analysed, as they are rather intended to provide a zest of the problem I wish to elaborate on, and will be demarcated by boxes to facilitate their identification. Apart from these illustrative stories, the exposition of the data and analysis will follow a thematic structure, weaving in numerous excerpts of the remaining interviews to exemplify specific arguments.

In order to avoid reinforcing the divide between Portuguese citizens and migrants, the stories presented will expose the narratives of subjects of both Portuguese and other nationalities in a continuum, exploring the transversal issues and the discontinuities which characterize their experiences. It is worth specifying that such a choice is not meant to ignore the fundamental differentiating role of the documentation issued by states, which produces direct consequences for the social and legal situation of these subjects. Rather, the underlying logic to presenting the data in this way is that migration regulations end up affecting both citizens and non-citizens, as is especially visible in the field of transnational conjugality. Although individuals who cross borders and live in a country other than the one issuing their passport are subject to additional conditioning because of the migratory status attributed to them, individuals closely engaging with them, regardless of their status, are also influenced by the regulation of marriage and migration. Moreover, analysing their experiences in the same study is a way to enable the transversal character of some issues to emerge, as is the case for the role of gendered policies in mediating the relation of the state with individuals.

GENERAL FRAMING OF THE RESEARCH PARTICIPANTS

The criteria followed to select research participants, who would help me in shedding light on the “marriage of convenience” control processes, focused on their residency and conjugal status. The couples’ common characteristic was that in each of them, one of the partners held an undocumented or precarious (non-permanent) residency authorization prior to the marriage or civil partnership. The choice of framing them only through this “asymmetric” and often transitory residency status was envisaged as a strategy to problematize the static categories which I had observed in the framing of “undocumented migrants”. I realized that, since the process of transnational marriage involved a potential transition from one legal status to
another, it would potentially enable insights into the complex and multi-layered issues involved in the construction of illegality. Choosing to interview inter-status transnational couples was meant as a device to avoid considering migrants as a separate group by default, and to overcome the dichotomous classification of migrants versus citizens. Similarly, the option of not selecting a single national or ethnic origin as a delimitation was based on my will to produce a study with a transnational and intersectional perspective, believing that prioritizing nationality over other social characteristics would make the articulations between class, nationality and gender less visible.

During fieldwork I traced the conjugal and legal trajectories of a series of heterosexual couples. This involved reconstructing the interviewees’ paths of mobility beyond the Portuguese context, in order to discover how the geographical trajectories followed by each of them articulated with their matrimonial life. I also inquired into how these subjects interacted with migration regulations and the state representatives in charge of its implementation. The interviews involved both partners if the couple was still united, and only one of the members if they were living apart, separated or divorced. I spoke to a total of 32 partners\(^\text{152}\) (24 individuals with full and repeated interviews, and 8 exploratory interviews), representing a total of 21 couples (17 couples included in the final analysis, and 4 exploratory).\(^\text{153}\) As well as holding different migratory statuses, the subjects who participated in the interviews represented diverse social backgrounds, as will be described below.

A range of education levels, income sources and professional activity indicators reflect a variety of socioeconomic statuses of the subjects. Most of them are students and/or employed with a contract. A few are engaged in informal jobs and activities, or working with a regime dedicated to self-employed work, which in Portugal may often be associated with precarious work conditions with no contract (Recibos verdes). Conversely, I only spoke to a limited number of skilled professionals with highly stable work conditions. In most cases, if compared to their partners the women had less stable work or income, both at the moment of marriage and at the moment of the interview. However, in the cases when one partner had travelled in order to join their companion, the gender divide tended to be less relevant, since

\(^{152}\) In six of the individual interviews I met the previously undocumented partner- four women and one man; in four cases the national/permanent resident partner- two women and one man. As explained in the methodological section, notwithstanding attempts to include also same-sex couples, the couples I interviewed were eventually all heterosexual.

\(^{153}\) From now on I will only refer to the full interviews, excluding the exploratory interviews.
in all of the cases the partner that was already living in Lisbon had a more secure socioeconomic status in Portugal. Although not the focus of this study, this may be interpreted as an interesting finding for future research, as a symptom of gendered windows of opportunity during migration. Joining the partner in a new country may imply increased economic dependency in itself, but these data suggest that the restrictions caused by state policies might not be conducive to equal opportunities for the incoming partner, even after some years of settlement in the country.

Table n°1 has been inserted below to facilitate a first synthetic overview of the couples whose stories will be depicted in this chapter. As is evident from the data presented, most participants’ age is comprised in the range from 25 to 35 years, although there are some older couples. Many of the partners lived in different countries - other than their country of birth - prior to or subsequently to the marriage. At the moment of the interview almost all the couples reside in Lisbon’s metropolitan area, except in the cases of research participants whom I interviewed individually, whose spouses in some cases were living abroad. The countries of birth of the spouses were heterogeneous and spanned five continents, including Argentina, Brazil, Guinea Bissau, Italy, Pakistan, Paraguay, Poland, Portugal, Mozambique, Nepal, Spain and the United States of America. Several individuals had changed or acquired nationalities during their life-course, determining a certain degree of fluidity of their nationality status.

The inclusion of nationalities which are included by the Border and Immigration Police (SEF) in the typology of “higher risk” of “marriage of convenience”\(^\text{154}\), such as Brazil or Pakistan, provided insights into the potential effects of such profiling on their trajectories. The aforementioned complexity of geographical and legal situations is an expression of the transnational character of the analysed life trajectories, which are influenced by different legal systems at the same time, albeit to different degrees. This aspect further confirmed that the choice of not using nationality as delimiting criteria made it possible to grasp the potential complexity of geographical and migration status trajectories which nationality documents often do not record.

\(^{154}\) For a description of the risk profiles, refer to chapter three.
Table 1. Characterization of the participants

<table>
<thead>
<tr>
<th>Couple nº/Pseudonym</th>
<th>Nationality</th>
<th>Age</th>
<th>Civil Status¹⁵⁵</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Agustin</td>
<td>Brazil</td>
<td>30-35</td>
<td>Married</td>
</tr>
<tr>
<td>Mercedes</td>
<td>Spain</td>
<td>30-35</td>
<td></td>
</tr>
<tr>
<td>2. Bart</td>
<td>USA</td>
<td>30-35</td>
<td>Married</td>
</tr>
<tr>
<td>Frida</td>
<td>Paraguay/Spain</td>
<td>30-35</td>
<td></td>
</tr>
<tr>
<td>3. Ana</td>
<td>Brazil</td>
<td>30-35</td>
<td>Married</td>
</tr>
<tr>
<td>Alejandro</td>
<td>Spain</td>
<td>30-35</td>
<td></td>
</tr>
<tr>
<td>4. Gilberto</td>
<td>Guinea Bissau</td>
<td>40-45</td>
<td>Married</td>
</tr>
<tr>
<td>Carla</td>
<td>Portugal</td>
<td>30-35</td>
<td></td>
</tr>
<tr>
<td>5. Joana</td>
<td>Brazil</td>
<td>40-45</td>
<td>Divorced</td>
</tr>
<tr>
<td>1º spouse Carlos</td>
<td>Brazil</td>
<td>45-50</td>
<td></td>
</tr>
<tr>
<td>2º spouse Casimiro</td>
<td>Portugal</td>
<td>45-50</td>
<td></td>
</tr>
<tr>
<td>6. Gita</td>
<td>Nepal</td>
<td>40-45</td>
<td>Married</td>
</tr>
<tr>
<td>Badel</td>
<td>Nepal</td>
<td>40-45</td>
<td></td>
</tr>
<tr>
<td>7. Deborah</td>
<td>USA</td>
<td>30-35</td>
<td>Married</td>
</tr>
<tr>
<td>John</td>
<td>USA</td>
<td>30-35</td>
<td></td>
</tr>
<tr>
<td>8. Sofia</td>
<td>Brazil</td>
<td>30-35</td>
<td>Married</td>
</tr>
<tr>
<td>Paco</td>
<td>Spain</td>
<td>30-35</td>
<td></td>
</tr>
<tr>
<td>9. Emílio</td>
<td>Mozambique</td>
<td>30-35</td>
<td>Civil Partnership</td>
</tr>
<tr>
<td>Giovanna</td>
<td>Italy</td>
<td>30-35</td>
<td></td>
</tr>
<tr>
<td>10. Nadja</td>
<td>Poland</td>
<td>30-35</td>
<td>Married</td>
</tr>
<tr>
<td>João</td>
<td>Portugal</td>
<td>55-60</td>
<td></td>
</tr>
<tr>
<td>11. Maria</td>
<td>Brazil</td>
<td>40-45</td>
<td>Married</td>
</tr>
<tr>
<td>Batista</td>
<td>Portugal</td>
<td>40-45</td>
<td></td>
</tr>
<tr>
<td>12. Florencio</td>
<td>Brazil</td>
<td>25-30</td>
<td>Married</td>
</tr>
<tr>
<td>Lídia</td>
<td>Portugal</td>
<td>25-30</td>
<td></td>
</tr>
<tr>
<td>13. Marcela</td>
<td>Argentina</td>
<td>25-30</td>
<td>Married</td>
</tr>
<tr>
<td>André</td>
<td>Portugal</td>
<td>25-30</td>
<td></td>
</tr>
<tr>
<td>Rita</td>
<td>Portugal</td>
<td>25-30</td>
<td></td>
</tr>
<tr>
<td>15. Zaqueu</td>
<td>Mozambique</td>
<td>25-30</td>
<td>Married</td>
</tr>
<tr>
<td>Patricia</td>
<td>Portugal</td>
<td>25-30</td>
<td></td>
</tr>
<tr>
<td>16. Kabeer</td>
<td>Pakistan</td>
<td>30-35</td>
<td>Married</td>
</tr>
<tr>
<td>Silvia</td>
<td>Portugal</td>
<td>30-35</td>
<td></td>
</tr>
<tr>
<td>17. Farrukh</td>
<td>Pakistan</td>
<td>45-50</td>
<td>Divorced</td>
</tr>
<tr>
<td>Adelaide</td>
<td>Portugal</td>
<td>50-55</td>
<td></td>
</tr>
</tbody>
</table>

¹⁵⁵ Age and civil status at time of interview.
The state-recognized conjugal forms encountered in the interviews only included marriages, except for one case of civil partnership (União de facto). Both conjugal forms are accepted in Portuguese legislation as “family reunification” prerequisites, in case spouses wish to base a residency application on their marital union. All but three of the couples were still legally married or in a civil partnership at the time of the interview. There were various nuances displayed among the couples in a “non-formal” conjugal status: I will list some of the characteristics which better illustrate the nuances of situations and support the arguments provided in the previous chapters regarding the impossibility to frame these couples in rigid categories. In order to maintain anonymity, most of the description will not be associated with the nationalities.

Amongst the interviewees, one couple had already separated when the former partners decided to marry in order for the groom to obtain documents, based on friendship motivations and because they had a child in common. Another separated couple did not declare it to the authorities, partly to avoid a regression of the regularization process, and two were living apart because of litigious separation but had not started the formal divorce procedures. Three of the couples were never engaged in a sexual or affective relationship but decided to marry for a range of political or solidarity reasons linked to the regularization process. To provide an overview summarizing the legal trajectories of the whole group, Table 2 presents the data regarding the legal status of partners before marriage, and subsequent to marriage, at the time of the interview.

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156 For simplicity, and due to the fact that the law regulating the civil partnership is equiparating in most aspects the attached rights and duties, notably the possibility to ground residency application on these grounds, I will speak of marriage from now on, intending to comprise both formulations.

157 In five cases, a partner had already been through another marriage before entering the couple relationship which was explored in my research. These include two women who had already been married and divorced for a first time in their country of origin, and had subsequently married again with Portuguese citizens. As for the offspring, at the time of the interview some interviewees had children from previous partners while others had children from the current husband. Most couples married in Lisbon, except for three who got married before moving to Portugal. There is also the case of three couples not formally tied, one is and one is still in the process of having their marriage recognized in Portugal, as it was conducted in Jamaica and the papers took a long time to be sent over.
### Table 2. Residency status trajectories of the research participants

<table>
<thead>
<tr>
<th>Couple / Pseudonym</th>
<th>Country of Birth</th>
<th>Before Marriage</th>
<th>Current Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Agustín</td>
<td>Brazil</td>
<td>Temporary Residency</td>
<td>Permanent Residency</td>
</tr>
<tr>
<td>Mercedes</td>
<td>Spain</td>
<td></td>
<td>Citizen (EU)</td>
</tr>
<tr>
<td>2. Bart</td>
<td>USA</td>
<td>Undocumented</td>
<td>Permanent Residency</td>
</tr>
<tr>
<td>Frida</td>
<td>Paraguay/Spain</td>
<td></td>
<td>Citizen (EU)</td>
</tr>
<tr>
<td>3. Ana</td>
<td>Brazil</td>
<td>Temporary Residency</td>
<td>Permanent Residency</td>
</tr>
<tr>
<td>Alejandro</td>
<td>Spain</td>
<td></td>
<td>Citizen (EU)</td>
</tr>
<tr>
<td>4. Gilberto</td>
<td>Guinea Bissau</td>
<td>Undocumented</td>
<td>Undocumented</td>
</tr>
<tr>
<td>Carla</td>
<td>Portugal</td>
<td></td>
<td>Portuguese Citizen</td>
</tr>
<tr>
<td>5. Joana</td>
<td>Brazil</td>
<td>Undocumented</td>
<td>Nationality</td>
</tr>
<tr>
<td>Casimiro (2º spouse)</td>
<td>Portugal</td>
<td></td>
<td>Portuguese Citizen</td>
</tr>
<tr>
<td>6. Gita</td>
<td>Nepal</td>
<td>Temporary Residency</td>
<td>Temporary</td>
</tr>
<tr>
<td>Badel</td>
<td>Nepal</td>
<td></td>
<td>Permanent Residency</td>
</tr>
<tr>
<td>7. Deborah</td>
<td>USA</td>
<td>Tourist Visa</td>
<td>Undocumented</td>
</tr>
<tr>
<td>John</td>
<td>USA</td>
<td></td>
<td>Permanent Residency</td>
</tr>
<tr>
<td>8. Sofia</td>
<td>Brazil</td>
<td>Temporary Residency</td>
<td>Estatuto de Igualdade</td>
</tr>
<tr>
<td>Paco</td>
<td>Spain</td>
<td></td>
<td>Citizen (EU)</td>
</tr>
<tr>
<td>9. Emílio</td>
<td>Mozambique</td>
<td>Temporary Residency</td>
<td>Permanent Residency</td>
</tr>
<tr>
<td>Giovanna</td>
<td>Italy</td>
<td></td>
<td>Citizen (EU)</td>
</tr>
<tr>
<td>10. Nadja</td>
<td>Poland</td>
<td>Temporary Residency</td>
<td>Permanent Residency</td>
</tr>
<tr>
<td>João</td>
<td>Portugal</td>
<td></td>
<td>Portuguese Citizen</td>
</tr>
<tr>
<td>11. Maria</td>
<td>Brazil</td>
<td>Temporary Residency</td>
<td>Temporary</td>
</tr>
<tr>
<td>Batista</td>
<td>Portugal</td>
<td></td>
<td>Portuguese Citizen</td>
</tr>
<tr>
<td>12. Florencio</td>
<td>Brazil</td>
<td>Undocumented</td>
<td>Permanent Residency</td>
</tr>
<tr>
<td>Lidia</td>
<td>Portugal</td>
<td></td>
<td>Portuguese Citizen</td>
</tr>
<tr>
<td>13. Marcela</td>
<td>Argentina</td>
<td>Undocumented</td>
<td>Permanent Residency</td>
</tr>
<tr>
<td>André</td>
<td>Portugal</td>
<td></td>
<td>Portuguese Citizen</td>
</tr>
<tr>
<td>14. Ahmed</td>
<td>Algeria</td>
<td>Temporary Residency</td>
<td>Temporary</td>
</tr>
<tr>
<td>Rita</td>
<td>Portugal</td>
<td></td>
<td>Portuguese Citizen</td>
</tr>
<tr>
<td>15. Zaqueu</td>
<td>Mozambique</td>
<td>Temporary Residency</td>
<td>Nationality</td>
</tr>
<tr>
<td>Patricia</td>
<td>Portugal</td>
<td></td>
<td>Portuguese Citizen</td>
</tr>
</tbody>
</table>
### Notes:
- Temporary Residency permit: mostly one year duration
- Tourist Visa: mostly three months duration
- Permanent Residency: mostly 5 years duration
- Undocumented comprises unregistered entries, unauthorized residency and over-stayers
- Under Investigation: residency rights are on hold because of “marriage of convenience” suspicions
- Estatuto de Igualdade: special statute for permanent residency, only available for Brazilian nationals
- Nationality: stands for Portuguese nationality

The systematized data exposes a significant heterogeneity regarding the legal trajectories of interviewees. This overview provides a first entry point to the issues linking conjugal practices to the institutional frameworks, establishing the possibilities of entry and settlement on family grounds. As shown in Table 2, before the application for residency through marriage, amongst the partners around half the individuals were undocumented or unregistered, while the others held temporary residency rights with various degrees of precariousness.¹⁵⁸ Most individuals initially entered Portugal with a tourist visa or with a Schengen visa from another country, except in two cases of unregistered entry.¹⁵⁹

The data therefore does not resonate either with the notion of “illegal” as a static status originating in “clandestine” entry into a territory, or with regularization seen as a progressive, linear process, as is suggested by governmental documents on undocumented migration. Rather, the case study indicates that many undocumented situations are the result of legalization processes occurring when individuals are already in Portugal, rather than of

¹⁵⁸ In this second group, in many cases the marriage occurred when the right of residency was about to expire. Temporary residency rights comprise tourist visas, usually of three months’ duration, and temporary residency authorizations, usually valid for one year. The renewal of temporary residency may be applied for on diverse bases, including family reunification grounds, registration in the education system, or work reasons. The last two are influenced by the formal educational or professional background of the applicant, and applications on these grounds may not be filed if the applicant is already in the process of requesting a permit based on his or her conjugal situation.

¹⁵⁹ One of the spouses used counterfeited documents and entered through other European Union member states, and one used someone else’s passport to enter Portugal.
unauthorized entries. Similarly, they suggest that regularization is a reversible process, and that the regression of residency status is often due to governmental regulations rather than individual practices.

The table displays the evolution of participants’ residency status, and the ways in which it has been affected by the recognition of marriage. The formalization of the marriage, since it allows individuals to apply for a permanent or semi-permanent residency authorization, enables most couples to move towards a secure residency status of the partner in a precarious legal situation. In most cases, at the time of the interview, the previously undocumented partner held a recognized residency status, and a significant number held long-term permits. Of these, two individuals had acquired Portuguese nationality through their applications as spouses of Portuguese citizens. Other individuals were already entitled to nationality in terms of formal requisites, but were still waiting for the three-year period established by law before they could start the naturalization procedures (naturalização). Two other participants were undocumented at the time of their interview and were undergoing processes of evaluation by the Portuguese administration to ascertain whether they could regularize their situations. As will be noted in the following subsections, this diversity facilitates insight into institutional differentiations linked to the geographic areas of origin of applicants, which appear to intersect with gender and socioeconomic status in determining the selection process.

Due to the legislative framework in place in Portugal, and the ways in which marital status is linked to citizenship rights, some additional considerations may guide the reading of the above data. Notably, the observed prevalence of applications for residency based on “family reunification” is largely due to the scarce and/or unsuitable alternative channels entitling transnational individuals to stable residency rights, rather than on other grounds. As several of the couples noted, marrying was seen as a way to smooth out the bureaucratic processes of

160 In almost all cases, this process was initiated by spouses of Portuguese or European citizens, except two. The nationality of the “secure-status” spouse is relevant, in that it determines the legal procedure for the “regularization process”. In the case of marriages with Portuguese citizens, the spouse is entitled to residency right lasting from two to five years, and after three years of marriage the applicant may acquire nationality, although other requisites, such as an “effective link to the Portuguese community”, must be demonstrated. The spouses of non-Portuguese European Union citizens may only receive residency rights. The only exception to the use of family reasons to obtain residency rights is Sofia, who obtained a permanent residency status though an alternative legal path available only to Brazilian nationals, the “Equality Status” (Estatuto de Igualdade).

161 Four gained the status as family members of European Union citizen- (familiar de cidadão da União Europeia), and another four as spouses of Portuguese citizens.

162 Deborah, although de facto separated, was in the process of validating her marriage certificate to prove she was entitled to a legal status equal to her husband’s.
regularization, which they considered obstacles to their life projects. The latter could include
the possibility of living or travelling together without worrying about the asymmetric legal
status dividing them, or opening up work or study opportunities.

The empirical data, however, indicates that marriage is anything but an unproblematic
channel to regularization. As already mentioned, in the current legislative framework the fact
of applying for residency or nationality through family reunification schemes makes any
residency rights acquired strongly dependent on the conjugal relationship. This implies that a
separation from the partner before the three years required for the obtainment of a permanent
and autonomous residency status can potentially jeopardize the process. As will be further
debated in the following sections, this exposes the applicant spouse to the loss of residency
rights, binding him or her to the partner’s will to keep sustaining the application. In this sense,
it is worth noting that whereas in the great majority of cases the marriage led to more stable
conditions of residency when the relationship was satisfactory, the picture changed in the
cases of litigious separation.

Although the small number of cases suggest the need to produce more empirical materials
with a focused research, the cases I observed hint to different outcomes of legal dependency
for men and women. When the problems occurred in couples where women were the ones in a
legally subordinate position, this led to a worsening of their position, leading them to an
undocumented situation. In all cases this was due to the uncooperative practices of the
husband, in at best not supporting their residency applications, or at worst directly threatening
to expose their wives to illegalization by denouncing them to the border police as
undocumented migrants. In one case, the husband denounced his wife, who wanted to leave
the conjugal home, of engaging in a “marriage of convenience”, exposing her not only to an
undocumented status but also to a criminalization process. By contrast, in the only two cases
in which the residency position of men involved in marriages did not improve, the lack of
progress was a result of SEF investigations. This highly gendered connotation of
regularization opportunities of men and women suggests an opportunity for further reflection,
and hopefully future investigations. In particular, it calls attention on the reinforcement,
through migration restrictions, of unequal power relations in couples.

The following sections will analyse the themes which emerged in my research, through an
immersion in the stories that were collected during the fieldwork. The presentation of data
will be based on themes which are considered appropriate to answer the research questions.
These include three main areas: Firstly, the notion of “authenticity” of couples as a basis for migration policies determining the right of spouses to apply for family reunification will be discussed in the light of the experiences of research participants. Subsequently, the accounts will be used to explore the functioning of the bureaucratic system of regulation of entry and stay in the national territory. Finally, the notion of “protection” of vulnerable groups articulated by migration authorities will be weighed against issues of (gendered) dependency within the couple and towards institutions, which are promoted by current regulations.

SECTION 1- MARRIAGE “AUTHENTICITY” AND FAMILY NORMS

The empirical data highlights the efforts of the Portuguese state in regulating the access to residency rights through procedures of “marriage of convenience” control. In particular, the documental data collected and the interviews with police officers show that institutional profiles are producing stereotyped representations of transnational couples with the declared objective of distinguishing “real” from “fake” marital unions. Governments and immigration authorities have consistently evoked the verification of “authenticity” as a fundamental criterion in the evaluation of marriages.

In the 2007 Migration Law, the article dedicated to “marriage of convenience” defines it as a marital union celebrated with the “only objective” of obtaining a residency authorization (Article nº189 Law 23/2007). An implicit premise underpinning the policing logic is that unauthorized residency in Portuguese territory may be considered illegal, as I analysed in the section on “illegality”. A second assumption is that the state has the legitimacy and capacity to investigate the motivations motivating couples to marry, in order to establish if their aims are to be judged “fraudulent” and therefore liable to prosecution. I will compare these institutional assumptions produced in the context of “marriage of convenience” policing operations, with the social practices of inter-status couples, tracing the ways in which the regulations influenced their conjugal choices. I will take into consideration the couples’ perceptions and re-elaborations of such classifications, tracing the representation of marriage by research participants.
Institutionalized Suspicion

As outlined in the description of institutional practices in chapter three, couples are required to conform to closely policed notions of a “real” marriage, based on what are framed as verifiable family-related intentions. In their interaction with the civil registrar and the SEF, almost all couples had to undergo a test of “authenticity”, with varying degrees of intrusion into their conjugal lives. This policing potentially places all transnational couples under suspicion, as if marriages involving individuals in a precarious residency status involved by default an accrued risk of “fraudulence”. The fieldwork aimed to uncover the ways in which the generalized surveillance impacted on the trajectories of the research participants. The use of interviews was significant in exploring the inner working of the control procedures and their social significance, capturing the couple’s perceptions concerning the processes of categorization and control. In particular, the dialogues provided rich accounts of the nuances of selection and investigation, as well as counter-narratives that helped in unpacking the mainstream public discourse on “marriages of convenience” and this discourse’s unequal repercussions.

As will be depicted with empirical examples throughout this section, the institutional interventions that constituted the surveillance of transnational couples ranged from simple verification of documental evidence to interviews, ad hoc investigations, and criminalization processes. All inter-status couples wishing to marry in Portugal are potentially controlled at the moment of commencing the preparatory marriage procedures at the consulate and at the civil registry. A second control is carried out by the SEF at the moment of application for residency, involving both couples married abroad and those married in Portugal.

Public institutions’ functionaries are expected to implement an initial assessment of couples when one of the partners wishing to marry holds a non-Portuguese nationality. Once the partners have collected all the documentation - including a declaration from the non-Portuguese partner’s country of origin confirming that he or she is not already married elsewhere - the first institutions they enter in contact with are the civil registries. In this first administrative phase, the superintendents may interview the future spouses alone or together, verifying their marriage motivations. If the superintendents suspect the marriage may be
instrumental to migratory advantages, they are expected to communicate their doubts to the SEF, who may open a pre-nuptial investigation.

The governmental justifications underpinning administrative practices, as already mentioned, are based on the notion of protection of “vulnerable” subjects, and on the wish to curb “illegal” practices. In some occasions, the bureaucrats themselves reinforce this message while performing the investigations. Mercedes recalls the superintendent at the civil registry stating: “it’s important to do this type of test because you know there are a lot of mafias doing marriages of convenience, and we have to know that you are not a marriage of convenience, because here there are a lot of people who come to get their papers.” The association that is made at all levels of public intervention in conjugal life, from policy to implementation, therefore contributes to the naturalization of the association between inter-status marriages and criminality, actively reinforcing institutional constructions of “illegality”.

In some cases, the interviews conducted by the civil registrars were depicted by research participants as purely bureaucratic formalities. In other cases, the investigation was perceived as considerably more intrusive. For example, in interviews spouses may be asked whether they already have or wish to have children, what made them decide to marry, or if they know their partner’s family. Frida recalls the surprise she felt at being asked “why” she and her partner were marrying: “I did feel that there was some kind of (...) institutionalized suspicion of whether you are getting married for the right reason or for the wrong reason.” She recalls a functionary justifying the intimate questions by stating, “we have to ask you if you are getting married because you love each other or you are getting married because, whatever...”

Institutional suspicion was perceived by most of the couples who participated in my interviews, regardless of their social profile, at least in some of the phases of their application

163 As previously noted, the interviews with SEF officers suggest that they follow indicatively the European guidelines on the “misuse of family reunification”, as well as national guidelines and subjective assessment. For instance, if the partners do not speak the same language, or give inconsistent answers in the pre-nuptial interviews, this could give rise to “marriage of convenience” allegations.

164 When not in English in the original, the interview quotes are translated by the author, and the original text inserted in the footnotes alongside the interview reference number and the name of the interviewee. All names used hereafter are fictitious, in order to maintain the anonymity of the research participants. I have chosen the pseudonyms individually at the moment of drafting the thesis, although I recently discussed the idea that in next projects it would be coherent to ask interviewees which name they would like to be represented with.

165 Int. 1 Mercedes: “ah, porque é importante fazer este tipo de teste porque vocês sabem que há muitas mafias que fazem matrimônios de conveniência e nos temos de saber que vocês no son um matrimónio de conveniência, porque aqui há muitas pessoas que vêm, para tirar os papéis”.

166 Int. 2 Frida.
process. Almost all research participants describe having found the investigation a deeply disturbing experience, demonstrating the impact of institutional surveillance in causing pressure on the couples. Mercedes complains about the discriminatory attitude and “presumption of guilt” inherent in the act of interviewing, as well as the lack of privacy: “So, always with these comments, that from the beginning we are already guilty, and they have to demonstrate if you really are a normal couple, (...) or not, so from the start they distrust, until they prove the contrary, so I felt discriminated and rejected for the fact of Agustín being a foreigner (...) I didn’t like it, that they distrusted, I don’t know why I had to answer questions that...personal, and other couples not having to do this type of test, isn’t it? (...) Eventually the functionary said that really it seems that we were together for love (...) that we were not a marriage of convenience.”

In this context of potential criminalization, subjects often described the feeling of being under permanent suspicion. This sensation was shared by individuals in an undocumented situation, at risk of illegalization, or who had simply been the object of insinuations regarding the legitimacy of their intentions. Many, regardless of the nature of their relationship, prepared for the session by discussing possible answers to the expected questions, for instance details of the partner’s preferences, families, their everyday life as a couple, and what they expected to be considered “important dates” by the functionaries. Similarly to what was noted by Jordi Roca Girona and colleagues regarding their fieldwork in Spain “Many couples described the application interview as an uncomfortable situation where they felt nervous and stressed (...) while they are scrutinized and tested according to unknown and unpredictable criteria” (Roca Girona et al. 2015:232). The majority of interviewees, for instance reported feeling deep tension when they had to undergo questionings regarding their relationship, in the context “marriage of convenience” investigations.

The picture that emerges from the case study corroborates, at least for the least privileged social class and the couples who do not conform to institutional profiles, Yvonne Riaño’s statement regarding the biases of state discourse, which is by default “interpreting marriage
migrants as potential abusers, legitimating restriction of their civil rights and the policing of family relations” (Riaño 2011:278). Riaño argues that this process may be considered a form of structural violence, since it involves an institution or social structure systematically harming people by preventing them from fully satisfying their rights and needs.

The critical insights into the reproduction of bordering by bureaucrats in Sarah Friedman’s work are particularly useful for unpacking what Frida calls “institutionalized suspicion”. Friedman argues that bureaucrats, in the process of distinguishing “real” and “sham” as two categories, give them “content and a face or stereotype with which others can identify. Put another way, there is no absolute, immutable definition of what constitutes a ‘real’ or ‘sham’ marriage: those categories come to life in a particular moment of discourse that constitutes marriages as real or fraudulent” (Friedman 2010:172). Friedman exposes in her work how bureaucrats not only “construct meaning” for the categories of “authentic” and “fraudulent”, but also make truth demands, requiring that “immigrants speak the truth about their intimate relationships in ways that conform to the expectations for one of those categories (...) Hence the demand for truth and the expectation that statements take a certain form are already embedded in power relations that deny to those who must speak the truth the ability to define the content of the categories themselves. (...) bureaucrats conform to an international immigration discourse that presumes officials have the ability to determine immigrants’ ‘true’ motives; in doing so, they reproduce the power relations that structure truth demands” (Friedman 2010:172).

Subsequently to entering into marriage, if they wish to apply for residency rights, the couples need to present an application to the SEF through a “family reunification” procedure - regardless of whether or not they are already living in the same country at the moment of applying. According to the accounts, in many cases the marriage certificate is not considered enough to prove the conjugal relationship, and the spouses need to prove that they are in a relationship, principally through providing complementary evidence of common life, subsistence means, and cohabitation. The burden of proof is therefore initially upon the applicants, and is subject to a significant margin of variation and arbitrariness. For instance, the accounts of research participants underlines a lack of consistency regarding the amount of evidence considered sufficient to conclude the administrative process. Moreover, this procedure is marked by an accrued degree of uncertainty, since the justifications for suspicion appear subject to some arbitrariness on behalf of the functionaries.
In case of suspicions of “marriage of convenience”, the process of residency authorization is interrupted, and criminal investigation units are authorized to investigate further the “authenticity” of the conjugal union. Reportedly, these investigations tend to focus on the spouses’ professional activities and on the requisite of cohabitation. The SEF’s practices include visiting the couple’s officially registered home address, occasionally before dawn, to verify whether they are cohabiting. In some cases, the research participants’ houses were inspected to register traces of common life, including an inspection of family pictures, accompanied by questions to the spouses to verify that they recognized the portrayed people. When the couple were not found at home, SEF officers reportedly questioned the neighbours on whether the couple actually lived there. If the immigration officers are not convinced of the couple’s declarations, the investigations can scale up and eventually lead to a criminal process. All of these steps, which are perceived as routine investigations, imply the institutional intrusion in conjugal trajectories, and have profound impacts on the ways in which transnational couples may pursue the recognition of their residency rights. The following box will briefly summarize the experience of one of the couples, which were being investigated at the time I met them for the interview.

Gilberto and Carla: Failing to fit into the institutional profile

Gilberto, a man in his forties born in Guinea Bissau, has been living in Portugal since 8 years ago, when he entered the country with a counterfeit document. He used to be a construction worker and to make a living through this job, but reports severe difficulties in finding regular occupations in the last few years, due to the rising unemployment in Portugal and to his undocumented status. This context of high precariousness, lack of a formal contract, and irregular contributions to the social security, are the main reasons for his repeated failures in regularizing his residency status. Two years before the interview, he meets Carla, a Portuguese woman some years younger than him, and starts cohabiting with her, her mother, and her four-year-old child in a relatively deprived neighbourhood of the city of Lisbon. Carla has a precarious job in a shop, and he is currently involved intermittently in odd jobs, mainly in construction work. After six months of cohabitation, they consider that through marriage they would be able to secure him stable residency rights. This is seen as a way to facilitate his access to a regular contract and stabilize their household financially. After their marriage, they apply for a residency authorization, but the process is blocked because suspicions are stirred.
in the immigration police regarding their conjugal intentions. The official reasons evoked by SEF for the suspension are twofold. Firstly, immigration authorities affirm that the requisite of cohabitation is not confirmed. This statement is due to the fact of the couple not being found at home on two consecutive inspection visits by immigration officers, which in both cases occurred during the partners’ working hours. Secondly, the two spouses reportedly give a different answer in the separate interviews with the authorities: when asked what wedding present he has given Carla, Gilberto replies it was a ring, while she says it was a bracelet. Gilberto explains that the misunderstanding derives from the fact that the ring was given as a “marriage promise”, whereas the bracelet was given after the wedding. In addition to this evidence declared by the SEF, Gilberto notes that their economic situation is also being evaluated, since they were asked to produce a common bank account, or proofs of regular income, which he does not have due to his undocumented position. Gilberto is currently trying to file an appeal against the decision of the SEF, and is still awaiting the resolution of the case. His application for residency rights will remain suspended until his case is judged or archived.

The above story suggests the ways in which socioeconomic opportunities are intimately linked with regularization and conjugality control, in the definition of selection procedures. According to the accounts regarding the extra documentation that they are asked to provide, the profile of the couple appears not to fit into the border police “authenticity” frames, because of their low income levels. Gilberto and Carla also adhere in several additional ways to the standardized “risk” profiles. According to the authorities’ discourse, the facts of living in a relatively stigmatized neighbourhood, not having proof of a regular income, and being a lone mother delineate Carla as a “vulnerable” woman who would more easily agree to marry in exchange for money.

“PLAUSIBLE COUPLES”: PRESCRIPTIVE CONJUGAL MODELS AND TRANSNATIONAL MARRIAGE

The denial of Gilberto and Carla’s application appears to be based, as well as on suspicions stirred by their precarious socioeconomic position, on their lack of conformity to a “genuine” conjugal profile. Their case may be used to explore the role of idealized notions on the “genuine” family in influencing the bureaucratic decisions regarding the eligibility of couples
for residency rights. Gilberto and Carla’s relationship includes several characteristics, which according to the guidelines are easily associated with “fraudulence”. Firstly, the two spouses have a substantial age gap, which is considered an indicator of risk in the context of “marriage of convenience” police profiling. Additionally, the fact that they live in a non-conventional family arrangement, in which Gilberto cohabits with his wife, her mother and her child, emerges from their account as a point that aroused perplexity from the functionaries. Carla recalls that an immigration officer who was processing their case suggested that if they had common children it would smooth the acceptance of their application, but states that they do not have the means to support a new baby in the house. Both these aspects appear to confirm how in the context of Portuguese migration policies “family admission is generally restricted to a narrowly conceived nuclear family” (Kraler and Bonizzoni 2010:183). These controls appeared to be inducing self-regulation in order to conform to the expected ideal, emerging as one of the ways in which regulations push applicants to “perform family” (Strasser et al. 2009), and, we may add, perform the “loving couple”. The institutional pressure constructs a specific idealized standard of what it means to love, get married, create a family, in which arguably many non-transnational couples are not asked to fit, creating an inherent discrimination. While the right of local couples to marry for reasons disengaged from romantic motivations, such as obtaining tax deductions, is never put into question, transnational couples need to perform normative visions of love to have access to their rights. The prescriptive processes, promoting a national ideal family model, are not new phenomena in the sphere of public policies. For instance, the intervention of the state in shaping families has been observed by the historian Franca Iacovetta in a study on Canadian social workers working with European newcomers after World War II. In particular, Iacovetta highlights the way in which gatekeepers, which in the Portuguese case would include the immigration police, tend to “stimulate conformity to dominant bourgeois ideals, especially to the gendered middle-class nuclear family” (Iacovetta 2006: 58). A related school of thought explores family norms and “moral gate-keeping” processes (Wray 2006), and how the marriage of undocumented migrants may be perceived by states as a risk to the “European family model”, albeit an artificial or imaginary one in contemporary European societies (Van Walsum 2004). The introductory case of Gilberto and Carla has been chosen in order to reflect how couples are selected according to their level of adherence to normative profiles. Couples who do not fit into the profile of the “genuine” couple, or who happen to bear characteristics pertaining to the standardized risk profiles, are targeted by stricter supervision and criminalization.
Similarly to Francesco Vacchiano’s considerations on Italian public policies regarding refugees, “difference”, seen as “the capacity of subjects to build alternative paths articulating a system of personal priorities other than the institutional, transforms itself into a reason for suspicion” (Vacchiano 2011:190, my translation).

**Institutional profiling and social stratification**

Factors such as age, physical appearance, education, nationality and socioeconomic status appear to be crucial in subjects’ interactions with the employees in charge of institutional control. The empirical data confirm the insights of literature observing the stratifying effects of migration regulation through explicit and implicit requirements for regularization. The research participants’ trajectories expose how applicants and partners enclosed in specific social profiles are subjected to stricter systems of control. The targeted subjects often have to provide further evidence regarding specific prerequisites. Namely, if migration authorities suspect a work contract might not be “genuine”, these often include proofs of subsistence means. Individuals are in this way repeatedly submitted to proofs of eligibility, which arguably are more conducive to selecting “desirable”, economically self-sufficient migrants than they are to the official aim of verifying the genuineness of marriages. Selection interviews in this sense may be seen, similarly to what Sarah Friedman argues in her study on Chinese spouses in Taiwan, as “bureaucratic border performances”, since “immigration interviews also generate a sovereignty effect with productive consequences: they define what constitutes an authentic marriage and a desirable immigrant/citizen, and in so doing, create a particular model of family and nation to undergird those sovereignty claims.” 2010:7). This type of stereotype, emerging in public social spaces, resonates with the state frames of “deservingness”. These frames divide migrants into “good” migrants, adapting to the imaginary of integration, or to the “bad” ones, more prone to engage in illicit activities.

Contemporary “high surveillance” mechanisms (D’Aoust 2012) imply the naturalization of authorities’ legitimacy in defining “real couples”. As Michel Foucault argues in a 1967 interview, “each society has its regime of truth, its ‘general politics’ of truth: this is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those
who are charged with saying what counts as true” (Foucault 1980 [1967]:131). The whole “construction of evidence” (Vacchiano 2011) process, as analysed in chapter three, seems to be contributing to these dynamics.

During the fieldwork I consulted Magdala Gusmão, the coordinator of the NGO Comunidária, regarding the process of institutional selection I was observing, to ask if she could identify any pattern in the way applicants were categorized and channelled in “marriage of convenience” investigations. Regarding the processes of residency authorization for family reasons, she reports perceiving a differential treatment, with gendered and classed connotations: “I think, I am certain, that there is a very strong evaluation of appropriateness in all of this (...) I think for men...for men...there is a colder evaluation, economic (...). The evaluation of the man is: ‘does he work, or not? How much does he earn?’ (...) and they calculate (...). They are more easily excluded for work reasons.” She then adds that for women the process differs, arguing “my perception (...) is that there is a moral evaluation there, you understand, regarding women.” 169 (Magdala Gusmão, Comunidária interview, 2013).

Her comments echo the perceptions shared by several interviewees, confirming how gender, in articulation with other social classifications, is one of the key factors in determining the first impression of administrative staff on the “credibility” of the couple. For instance, João comments on the naturalization of the age gap when the man is older (in his case, 21 years older than his wife-to-be), which made his marriage to Nadja look plausible in the eyes of functionaries: “in my case they said nothing about age, which is interesting...: older man, younger woman... pretty...”. To this, his wife Nadja adds that this evaluation of age is enacted “in conformity with what is socially accepted... a lot less acceptable would be the contrary, if I were older and you younger!” 170, thus adhering to patriarchal ideals of marriage.

Conversely, the subjects whose characteristics enabled them to fit into the category of credible relationships reported encountering few obstacles and little suspicion during the

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169 Magdala Gusmão: “Acho, tenho certeza, que tem uma avaliação de idoneidade muito forte nisto tudo. (...)acho que pra os homens , os homens... há uma avaliação mais fria, economicista(...) A avaliação do homem é: “trabalha ele, ou não? Tá ganhando quanto?” ...e fazem os cálculos. (...)são mais facilmente eliminados, por questões de trabalho. (...)a minha percepção (...) é que é feita uma avaliação moral aí, entendeu, em torno das mulheres”.

170 Int. 10 João: “no meu caso não diziam nada sobre a idade... o que é interessante...homem mais velho, mulher mais nova, bonita...”. Nadja: “consoante o que é mais aceite socialmente...! muito menos aceite socialmente é o contrario, se eu fosse mais velha e tu fosses mais jovem!”.
registration of their marriage or the regularization process. The observation of the cases in which the couples underwent a straightforward process of regularization constituted ideal comparative data, offering indications of the characteristics, which were positively, evaluated in institutional selection processes. As Florencio comments, the fact that he and his wife Lidia were both young made them “a plausible couple”,

Andre states he was surprised by the smoothness of the process, commenting that the civil registrar judge “liked us straight away”, and believed that were a “true” couple. Solicited to give an opinion on what factors moved officials to believe that his was an authentic marriage, Andre lists a series of characteristics shared by him and his wife, including the fact that they were a young couple, as well as “white, middle-class, of a fair cultural level... a priori part of the dominant model”. He also cites his stable socioeconomic framing as a professional with a regular income as having played a positive role in the evaluation. Andre specifies also how his wife-to-be could be easily framed in a privileged social class because of her “pompous name”, and the fact that she was a “half-aristocrat” coming from a “rich family scenario”. Lastly, he considers that the lack of suspicion was also an effect of the exoticization in function, making the European and the reportedly beautiful and “exotic” Argentinian seem likely partners. He ends up commenting that she was so good-looking that in a sense the official was “seduced by her, somehow”, and how he might have considered “plausible that someone could fall in love with this woman”. Studies in other contexts also affirm that physical appearance is not a secondary factor in institutional approaches. Works including Hélène Kringelbach’s study on Franco-Malgash couples in France and Laura Block’s observations in Germany (Kringelbach 2012, Block 2012) have observed the arbitrary judgement of attractiveness as an indicator for an “authentic marriage”, including accounts of the perceived lack of beauty of the bride being considered a reason to suspect the genuineness of a marriage.

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171 Int. 12 Florencio: “um casal provável”.
172 Int. 13 André: “ele gostou logo de nos (...) . Brancos, de classe-media, de bom nível cultural... à partida parte do modelo dominante”
173 Int. 13 André: Int. 13 André: “um nome pomposo (...) uma meio-aristocrata (...) um cenário de família rica”, “exotização em função”, “acho que de alguma forma o seduziu (...) era plausível que alguém se apaixonasse por essa mulher”.
174 Regarding the gendered aspects of “marriage of convenience” suspicion, see the work of Laura Block, ascertaining through a case-study in Germany how female-sponsored marriage tends to be seen as less credible by institutions in charge of control (Block 2012).
Other factors of suspicion derive from characteristics of the spouses or their behaviour. In the case of Kabeer, officially suspected of engaging in a marriage of convenience with a Portuguese woman, he suggests the suspicion probably arose due to his country of origin, as well as from the fact that he later divorced his wife. Apparently, the simple fact of the applicant being of Pakistani origin was a reason for suspicion. As he comments, when he went to the immigration police stating that he had lost his passport, the police officer admonished him, saying “you [Pakistanis] are all the same! You say you lost your passport? You think I’m stupid?!”, and directly insinuating that his marriage was only a strategy for him to obtain documents. A lawyer, who is trying to gather evidence to lift the charges from his client to prevent the investigation resulting in a trial, is currently assisting Kabeer.

Kabeer’s path is strikingly different to the process experienced by individuals from other nationalities and social profiles. Interestingly, in this case gender and nationality appear to intersect and somehow diminish the centrality of legal status. Apparently, his formal requisites for residency were all in place at the time of the application, and according to his account it was the particular insistence of SEF officers that led to his case being investigated, rather than some documental shortcoming. Similar double standards appear to have been at work in the emblematic case of Frida and Bart, to the extent that there was a “reversal” of roles. Frida complains that although it was her holding Spanish nationality, and therefore in a privileged legal status, while Bart was an illegally resident US citizen, she felt that she was treated as though it was her who could be exploiting his status. She reports the reaction of functionaries when they went to the civil registry: “every time we went to talk to the judge [superintendent], everyone recognized me as ‘she is the one who is marrying the American’, and it wasn’t like, ‘he’s the man who’s marrying the European girl’, and I was ‘ah, a senhora do Americano?!’ (...) I was taking advantage!”

The perception of marriage and migration officials regarding who might be taking “advantage” from the marriage between Frida and Bart, is an example of how the privilege or stigma of being born in a specific country can determine individuals’ regularization outcomes. Whereas in some cases individuals are

175 Int.16 Kabeer: “vocês são todos iguais! Dizes que perdeste o passaporte? Pensas que sou estupido??”.
176 In the case of Maria, the process of investigation started because her own husband denounced her, accusing her of having married him with the sole aim of obtaining residency documents. The facts that apparently are being used by SEF as clues that the marriage might have been a façade are the fact that Maria had previously been married, and had left for Brazil for a long-term stay only months after her wedding. The tribunal was still analyzing her case at the time of our last encounter, and will determine whether she loses her right of residency, after 14 years in Portugal. At worst, this process could lead to a trial, potentially leading to a prison sentence, or more likely to a notification requiring her to leave the country.
177 Int. 2 Frida
investigated by immigration authorities as being potential offenders by default, for others, as Bart summarizes, “those ideas just don’t cross their minds!”

The empirical data indicate intersectional logics are operating in the institutional selection of “authentic” couples eligible for family reunification rights. In this context, gender, national origin or class are inseparably intertwined as determining factors in the “hierarchy of acceptable marriages” (Wray 2011:18), as they are in the selection of desirable migrants on a broader scale. If state representatives do not consider a migrant to be ‘desirable’, it may lead to greater state interference in that individual’s life trajectory, including on their conjugal choices. As observed by Garbi Schmidt in a case study on Denmark, specific family norms imposed on migrants and their partners may indeed be “instrumental in including or excluding particular groups of residents” due to their gender, nationality or socioeconomic situation, or to “non-standard family practices” (Schmidt 2011: 258). The surveillance of intimacy by state representatives affects couples that are treated as “deviant” on the basis of the profile they are ascribed (Roca Girona et al. 2015:233).

Although sexual orientation and sexuality were not a focus of the present thesis, it is interesting to note how this theme may gain some relevance in the next years, and could be investigated in conjunction with other intersectional factors in the field of transnational marriage. The Portuguese government has adopted legislation, which introduces the possibility of obtaining residency regularization through same-sex marriage and civil partnership. Yet, there are still no data available regarding the percentage of same-sex couples who manage to obtain residency rights through marriage, and whether their administrative treatment responds to equality criteria. Magdala Gusmão, representative of the NGO Comunidária, expressed her surprise at discovering the ease with which the regularization of a same-sex couple of two women she was attending was processed by authorities. Gusmão commented that probably their privileged profile and socioeconomic status put their sexual orientation in second place. In her interview, she wonders “…why a lesbian couple (...) had been so well received, so well treated?! (...) an undocumented woman, undocumented! (...) it went beyond my expectations, and the experience with other women [who applied for residency]. It has been a classist evaluation! (...) A white woman, with a full degree in Brazil, marrying another here, also graduate, you know, white, you know, young… All of this counted somehow. I would like to know, if it were, I would have liked to see, indeed, the same

178 Int. 2 Bart
test [with other women], which I saw! (...) But I would have liked to see if it were a lesbian couple, too, but with other characteristics!"179 She went on to denounce the “moral side, and the profiling” involved in the application process, evoking the examples of “women associated with night professions, prostitutes, who encountered various obstacles, and who couldn’t [regularize]. Here we already solved cases of women who really had experience as prostitutes, they were trying for 5 years in SEF and didn’t manage (...) they complained saying they had been mistreated by [SEF] employees (...) two said to me ‘he almost called me a whore!’ What to say? Women with job contracts, with secondary education. So that we managed. Yes, they had the formal requisites!”180 The process of institutional selection influenced by moral considerations on women’s sexual behaviour may be framed by Eithne Luibheid’s observations on border policies in the United States: "sexual regulation at the border matters, not just on its own terms but also because it draws on and reinforces systems of sexual regulation that are directed at populations living in the United States" (Luibheid 2002:xviii).

(SELF-) REPRESENTATIONS OF CONJUGALITY: “LOVE” AND “CONVENIENCE”

The following story has been chosen to introduce some of the themes that will be discussed in this last part of the section. One is the opposition between “real” and “fake”, the other is the definition of “risk profiles”, and the association with the notion of “vulnerability”. The particular trajectory of these two actors challenges the margins of the concept of “convenience”, due to their overlapping motivations.

179 Magdala Gusmão: “porque um casal lésbico, ela branca, foi tão bem recebida, tão bem tratada?! (...)Uma mulher não documentada, não documentada! (...) fugiu completamente da minha, das minhas expectativas, e da experiencia negativa com outras mulheres. Foi uma avaliação classista, foi, foi! Uma mulher branca, uma mulher que tem um nivel superior completo no Brasil, casando com outra aqui, de nivel superior, entendeu, branca, entendeu, jovem... Tudo isso teve ai um toque. Eu queria saber se fosse, eu queria ter visto, mesmo, a mesma prova, como vi! (...) Mas queria ter visto se fosse um casal lésbico, também, e com outras características!”
180 Women’s rights activist: “todo esse lado moral e do perfil (...) mas ouvi isto em vários casos da x (...) mulheres identificadas com trabalho noturno, mulheres prostitutas, que tem encontrado vários entraves, e que não conseguiam...aquí já resolvemos situações de mulheres que tinham realmente experiencia como prostitutas, estavam 5 anos tentando no SEF e não conseguiam(... desabafaram dizendo que foram maltratadas, pelos funcionários (... ) duas me disseram isto! “me chegou quase a chamar de puta”! Que dizer? (...) ...mulheres com contrato, mulheres com estudos secundários... tanto que conseguimos! Sim, tinham os requisitos formais”.

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Rita and Ahmed: marriage as a rational choice?

After a period in her early twenties in which she felt she was marginalized, and living on an unemployment benefit, Rita started going regularly to visit a friend who lived in London. There, the mother of her friend and the mother’s husband, who were hosting her, introduced her to Ahmed, an Algerian citizen, who had come to live in the United Kingdom five years before. Having entered the country with a false passport, Ahmed, although having managed to find an insecure job and rent a little apartment, was in a precarious situation because of his unauthorized residency status. The couple that introduces them proposes to Rita to marry Ahmed so as to render his regularization possible, in “exchange for money”\textsuperscript{181} which amounts to a total of 3500 pounds. Rita states that at the time she was not fully aware that the couple hosting her had organized their meeting: “at the time I even thought that I was... very innocent, that it was a very clean thing, but no... inclusively, I got to know that it’s not only my story, there are others (...) but I never wanted to know anything, because with my husband things developed really smoothly.”\textsuperscript{182}

She considers that initially a mixture of motivations pushed her to accept this “marriage for money”, including a sense of solidarity motivating her to help Ahmed, based on her belief in his right to mobility: “I ended up understanding that in the end he was doing this because he wanted freedom, he wanted to be free, to be able to go to Algeria, visit his family which he didn’t see for I don’t know how many years, you know, and for him, himself.”\textsuperscript{183} Additionally, she notes that her economic precariousness at the time made the 3500 pounds an important incentive, although she displays a certain detachment, relativizing the importance of money: “in reality if I were to think if I really, really, really needed... if it was a very very urgent situation in my life, maybe it wasn’t, you know? (...) I always had arms and legs to work!”\textsuperscript{184}

\textsuperscript{181} Int. 14 Rita: “à troco de dinheiro”
\textsuperscript{182} Int. 14 Rita: “na altura eu até achava que tava a fazer...bué inocente, tava a ser uma coisa muito limpa, mas não...inclusivamente já cheguei a saber que não há só esta minha história...que há outras (...) não quis perceber nunca nada, porque com o meu marido a cena sempre... depois avançou bué dentro da normalidade”. Int. 14 Rita: “eu acabava por perceber que ele fazia isto no fundo porque ele queria liberdade, ele queria ser livre, pra poder ir à Argelia, visitar a família dele que não via há não sei quantos anos, tás a ver, e pra ele, ele próprio”.
\textsuperscript{183} Int. 14 Rita: “eu acabava por perceber que ele fazia isto no fundo porque ele queria liberdade, ele queria ser livre, pra poder ir à Argelia, visitar a família dele que não via há não sei quantos anos, tás a ver, e pra ele, ele próprio”.
\textsuperscript{184} Int. 14 Rita: “na realidade se eu fosse a pensar se eu precisava mesmo mesmo mesmo... se era uma situação bué bué urgente na minha vida, se calhar não era, tás a ver(...). Sempre tive mãos e pernas pra trabalhar!”.
During the interview she comes back various times to the issue of having received money, as if this were in contradiction with the pureness of her intentions, and states that she justified her choice to herself, considering it a joint choice with Ahmed: “I also felt that he... he preferred doing... he would say ‘I prefer doing things like that, I mean, I prefer to make this a deal, you see, not being a friend’s favour’ (...) for the thing to stay clean (...) so that I won’t be owing anything to you, or under obligation, I prefer you to accept this (...) and we remain equal to equal”.\(^{185}\) At the same time, she interprets her marriage - and linked to that, the opportunity of living in the UK - as part of a will of subversion on her behalf: “in that phase I thought... hey, the adrenaline of going to England! (...) in the end in these things I am a rebel, man, I like danger a lot (...) at the time... it was a fury of wanting to live everything, and even more!”\(^{186}\)

She describes her motivations as later becoming more complex, involving a growing feeling of friendship, and a sensation that the marriage involved mutual advantage, rather than an asymmetric relation in which she was “helping” Ahmed. Regarding the bureaucratic process and her temporary stay in London she says: “we went through all of this always together, easy-going, as friends, you see? I never felt bad with what we were doing, on the contrary!”\(^{187}\) The fact of having Ahmed to count on makes her feel more secure, as their relationship evolves in a sense of providing mutual support. Rita ends up settling in London for a year to find a job and raise some money, and in this phase the papers she has to obtain in order to regularize Ahmed’s position as a permanent resident in the UK prove of great utility for her. Namely, she refers how paradoxically her position as a “temporary immigrant” herself is considerably improved by the bank account, tax number, and regular contract, all of which Ahmed helped her to obtain\(^{188}\).

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\(^{185}\) Int. 14 Rita: “eu também senti que ele, ele preferia fazer... ele dizia-me isto ‘prefiro fazer uma coisa assim, isto é, eu prefiro memó fazer isto um negócio, tás a ver, não ser um favor de amigo’ (...) que é pra cena ficar limpa (...) pra eu não te ficar a dever nada, ou comprometido contigo, eu prefiro que tu aceites isto (...) e ficamos de igual pra igual”.

\(^{186}\) Int. 14 Rita: “nessa fase tava a pensar, ehi, a adrenalina de ir pra Inglaterra, de, de... opa não sei... no fundo eu nessa cenais sou bê rebelde, meu, é tipo gosto buê do perigo (...) nessa altura... era ali uma fúria quase de querer viver tudo e mais alguma coisa”.

\(^{187}\) Int. 14 Rita: “passamos por esses processos todos sempre juntos, numa boa, como amigos, tás a ver, nunca me senti mal com o que estava a fazer, pelo contrario!”

\(^{188}\) Unlike other interviewed couples, Rita and Ahmed underwent their marriage and residency application process out of Portugal. The whole regularization of Ahmed occurred in the UK, although they are now considering whether he could come and join her in Portugal.
During her account, Rita reflects on the issue of doing something considered “illegal”, and refers to having initially perceived the marriage with more concern once she understood that there was an intermediary involved: “while he was present I felt that(...) there was a mafia there...you know, (...) and of getting myself into great trouble.” During her account she suggests that Ahmed’s option of recurring to other agents to organize his regularization is due to the lack of legal options to gain autonomous rights, and also to the difficulty in gaining access to information and a thorough understanding of the bureaucratic process, stating “in the beginning it was always X. [the intermediary] who said ‘you have to do this, then that’...because they [migrants] don’t know, (...) in reality they don’t have conditions to have this contact with institutions, they live at the margins.” She recalls having completely overcome the sensation of doing something illegal when Ahmed said they would marry with no intermediaries: “we thought, ‘no, man, I have your number, you have mine, let’s talk, let’s be us sorting things out from now on.’ From that moment I stopped feeling that thing, of it being an illegal thing.” Rita ends up believing that her and Ahmed are really married, in their own terms, and have managed to overcome the framing of illegality: “The day of the wedding was beautiful, you know, seeing myself dressed as a bride, and full of friends, a girlfriend of mine came, and we also went out for dinner, yep, almost, it looked really like a wedding! And it was, it was. That really was a wedding (...), in the end I think we had this capacity, to transform that thing... easy-going, he never felt, I am certain, that I had extorted money from him.”

Rita and Ahmed’s relationship is an example of a marriage that would have been considered a “typical” marriage of convenience in institutional terms, since Rita married a man she did not know and with whom she had no intention to create a love relationship/family. Additionally,
Ahmed contacted her through intermediaries promising a certain amount of money for her collaboration, making their story fit into the stereotypical association of economic and migratory convenience, and the link to networks making a profit from illicit activities. Lastly, at the time of the marriage her social characteristics adhered to the stereotypical institutional definition of a “vulnerable” person: she is a woman from a relatively disadvantaged social background, surrounded by marginalized social networks involved in illicit activities, and unemployed. Yet her story confronts the narrow categories of illegality and conjugality categories from within, suggesting a reconsideration of the conception of marriage of convenience as a clear-cut notion (cf. Block 2012, Roca Girona et al. 2012). Her declarations in the interview challenge the dominant imaginary of the couple relationship as based on romantic love. For instance, when she exclaims that theirs “was a marriage”, based on companionship and mutual support, she introduces alternative perspectives on the conjugal link to those prescribed by state institutions. Additionally, the attitude she displays towards her choices contradicts her framing as a vulnerable, passive victim of a marriage of convenience network (Gil 2009, Gonzalez and Bacci Tamburlini 2015). Lastly, Rita and Ahmed’s perception of the economic transaction as a way to be “equal” may be seen as a provocative perspective, emptying the institutional meaning given to the notion of “convenience”. The commercial exchange seems to make Ahmed feel the relation is equal, and that marriage is simply an informal arrangement between consenting adult citizens. This appears to reinforce the argument that inter-status marriage may be seen as a rational choice (Varro 2000, Grassi 2006, Beck-Gernsheim 2011), rather than on the polarized love-convenience institutional understandings.

FLUID ATTITUDES AND MOTIVATIONS REGARDING MARRIAGE

If marriage is considered a bounded and clearly definable notion, centred on demarcated interpretations of romantic love, family (gendered) roles, and requisites such as cohabitation, sexual behaviour, and economic arrangements, it naturalizes such a definition as a measuring rod for what is “real” or “fake”. However, the diversity and complexity of conceptions of conjugality existing in articulation with (il)legalization processes may be used as a tool to gain insight into the “doctrinal” view of marriage manifested in Portuguese legislation and practices. According to the empirical findings, although acting in a context which we may consider to be one of limited freedom, the couples displayed a range of approaches to
marriage, both as a step in personal life and in terms of its formal recognition on behalf of the institutions. The motivations adduced by the subjects regarding their conjugal choices included varied positions, which often appeared to show how the participants both internalized and challenged the polarization between “love” and “convenience” used by institutions in the construction of “marriage of convenience” discourse.

As underlined by Ulrich Beck and Elisabeth Beck-Gernsheim, marriage as a gateway for immigration awakens indignation because its instrumentality breaches the cultural taboo of the “western ideal of love”, which is described as “our secular religion” (Beck and Beck-Gernsheim 1995). In other words, inter-status marriage, especially when it is celebrated out of the normative formulas, is a provocation against the fictional association between love and marriage. This association, as several feminist scholars have argued, obscures the entanglement of gendered and asymmetric power relations with the institution of marriage (De Beauvoir 1949). As Emma Goldman provocatively argued in 1910, “while it is true that some marriages are based on love, and while it is equally true that in some cases love continues in married life, I maintain that it does so regardless of marriage, and not because of it” (Goldman 2007 [1910]:91).

The fieldwork observation moreover confirmed the tangled motivations behind marital choices. These invariably underline the gap between the complexity of transnational conjugalities and the limited definition of “genuine marriage” imposed by institutional restrictive regulations (Wray 2006, Grassi 2006, Leinonen and Pellander 2014, Charsley et al. 2012, Block 2012, Bonjour and de Hart 2013, Schmidt 2013). All the stories in some aspect confirm how “love” and “convenience” are placed on a continuum of points along a spectrum (Block 2009), and are coexisting with a series of intersecting and fluid motivations, as well as with subjective conceptions of relationships and their formal recognition by the state. Unsurprisingly, in most cases the relationships appeared to develop over time, in interaction with the challenges presented by the mobility trajectories of one of the partners or the couple. In some cases the relationship was put under strain due to the stressful consequences of the precarious legal situation of one of the partners, and mobility constraints, due to the difficulties in being able to meet when living in different countries, or in travelling together.

The positions regarding marriage that emerged in the interviews are particularly fluid and complex, shifting over time and depending on the situation of the partner involved. The reference to some “romantic feeling” emerged in some of the interviews as being
Narratives and counter-narratives on “marriage of convenience”

incompatible with the “instrumental” aspects of marriage, such as residency advantages. In her account, Frida recognizes she deemed it important to choose marriage with a person mainly because of love and a desire to build a family together. A similar attitude emerges in the timing chosen by Alejandro for his marriage proposal to Ana, who was struggling to regularize her papers in Germany, where they were residing at the time. He explains that he waited for Ana to have her permit renewed through other means - namely a “temporary permit for job seeking” - before asking her to marry him, stating that he wanted to avoid any confusion regarding the motives of his proposal: “I didn’t want to have a marriage as a solution [to her undocumented status], so I took the opportunity, when we got the renewal, we had a relationship with one year ahead, and I was certain that she could stay, I asked her to marry.”

The story of Mercedes and Agustín reinforces the importance of considering the temporal dimension when investigating the complex and multi-layered perceptions of interviewees regarding marriage. They both refer to having strongly defended their views against marriage before meeting each other. Agustín states: “I never believed in the institution of marriage, no? (...) I saw it was completely useless...marriage, for what?” His wife Mercedes reinforces the argument, saying “we were against marriage as an institution... (...) I never thought in my life that I would get married. (...) But I think that circumstances also change, in life, and I saw marriage as a tool, as a means to stay with Agustín. (...) So that he could be able to work, lead a calm and peaceful life, without thinking ‘Agustín doesn’t have papers, maybe one day the police will take him and deport him.’”

It should be noted that for most of the couples, before their marriage the time the partners could spend together was inevitably determined by migration status of at least one of the two,
meaning the choice to marry could bring an evident advantage. Several couples in this situation felt a pressure to get married because of the perceived difficulties involved in individual mobility, and the possibility to live in the same country. Indeed, one of the themes called to my attention during the fieldwork was the appreciation of the value of marriage above all to guarantee mobility rights, and, in case of united couples, to avoid being separated by territorial borders. For instance, in some cases marriage was not part of individuals’ original migratory projects, but emerged as a strategy later on. In other cases the individuals did not wish to migrate and did so only to join their partners, and marriage was the only option available to do so. If we consider the temporal dimension as well, and the delicate negotiations within the couples, the classification of motivations is even less clear-cut, but is seen to adapt to contingent obstacles encountered by the research participants, such as in response to the need to regularize an insecure legal status. Paradoxically, restrictive migration regulations may thus push couples that did not desire to marry to do it, or to give incentives to others to marry earlier on in their relationship than they would otherwise have chosen.

In several cases, interviewees would state that they had an undefined stance on marriage as an institution, and subsequently made up their mind when they found themselves in a relationship with someone who experienced limitations because of residency. In the case of Bart, for example, his perception of his first wedding was devoid of symbolic values, as he defines it a “pragmatic” choice. In his second marriage, to Frida, he at first suggests that he is not fully aware of the advantages in terms of settlement and mobility, stating the second marriage “didn’t have anything to do with official status things”. However, in other parts of the interview Bart admits that the marriage involved important changes in his mobility: “I said ‘ok, at some point this will be a problem’...for one, I couldn’t go (...) to visit my family and everything like that, and then at some point I’m sure the residency, you know, all those issues would have come up (...). you know that if you’re married you have the right, they can’t take that away, you’re safe.”

Frida and Bart, due to their experiences as individuals and as a couple, stress the importance of being able to lead what they consider a “normal” life, and underline the importance of being able to cross borders together. For instance Frida, when asked how she feels they would have lived without getting married, comments “I don’t think it would be as stable as a couple, like two Portuguese people, for example, that can live for ten years without getting married,

196 Int. 2 Bart.
and everything being the same, like especially because, not because we’re both foreigners here, but also because of how we are foreigners, like we move lots, we’ve moved lots. (...) When you’re with someone, you want more or less the guarantee that you can stay together for as long as you want to be together.” In several other cases, the association of formally recognized conjugality with “migratory advantages” was more explicitly cited as a main reason for marriage.

When asked what was their opinion on transnational marriage involving a change in residency rights for one of the partners, several participants considered that it was legitimate to marry for the documents, or “with the passport” (Grassi 2006). Joana states that she feels no taboos in this respect, considering marriage as a way for individuals and couples to lead the life they desire and overcome migratory obstacles: “If I had now [a relationship with] a foreigner, and he had to live all the bureaucracies, I would be the first in calling him and saying, ‘my love, my friend, let’s get married exactly for this, because I don’t like paperwork’…(…) With no taboos, you know? To comply with the bureaucratic order.”197 Rita, when asked what she thought of marriage, affirms she does not believe in it as a formal institution “I don’t believe in it (…), so much that I tell you, if I hadn’t done this with Ahmed (…) I maybe would be married with some friend of mine…for example, Brazilian people (…), for which the marriage thing would really resolve their lives! I already had friends that had to leave from here, deported, you know? Deported for not having documents…”198

In this sense, transnational marriage may be read as a rational response to both globalization and increasingly restrictive rules. Analysing these stories is an opportunity to demystify romantic love as a pure and exclusive basis for marriage, for instance by making visible the historicity and variable social acceptance of the practice of marriage with instrumental ends (Beck-Gernsheim 2011).

Additionally, some aspects of the interviews underlined to what extent most marriages may be considered to enclose at least some form of convenience. Arguably, the social incentives for

197 Int. 5 Joana: “se eu tivesse (…) um estrangeiro e ele fosse viver todas as burocracias, (…) era a primeira que chamaria e diria, “meu amor, meu amigo, vamos nos casar pra isto mesmo, porque eu não gosto de papéis (…) sem tabu nenhum, entendeu? Pra cumprir uma ordem burocrática.”
198 Int. 14 Rita “Pois, aí está, não acredito [no casamento] (…) tanto que eu digo-te uma coisa, eu se não fizesse isto com o Ahmed (…) eu se calhar eu já tava casada com amigos meus, porque eu tenho bué pessoal amigo meu, por exemplo, pessoal brasileiro, (…) que a cena do casamento resolveria bué a vida deles! Eu já tive amigos meus que tiveram que sair de cá deportados, tás a ver…? deportados por estarem sem documentos…(…) “se deveria acabar com o casamento (…) porquê há outros contractos de vida que podem regular as vidas conjuntas, como a hospedagem, o formas de partilha das responsabilidades educativas”.

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the formalization of conjugal links demonstrate how marriage is a strongly state-sanctioned public act, bestowing a variety of privileges ranging from tax breaks to the formal recognition of descendants. As André comments in his interview regarding generic marriage between individuals of the same nationality, “in reality, a lot of legal marriages would fit into the definition of ‘convenience’”; adding that “the origin of marriage is patrimonial, not romantic.”\(^{199}\) His stance is that “we should put an end to marriage (...), because there are other life contracts that can regulate shared lives, such as solidarity, or such as forms of sharing of child-rearing responsibilities.” He eventually expresses his full rejection, declaring “I am against marriage as a historical and political institution”\(^{200}\), and underlining that he would never have married for reasons other than facilitating someone’s legal inclusion.

André puts his theoretical point into action, stating that he married Marcela with the exclusive aim of enabling her to obtain legal residency in Europe. Marcela is a friend of a friend, and is visiting Europe, but decides in the meanwhile to stay and asks for help in the regularization, which André agrees to. He insists that he considers his wedding as a step consistent with his political position regarding open borders and the appropriate role of the state. André stresses during the interview that his choice is not a personal favour, and that he never wanted to introduce the notion that he was being generous: “For me it was important that she didn’t feel that I was doing a favour to her (...) I was interested in it being a genuine relationship, not marked by a situation of inferiority.”\(^{201}\) Interestingly, André’s use of the expression “genuine relationship” reverses the institutional meaning, deconstructing the association between genuineness and the normative vision of marriage imposed by migration controls. André equally challenges the idea of the state deciding which couples are “fake”, contesting the bureaucrats’ legitimacy, and capacity, to operate distinctions in such a subtle area as motivations for marriage. According to him, “they don’t have a margin to prove that”, since “marriage is a juridical act and, just like civil partnership, it is the proof of a series of facts (...) The state is not going to say that you don’t love each other!”\(^{202}\)

\(^{199}\) Int. 13 André: “em realidade, muitos casamentos legais caberiam na definição de ‘conveniência’ (...) a origem do casamento é patrimonial, não é romântica!”.

\(^{200}\) Int. 13 André: “eu sou contra o casamento como instituição histórica e política”

\(^{201}\) Int. 13 André: “Para mim era importante que ela não sentisse que eu lhe ia fazer um favor (...) Interessava-me que tivéssemos uma relação genuína, não marcada por uma situação de inferioridade”.

\(^{202}\) Int. 13 André: “eles não tem margem para o provar”, “o casamento é um acto jurídico e, como a união de facto, é a prova de uma série da factos (...). O estado não vai dizer que não te amas!”.
Rita’s account similarly reflects the importance for her to subvert a law, which she considers unequal and detrimental to fundamental rights, such as choosing where to settle, being able to work legally, and travel freely. Rita and Ahmed’s story may also be considered an example of how current policies are distracting attention from the real causes of vulnerabilization. When they are left to decide autonomously, between consenting adults, how to solve their life conditions, they find an arrangement that favours the two of them (cf. Grassi 2006). While Ahmed receives his residency regularization, Rita feels supported in her migration experience in the United Kingdom and stabilizes her economic situation. This story contrasts once again with the dominant institutional portrayals of “marriages of convenience” associated to trafficking gangs and exploited victims.

Additionally, non-conventional conjugal stories challenge the normative frames used by state authorities to determine the “authenticity” of marriage. This is the case with Patricia and Zaqueu, who had a child in common but decided to marry when they were already separated, with the sole intention of guaranteeing Zaqueu’s rights of residency, and subsequently supporting his nationality application. Therefore, although their motivations were linked to the legal status of Zaqueu, their couple adhered to the normative standards of nuclear family promoted by institutions -at least in their formal façade-. Furthermore, the institutional profiling related to socioeconomic indicators appears fallacious when we consider that financial transactions are only one among many potential, often multi-layered motivations underpinning the decision to marry. In the cases of André and Marcela, and Florencio and Lidia, for example, motives included friendship ties and political convictions. Even in the case of Rita, who did receive compensation, the incentives she reports are a complex mix of personal “rebellious” attitudes towards authorities, personal principles of the right of human beings to freedom, and a growing feeling of mutual support with her husband Ahmed. By expressing the diversity of legal and conjugal configurations in a context of mobility, these narrations pose considerable challenges to the categories and justifications on which “marriage of convenience” policing is based. The interviews thus highlight how the term “marriage of convenience” may be seen as an empty signifier, since the multi-layered motivations of couples are not inscribable in narrow and inherently moralistic definitions of “convenience”.


TRANSNATIONAL MARRIAGE AS AN EXPRESSION OF AGENCY

The perspectives and practices of transnational families can be seen to challenge monolithic visions of the family and can be seen as “paradigmatic of the diversification of family structures and arrangements” (Williams 2004:35). The empirical data confirms the shortcomings of the “love” versus “convenience” dichotomies. Most marriages, even if adopting institutional framings of evaluation, would fall into the large grey zone between the two extremes, with mixed motivations and incentives propelled by both the agents and the structure (Block 2012).

Similarly to what Kaufmann observes in his “sociologie du couple”, based on his observation of the French population (Kaufmann 1993), the choice of a (foreign) partner may depend not only on “love” and “attraction”, but also on rational choice, on perceived risks, and on expected gains on both sides (Varro 2000, Grassi 2006). As a way of making definitions more flexible and capable of embracing this complexity, it may therefore be useful to look at transnational conjugalities as “elective romance”, and as one of the possible choices of a “competent migrant exercising considerable agency”, to borrow John Davies’ expression (Davies 2009). This may contribute to demystifying the essentialist views on marriage with “instrumental ends”, to include the multifaceted perceptions of subjects and acknowledge their agency. In this perspective, we may consider even marriage entered into solely for legal status purposes as a legitimate and rational choice, a more or less intentional form of bending the law (Morawska 2001), and in some cases even as a form of civil disobedience.203

At the same time, it is important to avoid romanticizing the experience of transnational lives, by taking into account the structural and intersectional factors of oppression and stratification which are actively operating, as analysed in the previous sections. The stories shared by the couples are emblematic of the multiplication, overlap and fluidity of social and legal borders, and their articulation with the particular characteristics of the spouses. In a context in which restrictive policies have engendered highly unequal access to mobility and life opportunities, we may see transnational conjugality also as a form of appropriation of mobility. From this perspective, the growing restrictions to mobility may be seen as counterproductive, since the construction of walls also often constitutes a “call to transgression” (Bennafla and Peraldi

203 On this point, see the theorizations referring to the conceptualizing the “autonomy of migration” (Scheel 2013).
As Castles and Miller argue, in this sense migration creates new transnational social spaces reproducing social hierarchies, but also desires of freedom and equality (Castles and Miller 1993).

**QUESTIONING LOVE, CONVENIENCE, AND AUTHENTICITY CLAIMS**

As exposed in the description of the institutional profiling processes, the narrow profiles used for “marriage of convenience” discourse fail to capture the multi-layered motivations and trajectories of the interviewed couples. Their stories reflected how the diversity and the fluidity of transnational conjugal situations cannot be captured in the binary system of “genuine” versus “fraudulent” marriages, making the distinction empirically unsound and theoretically unsustainable.

The generic stigmatization of transnational couples as potentially “fraudulent” underpins the immigration authorities’ legitimacy in the development of activities of supervision and selection. Namely, administrative practices in place in Portugal prescribe the type of relationships that are entitled to obtain legal residency under family reunification schemes, exposing those who do not conform to illegalization and persecution processes. In this way, state regulations actively “construct and condition the family, by distinguishing migrants eligible for admission from those who are not and by defining a variety of conditions prospective immigrants have to meet” (Kraler and Bonizzoni 2010:183). This section has investigated the ways in which state regulations and couples’ reactions are shaped by normative conceptions of what a “true” marriage is. This approach enabled insights into the ways in which the institutional framing of state-sanctioned “marriage”, as valid for regularization purposes, interacts with normative notions of family, causing a series of repercussions on couples’ trajectories, and on their access to fundamental rights.

As previously observed, migrants and their partners end up needing to negotiate their legal status and settlement with a system that does not treat all subjects as equals, and which pushes them to adhere to normative models, adapting to the institutional imaginary of “authenticity”. This outcome is heavily influenced by expectations on what characteristics define a “plausible couple”. In most of the collected stories, state interventions exposed gendered and normative conceptualizations of what type of conjugal/professional/reproductive choices are implied in a “true” marriage. For instance, in some cases officers in charge of filing the regularization
through marriage reportedly advised women that if they had children with their partner this would be considered positively in terms of the demonstration of a genuine conjugal link.

Although from different disciplinary backgrounds and with a range of analytical frameworks, this process of intervention on conjugal processes through “marriage of convenience” policies has been detected by researchers in most European Union countries. These include Norway (Eggebø 2012), Finland (Pellander 2014), Denmark (Schmidt 2013, Fernandez and Gudrun-Jensen 2013), United Kingdom (Charsley et al. 2012, Shah 2010), Holland, (Bonjour and De Hart 2013), France (Kringelbach 2012), Belgium (Foblets and Vanheule 2006), and Spain (Roca Girona et al. 2015). The comparison with other European studies shows how the policies operationalized in Portugal are part of broader European processes of surveillance. Although with some variations in the modes and outcomes, government discourse and policy on transnational marriages are based on exclusionary, gendered, securitarian and selective notions of the state’s role in influencing human mobility.

The pervasive and unequal relations of power operating behind the façades of security, and “neutral” and universally applied administrative procedures, are evidence of the inquisitorial manner in which “marriage of convenience” is policed. As Foucault asks, in a broader context of what he came to name as governmentality: “How is it that in Western Christian culture the government of men demands, on the part of those who are led, not only acts of obedience and submission but also ‘acts of truth’, which have the peculiar requirement not just that the subject tell the truth but that he tell the truth about himself, his faults, his desires, the state of his soul, and so on? How was a type of government of men formed in which one is required not simply to obey but to reveal what one is by stating it?” (Foucault 1997:81, emphasis added). The state’s demands for “acts of truth” reach another level in the policing of migration based on marriage. As Sarah Friedman reminds us in the insightful essay Determining truth at the border, “the personal lives of immigrants are subject to a much greater degree of state scrutiny, especially in the relationships (such as marriage) that make immigrants eligible for naturalization. To gain entry, immigrants must prove the validity of their bonds according to standards set by the admitting nation-state” (Friedman 2010:172).

Narratives regarding “fake” or “fraudulent” marriages are consistently used to justify restrictive migration laws and legitimize a surveillance procedure that has unequal outcomes. The type of requisites established by law, the way such policies are implemented by bureaucrats and immigration police, and the practices of transnational couples interact in this
framework to determine what conjugal forms are selected as “genuine”, and thus eligible for family reunification purposes.

The moral order imposed on transnational couples on the basis of “authenticity” and “fraudulence” resonates with the selective practices based on the construction of ‘us’ and ‘them’ in the public sphere (cf. Fernandez and Gudrun-Jensen 2013). Nonetheless, the contradictions, diversity and overlaps that emerge in the interviews regarding attitudes toward and motivations concerning marriage are considered in themselves a deconstruction of the “fake”/“true” dichotomy. Regardless of the possibility of gaining residency advantages in Portugal, interviewees see motivations for marriage as a mix of rational choice for economic or mobility reasons, as well as emotional, affective, and relational aspects. The interviews demonstrate how transnational marriage, in this sense, may be seen as a powerful tool to assert agency and operate rational choices in significant areas of partners’ lives, including the choice of the place of residency and mobility rights.

SECTION 2- TRANSNATIONAL LIVES AND THE CONSTRUCTION OF (IL)LEGALITY

The analysis of “marriage of convenience” policies exposes the discursive and administrative mechanisms through which the state categorizes human beings under migration labels, determining their right to stay in the national territory. One of the main outcomes of such categorization is the distinction between “legal” and “illegal” migratory practices. In particular, the state defines the fight against “illegal migration” and the promotion of “legal migration” as the pillars of its migration policies, as if these were ahistorical and apolitical categories.

Unpacking this naturalized and dichotomous approach, as well as the ways in which it impacts on social relations, will be the central focus of this section. In the following chapter, I will trace the processes through which subjects are classified by institutions, exploring the repercussions of the current discourses, policies and practices on (il) legality. At the same time, I will provide accounts of how individuals and couples have managed to navigate the restrictions and determine their own conjugal and mobility paths, and will also trace their perceptions and interpretations regarding their own trajectories.
The story of Frida and Bart has been chosen to introduce several themes that will be touched upon in this part of the chapter. These include the influence of transnational processes on the complexity and fluidity of legal trajectories, and the relative influence of legal status on conjugal relations and on life conditions, depending on the geographical context and intersectional factors. Their narrative, as well as the interview excerpts presented hereafter, reveal how regulations and bureaucratic procedures may impact on the trajectories of individuals in mobility and their partners, as well as examples of how such individuals may react towards the policing of their mobility and intimate lives.

Frida and Bart: navigating transnational mobility and (il)legality

Bart, 33 years old, is born in the USA. In his juvenile years he travels to Germany and decides to stay and live there, employed in temporary jobs. In his mid-twenties, he chooses to marry a girlfriend of the time, so as to be able to stay in Germany once his Visa expires: “I did it to stay there, I mean, that was the idea. (...) we came to look at that as something cool later, uh...but at the beginning it was pragmatic, it’s ‘let’s just go and get married, then, we’re good you know”. Subsequently, he receives a temporary residency permit on the basis of his marriage, but never applies for German nationality.

Frida, his current wife, is 30 years old, is born in Paraguay, and goes to Germany when 17 years old to continue her studies for one year. After her course finishes she wishes to stay, but fails to renew her student visa: “I had one...two more weeks to leave, and I didn’t want to leave, so a friend of mine offered to marry me. He said ‘we can get married and then you can stay’. ...I kind of played with the idea but some romantic thing made me say ‘No, I’d just rather get married some other time’ [laughter], (...) and I remember this friend of mine came home and said ‘I have the papers, it’s really easy, you just have to sign here, we take it there’...it was a small town so it would be very fast, and...but then I didn’t do it.”

At the time, she decides to reunite with her family, who in the meanwhile had moved from Paraguay to Spain. In that period, the whole family is living in an unregistered status. She reports feeling a lot of pressure because of that: “that was more stressful, and more...that was sadder because we had to deal...with...with the whole family and not just you dealing with your situation, it was like my mum, my little sister being illegal, like...she hearing that in school, and coming back saying ‘am I illegal, do I have any papers?’ ”. Frida attends university in

204 Int. 2 Frida.
Spain, and during her graduation years she goes for a year abroad in Lisbon, but experiences some hindrances due to her semi-legal status: “I came to Portugal without papers, so to speak, so I couldn’t work, I didn’t have any social…I didn’t have any health coverage, or anything, because I was in a grant from my university in Spain but I only had the right to live in Spain (...) I think it’s kind of a loop, ‘cause I was actually entitled to be here, ‘cause my grant said that I was coming to Lisbon, but I didn’t have any rights here, because I didn’t have any papers for Portugal specifically”. After she returns to Spain, the whole family manages to gain regular residency through a mass regularization campaign in Spain, and eventually she manages to obtain Spanish nationality as well.

Frida and Bart had already met in Germany as friends several years before, but in 2010 they start living together as a couple in London, where she has a job. He stays there on a tourist visa and lives on informal temporary jobs, but after a weekend spent together for leisure in Paris, the British border police decide not to let him back in the United Kingdom, suspecting he will overstay his 6-month visa period. She comments: “the border in the UK separated us, (...) and we didn’t plan to be separate, so we had to be apart for three months because like I couldn’t leave London, and also I didn’t want to leave my job in a bad way. I remember when Bart couldn’t go through, in Paris (...) and I remember just going in with my passport, and him waiting on the other side, and I was thinking “I have this passport that allows me to go in...ME? I’m Paraguayan, like! I’m usually the one who is standing on the other side!”, and it was funny for me to think “what, HE can’t come in here!?”. It was a very weird situation where I thought “I have this privilege for some reason that it was…”, like no one was even looking at me, no one even asked me what I’m doing, or anything”.

In 2011, Bart and Frida manage to move together to Portugal after she enrols in a PhD program there. Bart reports feeling he had a very easy time with institutions and that despite not having regular papers he felt no constraints. Frida compares his situation to what she had to undergo when she had spent a study year in Lisbon while undocumented, underlining the favourable treatment he receives, probably because of his US nationality. She recalls that during her first stay in Portugal “they asked me for papers for everything, like everything that was official, or getting a job, and I couldn’t do any of that”. Conversely, Bart describes his situation as radically different in that his administrative registrations were much smoother: “I never really assumed there would be any problems, with the Segurança Social thing because, whatever, they were like ‘yeah, you do this, then you do your taxes, then you get your number’. Frida adds that institutions were lax in requiring him to hold a work permit to get his
fiscal registration number: “once, they sent a letter saying like ‘this is your NIF\textsuperscript{205} and...please send a copy of your passport and work permit to the social security so that we can register you’, and he just sent a copy of his passport and his NIF, and then they registered him. Yep, they asked for it, but he didn’t have it so they registered him anyway.” Bart adds: “Yeah, from everything else that I’ve seen, people here would never suspect an American of coming here for work, or whatever. Like I’m here for fun, you know? And it seems...like you go to the bank, and they’re not suspicious that you’re gonna open the account and not pay something or whatever, you go to Finanças [fiscal administration office] and they give you a paper so easily, they probably think you’re gonna open some huge company and save Portugal(…).” Frida is surprised at the unequal treatment they received, although they had exactly the same legal status: “I was always mad with the situation, because of me coming here in 2008 with my Paraguayan passport, that is the same situation Bart was in when he came here, being treated completely different, just like when we went to the bank...and I was sure, I said ‘Bart, they are NOT gonna open an account for you, it’s like, I’ve been through this (...) and he’s signing the papers and the director of the bank comes, and I thought like ‘see? She’s gonna tell you that you can’t open an account here’, and she actually came to tell him that there are restrictions to his bank account because he can’t buy Portuguese companies or shares (...) I was shocked, I said “what!?”, like with me, with my Paraguayan passport, with exactly the same amount of money he had, they wouldn’t even talk to me in the bank (...) Everyone in Portugal likes Americans (…) this didn’t seem to be scary in any way, and ‘oh no, they are not giving me this thing, I’m illegal’, all the bureaucratic things seems to function very easily ...”.

In a further dialogue, they discuss the notion of “illegal”:

FRIDA yeah, we had this argument once, remember? When they told you “but you are actually illegal here” and you said “no!”

BART well, it just doesn’t seem like I’m an illegal...

FRIDA I thought he was, because I thought “you don’t have any papers, you are not European, therefore you’re illegal”

\textsuperscript{205} NIF- Número de Identificação Fiscal, is the Portuguese tax identification number, similar to VAT.
In 2012 they decide to marry, and choose to do it in Portugal rather than Spain, where her family resides, because they find that the requisites are easier to fulfil and the amount of paperwork lighter. Subsequently, he gains the right to residency papers as a “family member of European Union citizen”. Frida and Bart recall how they felt that his nationality influenced the marriage process, making functionaries suppose it was her scaling up her migration advantages. She suspects that her South American background makes functionaries perceive her as the potential undocumented migrant, even though she now holds Spanish nationality as well, and is the one granting the possibility of regularization of his position:

FRIDA Maybe they were thinking that I was marrying you for convenience, you are from America! (…)

BART [Regarding what the administrators think about “Americans”] … “You have enough chances without being married that we don’t need to worry about you getting married only for that, you know?” (…) They may just assume that, “Oh, yeah, HE doesn’t need a marriage of convenience” you know, it’s so convenient for him , you know. I wouldn’t doubt if they thought it’s just easy for me to stay here in Europe forever, or something, ehm…(…) it makes me think that Portugal doesn’t even know that it’s hard for an American to go somewhere else, you know? Like that they would not give you a residency permit in Germany, or something, just “what?! An American, why wouldn’t you give HIM one?!”

Frida and Bart recount that the interview at the civil registry seemed a mere formality, and that the superintendent even suggested how to frame the story of their relationship, by saying they were not already resident in Portugal, to ease the bureaucratic process. After the wedding, they enjoy the fact of being able to move together freely. Frida, speaking about the advantages of being married, states: “when we got married I do remember we were saying ‘Oh, ok, now we’re married, now no one except us can separate us’, it’s just like there is no border that they can say you are going and you are not!” Later, they travel again to the UK, and she comments: “In fact when we went to England we were very nervous because it was the first time B. had gone back after he’d been refused entry (…) And we were sitting there
waiting, we were very nervous, but still, there was some kind of like, kind of like calm to say we’re married, they can’t really very easily separate us(...) for me it was a peace of mind”. Bart reinforces the feeling of relief connected to their possibilities to move together: “before there was some anxiety with flying, or whatever, it was like “oh, ok now we’re going to the airport and like maybe we have tickets and everything, and maybe they’re not gonna let me in”.

Frida and Bart’s story is emblematic of the multiple ways in which transnational trajectories strain the clear-cut categories used in migration and conjugality state control. The numerous and crisscrossed spatial and legal shifts observed in the above story inevitably reflect processes of transition between imposed categories, such as “undocumented”, “migrant”, and “citizen”. In particular, their relationship constitutes an example of the challenges that social links between people across borders pose to narrow notions of “illegality”. Notably, the story defies static notions of legality, showing reversals, apparently contradictory administrative approaches, and the intersectional effects of regulations. For instance, the episode in which Bart, although holding a valid visa for the UK, is denied entry on the basis of suspicion of overstay, is an emblematic case of the arbitrary power of border authorities in determining whether he can be trusted to leave the UK once the 6-month visa has expired.

The above account also exposes different experiences of bordering and institutional interference in life trajectories characterized by complex layers of transnationalism. The degree of state intervention and its repercussions appear to vary according to time, space, legal context and individual characteristics. In this sense, the inevitable comparison between their two experiences in interacting with institutions exposes the multiple intersecting levels on which differentiations between individuals are developed when facing legislation and institutions, causing them to encounter external (territorial) as well as internal (social) borders (Block 2012, Kraler et al. 2011). This section will debate these themes by interweaving Bart and Frida’s experience of interchangeable legal statuses with other couples’ accounts.
As anticipated in the methodological and theoretical sections, the story of Frida and Bart demonstrates how the mere study of laws is not sufficient to fully understand the range of implications that residency status can have on the lived experiences of individuals. The study of the representation of (il)legality aims to underline the deeply unequal processes through which subjects are treated as “illegals”, and differentially labelled as such, sometimes regardless of the actual status they possess. The infinite forms and trajectories of (il)legality that emerge through this attention to the nuances of representation inevitably challenge the dichotomist discourses of institutional representatives, which oppose “legality” to “illegality”. Indeed, one of the aims of the analysis of illegalization processes is to question simplistic associations, such as the one “equating the conditions of irregularity of a migrant to the practice of illicit activities” (Vianello 2006:161).

The institutionally prescribed labels do not reflect the complexities of “(il)legality”, and are too “static” to comprise all the transition dynamics, intermediate phases or hybrid statuses occurring when migrants are shifting from one legal status to another. The variety of situations collected in the fieldwork could not possibly be captured by an exclusively theoretical study based on pre-established categories. Similarly to the paradox of “semi-legality” exposed by Frida in her description of her first stay in Portugal, Deborah represents her position vis-à-vis the Portuguese state as follows: “I am not completely legal… I’m like “half-legal” [laughter], its’ just crazy!(…) because they can’t make me leave, and I’m in the systems, you know, the social security, the taxes, I can get, do green receipts, but I don’t have my residency card…” These excerpts suggest the usefulness of envisaging legality and illegality as points on a continuum, which depend on the interaction with state institutions. Individuals’ position on the continuum depends both on their social representation and capacity of dealing with institutional norms, as well as on the particular state institution they are dealing with.

Regarding the impression that apparently neutral laws are applied by institutions in selective ways, Nadja, who came to Portugal from Poland, adds that she perceives the existence of a

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206 The expressions “legal status” and “residency status” are used interchangeably, referring to the formal recognition of entry and settlement on behalf of Portuguese institutions.

207 Green receipt booklets are distributed to self-employed workers in Portugal and are used as a registration tool for the tax system.

208 Int. 7 Deborah.
double-standard depending on the origin of individuals, juxtaposing “first class citizens, second class citizens.”\textsuperscript{209} Her husband João agrees: “yes, I think that in Portuguese society, when ‘good immigrants’, so to speak... ‘good immigrants’ arrive, they don’t encounter much difficulties.”\textsuperscript{210} She underlines how she felt included in the first category, since Poland had entered the European Union just months before their marriage and her arrival in Lisbon.

The conjugal story shared by Bart and Frida emphasizes the ways in which the administrative labels of “illegality” shift over time and space. For example, their accounts suggest how holding a US passport has different implications in Germany, the UK, or Portugal, due to different institutional attitudes. Bart’s labelling fluctuates, according to different geographic locations, at times hindering his ability to travel freely with his partner to the United Kingdom, and at other times enabling him to be a positively received foreigner in Portugal, even though officially he has an undocumented status. This shift is also manifest in Frida’s account of the surprise she felt when Bart was not authorized entry to the United Kingdom. Her awareness that she had previously been the one labelled as “illegal” makes her question her own right to cross a border based on the mere possession of a Spanish passport, given that her partner is denied entry.

As these examples suggest, during my fieldwork I observed noticeable variations in the extent to which individuals were ascribed a legal status, depending on economic factors. When applicants had secure financial situations, this influenced directly their opportunities for regularization, as it allowed them to comply with subsistence requisites more easily. More importantly, it also favoured them indirectly, in that it meant they did not fit into the risk categories used by the immigration police. The latter, as described before, base their evaluations of risk of migration-related “illegality” partly on socioeconomic factors such as neighbourhood of residency and professional situation. This selection appears to apply in the aforementioned case of Gilberto, a man in his forties born in Guinea Bissau, making a living from odd jobs in the informal labour market. He recalls that the SEF openly suspected him of involvement in illicit activities because he did not have an active bank account, and asked him for alternative proofs of subsistence while repeatedly delaying his application.\textsuperscript{211} Gilberto’s...

\textsuperscript{209} Int. 10 Nadja (she uses this expression in English).

\textsuperscript{210} Int. 10. João: “Sim, eu acho que na sociedade portuguesa, quando os bons imigrantes, entre aspas , os bons imigrantes chegam, não têm muitas dificuldades”

\textsuperscript{211} It should be noted that for individuals living on informal jobs, and thus with no paid “days off”, these delays have an increased cost. Gilberto complained that, to be able to go to the SEF several times to pursue his residency application, he had to forego whole days of work.
example suggests how in many cases socioeconomic factors play important roles in the process of legalization (Sciortino 2004), both on paper and in administrative representations.

Other research participants in precarious economic statuses also tended to encounter more obstacles in their process of regularization. Many of them had to undergo much more complex procedures to have access to the services they needed, in some cases because they needed to collect the money required for the bureaucratic process, or for the occasional fines attached. The lengthy processes to prepare documentation for residency often feeds into vicious circles, leading to increased bureaucratic obstacles, for instance because most documents are only accepted by the SEF within three or six months of their issue. Additionally, many applicants, after seeing their tentative solicitations frustrated, decided to recur to lawyers, increasing the comparative disadvantage deriving from their economic difficulties.

Other categories appeared to be interacting with social class in determining (il)legalization. For instance, the access of interviewees to all administrative procedures appeared to be based partially on national profiling on the part of administrative and police staff. In this regard, it is interesting to review the previously quoted dialogue between Frida and Bart on the label of “illegality” during their description of his trajectory of regularization. In fact, Bart is unique among the interviewees in that, despite living in Portugal for more than three years with no official registration, he reportedly had never felt categorized by institutions as a potential “illegal migrant”, and had never perceived limitations in his access to Portuguese services: as Frida recalls, he has never been told “no”.

Bart himself recognizes that state institutions positively discriminated towards him, and regarding his easy access to registration in Portuguese tax and migration systems he comments: “I just imagine that situation, if I had been from Angola, or something, being very different, I can’t imagine that being the same.” Regardless of his legal status, the fact of being classified as young, white, middle-class and from a country which is not stereotypically framed in Portugal as a migrant-sending country, appears to influence his representation and his reception in institutions.

According to the account, administrative staff are treating Bart as an “American”, therefore by default as a non-migrant, as a privileged citizen, who is never classified as “illegal”. Conversely, his papers indicate that he is residing in the country as an undocumented worker.

212 Int. 2 Bart.
Gilberto, notwithstanding a similar legal situation, has a significantly different experience. For instance, he reports being regularly stopped by the police in public spaces and being asked for his documents, which has never happened to Bart. This may be seen as a symptom of the overlap between national and socioeconomic profiling in determining the labelling of “illegality.”

Additionally, the construction of what is illegal differs according to gender, as do the responses of sending and receiving states towards it, and observing the construction of illegality can help us understand migration from a gender perspective (Grassi and Giuffré 2013, Schrover et al. 2008:9). As suggest the results of the already mentioned study coordinated by Marzia Grassi on illegality and gender in Italy and Portugal, women’s “illegality” tends to be perceived by institutions as less “menacing”, whereas men’s “illegality is seen as more socially hazardous (Grassi and Giuffré 2013). Although in the case of marriage control women do not appear to be perceived as less prone to illegal acts, the interviews show perceptions on behalf of authorities, that are deeply gendered. These considerations suggest that the dimension of legal status intersected with the categories of gender, class, and nationality plays a crucial role in defining the social layering involved in transnational experiences.

In sum, the stories I collected demonstrate a clear gap between the imaginaries of bureaucrats regarding an individual’s potential “illegality”, based on his or her nationality and social positioning, and the actual legal status of that individual. This aspect suggests the need to study “(il)legality” not only as a formal status automatically derived from possession (or lack) of residency documents, but also a status determined in large part by the representations of individuals according to social constructions. It also suggests the extent to which intersectional factors related to gender, socioeconomic status, and nationality may mediate the experiences by producing privileges and obstacles.

This type of dynamic exposes how structural factors interact with the institutional procedure’s discriminatory effects in a mutually reinforcing manner. In some cases, differential treatment

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213 For instance, the probability of Gilberto being subject to a racialized classification as “black”, and the fact of living in an area commonly described as an “immigrant” neighbourhood, may also be important analytical inputs. Although the articulation of national and socioeconomic labels with racialized stereotypes on illegality has not been a specific focus of this study, it would be an interesting topic for future research.

214 This gendered aspect will be particularly visible in the ambivalent discourse and policies on women exposed in section 3.
appeared to follow a process of social stratification through bureaucratic dynamics. Magdala Gusmão, as representative of Comunidária commented on how common it was for migration services to select who gains access to regularization by obstructing the processes, for instance by asking for additional requisites and trapping applicants in time-consuming bureaucratic procedures. She argued this feeds into exploitative systems, because information is never complete and migrants may not feel able to understand the paperwork, so may resort to lawyers, even though, in her words, “nobody should profit from somebody else’s citizenship!”

The disparate ways that individuals are treated by the different agencies enacting migration and marriage control, and the unequal treatment of subjects depending on their profile, are additional symptoms of the mechanisms leading to the reproduction of social hierarchies. The main repercussions on couples were a reproduction of unequal social privileges, based on intersectional factors, and a difficult path towards full rights. Even though guarantees of equal treatment are present at the formal level, this causes the infringement of basic freedoms and fundamental rights, coupled with processes of illegalization. The case study shows the extent to which the lack of appropriate, timely, consistent information on the available options for regularization constitutes in itself a limitation to the inclusion of individuals and couples. The difficulties in regularizing their stay in state-sanctioned ways may push individuals into adopting informal solutions to the legal impasse in which they find themselves.

**Bureaucratic (dis)services**

As described above, the entry into an undocumented situation, whether or not the authorities formalize this status, often transcends the choice of individual, such as in the case of institutional representations, which respond to discriminatory profiling. In some cases, applications for residency are blocked by what become insurmountable bureaucratic obstacles for the subjects involved, for example if there are excessively demanding income and habitation requirements for family reunification. The costs involved, such as the administrative fees and the fines for the periods of undocumented residency in the country -

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215 NGO “não é para ninguém lucrar, acima da cidadania de ninguém!”
216 For example, this occurs through the so-called “integration measures” and humanist approach discussed in chapters two and three.
which in Portugal can reach 600 euros - may be prohibitive for some applicants. Other obstacles that can lead to illegality include the difficulty of recovering original documents (such as birth certificates or criminal records) from the individual’s country of origin.

Some research participants report trajectories of progressive illegalization, as a direct consequence of increasingly restrictive legislation or bureaucratic obstacles. This can make it difficult to clearly demarcate in what moments they pertained to one status or the other, due to the uncertainty of the legal processes, and their reversibility. Additionally, except in the case of nationality, both the “legal” and the “illegal” are easily reversible statuses, for reasons that may derive from law changes or regularizations.

The cumbersome process of regularization is often rendered even more complex by transnational factors, such as different national laws, which intersect in defining the subject’s position, vis à vis the application processes. These difficulties were in most cases influenced by transnational factors, depending for instance on individuals’ ability to recur to family ties to find/send documents or economic support, the level of bureaucratic efficiency of their country of origin, or whether the required documents are actually available from that jurisdiction. The experience of Ana and Alejandro is emblematic of how transnational lives incur into specific legal complications, due the intersection of different levels of legislation. Relevant jurisdictions can include the European Union, present and past countries of residency, and countries of origin of the spouses. The marriage of Ana and Alejandro adds a particular complexity to the picture, in that their conjugality is characterized by a “multiple” transnationalism, which further confounds the administrative process. Alejandro describes Ana’s complicated path to obtaining a recognition of her residency rights in Portugal at the SEF in Lisbon: “it’s a chaos (...) they don’t know really what they can do. In her case it was a very complicated case, because... (...) a marriage in Portugal, between a Brazilian and a Spaniard, who had lived for the previous two years in Berlin...for the marriage the residency of the last two years is important, so it was a mixture of four countries!”

In addition to the above-mentioned potential barriers, analysis of the administrative processes described by the research participants reveals the role of bureaucratic services in further filtering the access to regularization. The research participants shared their views on the

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217 Int. 3 Alejandro “é um caos (...) eles não sabem realmente o que podem fazer. No seu caso é um caso muito complicado, porque nos nos queríamos casar, começamos a tentar tramitar o casamento, e o casamento de uma brasileira com um espanhol, em Portugal, que tinham morado os últimos dois anos em Berlim... para o casamento é importante o lugar de moradia dos últimos dois anos, então era uma mistura de quatro países!”
aspects of the bureaucratic procedures, which they found particularly problematic. The examples covered a range of different moments in their mobility trajectories and residency applications. These included their contact with consular services abroad and their entry into Portuguese territory, as well as the process of formal recognition of their conjugal union and the process of residency regularization.

Large parts of the interviews were dedicated to the description of the highly complex procedures the spouses had to undergo to achieve the formalization of their marriage and/or obtain the regularization of residency. Almost all interviewees criticized what they perceived as widespread institutional inefficiency in dealing with the conveyance of information, as well as with the management of documents and the bureaucratic processing of their cases. This inefficiency was detected by various research participants in their interactions with institutions in charge of migration control at the airport, the immigration police, and the civil registry.

In some cases, the inconsistent information was given by consular services abroad. Deborah recalls how, when leaving the USA, she asked the local consular services if her paperwork was in order for residency purposes, and got imprecise information: “the Portuguese consulate said there is no problem: (...) just give them (...) these documents (...), of course your wife is allowed to stay, you’re married, you’ve got a work visa, of course you have your family with you.’ (...) When we got to SEF they told me that mine and the children’s birth certificates were too old, and that my marriage certificate was too old.” The experience of Ana also evidences the lack of appropriate and consistent information from Portuguese authorities, within and outside the national borders, which hinders the legal procedures of the spouses and their regularization: “I went to the Portuguese consulate in Berlin, and I asked how it was, if I could come, if I could stay, and they didn’t know very well how to inform me, but (...) they told me I could stay in Portugal as long as I had the Visa for Germany (...), then

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218 A notable exception to the general dissatisfaction is constituted by the experiences of interaction with the service provided by CNAI (National Centres of Immigrant Support), which is run by the State Commission for Migration. All interviewees who had used this service reported having received good treatment, efficient service, and complete and accurate information on the administrative procedures they had to follow to obtain residency rights.

219 Int. 7 Deborah.
Narratives and counter-narratives on “marriage of convenience”

when we arrived here we discovered it wasn’t like that, my German visa was not valid for Portugal (..) each employee told something different!"220

All participants report having to return to SEF and other administrative offices several times because there was always some document or detail missing. Like most interviewees, Agustín also complained regarding the long queues at the immigration office: “they say: ‘we have a problem with the computers’, but they have problems with computers every day! Because it’s impossible, isn’t it? I had to go there twice, and both times it was the whole day, from... 9 a.m., because they book you at 9 a.m., you get out at 4 p.m.. (...) No, I see a great inefficiency...they have a lot of employees, but it’s extremely bureaucratic!”221

Interviewees refer to inconsistent practices carried out by different Civil Registrars and SEF offices. The most common complaint is that depending on the employee or the office, more or less documentation was required for the same applications, based on apparently discretionary choices.222 For instance, Joana reports how she received incorrect information in one administrative office: “I encountered a small barrier, in the civil registrar an employee said I needed a residency visa to be able to marry! [laughter] I said ‘This is not possible!’(...) I went to another registrar and everything got solved!”223

As well as complaining about scarce or inconsistent information and cumbersome bureaucratic processes, the research participants often pointed out the discriminatory aspects of institutional interactions, and the strategies they adopted to overcome such obstacles. Agustín recalls that when he and Mercedes needed to register in the SEF office, they chose the employee who looked most helpful: “there was a young woman who treated everyone badly (...) I said to Mercedes, ‘if I go with that woman, we will get stuck here, no?’ And there

220 Int. 3 Ana: “eu fui ao consulado português em Berlim, e perguntei como é que era, se eu podia vir, se podia estar, e não sabiam muito bem o que me informar, mas ( ...)me falaram que eu podia estar em Portugal o tempo que eu tivesse um visto pra Alemanha ( ...), então quando chegamos aqui, fomos descobrir que não era bem assim, que o meu visto pra Alemanha não era valido pra Portugal (...) cada funcionário contava uma coisa”.
221 Int. 1 Agustín: “eles falam que “temos problemas com os computadores”, mas tem problemas com os computadores todos os dias! Porque é impossível, não? Eu tive que ir lá duas vezes, mas as duas vezes foi o dia todo, desde as... 9 da manhã, porque eles marcam às 9 da manhã, você sai as 4 da tarde”
222 The minimum list of documents required by the civil registrar to formalize a marriage included in some cases a certificate of lack of impediments to marriage (which is in some cases provided by the local diplomatic or consular services of the country of nationality), birth certificate, and passport. It should be noted how in some countries (such as in the reported cases of the USA and Brazil), some of these documents do not exist in the format requested by Portuguese institutions. In these cases, there is a discretionary power of employees to accept alternative proofs.
223 Int. 5 Joana: “encontrei uma pequena barreira, na conservatória um funcionário falou que eu precisava de ter o visto de residência em Portugal pra poder casar [risa] Eu disse ‘isso não é possível!’ (...) Foi pra outra conservatória e ficou tudo resolvido!”
was a young man that was very gentle, very nice, and we were attended to by the nice guy. Everything then ran smoothly...”\(^{224}\). Other interviewees also expressed positive comments on individual employees, although mostly these were outweighed by accounts of the malfunctioning of, and poor treatment provided by, the service in general. Mercedes reinforces the impression of unequal treatment, affirming she felt that at the SEF “with all foreigners, with Brazilians, with Africans, with everyone they’re like that. I see there is a very inimical service, a discrimination as well.”\(^{225}\) Agustín also points out the mistreatment he perceived at the reception of the SEF office: “everyone would see the expression of this person (...) irritated at everyone who was there (...), I mean, treating you like that, I mean, you are a foreigner, you arrive in a foreign country, the minimum would be to treat you well, no? A person who is attending to you, a person paid by the state to attend to another person.”\(^{226}\)

The experiences collected in the fieldwork pushed me to consider the extent to which obstacles to an equal and dignified process of acquisition of residency may originate in the management of services, as well as in “objective” restrictions due to legislative requirements. Most of the above shortcomings could be addressed with specific measures to improve the quality and consistency of service, if there was a political will to do so. Additionally, the observation of the bureaucratic practices exposes a differential application of regulations, for instance through the imposition of additional requisites to specific groups. Notwithstanding bureaucratic simplification efforts carried out in Portugal in recent years, the system of regularization appears to have considerable work to do in terms of system transparency and accountability, efficiency, and equity. The case study suggests the need to reflect on whether these obstacles are the product of the structural inefficiency of a cumbersome bureaucratic system, or the consequences of deliberate selective objectives. The literature investigating bureaucracy as a tool for social ordering and bordering (Van Houtum 2010, Pellander 2014, Machado 2011) has been useful in this sense to critically engage with the political and social

\(^{224}\) Int. 1 Agustín: “tinha uma menina que tratava todo o mundo pessimamente, (...) eu falava para a Mercedes “se eu vou com aquela menina, ângote vai...” [risa]... “vai se embaraçar aqui!”; não? E tinha um menino do lado que era muito gentil, muito simpático, e...caímos com o menino simpático. Dai já foi tranquilo...”

\(^{225}\) Int. 1 Mercedes: “sempre funcionou assim, e é com todos os estrangeiros, é com os brasileiros, com os africanos, com todos são assim. Eu vejo que há um atendimento muito ruim, uma discriminação também.”

\(^{226}\) Int. 1 Agustín: “todos viam a expressão desta pessoa que disse...chateada com todos os que estavam aí (...)ou seja, te tratando assim, ou seja, você é um estrangeiro, você chega num país estrangeiro, no mínimo você tem que ser tratado bem...não? Para a pessoa que está te atendendo, uma pessoa paga pelo estado para atender outra pessoa! Não, eu vejo uma grande ineficiência...que tem muitos funcionários, mas que é uma coisa muito burocrática”.
role of public administrations. My case study and the broader literature both suggest how cumbersome administrative requirements, as well as providing unclear and unequal paths to regularization, may be seen as disciplining tools, contributing to the (re)production of a docile pool of applicants waiting for residency.

“ILLEGALITY” AS A LABEL: REPERCUSSIONS AND (SELF-)PERCEPTIONS IN EVERYDAY LIVES

In order to understand the applied functioning of the restrictive measures concerning marriage and migration, the empirical investigation focused on the impacts of unstable residency statuses on research participants. The interviews assisted me in capturing the repercussions of undocumented status in the daily lives of individuals and couples, including at the level of their self-perceptions. This approach was inspired by the work of authors defending the effectiveness of ethnographic techniques for the study of the everyday experiences of undocumented individuals, in order to acknowledge the multiple ways in which illegalization processes impact on individuals in mobility (Vianello 2006).

Following this line of thought, I consider the collection of primary data as a fundamental input to investigate the social relevance of the construction of “illegality”. I therefore inquired into the variable ways individuals adapted to the social context, and into the resources they could count on, while they were in an irregular status. Interviewees were asked in particular whether the lack of stable residency rights affected their choices, opportunities and life conditions. The practical issues that were most often highlighted included impacts on their mobility, labour implications, and impacts on service access.

Some participants reported being particularly affected by (im)mobility issues, since not having papers which would grant them freedom of movement within (and out of) the European Union hindered their possibility of movement in the periods in which their residency status was unstable. For instance, several interviewees’ undocumented status had prevented them from travelling back to their home country to visit their family. This was the case for Ahmed, who had been away from Algeria, his home country for several years. His wife Rita tells me how, when he received his residency documents, the first thing he did was buy a ticket in order to go and visit his family. Other participants struggled to reunite with
their children when they lived abroad, needing to wait for their own stable residency rights before they were able to file for family reunification schemes.²²⁷ This was the case for Maria, who worked several years in Portugal before gaining a stable enough status to file for a family reunification and bring over from Brazil all her three children, who in the meanwhile stayed with her mother.

Another obstacle that was described as highly problematic for those lacking full residency rights was the reduced access to the labour market. A majority of the participants who had been, or remained in, an undocumented situation had stayed jobless, because employers would not accept undocumented migrants, or had felt forced to accept jobs with no contract, or with poor working conditions. Most of them report feeling obliged to accept jobs well below their skill and educational level, as well as abusive working conditions, in terms of long working hours, mistreatments and delays in the payment of wages. Joana summarizes her experience of this precariousness by saying: “I had to look for a job as an undocumented woman, I went through this process, of exploitation, of abuse (...), in a framework of really huge vulnerability.”²²⁸ Agustín states that after having left his skilled job as a teacher in Brazil, due to migration status restrictions he had to wait for months before applying for a job in line with his qualifications, and in the meanwhile was not even able to be hired in call centres or low-skilled jobs: “I did various job interviews, and they would tell me ‘look, you still don’t have papers, so...I can’t give you a contract’... (...) naturally, they were not my dream jobs! They were positions to work in... in a call centre, but I needed it!”²²⁹

The lack of formal work contracts, in turn, considerably hindered the possibilities for many interviewees of obtaining regular documents on the basis of employment in Portugal, although most had been paying taxes during the period of “undocumentedness”. Other obstacles reported in the interviews included difficulties in finding accommodation, having the equivalency of their educational qualifications recognized, or opening a bank account. Amongst other disadvantages, participants commented on how their uncertain legal status did not allow space for long-term planning, which caused particular concerns for those accompanied by minor children, due to the impossibility to grant a stable and secure living

²²⁷ This was the case for Gita and Joana.
²²⁸ Int 5. Joana: “eu tive que procurar um emprego como mulher não documentada, e passei também por tudo esse trajeto, de exploração, de abuso (...) do que é realmente um quadro de muita vulnerabilidade”
²²⁹ Int 1. Agustín: “fiz algumas entrevistas de emprego, mas sempre nas entrevistas de emprego, que me diziam ‘olha, você ainda não tem os documentos, então...não posso te contratar’(...)claro, que não são trabalhos assim da sua vida! São trabalhos para trabalhar em...em call center, mas necessitava disto”.
arrangement. In general, almost all my interlocutors commented on how the lack of residency rights hindered their inclusion in the surrounding social context, making them feel isolated and with no institutional safety net on which they could rely.

THE MULTIPLE IMPACTS OF MIGRATORY STATUS ON TRANSNATIONAL CONJUGALITIES

The different sets of laws and regulations in the countries of origin, transit and residency impacted on multiple aspects of the couples’ lives. These include the effects of borders on conjugality and mobility, on the decision to marry, in terms of motivation, place, and timing, and on the differential progress of residency regularization processes before, during, and after the wedding. Coming back to Bart and Frida’s story, their different conjugal trajectories are emblematic of the potential ambivalence of state restrictions. The mere comparison of their choices in their younger years, with him deciding to marry to be able to stay in Germany, and her deciding to refuse her friend’s offer and leave the country, can be analysed as outcomes of the restricted options they had to reside in the country of their choice. For Bart, the fact of marrying his girlfriend with the intention of acquiring residency right shows to what extent marriage may be seen as a last resort, when no other possibilities are left for him to renew his visa. The marriage for them implies no additional or long-term commitment, and they separate shortly after, although he maintains his residency on the basis of his marital status. Frida, with a similar pressure to marry because she had no other option to secure her right to stay, conversely considers that marriage for her bears a symbolic meaning, linked to “romantic” feelings, and decides to refuse. These differences lead to a reflection on the way in which state restrictions on migration are hindering life projects, and how paradoxically policies are indirectly incentivizing individuals to marry to make their relationship publicly recognized and state-sanctioned, rather than for personal motivations.

The observation of the impact of undocumented or precarious status on conjugality exposes the extent to which matrimonial processes are not entirely freely determined by the partners. As Annett Fleischer observes in her thesis on Cameroonians marrying in Germany, “migrants are induced to distribute temporalized vital events, especially marriage and birth, over international boundaries in response to restrictions imposed on their rights to live and work” (Fleischer 2010:5). In this sense, the transnational character of the couples involved in the study deeply affected the type of options available to them. Since the subjects had often lived
in more than two countries, in some cases during the time of the relationship, the migration regimes in effect in the various times and places in which they lived constantly interfered with their trajectories.

According to the accounts of the couples, legal requirements would often indirectly determine the date of their marriage, for instance to match the expiration dates of previous residency documents and thus provide alternative application channels. Furthermore, the transnational character of couples would have further effects on the process due to the difficulty in obtaining documentation from the countries of origin. Gathering these papers often implied costly and time-consuming processes, involving trips to the home country, certified translations, international document transfer costs, and in some cases the professional help of notaries or lawyers. The choice of the place to marry in most cases involved weighing up various options strategically, in relation to requisites and limitations rather than based on personal preferences. In most cases, the couples describe deciding to rule out countries whose migration constraints were considered more bureaucratically cumbersome. These constraints on significant life choices of individuals in mobility should be considered when evaluating restrictive policies on marriage and migration, considering all the collateral effects of residency for family, labour, and life conditions, as well as for couples’ relationships.

Many of the interviewees expressed that they felt their bond with the partner was put under strain as a direct consequence of the legal restrictions, for instance by the restrictions causing long separations. Some of them note that misunderstandings within the couple about the perceived experiences as “undocumented” and/or “migrant” were a difficult aspect of the transnational processes, causing uncertainties and difficulty in making long-term life plans. On more than one occasion, the interviewee who was in the undocumented position complained about the lack of comprehension of their partner regarding the difficulties in dealing with the migration authorities.

For instance Sofia corrects her husband Paco, interrupting him while he affirms that the process of her regularization was smooth and that she is now a “full rights citizen” in Portugal. She comments that Paco’s misunderstanding of the situation is because it was her having to make the effort to gather all the paperwork and deal with the bureaucracy, and adds: “I think what he is saying is symptomatic of the ignorance of Europeans, with respect to the situation of those who are not European, and this, by the way, was a reason for a lot of misunderstandings (...) even when I was living here, and having to go frequently to SEF.
Obviously, I understand that (...) it is a completely unknown reality, completely! The [European] person never experiences this.”

LEGAL STATUS AND SELF-PERCEPTIONS

The stories collected confronted me not only with a variety of conjugal arrangements, but also with a wide range of narratives regarding the impact of controls on self-perceptions, often with considerable differences within couples. The collection of migrants’ stories encouraged me to take into account “how the lack of legal status intersects with, on one hand, specific legal and policy arrangements and broader socio-economic context, and, on the other hand, migratory projects and migrants’ expectations and histories” (Sigona 2012:62). During the interviews, the participants were asked how they felt during the process of migration and conjugality control. Their reactions to the controls included impacts on their feelings, and a combination of compliant and defiant attitudes with respect to the prescribed behaviour or choices.

The degree of perception of legal status as an obstacle also appears to depend on the phase in the actor’s life cycle, as well as their social position. These differences may also be determined by their available resources, including social and family networks and socioeconomic factors, such as education level and financial resources, which mediate the effects of legal status, sometimes to the point that it becomes almost unnoticeable in daily lives. As Susan Coutin observes on Salvadoran subjects in the USA, “On a day-to-day basis, their illegality may be irrelevant to most of their activities, only becoming an issue in certain contexts, such as when changing jobs, applying for college, or encountering an immigration official. The undocumented thus move in and out of existence. Much of the time they are undifferentiated from those around them, but suddenly (...) legal reality is superimposed on daily life. The borders between existence and nonexistence remain blurred and permeable” (Coutin 2003:40).

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230 Int. 8 Sofia: “acho que o quê ele fala é sintomático de algo que é o desconhecimento dos europeus da situação de quem não é europeu, e essa aliás, foi uma razão de muitos desentendimentos (...) inclusive quando eu estava a morar aqui, e tinha de ir frequentemente ao SEF, que é...obviamente eu entendo que, que...a pessoa...que é uma realidade totalmente alheia, é totalmente, a pessoa não, nunca vivenciou isso”.
The couples’ accounts expose how the fact of having access to particular resources such as education, the health system or to the labour market, even when undocumented, allows individuals to moderate the importance of formal residency status. In fact, as Giuseppe Sciortino comments, legal status is only relevant inasmuch as the legal situation constitutes a limitation of the actor’s relations and actions (Sciortino 2004:22). Individuals’ perception of their own “illegality” may thus considerably shift over time, depending on contingent factors, such as professional or educational situation.

For instance, Frida’s position evolves from a relatively precarious life with an undocumented family sustained by informal jobs, to a relatively more secure position as a student, exposing the variability of both legal status and its perception. In this regard, she reports that unlike the initial period in Spain, in which she worried about her whole family’s status, in other moments holding a precarious legal status was not a stressful experience. Regarding the first experience in her late adolescence, she comments that she was anxious: “I imagine because I was illegal, and I had this idea “ah, it’s bad to be illegal”, everyone suspects that you are gonna be illegal, that you are doing this wrong thing.” When speaking of her undergraduate years, conversely, she comments more assertively on her lack of residency papers: “I wasn’t ashamed of it, and...they wouldn’t make me feel ashamed of it, really, my friends and people (...), it didn’t seem to be like that big a deal (...). I was studying, so it was not like I was sitting at home, waiting for my papers, so I was studying, and I would find now and then some...like I couldn’t get a grant, or I couldn’t work, but other than that (...) it didn’t affect more.” Frida’s story is an example of the impact of subjective and contextual factors in shaping and shifting perceptions, representations, and effects of “illegality”. This can also be seen in the case of Nadja, who explains how she found a job as an English teacher before obtaining her regular registration in the country: “my employer never asked me for a residency document (...) thus, I don’t know to what extent I felt weakened while I didn’t have papers.”

The accounts of interviewees demonstrate a great diversity of feelings associated with the general condition of “illegality”, or with actual obstacles to specific rights and opportunities due to the lack of residency authorization. Although some interviewees reported having
managed to live a satisfactory life notwithstanding the limitations deriving from their precarious legal status, in general these are described as difficult life phases. As Joana observed during her interview, her “resilience” was instrumental in making her capable of overcoming obstacles in her interaction with institutions: “you need a lot of strength, a lot of balance, when coming up against all these barriers.” Sarah Willen describes the mixed effects of individual agency and state impositions in the embodiment within individuals of the growing persecution of undocumented migrants in Israel. Her fieldwork exposes how migrants in this context of policing are often ridden by a “profound degree of persistent, embodied tension and anxiety (…)” Without falling into the trap of assuming that all undocumented migrants’ lives are necessarily on-going tales of suffering and distress, it is certainly the case that these are common features in the lifeworlds of a great many undocumented migrants in diverse host society contexts” (Willen 2007:16).

To different degrees, the interviewees defined their own subjectivity in relation to the migration regime, and some internalized the fact of “being illegal” with a negative connotation, embodying (il)legalization as an existential process rather than a mere administrative status. In these cases, subjects appear to internalize the feeling that it is not only their presence that is considered illegal, but their very person (Willen 2007). Florencio, for instance, describes the period in which he was undocumented as “an existential condition”, in which “a visceral fear conditions your behaviour.”

As Willen observes with regard to Israel, it is thus important to acknowledge not only the practical aspects of residency status, “but also its deeply significant experiential, embodied, and sensory dimensions” (Willen 2007:13).

The feeling of pressure and marginalization caused by the migration regime may push individuals to maintain a low profile, to avoid being stigmatized and/or investigated. This is particular visible in some commentaries, such as Ana’s “Normally when I go to SEF (...) or the civil registry, which I do alone,” I know that I have to control myself, I try being very polite, and speak calmly, and with words... not refined, but also, you know, showing that

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234 Ent. 5 Joana: “é preciso mesmo muita força , muito equilíbrio, para enfrentar essas barreiras todas”.
235 Int.12 Florencio: “uma condição existencial”, “um medo de base condiciona o teu comportamento”
236 Regarding Ana mentioning the detail of “going alone” to administrative offices, it is interesting to note how several interviewees perceived that going to the SEF accompanied by the Portuguese partner was a strategy to avoid mistreatment. Nadja (Int. 10) remarks: “we went to SEF to take care of the residency. From what I remember, I didn’t perceive negative reactions towards me...maybe because I always went with him, I never went alone.”
Narratives and counter-narratives on “marriage of convenience”

*I’m not a poor Brazilian immigrating here, because (...) it’s from there that discrimination stems (...) It’s sad, but I try keeping this attitude.* 237 This attitude may be seen as a symptom of what Sayad describes as “social hyper-correction” (Sayad 1999), that is, the feeling the immigrant has of being object of systematic suspicion, and having to justify constantly his or her own practices as a consequence.

Conversely, some research participants challenged what they felt as a social and institutional pressure to change their behaviour or appearance to fit into the institutional ideal of the “integrated” or “well-behaved” migrant. Although she depicts herself as a strict, law-abiding person, a “legalist” 238, Joana has a particularly assertive attitude in contradicting institutional expectations and restrictions, which she feels go beyond the legal sphere and interfere with her way of life. As she vividly describes, she rejects, despite feeling institutional pressure to do so, any change in her style or attitude to avoid being associated with the imaginary of the provocative, noisy, exuberant Brazilian woman: ”I never internalized this (...) nor changing my voice, my accent, nor stop laughing, even though people are demanding that, isn’t it? I feel this pressure on me (...) clothes, too, you know? Dress codes 239, and everything...very conservative (...) And I don’t wear a formal shirt, I don’t! (...) My wording, all my way of being, I refuse completely, you know? I’m not even there, I don’t avoid coarse language, nor speak in a lower tone for being Brazilian (...). I am even kind of radical, so much as that, I change nothing.” 240 As will be thoroughly discussed in section X, institutional expectations and representations, which emerge as “reliability” and “integrability” frames in Joana’s account, are heavily gendered. Her rejection of these stereotyping frames pushes Joana to say

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237 Int 3 Ana: “normalmente quando eu vou, ou no SEF ou...em qualquer, ou no SEF ou o regist...quando eu vou sozinha (...) eu tenho que me controlar, eu tento ser muito educada, e falar calmo e...com palavras, não rebuscadas, mas também, sabe, mostrar que sim, eu não sou uma pobrezinha brasileira que tá imigrando pra cá, porque (...) é a partir de aí que vem a discriminação...é triste...mas tento me colocar desta forma...”

238 Int. 5 Joana: “sou legalista”.

239 Several interviewees reported changing their habits or how they behaved in public spaces in terms of dress codes, or not disclosing in formation to avoid rising suspicion, changing route to avoid meeting the police, or avoiding some public spaces for fear of being identified. Some participants report having tried to adopt what they felt were the most appropriate dress codes or behaviors.

240 Int 5. Joana: “Só que eu nunca me internalizei este tipo, nunca, nunca entrou na minha cabeça, nunca internalizei, nem mudar a voz, nem o tom de voz, nem deixar de rir, apesar das pessoas pedirem isto, não é? (...) sinto esta pressão acima de mim (...) A roupa, também, entendeu? As roupas, tudo isto... extremamente conservadores (...) E eu não visto camisa...não visto! (...) A minha linguagem, todo o meu jeito de ser, me recuso completamente, entendeu? Não tou nem aí, não deixo de falar vulgar , nem diminuir o meu tom de voz por ser brasileira (...) Sou mesmo até uma certa radical, mesmo, não mudo nada!”
that she refuses a conservative dress-code, defying the common fear amongst Brazilian
women of being associated with sex work and consequently framed as undesirable migrants.

An additional gendered connotation emerging in the interviews, which could be further
investigated in future research, regards the social and subjective positioning of undocumented
male migrants. In the eyes of state representatives, male migrants’ desirability tends to depend
on their role as active workers, inherently reinforcing their perceived role as “male
breadwinners”. From the accounts collected, it could be inferred that the pressure to be
economically active was often frustrated by the impossibility of finding a job while in an
undocumented position. This pressure, coupled with the dependency inherent in obtaining a
legal status based on their conjugal link with their wives, seems to threaten the self-perception
of masculinity of some migrant men, as Elizabeth Charsley observed in her study on the
practices of Pakistani spouses in the United Kingdom (Charsley 2005). Giovanna, for
instance, reports her partner being too proud to accept a marriage to obtain his residency
documents. This choice, in turn, worsened his stressful experience during the first period of
his stay in Portugal, in which he felt unstable because of his temporary residency and lack of
employment. Agustin, although he does not explicitly link it to gendered roles, mentions
assuming the management of housework while unemployed, but feeling a deep discomfort in
being financially dependent on Mercedes: “...imagine you are with someone (...), your
husband... and your husband is not working, your boyfriend is not working, and you are
supporting all the expenses, the other person is there without receiving money (...), this for
me is nasty, of course, for whatever person being totally dependent on another, isn’t it? They
should facilitate this process, so that the person may, when residing in the country, look for a
job, make his life, and be a bit more independent, no? (...) you get a bit annoyed (...) in the
sense of ‘ah, I need to go to the so and so place...look, give me the money to go to that place’,
I feel bad, you know?”,

The above accounts provide some initial insights on (il)legalization, both as a state-driven
process in which individuals have little power of negotiation, and as an internalized process

241 Int. 9
242 Int. 1 Agustin: “imagina, você está com uma pessoa, seu namorado, sua namorada, seu marido... e seu marido
não está trabalhando, seu namorado não está trabalhando, e você está sustentando todas as despesas, a outra
pessoa está aí sem receber um dinheiro(...), isso para mim é muito ruim, claro, para qualquer pessoa, que está
totalmente dependente da outra pessoa, não? (...) deveria-se agilizar este processo, para que a pessoa possa, para
que a partir de estar no país, que é dependente da outra pessoa, que possa buscar seu trabalho, também fazer a
sua vida, e se tornar um pouco mais independente, não? (...) você fica um pouco mais chateado(...)no sentido de...”puch, preciso de ir a tal lugar...olha, dá o dinheiro para eu ir para o tal lugar”...eu me sinto mal, entendeu?”.
pushing individuals to self-censorship. Yet they also hint at a specular aspect in the dynamic relation of interviewees with state regulations and institutions. Namely, the attitudes and practices of research participants in many cases defy what emerge as the normative models of (il)legality and citizenship. For instance, self-perceptions in the relation with authorities range from Rita’s attitude, defining herself as a “rebel”, to André stating that he relativizes what “illegality” represents with regards to his relation with the state: “I completely don’t care. I do various illegal acts on a daily basis.”

Some individuals seem to contest the whole paradigm of illegality and citizenship, by voicing claims of the illegitimacy of restrictive policies, and by asserting that they never thought of themselves as “illegal”. A minority, such as Bart, do not even acknowledge the fact that not being registered with the SEF is liable to categorize them as “illegal”. Others acknowledge in their accounts that they were institutionally categorized as such, but did not feel illegal, for various reasons. These include the long duration of their stay in Portugal, the fact they had only an un-regularized administrative status and had not committed any crime, or the paradox of paying taxes and still not being recognized by the Portuguese state. All these aspects, in their view, were inherently in contradiction with the state claims that they were “illegally” residing in its territory.

In some cases, participants’ rejection emerged in what could be defined as emancipation from what they frame as an unjust subordination. Some research participants associate their contestation of the “illegality” label with political motives which go beyond the migratory status, in what we may define a decolonial logic. For example, Zaqueu affirms that he feels that, considering the historical imperialist exploitation suffered by Mozambique, the Portuguese state should not define him as an “immigrant”, and even less as an “illegal immigrant”.

Similarly, Rita describes her surprise in seeing how her husband Ahmed considered himself a “normal citizen”, notwithstanding his precarious residency right in the United Kingdom, and how he did not fear the police: “Sometimes it was more me: ‘ah, there, the police is there, let’s go’...and him (...) ‘Rita, but, stay cool, huh, I am a citizen! (...) No, the police, what is the police? I am a normal citizen!’’. You see, there wasn’t that worry. [He said] ‘if they come

243 Int. 13 André: “passo-me completamente ao lado. Faço vários actos ilegais no meu día-a-día”

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to talk, don’t worry, I speak... ’(…) so a confidence that to me, it made me feel super easy.”

Such attitudes hint to the multifaceted ways in which “unauthorized migrants” potentially “displace legal space, transforming the geographic locations they traverse and moving the national borders they cross”, as is argued by the critical criminologist Susan Coutin (2003:110).

(IL)LEGALIZATION AND SOCIAL STRATIFICATION

My interpretation of the empirical data suggests how the lack of residency documentation is not an exclusive determinant for the experience of illegality: the perceptions, self-perceptions and representations of illegality also constitute important factors influencing interviewees’ access to opportunities and citizenship rights. The label of illegality is often attributed to individuals possessing regular residency documents, and vice versa. Life trajectories that encompass transnational contexts imply additional repercussions in the context of illegality. In many cases transnational dynamics determine the degree of couple’s citizenship rights, because of the intersection of their origin and arrival contexts.

Most research participants expressed dissatisfaction regarding what they perceive as a cumbersome institutional path to regularization and autonomous citizenship rights, which they feel affects their fundamental rights. Namely, the obstacles to autonomous legal status may hinder their access to rights and services and potentially deepen situations of social disadvantage, as well as increasing individuals’ dependency on their partners.

Bureaucracy is actively impeding legalization for some individuals. Yet in the majority of cases, the selection operates by filtering access and contributing to subordination mechanisms in subtler ways, maintaining individuals in precarious residency situations for long periods. The functioning of migration law plays a major role in the discouragement of applications, by

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244 Int 14 Rita: “ás vezes era mais eu “ahi, isso aqui, ahi, tá ali a policia, vamos, não sei quê” e ele (…)”Rita, but, stay cool, huh, I am a citizen!” o gajo até dizia... ‘eu sou um cidadão!’ (…). Não , a polícia, que é a polícia, eu sou um cidadão normal”, tás a ver, não havia, tás a ver, aquele receio (…), se eles vierem falar, não te preocupes, eu falo...assim, uma segurança que a mim, deixava-me memo super à vontade.”

245 Susan Coutin (2003) analyzes understandings of borders, citizenship, and migration based on a case study on migration from El Salvador to the United States.

246 Although during my fieldwork more evidence emerged on the issue of women’s dependency, it should be noted that other studies observe the same processes with men. For instance, Annett Fleischer observes how “diminishing options for legalizing their status in Germany by other means make Cameroonian men increasingly dependent on sustaining a marriage to a German wife for at least three years” (Fleischer 2011:5).
making them complex and inaccessible, and by keeping a part of the population marginalized and passive (Van Houtum 2010). This process, as explored by Foucault in *Discipline and punish* (1977), does not exclusively impact on individuals classified as migrants. Yet the classification and control is executed in specific ways in interaction with migration status, enabling higher levels of power on behalf of the state and determining by default a subordination of specific categories of individuals as second-class and unrecognized residents.

The institutional protocols adopted to determine which couples and individuals are “suspicious” and have to undergo specific investigations additionally appear to be based on gender, socioeconomic and national origin factors, determining exclusion of those that do not conform to normative institutional perspectives and frames of “deservingness” (Chauvin and Mascareñas 2014). On the basis of empirical data, I uncover how the migration context is hindering in particular the autonomy and life opportunities of women and men engaging in transnational lives and conjugalities, and thus deepening social inequalities. However, the social positioning of individuals—both structurally and in their own subjective imagining—causes notable diversity in the actual repercussions of such classifications. It influences not only their formalized residency status, but also the probability that limitations attached to their legal status will actually be enforced by institutions.

Authorities, in this sense, are seen in this analysis to reproduce unequal power relations and create social order through bureaucracy. Access to regularization is impeded through omission of information, unclear on incorrect bureaucratic instructions, inconsistent documentation requirements, arbitrary consideration of requisites, and time and resource-consuming administrative steps, all of which are biased along socially stratified lines. I have observed with an intersectional lens how, through the “marriage of convenience” regulation, the state operates a categorization of subjects, following “genuine”/ “fraudulent” or “legal”/ “illegal” binaries. Following the theoretical framing of bordering, I have argued that these narrow classifications, far from being based on neutral and objective administrative criteria, are interpreted as a tool for the (re)production of social ordering.
SECTION 3- THE GENDERED IMPACTS OF “MARRIAGE OF CONVENIENCE” RESTRICTIONS

Governmental justifications of restrictive marriage and migration policies are often based on the notion of the state as protector, safeguarding potential victims of “marriages of convenience”, framed as “vulnerable” individuals. As emerges from European and Portuguese documentary sources and my fieldwork, these “victims” are often presented as poor, uneducated, marginal women, and consequently in need of “rescue” (Rubio Grundell 2015).

First, public discourse underlines the risk of marriage being used as a cover for human trafficking, feeding into sexual and labour exploitation industries. In this context, women are invariably used as the principal examples of persons at risk of trafficking, and are depicted as more vulnerable to enticement into deceitful marital promises and forced marriages. In particular, women engaging in remunerated marriages with the help of intermediaries are seen to expose themselves to potentially dangerous criminal networks. Second, the claim for strict controls on conjugal practices is maintained by invoking the danger of women, both Portuguese non-Portuguese, naively believing they are entering a marriage based on affective motivations, whereas they are being tricked into relationships with spouses who are using marriage as an instrument to gain residency papers. In all of these representations, transnational marriage is framed as a potential danger for these subjects, justifying monitoring by a “tutorial state” (Van Walsum 2011:67).

This section will examine the aforementioned discourses against the data collected in my empirical fieldwork. It will consider the ways in which contemporary state practices play out in situations of infringement of women’s rights. My aim is to question the extent to which the state-defined categories of vulnerability are useful for understanding the mechanisms at play in transnational conjugalities. The analysis is based mainly on the narratives of five women of Nepalese, United States, Portuguese and Brazilian nationality, although it draws on a broader range of interviews. The main themes emerging from the interviews are the women’s

247 For a more detailed discussion of the discourse of Portuguese authorities on “marriage of convenience” as a threat for “vulnerable” subjects, refer to Chapter Three.
interactions with the migration and marriage regulation authorities, and how these interfered with their life options and their conjugal situations.

THE TUTELARY ATTITUDE OF THE STATE: GENDERED CONSTRUCTIONS OF VULNERABILITY

Apart from cases in which the Portuguese consulate of the spouse’s country of origin operates a selection, for most couples the civil registry superintendents are the first institutional representatives with the power of deciding whether their marriage can be considered “genuine”. The accounts of interaction between couples and functionaries in this context reflect particularly gendered representations of couples. Many dialogues recalled by couples reflect how women are depicted and institutionally treated as incapable of rational choice or of taking care of their own conjugal choices autonomously, with the implication that they can therefore be investigated “for their own good” (Ehrenreich and English 2005 [1978]). As already argued, the governmental discourse in this area subtly mixes alleged “misuse” of family reunification mechanisms (EMN 2012) with highly gendered discourses relating to forced marriage and human trafficking.

This tutelary attitude often coincides with highly gendered mechanisms, such as victimizing discourses on women. Framing women as a group to be protected from “marriage of convenience”, exposes them to increasing surveillance, which as I observed constitutes a space of selection based on their social characteristics and adherence to normative mandates. Additionally, the effects of the current regulations in terms of exposing the specific groups framed as potential “victims” to abuse and criminalization confirms to what extent institutional risk profiles promoted at the European and national level are counterproductive with regards to their alleged purposes.

In the Portuguese context, selective interferences in spousal choices are visible at all the administrative stages involved in marital acts and residency applications, where state institutions filter the spouses that are eligible for entry and residency rights in the country. State representatives’ practices are in line with constructions associating migration with criminality, whether they are depicting transnational partners as victims or abusers: spouses are treated either as potential falsifiers and criminals, or as incompetent victims to be saved. These observations appear to echo Didier Fassin’s reflections on the “moral economy” of immigration policies in France, where he argues that the government is subtly mixing
compassion and repression in its discourse and policy as a way to more effectively control migration (Fassin 2005).

The transnational process of control involves institutions from different countries, including the administrative offices or the consulate of the country of origin (producing birth certificates and civil status affidavits), and, in Portugal, administrative employees and judges at civil registrars, as well as the Border and Immigration Police. The filtering of “victims” and “abusers” may happen through subtle interferences or more direct interventions, as in the case of the SEF officer who states that he once advised a Portuguese lady to take care, because he believed that her husband was marrying her for personal gain. Several women participating in the interviews commented they had felt treated as potential victims of trafficking. In her interview, similarly to what other participants recalled regarding the Portuguese context, Rita for instance recalls the attitude of the British officials interviewing her and Ahmed over their relationship: “They were much more directed toward me, not to him, it’s funny (…), again that thing, they go… they go to the woman, always… as the more vulnerable being”248. Bart and Frida recall the impression that the interview they had to undergo at the Spanish consulate in Lisbon was more directed towards the future bride, as if she were inherently in a more vulnerable position for being a woman, in this case with regards to forced marriage. They report how the consul implicitly asked if Frida was forced to marry:

BART they only did the separate interview thing because...

FRIDA …to protect me

BART Yeah, they were asking (…) if you were forced to do it, somehow, like “are you getting married on your own free will?”, “do you know what it means?

FRIDA you have an interview, with the consul or the person in charge, and then they tell you your rights and say, more or less warn you for…against the dangers of getting married without being sure”249.

248 Int. 14 Rita: “viraram-se muito mais pra mim, não foi pra ele...tem piada...(…)Logo aquela cena, vão...vão à mulher sempre... ai, como o ser mais vulnerável”
249 Int. 2 Bart, Frida.
These accounts motivated me to analyse the way in which gendered representations play out in the whole process of interaction with governmental institutions, and to what extent the state’s apparently protective attitudes are actually conducive to the promotion of transnational actors’ rights. A growing body of literature problematizes the notion of “vulnerability” in the context of migration. Several authors identify the ways in which speaking of victims inevitably introduces a dichotomous logic, inherently indicating that there are corresponding abusers, and that the state is a neutral entity, called to action to respond to the needs of unprotected subjects (Gregorio Gil 2009, Davies 2009). The “victims” are consistently evoked in official “marriage of convenience” discourses to justify the necessity of marriage policing, with slightly different connotations for Portuguese women, as compared to migrant women. Portuguese women are portrayed in institutional discourse as potential victims through two stereotyped images. The first is that of the trusting local woman who marries a deceitful foreigner interested in gaining residency rights, believing it is a love marriage. The second is that of the “marginal”, uneducated and self-interested woman marrying for economic gain, who does not understand the gravity of entering a “fraudulent marriage”, or the risk of entering into contact with criminal networks who mediate the marriage. These depictions resonate with the findings in other European countries, regarding the gendered categorizations employed by immigration officials. Saara Pellander observes how Finnish women marrying migrant men are seen as naïve victims who are easily lured into deceptive marriages (Pellander 2014). Helena Wray provides similar evidence for British women marrying men from outside the United Kingdom, who are portrayed as “victimized, naïve or reckless” (Wray 2006: 320).

Migrant women, by contrast, are often portrayed as poor and desperate individuals who can be deceived into travelling for work opportunities, and can then be subject to human trafficking under the cover of marriage. The other representation in public discourse, which overlaps with that of Portuguese women described above, refers to migrant women (or women of migrant background) holding residency rights in Portugal, living in “problematic” neighbourhoods and/or engaged in “illicit” activities, who might be easily enticed into marriage for economic gain.

As has been observed by a growing number of researchers, the victim/perpetrator framework leads to a elevated level of policing attention towards “abusers”, who are invariably framed as foreign citizens or members of international criminal networks (Wray 2011). Equally, these representations reinforce the image of “migrant families” importing patriarchal values
Narratives and counter-narratives on “marriage of convenience”

(Kofman et al. 2013), and potentially associate all inter-status marriages with international criminal networks exploiting women. This rhetoric systematically associates the threats to vulnerable women with external causes, overlooking the widespread gender violence that also characterizes European countries. This discursive device allows the state to present itself as a saviour, and to better control its bordering mechanisms, by depicting inequalities and exploitation as risks originating in geographically distant spaces, and from which the sovereign state is protecting its citizens. By producing this characterization, the authorities can disguise the extent to which processes of illegalization are embedded in state policies and practices.

Yet empirical data exposes the superficiality of the association between vulnerability and risks related to “marriages of convenience”. For instance, the institutional reaction to the supposed vulnerability of women, which according to “marriage of convenience” discourse might be related to a risk of forced marriage, or of pressure to accept monetary offer in exchange for a “façade” marriage, reveals a lack of institutional response to tangible issues. In the case of undocumented women, increased restrictions may be a cause of further vulnerabilization, obliging them to remain in unwanted relationships to avoid the risk of illegalization. In the case of Portuguese women, rather than resulting in concrete support for the supposedly “vulnerable” party, the most common outcome of state policies in the “marriage of convenience” framework is to deny regularization to their undocumented partners, which arguably is not an effective way of securing their Portuguese spouses’ safety and wellbeing.

Interestingly, migrant men are absent from the institutional discourse on vulnerability, except in the category of perpetrators, where they implicitly appear as elusive, criminal, dangerous subjects. In this framework, as noted by Helena Wray, it is important to observe how “gender disadvantage should not be taken as being synonymous with ‘female disadvantage’. Men, particularly non-white men, have frequently been the victims of gender-based beliefs about marriage migration” (Wray 2011:16). Local men, conversely, are completely erased from the institutional problematization of transnational marriage, although empirical evidence in my research indicates that significant issues of gender violence originate in couples with Portuguese men marrying women in a dependent legal status. As will be analysed in the case of Gita, Joana and Maria, the level of conjugal dependency involved in their lack of autonomous legal status was a crucial triggering factor in their husband’s abusive and violent behaviour.
In approaching these themes, I have attempted to build on the literature critically exposing the construction of the concepts of “victim” and “vulnerability” in anti-trafficking discourse (Davies 2009, Agustin 2005). Although it is important to recognize that human trafficking is a tangible phenomenon, and that numerous women in the world are caught in trafficking networks, my proposal is to shift the focus towards understanding what type of policies are justified through the discourse on trafficking, and what are its effects. A growing body of literature demonstrates how the assumption that women are the typical potential victims of trafficking has resulted in stronger monitoring of migrant women than migrant men (Erel et al. 2003, McKay et al. 2011, Andrijasevic 2010). Schrover and colleagues similarly argue that “the narrative of victimhood and the assumption that women are forced to migrate and work in prostitution has brought about protective measures, which sometimes help women but also restrict their choices” (Schrover et al. 2008:11). The depiction of women as dependent and docile prey, caught in abusive situations, serves the purpose of justifying constricting and criminalizing policies: “since women are cast as victims these restrictions on their rights are justified by claiming to protect them” (Schrover et al. 2008:11).

Scholars such as Laura Agustín underline that the naturalized equation of women’s “illegal” migration with trafficking also has other implications, and that most of the time trafficking is used as a synonym for sex work (Agustín 2005). Agustín states that polarized and ideological stances on illegality and migration feed into a “rescue industry” which ascribes victim status to people (most often women) who have made and are capable of making conscious and rational decisions (Agustín 2005). Arguably, if women were granted the opportunity to regularize their residency, they would not need being involved in criminalizing practices that the state paradoxically frames as “rescue” interventions. Exploring the intersection of gender-based violence and the discourse of “integration” and “cohesion” in the UK’s recent immigration policies, Pragna Patel additionally examines how narratives on gender-related violence against minority women, especially forced marriage, are increasingly used to give rise to a moral panic about the need for integration, as well as to justify restrictive immigration controls (Patel 2014). Laura Block similarly argues that by holding spousal migration responsible for integration deficits and for the production of female victims, decision-makers in the European context justify restrictive changes in this field (Block 2014 2014). My analysis of the gendered processes involved in transnational marriage discourses and surveillance policies in Portugal has been framed by these observations, calling attention to the ambivalence of the tutelary attitudes of authorities in charge of immigration control.
During fieldwork, gendered issues of dependency emerged with particular prominence, exposing the need to investigate the ways in which state intervention intervenes in the power relations between spouses. The legally sanctioned subordination of women’s legal status to that of their partner’s in particular appears to be naturalized, and needs to be analysed as part of broader processes of gender inequalities within couples. While the legal status of a migrant spouse is typically dependent on that of their partner without regard to gender, in practice the legally sanctioned subordination of women’s legal status to that of their male partner’s appears to be particularly naturalized, intersecting with broader patriarchal relations in the Portuguese context. These processes, deeply interlinked with transnational gendered access to resources and autonomy, in the contexts of both origin and settlement, are subsequently reproduced by state restrictions on residency regularization.

The fact of the applicant spouse needing the collaboration of their partner, to prepare and present all the necessary documentation to apply for residency on the basis of marriage, is the first bureaucratic step that may hinder their autonomy. The legal provisions contained in Portuguese migration laws, as discussed in chapter three, establish that marriage and civil partnership are sufficient grounds to apply for a residency permit under the “family reunification” scheme. This is based on the fulfilment of a series of prerequisites, including habitation and economic criteria. For instance, the authorities ask the resident spouse to sign a declaration that they are taking responsibility for the “family reunification” of their partner from a financial and legal point of view. Additionally, in case of marriages involving Portuguese nationals, spouses are required to remain married for at least three years, to obtain the right to “naturalization” and Portuguese nationality. This means that the legal status of the applicant is attached to the spouse’s citizenship or residency rights, creating a position of legal subordination. Especially in the case of couples with highly asymmetrical power dynamics, these legislative requirements may hand the control of many aspects of women’s lives to the men they marry, as is discussed below.

250 For example, affirmations such as “One of the main concerns is the legal status of immigrant women in the country of arrival, since the legal status of women typically depends on their husband or partner’s” (Fonseca et al. 2005:42 emphasis added) may stem from concerns over women’s wellbeing, but need to be framed within broader dynamics to avoid them being considered cultural features of family arrangements in countries of origin, based on gender imbalances.
Many of the women I spoke to were particularly concerned by how situations of legal and economic dependency are reinforced by migration law. The following two stories are brief accounts of how such dependency may unfold, in two different “family reunification” contexts.

**Deborah**

Deborah, in her late thirties at the time of the interview, is a US citizen. She arrives in Portugal with her three children and her husband John, who has fled from the United States because he found himself highly in debt and unable to pay back his loans. They enter Germany with a tourist visa, and then come to Portugal by car, so Deborah never registers her entry into the country. Deborah notes that she hadn’t worked since the birth of their first child (ten years ago), because John had wanted her to be a stay-at-home mother. Conversely, John already has a job waiting for him, in his area of specialization in the health sector, and soon gains a regular work permit, which would entitle the whole family to apply for a family reunification scheme. Soon after their arrival, though, he ends his relationship with Deborah and starts another; subsequently, he does not follow up on Deborah’s or the children’s regularization processes. Deborah finds herself in a precarious situation, with no autonomous income, and with an undocumented status. She starts looking for a job, although without speaking Portuguese she only finds some intermittent work as an English teacher, and she describes having repeatedly solicited help from John in terms of financial and childcare support. He often refuses and blackmails her, saying he will denounce her and the children to the immigration police as undocumented migrants if she insists. She complains that being undocumented does not give her access to benefits for being a single mother with children, nor to free Portuguese classes. She additionally talks about the deep anxiety that being undocumented creates in her. After our first encounter she finds an informal job as a private English teacher, and is currently being supported by a lawyer friend of hers to seek ways to gain a regular residency and be able to make claims for regulated family support from her husband.

**Gita**

Gita, accompanied by her son, arrives from Nepal to Portugal in her early forties, to reunite with Badal, her Nepalese husband. She arrives 6 years after her husband, who at the time of
Gita’s arrival, holds a temporary residency authorization for work purposes. As soon as she arrives, she discovers that he is in a relationship with another woman. She recalls trying to convince him to give her part of their common properties, and money, but he reacts violently and beats her, and makes her leave their shared residency, keeping their common son with him. At the time of the interview her temporary residency is about to expire, and she is in distress due to not being able to access either appropriate support for the situation of conjugal violence or a job contract which would allow her to gain an autonomous income. She states that she cannot divorce officially because, according to Nepalese law, she would lose her right to the common property shared with her spouse. At the time of our interview, she is seeking a work contract to be able to file for residency through a work permit, but encounters serious limitations due to language obstacles and her precarious legal status.

Both Gita’s and Deborah’s trajectories demonstrate the ways in which restrictive state policies indirectly feed into dependency and legalization processes. These are triggered by the specific restrictions attached to “family reunification” procedures in Portugal, such as the ones enacted by “marriage of convenience” regulations. The undocumented situation of both women derives from the fact that their residency rights are dependent on their husband’s residency status, which exposes them to blackmail and abusive situations. For them, their husbands are the only channels through which they can guarantee their financial needs, as their undocumented status impedes them from finding regular work contracts. This exposes them to difficulties in a range of other activities, such as in renting an apartment, or travelling to other countries. In particular, since the couples have common custody of their children, if the women wish to leave Portugal, their husbands might use legal means to stop them from bringing the children along. Both women are stuck in a legal limbo, due to the impossibility of disconnecting their own right of residency from that of their husbands. Additionally, state institutions failed to solve their respective legal impasses, for instance by not offering alternative solutions for their residency processes, such as the possibility of retaining residency rights in cases of litigious separation.\(^{251}\) This lack of support appears to confirm

\(^{251}\) Portuguese law formally enables autonomous residency status before the set period only if the public prosecutors have recognized one of the spouses as “victim of domestic violence” (article nº 107, “foreigner’s law” nº 23/2007). As observed in the fieldwork, the access to a police investigation and a trial are heavily hindered by the criminalizing approach of state institutions towards undocumented migrants, thwarting this
how discourses of protection are often based on misleading assumptions regarding women’s needs (Kofman et al. 2013), with stereotypical profiles leading to patronizing public policies that are unable to respond to the risks and obstacles actually experienced by individuals.

The stories shared here are useful in untangling the particular instances in which state policies may contribute to indirectly deepening the elements of subordination inside and outside the conjugal space. Namely, these stories, as with several others collected during the fieldwork, are examples of the gendered mechanisms involved in the interaction between couples and the Portuguese migration regime. The undocumented or precarious status of these women is intimately related to the asymmetrical power relations in their households, which can be reinforced by moving to a foreign country, in which, for example, their professional skills and educational proficiencies may not be fully recognized adding to the possibility that skills may also be less applicable due to language barriers. Having to rely on their partner’s good will and financial resources to sustain themselves reduces their ability to enact autonomous choices. In both cases they previously had jobs and left them, in the case of Deborah on request of her husband, and in Gita’s case because her partner decided to migrate and she followed him to Portugal. This lack of autonomy is reinforced by other institutional limitations. For instance, their job opportunities are severely limited because of not knowing the local language. They both state they would like to learn Portuguese, but have no access to state-run free courses while they are in an undocumented or transitory situation. All of the factors described above highlight the need to clearly recognize the political responsibility that the state itself bears for having actively and passively promoted this type of dependency through restrictive administrative requisites.

**Gendered risk profiles**

Throughout this research, I have consciously chosen not to prioritize a particular nationality in the process of selecting couples. Interviewing individuals from a broad range of nationalities has enabled me to identify the ways in which nationality can intersect with gender to provision’s implementation. For instance, the access to a lawyer may be impeded for individuals whose spouse’s income is greater than the social security threshold for free legal support.

As recognized also by the High Commission for Migration, overqualification and difficulties in the recognition of education equivalencies are still problematic aspects in the inclusion of skilled workers in Portugal, notwithstanding some regulatory effort by the government to facilitate recognition in special areas, such as the health sector (Oliveira and Fonseca 2012).
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influence legal trajectories. Amongst my interviewees, the Brazilian women I spoke to particularly emphasized the ways in which they felt their nationality had impacted their attempts to obtain residency rights in Portugal. The following section will look at these processes in more depth, by analysing the accounts shared by women born in Brazil and resident in Portugal, who had married Portuguese or European citizens. These women all married at a moment in which they did not hold stable residency rights, and all had to deal with “marriage of convenience” control practices.

### Maria and Batista: Legal status dependency as a tool for control

Maria, now in her forties, begins her story by recalling how, fifteen years ago, she managed to leave her violent husband in Brazil. She then travelled to Portugal in search for a job in order to overcome her economic difficulties as a single mother. She finds a job a few months after arrival and, through her work contract, manages to gain the right to temporary residency, bringing over two of her children through the “family reunification” channel. Two years later, she meets a Portuguese man, Batista, and, after eight years of cohabitation, they marry. Although Maria would already have the entitlement to file for Portuguese citizenship based on over ten years of legal residency in Portugal, she applies for Portuguese nationality on marriage grounds. She explains this decision by referring to her husband’s insistence, recalling: “he advised: ‘apply [for nationality] through the marriage, it’s faster!’” and adding “...he has a friend working at SEF.” She comments that she thought at the time that applying for nationality on marriage grounds would be an easier procedure.

While her nationality application is still undergoing evaluation, after an argument with her husband she threatens not to continue living with him. He takes revenge by denouncing her to the SEF, alleging that she has married him purely to gain residency rights. The authorities open a process of investigation, which blocks her regularization until the end of the inquiry into the “marriage of convenience” allegation. Thereafter he continues to blackmail her and cyclically asks for forgiveness, stating that if she stays with him he will renounce his accusation. She comments “I don’t know what to do. He threatens me (...) I had to leave home because he drinks, he drinks a lot and starts losing control: (he says) ‘I’ll call the SEF,

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253 Int. 11 Maria “[ele] aconselhou: ‘dá [o pedido de nacionalidade] por casamento que é mais rápido!’ (...) Ele tem uma amiga que trabalha no SEF”.

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I’ll tell them not to give you nationality!’ (…). She further describes her feeling of precariousness, by adding “he doesn’t let me work. I can’t work Saturdays or Sundays, I can only work from Monday to Friday, and only up to 5pm, and I cannot work in whatever place (…). I managed [to find] a job taking care of an old lady, and he texts me saying that...no [I can’t]! (...) he prefers to see it his own way: that I am not working, that I am streetwalking”\(^{254}\). Maria affirms: “I’ve been wanting a divorce for a long time, forget all of this but I’m in his hands! (...) I’m like that, dependent on him\(^{255}\).” She underlines how she considers this a sudden turn in their relationship: “We always lived for each other (...), I never imagined that our fairy-tale could come to an end!”\(^{256}\) Yet she manages to oppose this oppressive situation, and refers “I left home. (...) There was too much pressure (...), there, I lived in his hands. (...) I mean, I would live a façade marriage, because of SEF?!\(^{257}\) Her residency papers, still linked to her previous work contract, are about to expire. Maria is concerned about her shaky legal situation, and is currently working on her appeal against the “marriage of convenience” charges with the help of an association providing legal support to migrants. As a result of failing to be recognized as a citizen with full rights and being exposed to such a criminalizing process, she stresses her feelings of legal and existential precariousness. She complains about what she sees as a betrayal by the state, considering she had never been undocumented before, stating that “… after fifteen years living in Portugal, I think it’s absurd!”\(^{258}\) She adds “I think it has to change, this law has to be changed (...) or at least, revoke the law that they will give you legalization, nationality, through marriage! (...) now, after my story, I went to look for other stories and I was horrified!”\(^{259}\) Maria argues that she feels that gender played an important role in her experience: “we women are for them (...), principally we Brazilians, people see Brazilian women as all the same, you understand? We

\(^{254}\) Int 11. Maria: “eu não sei o que fazer. Ele me ameaça (…) eu tive que sair de casa porque ele bebe, ele bebe muito e ...começa a se passar: [e me diz] ‘vou telefonar ao SEF, vou lhe dizer que não te dêm residência nenhuma!’ (...) não me deixa trabalhar qualquer lugar, não posso trabalhar sábado nem domingo, só posso trabalhar de segunda à sexta, só até as cinco da tarde também (...)eu consegui um trabalho pra tomar conta de uma senhora, e ele manda-me mensagem a dizer que...não (...)...ele prefere ver o jeito dele, que eu não estou a trabalhar por conta de uma senhora, que eu estou...a fazer vida!”

\(^{255}\) Int. 11 Maria: “queria mesmo divorciar dele, esquecer disto tudo, mas tou na mão dele! (...)”

\(^{256}\) Int. 11 Maria: sempre vivemos um para o outro (...), nunca imaginei que aquele conto de fadas pudesse acabar”

\(^{257}\) Int 11. Maria Se eu estou a viver aqui há 15 anos eu acho um absurdo!”

\(^{258}\) Int. 11 Maria: “sai de casa (...) A pressão era demais, entende? Ai eu vivia na mão dele, quer dizer, tinha que viver um casamento de fachada por causa do SEF!!”

\(^{259}\) Int. 11 Maria: “Eu acho que tinha que mudar, tem que mudar esta lei (...) ou pelo menos tira a lei, que vão dar legalização, nacionalidade por casamento!(...) agora, depois da minha história eu fui buscar histórias e fiquei horrorizada!” A pressão era demais, entende? Ai eu vivia na mão dele, (...) eu ia ficar com...viver um casamento de fachada por causa do SEF”
suffer this discrimination. It can be a Brazilian woman working 24 hours cleaning in a building, but people will not see her as a cleaning lady, if she is wearing a tight-fitting top they see her as a streetwalker...so...I think this had an influence, certainly! If I were a man, none of this would have happened!”.260

Joana, Carlos, and Casimiro: Learning to navigate marriage and mobility restrictions

Joana is more than 40 years old at the time of the interview. She first travelled to Portugal in her early thirties, together with her son, leaving her job and her middle-class profession, to reunite with her husband Carlos, who had moved to Lisbon six months earlier. At the time of her arrival, she discovers he has lied to her about holding a regular work contract, and thus about the possibility of obtaining a legal residency for the rest of the family on such grounds. Regarding this phase of her trajectory, she remarks “I think it’s very tough, this dependency on citizenship, on the papers, on being in the hands of another person.”261 At the time, she decides to divorce her husband, even though she still holds no legal residency as an “over-stayer” of her initial tourist visa, and describes the process of looking for a job “as an undocumented woman” as a “process of exploitation and abuse”. She also recalls the “horrifying fear” she suffered in thinking that she would not even be able to go back to Brazil with her son, if her husband refused to provide his authorization, or that the minor could be separated from her by the authorities due to her precarious situation. In that period she remembers feeling as if she had “no support, no social network (...) absolutely nothing”. Joana describes the regularization of her own and her son’s papers as “a very difficult path. I managed without having legal support, or an intermediary, because I am a person with a high level of knowledge, and also of boldness, but for a more fragile person... I think it would be hard.”262 She stresses during her interview the existential difficulties and self-blame she suffered in dealing with such a precarious phase, while also having the responsibility for a

260 Int. 11 Maria: “nós mulheres somos pra eles, principalmente nós brasileiras, as pessoas aqui em Portugal vêm as brasileiras todas iguais, entende? Nós sofremos esta discriminação (...) Pode ser uma mulher brasileira que trabalha ali 24 horas por dia limpando aquele prédio, mas uma pessoa não vê ela como empregada de limpeza, vê ela, se ela usa um top, vê ela como uma garota de programa, dai... eu creio que isto teve influência sim, por eu ser mulher, com certeza! Se fosse um homem, não teria acontecido nada disto”

261 Int. 5 Joana: “eu acho que é muito forte esta dependência de uma cidadania, de um documento, estar na mão de outra pessoa.”

262 Int. 5 Joana: “tudo foi uma caminhada difícil, só consegui sem precisar de assessorias ou de um intermediador porque eu sou uma pessoa que tem um grau de conhecimento e também de ousadia muito alto (...), mas uma pessoa que esteja fragilizada (…) é muito difícil”.

child. Joana also describes the shame that prevented her from going back to Brazil and to her family, since they had originally advised her not to follow her husband.

Subsequently, Joana manages to leave her son with her family and decides to take a postgraduate course, a choice that she considers “a resilient reaction to all of this, which was very harsh for me”. After some years she decides to marry again, this time with Casimiro, a Portuguese citizen, but stresses the fact that she learnt a lot from her first experience in coming without a guaranteed residency, saying: “the first time I really came blindfolded. The second time, being blindfolded would have been a big mistake, wouldn’t it? (...) I didn’t want to have any doubt, or possibility for this to happen, no way! Only when I have my document in my hands, I bring my son [back to Portugal]. I didn’t want to have this high dependency on my husband, you understand?”263 Later Joana successfully applies to obtain Portuguese nationality, and talks about being treated by the SEF in a much more respectful manner compared to her first experience: “I want to tell you that I had no lawyers, no intermediaries, it was an extremely impersonal process (...), but I also think I had another profile (...) a woman more than 35 years old, an educated woman, postgraduate, with a degree, a CV, everything shown, everything verified.”264 Yet she describes a wide range of discrimination she experienced at the hands of institutional representatives, and narrates the systematic suspicion she, and all the Brazilian women she knows, have to endure. Most commonly, this involves insinuations that they are sex workers, and that they are not worthy of staying in Portugal, being only in search of husbands to obtain comfortable lives and legal papers.

After some years of marriage to Casimiro, Joana divorces again, and is subsequently frequently stigmatized by friends, family, and institutional representatives, all of whom insinuate she had married only to gain nationality. Nowadays she has become an activist fighting for the rights of women migrants, and against their stigmatization and exploitation. Commenting on broader issues regarding gender and migration Joana declares: “does Portuguese society stimulate, or give support to these women? Well, I think not (...) Receiving support is also a lot more difficult, support in case of violence, everything is very

263 Int. 5 Joana, “a primeira vez eu vim mesmo de olhos fechados! Agora da segunda de olhos fechados, aí era muita falha, não era? (...). Não quis dar a mínima sombra, margem para que isto pudesse acontecer, de forma nenhuma. Só quando o meu documento estar na mão, trago o filho. Que não quis ter essa dependência tão alta do meu marido, entendeu?”

264 Int. 5 Joana, “E quero lhe dizer que não teve nem advogados, nem cunhas, também, foi um processo mesmo extremamente impessoal, mesmo. (...) também acho que tinha um outro perfil (...)...uma mulher de mais de 35 anos, uma mulher formada, pós-graduada, com um título, um curriculum todo mostrado, comprovado.”
difficult.” To exemplify, she speaks about women wanting to report situations of gender violence, and explains that if they have a foreign accent, the officers in police stations immediately say: “‘you’re not from here, are you..? Lady, provide your papers!’ So, he [the policeman] is authorized by the state to notify an expulsion procedure.” Joana explains what this signifies for the woman involved, “if she is undocumented (...) she goes back home, back to her aggressor, on whom she is dependent, and, even more, the police will have her address, and she will even receive the expulsion notification! So who would do that [i.e. report their abuser to the police]?! Especially, if you know the mechanisms!”.

Sofia and Paco: Exoticization and stereotypes

Sofia, in her early thirties when I meet her, reached Europe on a student visa with the help of her family, who provided a financial guarantee to satisfy the economic requisites imposed by migration control. She meets her future husband, of Spanish nationality and, after her studies finish, she goes back to Brazil, and they continue meeting in their respective countries by crossing the ocean twice a year. Regarding these trips, she refers to passing through border control at the airport as an invariably “stressful” situation, in which she felt that she was treated in a discriminatory way. She comments, “because of the fact of me being from Brazil, there was immediately special attention...and for being young (...) I have never seen the questions they posed to men, when they went past migration [control], but to me, when they asked, there was this issue of “and what are you coming to do?”...and yet, I tell you, I would dress in a very, how to say, conservative fashion, I wouldn’t take the plane in shorts! It was summer, but I would go wrapped up so that there would be no kind of suspicion.” She adds: “we, Brazilian women, are frowned upon”. To illustrate this climate of stigmatization, she cites a highly mediatized case regarding a small city in the north of Portugal where in 2003 a
movement called “Mothers of Bragança” was created. In her opinion, this movement expressed the “rage of Portuguese women against Brazilian women who migrated to their city (...) and would steal, so to speak, their husbands. They would go and look for their husband at the door of the brothel and they would find them with Brazilian women”. She adds “this remained very strong in the imaginary, and it expanded the image of Brazilian woman stealing other women’s husbands, and who is a prostitute.” 268

After several years of this long-distance relationship, Sofia decides to move to Portugal to reunite with her fiancée and formalize their union, notwithstanding, she comments, the “stifling quantity of paperwork to get married”. 269 To obtain her first residency authorization she needs to ask her husband to act as her financial guarantor, so as to fulfil the legal requirements, and, amongst other restrictions, she discovers that she is dependent on his health system registration to have access to health services. In the meanwhile, being a freelance worker, she struggles to obtain work contracts, but ends up finding assignments and expanding her social networks, meeting a large number of fellow nationals. Through one of her acquaintances, she discovers that, due to a little known bilateral agreement between Brazil and Portugal, she can be entitled to a privileged residency status as a Brazilian national, which she obtains after a cumbersome bureaucratic process. She complains about the inability of her husband to understand the stressful burden she is carrying regarding the whole bureaucratic process: “I have always felt in a precarious situation, always! (...) the status I hold now derives from the fact of my being Brazilian, not of being married, but still I have to renew it every two years, so I still have to go to the SEF, but the European doesn’t understand (...) it’s very difficult, if the person didn’t live through that, to understand how stressful it is to go to the SEF five times, because there is always an obstacle!”. 270

268 Int. 8 Sofia: “a raiva que tinham as portuguesas, que as portuguesas tinham contra as brasileiras, que imigraram para esta cidade (...) e roubavam entre aspas os maridos, então elas iam buscar os maridos à porta dos prostíbulos, e estavam com brasileiras, e isto ficou muito forte no imaginário e se expandiu, essa...imagem de Brasileira que rouba o marido das outras, e que é prostituta”.

269 Int. 8 Sofia “a enorme papelada para poder casar”.

270 Int. 8 Sofia: “sempre me senti numa situação precária, sempre! (...) O estatuto que eu tenho hoje, advém do facto de eu ser brasileira, não do facto de eu ter casado, mas ainda me obriga a renová-lo, cada dois anos. Agora já não é uma vez por ano, mas é a cada dois anos, portanto eu ainda tenho que ira o SEF, mas o europeu não percebe! (...) é muito difícil, quando a pessoa não passou por aquilo, entender, também, como é desgastante ir ao SEF cinco vezes, porque sempre colocam alguma, algum impedimento”.

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INTERSECTIONAL POWER RELATIONS AND SOCIAL STRATIFICATION

These stories demonstrate the functioning of the exclusionary potential of migration policies as they are currently designed, and provide empirical evidence of the intersectional functioning of gender, socioeconomic status, and national origin. Sofia’s opportunities in terms of mobility and access to the recognition of citizenship rights appear to stand out: she has a family that can sponsor her studies in a European country, and has had advantaged access to information regarding the opportunities to obtain an autonomous legal status, thanks to her high level of education and professional and personal networks. It is her personal contacts, not the migration services, which inform her about the bilateral arrangement through which she ultimately obtains residency rights. Additionally, her partner has the financial resources to fulfil the entry requirements when she first arrives in Portugal. These may be considered factors of relative privilege if we compare her trajectory to Maria’s and Joana’s or Gita’s, who have no support when arriving in Portugal, and have to seek work in precarious conditions in order to have their right of residency recognized and be united with their respective children. In these cases, the restrictions imposed by migration services deepen pre-existing social inequalities, rather than level them out through equal citizenship opportunities.

Intersectional theories (Stolke 2006, Yuval Davis 2011)\textsuperscript{271} are helpful in acknowledging that it is not feasible to analyse markers of difference in isolation from each other, since they are in continuous reciprocal interaction, leading at times to contradictory effects. For instance, it is useful to consider the non-linear outcomes of categories of “privilege”. A social advantage may potentially turn into disadvantage in the case of marriage breakup. Maria, being still legally married to a well-paid professional, is considered more affluent than she actually is, and does not have the right to a free state lawyer. Similarly, the fact of her husband having social networks in institutions, namely, his friendship with a SEF officer, while constituting an advantage while she is applying for nationality, may be counterproductive when she is being investigated as a “deceitful” migrant wife. In the case of Deborah, due to the perception that public officers have of her nationality as being associated to secure financial conditions, she is denied access to free childcare. She complains that the municipal functionaries “\textit{said I can afford holidays, and shouldn’t use the opportunities for poor Portuguese kids}”.\textsuperscript{272}

\textsuperscript{271} For a further discussion of the theoretical framework, refer to chapter two.
\textsuperscript{272} Int. 7 Deborah.
All the stories I collected confirm that the interacting effects of gender, nationality and socioeconomic class are not evened out by migration, but rather reinforced by the effects of legal restrictions. Until they have access to an autonomous legal status, individuals depend on the benevolence of the state, their partner or their family to guarantee their rights, which are put on hold by their precarious legal status. In this way, current regulations (re)produce the social order by maintaining and reproducing the social positioning of individuals.

The intersectional mechanisms observed in the selective suspicion of “marriage of convenience” thus fit into the aforementioned debate regarding “deservingness” inherent in the institutional selection of migration (Chauvin and Mascareñas 2014), filtering migrants symbolically and institutionally according to state interests. Although migration law includes few explicit distinctions, individual paths to residency recognition end up being distorted by intersectional factors and related stereotypes in the institutional discourse and implementation, introducing differential treatment of applications on the basis of gender, class, and nationality. Igor Machado criticises the construction of more or less desirable categories of migrants, which the government develops on the basis of their “integrability” in the social fabric of the Portuguese nation-state, as if it were a homogeneous and depoliticized social space (Machado 2011).

My fieldwork provided numerous examples of the ways in which the frames of “vulnerability” serve to classify both migrant women and Portuguese women according to stigmatizing (and criminalizing) profiles. The processes involved in “marriage of convenience” policing, in terms of the institutional imposition of family norms and intrusion into the intimate lives of less privileged sectors of the population, appeared to operate transversally. One of the analytical turning points in my research was my attendance at a “marriage of convenience” trial in the Lisbon High Court in 2013, in which three men and one woman were charged for organizing a transnational marriage network for profit. They were accused of working as intermediaries between Portuguese potential brides and migrants who were seeking residency papers through marriage and willing to pay an amount of money in exchange. In this context, I had the chance to observe the way in which Portuguese brides were institutionally framed in the juridical sphere, which provided an interesting counterpoint to the information collected in SEF. I listened to the testimonies of 13 women who were included in the investigation and gave evidence as witnesses. The subtle mix of victimization and criminalization to which they were exposed during the questioning, on the basis of having
married foreign citizens, bore a notable resemblance to the double-edged institutional approach to women migrants.

Primarily, the witnesses were treated during the trial as vulnerable victims, incapable of taking care of themselves, and resorting to “fraudulent” marriage as a way of sustaining themselves in critical economic situations. This involved an insistence, interestingly by both defence lawyers and public prosecutors, of their unprivileged social situation, focusing on a range of factors, such as that they were living in degraded neighbourhoods, were single teenage mothers, and/or were living on state subsidies. At the same time, the behaviour of institutional actors exposed how the women were being criminalized and sanctioned for their “deviant” behaviour, which appeared to imply an additional, subtle moral judgement, since they were accused of having breached the social imaginary of the “disinterested” marriage. This approach, suggesting an overlap between stigmatized and victimized groups, is consistent with the essentialist institutional framing of migrants that emerged during the case study.

In this regard, Adelaide’s story problematizes the appropriateness of the “marriage of convenience” paradigm of victimization and the institutional claims of the state’s role in protecting “vulnerable women”. Adelaide, a Portuguese woman in her sixties divorced at a young age from her first Portuguese husband. Several years later she married Farroukh, a man born in Pakistan. She recalls that she entered this marriage because she was in love with Farroukh, but found out after a couple years that her husband had married her at least partly to gain documentation, although she believes that he ended up feeling some affection for her as well. At the time, several friends and acquaintances urge her to think carefully about the possibility of him marrying for “hidden” intentions, to gain Portuguese nationality, but she says that she was “completely in love and (…) didn’t care at all.” A short time after receiving his residency authorization, he moves to work in a northern European country, they start having some conflicts and she suspects that migratory rights were an important factor in his motivations to marry, deciding to divorce him. Yet when I ask if she thinks that stricter state control on foreign spouses could avoid what she considers a “deceitful situation” she strongly disagrees, and states “if I had wished to investigate my husband, I could have done it by myself!” In describing her position, she underlines that she had the right of “not wanting to know” about her husband’s hidden intentions, and regarding the policing of marriages she

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273 Int. 17 Adelaide: “estava completamente apaixonada, queria lá saber!”
argues that “they are not protecting women, they are protecting the state!” Sharing her perceptions on her conjugal story, she deconstructs the idea of “victimhood” and “vulnerability” as a woman, arguing “the state wants to protect me? What am I, a cat, a dog, so as to need protection?.”

At the moment of the interview, her new companion, Deepak, also of Pakistani origin and undocumented, is at risk of expulsion, having received a notification from the immigration police. After several years of cohabitation, which was a consensual choice regarding their conjugal life, she now feels pressured to marry him because of his insecure legal status. Namely, Adelaide states that she would marry as a last resort in order to give him a possibility of gaining regular residency, as they want to live together and she is not willing to go and live in Pakistan if he is expelled. She complains that she has already married twice and doesn’t feel the need to formalize this relationship, and argues that there should be alternative channels for regularization, even for individuals who entered into Portugal unregistered. Paradoxically, she feels they would be obliged to formalize their relationship due to institutional restrictions. During the interview, Adelaide strongly affirms her right to autonomously choose her partners and the type of marital conformation she wishes to live in, with no state interference. Similarly to other interviews collected, her account exposes the ways in which restrictive migration policies are interfering with conjugal choices, and pushing couples that would have otherwise chosen cohabitation or alternative arrangements into state-recognized marriage. Additionally, Adelaide’s strong stance on her right to autonomous conjugal choice, as an adult and independent woman, is in deep contrast to the institutional depiction of defenceless, naïve and deceived Portuguese wives. As Laura Agustín notes in a case study on trafficking, “women’s own description of what they are doing contrasts with the characterizations of outsiders, particularly the gendered emphasis on passivity, ignorance, and force” (Agustín 2005:98).

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274 Int 17. Adelaide “se eu quisesse investigar sobre o meu marido, podia fazê-lo sozinha! (...) não queria saber de nada! (...) Eles não querem proteger as mulheres, eles querem é proteger o estado! (...) eles querem me proteger? E eu... sou gato, sou cão, pra precisar proteção?”
Collecting stories from individuals of different nationalities enabled me to observe the ways in which nationality influenced bureaucratic processes, and articulated with gender. The stories in this subsection have been selected as emblematic examples of such links, as they expose the specific stigmatizing representations of women of Brazilian origin. These gendered and sexualized representations are not exclusively observable for this nationality, but, during fieldwork, they were particularly evident in the experiences of Brazilian women.

The dominant portrayal of “the Brazilian migrant woman” emerged strongly in the accounts of women inserted in this category, and appeared to considerably impact their legal and conjugal experiences. As a rich literature confirms, the stereotyped image of Brazilian women as eroticized and seductive is built into the Portuguese collective imaginary, and is easily associated with self-interested and concealed intentions (Raposo and Togni 2009, Gomes 2013, Piscitelli 2008 and 2009, França 2012). As Mariana Gomes comments, “Brazilian women are seen as [a] “colonial body” in Portugal, and are “defined, essentialized and stigmatized through characteristics attributed by colonial history, related to hypersexuality” (Gomes 2013:ii). Women participating in the research invariably expressed that the fact of being Brazilian was a crucial determinant in their interaction with public officers, stirring preconceptions regarding their “morality”, and doubts over their genuine intentions to create a family in Portugal and/or their professional activity in the country. This in some cases included insinuations by public representatives that they might engage in activities such as sex work (although this activity is not illegal according to Portuguese legislation). The following section will outline the (il)legalization trajectories based on moral stereotyping and policing, and the reactions of these women to the constraints encountered. The narratives will inclusively underline the continuities in the overlap between victimizing and criminalizing representations of women of both Portuguese and other nationalities.

The Brazilian women I interviewed faced heavy prejudice and appeared to be constantly confronted with a sexualized imaginary, feeling pressure to justify the morality of their behaviour, relationships and professional activities when interacting with state institutions. My data indicates that nationality has major implications for the selection processes of state

275 For a specific analysis on how the stigma associated with the alleged sensuality of Creole women, reminiscent of the Portuguese colonial imaginary, may be reversed and become a resource for Brazilian women, refer to Jorge Malheiros and Beatriz Padilla’s work (2014).
Narratives and counter-narratives on “marriage of convenience”

institutions, and for the regularization opportunities of certain groups. This observation was reinforced in a discussion with Magdala Gusmão, from Comunidária: “How come women who have the same documents, the same condition, receive different treatment [in state institutions]? (...) I believe there is an aspect related to nationality, and I think that Brazilian women feel this very strongly (...), they have straight away moral barriers, you know, very clear, I believe concerning Brazilian women principally.”

Following these examples, it could also be argued that to grasp the “moral” approach to marriage and mobility in my case study, it is useful to consider mainstream understandings of sexuality implicit in state migration law. On the one hand, sexuality is institutionally constructed as a sphere organized around biological reproduction (and therefore moulded mostly by heterosexual norms), and is used a measuring rod to verify the “authenticity” of couples. The fact that couples with children are favoured in the measurement of “authenticity” is an example of this paradigm. On the other hand, state evaluations of authenticity appear to identify forms of “suspicious” sexuality, as in the case of the insinuation of sex work as a means to cast doubt on “genuine” intentions of marriage.

My interpretation of the empirical data collected leads to a questioning of the current paradigm, exposing the ways in which migration-related restrictions are curtailing fundamental rights and (re)producing unequal access to residency rights and resources. Following the work of gender scholar Eithne Luibheid in a study on sexuality and migration, family reunification provisions may be seen to construct women’s sexuality as “procreative within a patriarchal framework”, and as “most appropriately channelled in marriage and reproduction” (Luibheid 2002:3). Moreover, the reference to “sex work” in public officials’ discourse when referring to women in mobility exposes how they are subject to a “double standard that [makes] them, but not men, liable to sanction for deviations from sexual norms” (Luibheid 2002:3). Arguably, the general population may be subject to the same double

276 Portugal has a series of bilateral agreements regarding residency regulations, which interestingly facilitate Brazilian nationals’ obtention of a tourist visa or an equivalent of a permanent residency authorization. This apparently contradicts the official institutional practices, which are particularly focussed on some nationalities due to alleged higher incidence of crime and fraudulence (cf. chapter two).

277 Magdala Gusmão “como é que uma mulher tem o mesmo documento, a mesma condição, e recebe outro tratamento? (...) Mas acho também que tem também um aspecto da nacionalidade, e acho que as mulheres, as brasileiras sentem isto muito forte. Tem logo barreiraras morais, claras (...) eu acho em relação às brasileiras, principalmente.”
standards in terms of sexual permissiveness, although this may not enforced as explicitly in state administration spaces as it is for individuals categorized as migrants.

GENDER-BASED VIOLENCE AND THE ROLE OF INSTITUTIONS

The empirical data indicates that the tutelary attitude of the state, as it is manifested in Portugal, is not conducive to better opportunities for the women involved in inter-status marriages. The research participants consistently underlined how their legal status confined their possibilities of entry to and exit from Portugal, as well as the type of entitlements they had access to, limiting their autonomy. Their experiences challenge the institutional depiction of the state as a benevolent saviour of women in danger, as well as the stereotype of passive and naïve victims, common in the discourse on women migrants. The sociologist Julia O’Connell Davidson (2015:1), in a critical editorial on the binary categories opposing human trafficking versus economic migration, argues that this distinction is “profoundly gendered and aged because adult men are regarded as almost by definition authors of their own destinies, whereas women and children’s grip on their own wills is understood to be already fragile and tenuous”.

The interviews I collected expose how in cases of separation or conjugal conflict, when one of the partners does not hold permanent residency rights, women are exposed to blackmail, abuse and accusations. Their experiences reveal the legal (and often economic) dependency of the migrant partner on the spouse, a situation directly promoted by migration regulations. For instance, notwithstanding police representations, the access to state protection in cases of gender violence is not straightforward for women in an undocumented position, aggravating the abusive situations they are experiencing. As underlined as far back as 2005, in a report for the publicly funded Migration Observatory, in case of “abusive situations within the family, victims must be encouraged and aided, making it easier for them to solve the problem, and not threatening them with expulsion from the country when they are separated from the abusers” (Fonseca et al. 2005:220). However, among the women I spoke to, those who wish to denounce their partner’s abusive behaviour risk exposing themselves to an expulsion notification, demonstrating that this support is not universally guaranteed.
Additionally, the narratives collected reveal how the derivative status of legal dependants established by the migration regime may increase abusive husbands’ control on their wives’ lives, enabling in some cases higher levels of violence or emotional abuse. These accounts appear to confirm Leisy Abrego’s argument that “fear of detention and deportation powerfully regulates immigrants’ behaviour, often impeding them from having access to their legal rights and preventing them from seeking social services” (Abrego 2014:9).

Maria’s and Joana’s accounts in particular suggest that in situations of gender-based violence in the couple, state institutions are not facilitating exit channels from abusive relationships, but rather are deepening women’s dependency on their partner, by exposing them to criminalization or loss of residency rights, and failing to provide safe complaint channels. For instance, notwithstanding formal moves towards the provision of safer channels for denouncing “domestic violence” crimes in police stations, the narratives I collected repeatedly exposed the flaws in the reception system, which often operates through discrimination against particular nationalities and migratory statuses. In Maria’s trajectory in particular, I observed what the anthropologist Sara Friedman describes as a potential “tension between permitting vulnerable immigrant spouses to leave an abusive relationship and requiring them to prove both the abuse and a ‘good faith’ marriage” (Friedman 2012:225). The pre-existing symptoms of an abusive relationship, such as the fact of her husband not letting her freely choose her professional activities and timetables, considerably worsen after she is “tied” to him by “marriage of convenience” regulations.

The empirical data uncovers the ways in which the “tutorial state” is placing limits on the autonomy of subjects. For instance, Maria may have engineered her migration from Brazil as a strategy to exit economic privation and gender violence, but subsequently encounters obstacles leading her into a similar situation in the country of arrival. She is now facing an investigation process which is putting her financial situation under strain, but has no access to a state lawyer because officially she is married to an affluent man. Additionally, she has to cope

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278 For instance, special units for the reporting of domestic violence crimes have been established in main police stations, and should provide a tailored assistance especially to “vulnerable groups” such as “children, elderly, women, and disabled” (PSP- Police website 2015), who come to report such situations. Yet there are several reports of mistreatment in police stations which suggest this policy is not adequately or homogeneously implemented. The fact that domestic violence has been declared “public crime” may additionally have some counterproductive effects in the case of undocumented individuals. The undesired exposure that the reporting process involves might lead, as well as to the intended denunciation of the perpetrator, to illegalization mechanisms for the accuser if the crime is not proven. Since the law only protects the residency status of subjects who have been officially recognized as victims of domestic violence, and the investigation may be very time-consuming, negative outcomes for the “victim”, such as loss of residency rights, are not uncommon.
with moral condemnation, unstable residency rights and consequently precarious working conditions. Being in a legally disadvantaged position, she needs to maintain some negotiation possibilities, and therefore cannot leave her husband until the investigation process is finished, thus increasing her exposure to blackmail. Her account shows the extent to which the incorporation of securitarian imperatives in migration policies results in women being encumbered in their processes of choice and empowerment instead of being actively supported.

**CAN “MARRIAGE OF CONVENIENCE” CONTROL “PROTECT” WOMEN?**

The interview material indicates that the pronouncements of the Portuguese state with regards to the safeguarding of women’s rights are not coupled with gender-balanced policies based on the needs which the research participants express. Conversely, the possibilities of criminalization faced by transnational couples on the basis of “marriage of convenience” provisions appear to be (re)producing unequal relations of power. Namely, the highly gendered structure of dependency in heterosexual couples appears to be reinforced by policies restricting access to autonomous legal status for spouses of Portuguese citizens. These dynamics have been analysed as emblematic examples of the intersectional, and particularly gendered, stratification processes which arise from interaction with the institutions in charge of migration control (Riaño 2011, Raposo and Togni 2009, Friedman 2012).

It has been observed, in the context of the European Union, how “immigration policies prescribe ‘legitimate’ modes of family life (…). Both the normative model of ‘good family’ life underlying family migration and integration policies as well as the lived reality of family lives are highly gendered” (Kraler and Bonizzoni 2010:184). My data indicate that these two spheres mutually reinforce each other. The justification of marriage of convenience control with the alleged aim of protecting women offers an example of this. As Yvonne Riaño argues in a study of migration policies in Switzerland, there is an inherent contradiction between the discourses on women’s protection, and the creation of unequal, gendered relationships through restrictive residency regulations and the patriarchal values that underpin them (Riaño 2011). The stories I collected indicate that women may not be protected through rules that keep them dependent by tying them to a conjugal relationship.

The empirical evidence confirms the need to highlight the role of the state in “gendering transnational processes and experiences” (Pessar and Mahler 2003:812). In each of the
accounts I collected, state interventions exposed underlying gendered and normative conceptualizations of the types of conjugal/professional/reproductive choices that are expected from women in a “true” marriage. For instance, in the discourse and practice of institutions, it is often naturalized that women, in contrast to men, are dependent from their family or partner regarding their residency rights and financial support. On the other hand, women who are financially self-sufficient are often suspected of engaging in “illicit” activities.279

The individual interviews were particularly useful as spaces of reflection on the gendered implications of the mechanisms of dependency inherent in the marriage regulations. Until the recognition of autonomous residency rights, one of the spouses is not fully acknowledged by the state in his or her own right. Therefore, dependency and lack of choice are often the results of such regulations. Specifically, the obstacles to autonomous legal status can be a barrier to citizenship, hindering access to rights and services and potentially deepening both situations of social disadvantage and dependency on partners.280 In particular, the legal dependency established by marriage and migration controls has been shown to facilitate women’s subordination vis-à-vis abusive partners. Autonomous legal status is a necessary condition to allow women in mobility to sustain themselves and avoid exposure to abusive situations, as it increases their ability to leave marital situations in which they are submitted to asymmetrical power relations. Moreover, basic guarantees of dignified life conditions -such as equal access to services and the labour market regardless of migratory status- would enhance the opportunities of women to make independent and meaningful choices.

The stories underline the possible contradictions (and overlaps) between the institutional aims relating to the “protection of vulnerable subjects” and the atmosphere of distrust regarding women of specific geographical origins and socioeconomic statuses. It appears that a discourse and practice has been established, based on mutually reinforcing constructions of

279 Most notably, as emerged from the accounts, the women framed as drug users or sex workers were the most frequently targeted by institutions as potential victims or abusers of the “marriage of convenience” phenomenon. It is important to note in this respect that, according to the penal code, sex work –as well as recreational drug use- is not an illegal activity in Portugal. The evaluation of whether women engage in this type of activities therefore has no legal grounding as a basis for assessing their eligibility for regularization. Yet both the women interviewed and the SEF representatives state that the suspicion that women are engaging in such a profession is negatively evaluated in the processing of their migration status and in the “marriage of convenience” control procedures.

280 Although during the fieldwork in Portugal, the issue of women’s dependency emerged with more evidence, it should be noted that other studies observe the same processes with men. For instance Annett Fleischer observed how “diminishing options for legalizing their status in Germany by other means make Cameroonian men increasingly dependent on sustaining a marriage to a German wife for at least three years” (2011:5).
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“social hierarchy” and “illegality”. These constructions echo the observations made by Bridget Anderson on the extreme simplifications made by institutions, dividing individuals into “good and bad migrants” (Anderson 2008) to serve the state’s selective purposes.

A key question arising from my fieldwork is whether current “marriage of convenience” policies, built on the “victims-abusers” binary, are protecting any group at all. The control of “marriage of convenience”, as it is implemented, is misrepresenting women of Portuguese nationality who enter into marriage with foreign nationals, whether through paternalist victimization or criminalization of their conjugal practices. The implementation of these logics is hindering the regularization of their partners and potentially exposing them to punitive “marriage of convenience” charges. Nor are these restrictions granting rights to migrant women, who are stigmatized and left with the burden of proving their eligibility for regularization, and in the meanwhile are exposed to violations of their rights producing concrete obstacles to their autonomous social and professional trajectories. This is the case for both middle-class women struggling to have their qualifications recognized, and less advantaged women trapped in low-wage and insecure labour sectors, caught in what Eithne Luibheid calls “intersecting systems of patriarchy and racialization” (Luibheid 2002:13). The interviews confirm, as already observed in the broader European context that states impose “a period during which the spouse is dependent for residency status on the partner so that the dependent spouse is liable to deportation if the marriage breaks down. Women can be tied to failing, and sometimes violent, marriages in order to maintain their right to residency” (Kofman and Sales 2001:104). The stringent conditions attached to applying for regularization through marriage are not promoting women’s autonomy, but rather are reinforcing the gendered asymmetries in the conjugal and public space.

Even in the cases that fell into the institutional “risk profile”, subjects had a margin for agency in the choice of marrying: what reduced their agency were state restrictions and lack of opportunities. These comprised unstable labour conditions or unemployment, difficulties in denouncing abuse and violence without being detected as irregular migrants, and issues of

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281 It should be noted how in this case the state should not be seen as a monolithic, homogeneous entity with a linear logic. Tsianos and colleagues propose speaking of the ‘migration regime’, so as to include a multitude of actors whose practices relate to each other but are not ordered in the form of a central logic or rationality, but rather imply a space of negotiating practices (Tsianos et al. 2009).

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legal dependency. The repercussions of these situations could be greatly diminished if marriage was not criminalized and if the obstacles to free entry and settlement were lifted.

The current institutional practices based on “marriage of convenience” policing logic do not provide adequate solutions to the concrete situations faced by women in situations of abuse and violence, and rather tend to worsen the situation by exposing these women to illegalization processes.\textsuperscript{282} The stories collected conversely demonstrate how, with less administrative obstacles, women engaging in mobility may overcome marginalizing situations with more ease, thus freeing up their resources and enabling them to follow their life projects. This presentation does not fully reflect the resourcefulness that has allowed them to determine their life trajectories by overcoming the obstacles, the prejudices, and the situations of dependence, which they felt the regulations were confronting them with. Yet at least in some cases it has exposed how, when individuals are given the chance to exit abusive situations with secure regularization channels, they tend to manage their choices autonomously in order to pursue their life projects through safer processes. In this context, treating women in mobility as an inherently vulnerable group, or as potential abusers of migration law, rather than facilitating their trajectories as subjects with their own rights, serves to displace attention from the roots of social inequality and produce a criminalization of its effects.

CONCLUDING REFLECTIONS: NEGOTIATING CONJUGALITY AND RESIDENCY RIGHTS

Living in Portugal in an undocumented situation implies a series of obstacles to full citizenship rights, due to the restrictions put in place by the government on the entry and settlement of foreign nationals in its territory (Machado 2011, Grassi and Giuffré 2013, Bacci Tamburlini 2013). These restrictions, as debated in the chapter two, are based on the premise

\textsuperscript{282} Although financially-motivated marriages are not the main focus of this thesis, it should be noted how, at least in the cases which I analyzed, the institutional rhetoric of protection from the dangers of international criminal networks does not appear applicable. The “security threat” for people involved in paid marriages, if any, appears to the exploitation on behalf of marriage mediators. Paradoxically, the business of mediators – whether part of broader criminal networks or not-is being fed by the same restrictive migration policies which are expected to curb the phenomenon.
that the nation-state may legitimately regulate population movements in the territory it occupies, and delimit the sphere of “legality” inside its borders. Current policies regarding the management of unauthorized migration flows are based on securitarian and selective paradigms, in line with contemporary European Union policies (Schrover et al. 2008, Dauvergne 2008). This chapter has analysed how, against this backdrop, the specific controls to which transnational marriages are subject create particular forms of institutionalized criminalization and social subordination.

Each section of the chapter considered a pillar of the current “marriage of convenience” discursive constructions, policies, and implementation and weighed them against the results of my fieldwork in Lisbon. The three parts analysed the applicability of institutionalized dichotomies regarding “authenticity” (“real”-“fake” marriage), “legality” (“legal-illegal”), and “protection” (“victims”- abusers”) respectively, as complementary aspects of the current paradigm of migration control. The analysis has been delineated in articulation with the theoretical interest of suggesting a revision of the current paradigms, which classify and regulate mobility and conjugality. With this aim in mind, I exposed the plural and overlapping ways in which conjugal arrangements articulate with the acquisition or loss of residency status. Synthesizing my empirical material with the wider literature, I will here suggest some concluding reflections on the case study conducted in Lisbon. My fieldwork enabled me in particular to analyse the articulation between migration policies, institutional framings of “family” and “marriage”, and the socioeconomic hierarchy deriving from this interaction.

Analysing the research participants’ stories, I tracked how the outcomes of institutional selection derived from the interaction of couples with public officials. During the chapter, I discussed the ways in which the binary and criminalizing categorizations resulting from the “marriage of convenience” institutional discourse and practice in Portugal are not appropriate to describe and manage the diversity of transnational conjugalities emerging in the fieldwork. The analysis demonstrates how restrictive practices rest on crystallized categories, which are not applicable to the variety and fluidity of transnational life trajectories.

A related finding which emerged in section one is that the implementation of “marriage of convenience” policies is targeting specific segments of the population, by approving for residency regularization couples which are seen as “authentic couples”, and thus as deserving legal residency rights through “family reunification” schemes. Bureaucratic and policing mechanisms are put in place to distinguish “real” from “fake” marriages, using intrusive
investigations to ascertain couples’ motivations for marrying. I critically assessed the “truth demand” inherent in this evocation of “authenticity”, and observed how it introduces a discriminatory “institutionalized suspicion” targeting transnational couples.

Moreover, the empirical data regarding institutionally-imposed prescriptive conjugal models called my attention to the role of the state and its regulatory framework in “shaping and constraining families” in mobility (Kraler et al. 2011:43-44). The research participants exposed how state interventions operate through narrow depictions of eligible marriages, resulting in intrusive policies, which actively shape family arrangements. In particular, the observation of how public policies reproduce gendered forms of dependency within couples led me to investigate the extent to which marriage migration control processes are gendered, and to explore the nature of the ideal of marriage and family against which applicants are “measured” (Wray 2006, Block 2009:13). These reflections emphasize how migrants inevitably “leave and enter gendered and stratified societies” (Piper 2008:2), although the Portuguese case study exposes differences in the repercussions of gendered policies depending on the social positioning of the subjects.

The second section argued that the outcomes of “marriage of convenience” policies appear to be in contrast with the purported objectives of “safeguarding legality”. I argue that (il)legalization needs to be seen as a process primarily originating in state policies, thus attempting to overcome the dichotomy “legal-illegal” used in framing migration flows. The observation of bureaucratic practices laid bare a series of systematic malfunctions that make gaining regular residency a challenging endeavour. Most research participants expressed dissatisfaction regarding what they perceive as a cumbersome institutional path to regularization and autonomous citizenship rights, which they feel affects their fundamental rights by hindering significant choices over their life trajectories. From their perspective, the process of regularization appears flawed by inconsistencies, time-consuming procedures, lack of transparent and complete information, and often discriminatory administrative processes. The selective and discriminatory aspects of bureaucratic implementation pushed me to further examine the processes of (il)legalization, focusing on the ways in which social stratification is reinforced by institutional restrictions to residency rights. The way in which policies are implemented appears to follow a stratifying pattern, reproducing intersected social markers of privilege and marginalization, including gender, class and nationality.
The last section of the chapter considered the aims of “protection” of “vulnerable groups”, evoked by state representatives as a justification for transnational marriage control, in particular the declared objective of protecting women from international criminal networks and abusive situations. I argued that current policies tend to construct stereotyped images of “vulnerable” groups, mainly women. Furthermore, I contended that, by stereotyping transnational partners as victims and/or abusers, institutional representatives discursively reinforce the association of marriage with criminality. On one hand, this discourse treats spouses as potential falsifiers and criminals, and on the other hand as incompetent victims to be saved. In particular, I used the empirical data as a basis to critically assess the discursive victimization of women as a rhetorical device to defend restrictive migration regulations. Additionally, I affirmed that rather than offering appropriate and secure institutional support when women find themselves in situations of abuse and/or violence, policies and implementation are contributing to their victimization and criminalization.

To make sense of the unequal opportunities in terms of residency rights recognition, I built on the intersectional perspective and on the concept of civic stratification (Kofman and Kraler 2006), providing empirical evidence of unequal conditions and effects of marriage and migration policies for different categories of third-country national applicants. With this combined analytical lens, I could observe how “marriage of convenience” policies may contribute to specific state and political agendas, promoting migration management and control on the basis of state interests. Regardless of whether the outcomes are direct or indirect, intentional or collateral, the data collected indicates that current policies are producing and reproducing inequality, reinforcing transversal social inequality within and beyond the population that is described as “migrant”. This is not the only form of discursive discrimination that emerged. By observing the institutional discourse and practice, I further hypothesized that double-edged typologies of groups “constituting risk” and “at risk” end up overlapping, contributing to processes of criminalization and/or surveillance of specific sectors of the migrant population.

The case study allowed me to trace how couples and individuals navigate their interaction with marriage and migration regulations and shape their transnational conjugality amidst an increasingly restrictive context. The analysis of the material collected reveals that the institutional exclusionary norms are not operating in a social vacuum and on completely subordinated subjects, and are thus challenged and reinterpreted, as well as naturalized and internalized. The brief sketches reported in this thesis may not fully reproduce the abundance
of interpretations that the interlocutors shared regarding what they perceived as the paradoxes of the migration control system, or the range of possible solutions they envisaged. Yet the interview excerpts are fundamental material to enable a denaturalization of the categories on which current migration regimes, in Portugal and across Europe, are based. Through these interviews, it is possible to observe how transnational couples’ practices inevitably breach the narrow categories on which the state bases its inclusion and exclusion mechanisms, contributing to a more nuanced understanding of “marriage of convenience” underlying processes of discrimination - and hopefully to a questioning of stigmatizing representations of inter-status conjugalities and unauthorized mobility.
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Narratives and counter-narratives on “marriage of convenience”
CONCLUSIONS

A border is not an answer, it is a constant interrogation, for ourselves as well as others.

Henk Van Houtum, 2010
Narratives and counter-narratives on “marriage of convenience”
Marriage in a context of international mobility has been increasingly framed by European Union institutions as a potential channel for circumventing migration laws, and consequently as a problem to be dealt with through public policies. In line with the restrictive European framework regarding family and migration policies, member states have approved increasingly punitive legislations, limiting the access to residency rights through marriage. This thesis approached the theme of mobility and conjugality control by focusing on the repercussions of the recent criminalization of so-called “marriage of convenience” in Portugal, and aimed to unpack the institutional control of marriages from various angles. Firstly, I considered the theoretical underpinnings of the current institutional approach to transnational conjugalities, by debating its normative conceptualizations of “migrant”, “illegal” and “marriage”. Then, my study inquired into how differential restraints on human mobility have been politically constructed and justified, and how they are deeply embedded in the economic status quo and in processes of social stratification. Thirdly, my approach included a case study carried out in Lisbon, focusing on the interaction between the institutional implementation of regulations and inter-status couples’ practices. Based on a documentary analysis and the consultation of state representatives, I argued that regulations based on the notion of “marriage of convenience” are built upon normative conceptions of migration, marriage and “legality”, and underpin exclusionary policies. Conversely, the counter-narratives collected with inter-status couples reveal a diversity of practices, which do not fit into narrow institutional profiles, but rather include multi-layered motivations and meanings.

The purpose of my interest in routine administrative practices and their impacts in lived experiences reflects an attempt to push the analysis beyond the most mediatized debates describing migration as an “emergency”. The regulation of conjugality represents a less “extreme” and mediatized facet of migration and social control: although it does not involve direct coercion or physical violence as the policing of borders, I demonstrated it has long-term and deep repercussions on the lives of the partners involved and on social (im)balances. The reflection opportunities emerging from the observation of policies and practices therefore include insights on both the direct repercussions and the broader social implications of current regulations in Portugal. On the basis of the case study, I argued that state regulations affecting inter-status marriages end up constituting a channel for migratory selection, through the
(differential) restriction of residency rights. Empirical data also suggest that current state policies are not responding to their alleged objectives of protecting subjects framed as “vulnerable”, and promoting “legality”, but on the contrary are paving the way to dependency mechanisms and insecure legal statuses. The repercussions of the contemporary regulations in the context of the Portuguese migration regime, as well as producing prescriptive pressures in terms of “legitimized” family structures, are seen to contribute to (re)producing social stratification, along intersecting lines of gender, class and nationality. In this concluding section I will briefly summarize the methods and analytical path chosen to engage in these themes, and frame my analysis of the case study within a broader reflection on the role of the state in mediating social relations. In the closure I will pinpoint some limitations and contributions of the concluded project to contemporary debates on mobility and social stratification, hinting at possible continuities in my future research.

Looking back at the materials collected I consider that the qualitative and empirical character of the research provided exploratory insights, which I would not have grasped with a purely theoretical study or a quantitative approach. Namely, the focus on the interface between transnational couple’s trajectories and the institutional implementation of policies targeting purported “marriages of convenience”, constituted an entry point towards unpacking the premises and repercussions of current regulations. The investigation took as a starting point the concerns expressed by the research participants themselves, and the problematic aspects they pinpointed regarding migration policies. Retracing the often non-linear trajectories of the couples over more than two years allowed me to explore the margins of the static classifications in which institutions would encapsulate their residency rights and conjugality. The direct observation of interactions with state representatives revealed several interstices of the migration regime, such as the systematically inconsistent information provided to couples in different governmental offices, or the ambiguity of the claims of “protection” targeting women.

The complexities and apparent contradictions of the migration regime’s functioning drew me towards using a multidisciplinary theoretical framework, so as to enhance the flexibility of my analysis and adapt it to the specificities emerging from the fieldwork. For instance, the experiences of subjects who married a partner with a different legal status exposed the limitations of thinking within the frame of the nation-state as a “natural container” of social relations (Wimmer and Glick Schiller 2002), and pushed me to adopt a transnational perspective. I consider that the transnational perspective makes it possible to view the state
not as a given fact, but as a fertile field of empirical analysis. The analysis also made use of some inputs from the frameworks of civic stratification (Morris 2003, Kofman 2003, Kraler et al. 2011) and intersectionality (Crenshaw 1989, Hooks 2015 [1981], Yuval Davis 2011, Stolke 2003) to account for the transversal and simultaneous modes of production of social hierarchies that I observed in the case study. I additionally integrated in my analysis the bordering approach (Van Houtum and Van Naerssen 2002, Anzaldúa 1999 [1987]), intending to study the multiple processes of social ordering involved in the production of frontiers, including its non-territorial dynamics. This perspective enabled me to unpack how “us” and “them” (Anderson 2013) formulations play out in the construction of administrative barriers to full citizenship rights both inside, and beyond, a particular nation-state. The analysis of such subordinating processes also benefited from the inputs of critical scholarship, including postcolonial, decolonial and feminist studies (including, amongst others, Segato 2012, Sayad 1999b, Grosfoguel 2012). Even though many of the authors I referred to were not directly concerned with mobility phenomena, these inputs supported a broader perspective from which to observe the construction and functioning of unequal power relations, beyond migration policies. The analytical lenses exposed in the thesis enabled me to trace the production of difference involved in the regulation of residency rights and the control of transnational conjugality, and how it was crosscut by factors including gender, nationality, and class.

MIGRATION POLICIES AND DISCOURSE: DEMARCATING AND CRYSTALLIZING DIFFERENCE

The case study on transnational couples and “marriage of convenience” control contributes to an understanding of the subtle dynamics involved in civic stratification in Portugal. Namely, in its national policies there has been a consolidation of an institutional discourse on migration that, echoing European policies, reveals a twofold perspective: one of surveillance of migrants in the context of security policies, officially aimed at curbing “illegality”, and the second based on “integration” and “protection” discourses, with special attention paid to “vulnerable” segments of the migrant population. The arguments that the Portuguese government systematically calls upon to justify restriction and control of certain types of

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283 Although referring to authors who thoroughly studied the social repercussions of discriminations based on factors of race, gender and class, the present thesis I did not provide an in-depth analysis of racial issues in particular, except when cited by the research participants. Future projects may be an opportunity to engage in this theme with more detail.
human mobility may be unpacked, exposing how such policies result in a selective restriction of migration flows.

The present thesis explored in a specific geographical, social and political setting the everyday negotiation of difference, of which migration regulation tools are only a part. Conversely, contemporary European public discourse appears mostly confined to polarized views of human mobility. On one side we may observe a securitarian discourse, seeing migration at worse as a menace or at best as a problematic social phenomenon to be managed and circumscribed. On the other side, the humanitarian paradigm often concentrates on idealized notions of “victims”, and may fail to problematize the more subtle modes of subordination, for instance the links to contemporary issues of global and local inequalities in which national governments play an important role. In particular, control practices based on the notion of “marriage of convenience” may be seen as locally and historically situated manifestations of broader dynamics of stratification. These include the broader processes of criminalization of migration, articulating at various levels with neoliberal and postcolonial processes, as well as with social stratification on the basis of gender, class and nationality.

The observation of stratification processes confirms, as Eithne Luibheid argues, how “family migration policies must be understood as technologies of power and resistance, which produce not just exclusions but also differentiated inclusions at multiple scales, and affect not just migrants but also citizens” (Luibheid 2015:1). The empirical materials have been used to emphasize how family migration policies and practices constitute a contemporary and local expression of social bordering, in terms of exclusionary effects. By focusing on the tangible repercussions of public policies, I attempted to expose the ways in which mobility constitutes an unequally distributed privilege, interacting with other transversal dimensions in the reproduction of social hierarchies. The perspective I propose on these findings emphasized the ways in which migration regimes tend to consolidate a particular way of life and social profile as a condition for full citizenship recognition.

Although acknowledging some steps pioneered by Portuguese governments in recent decades towards more receptive migration policies, I argued that these remain fundamentally based on a utilitarian approach to migration, and therefore bear limited transformative potential. The analysis of institutional practices delved into the subtle configurations of inequality (re)produced by state intervention, beyond its “humanist” discourse. In particular, the data collected suggests that even the Portuguese policies that are considered more progressive do
not challenge the underlying logics of migration control and its inequalities. For instance, I inquired into the problematic underpinnings of the “integration” discourse, arguing that it potentially corroborates the mythical homogeneity of the “host” country, and further reinforces a despotic premise regarding migrants’ alleged responsibility in conforming to the norms and practices of the society they live in.

The collection of empirical data facilitated a nuanced understanding of the ambivalence of state claims. Regarding the specific policies observed in Portugal, I argue that integration policies framed as benevolent concessions may not provide comprehensive answers to the profound inequalities of the current migratory system. Namely, I built my reflection on the acknowledgement of what has been identified as a problematic overlap between compassion and repression in European migration policies (Fassin 2005). Against this backdrop, I looked at the issues surrounding “marriage of convenience” control with the aim of untangling from different angles its power relationships. Even though in international rankings Portugal is considered to be amongst the legislative frameworks most favourable to migrants in the European Union (MIPEX 2014), the empirical evidence exposes the gaps in the implementation, and, most importantly, the multi-layered forms of structural hierarchization emerging from the exclusionary underpinnings of its migration regime.

The dissertation called for a thorough consideration of the premises of normative concepts articulated in the institutional discourse and practice. The particular implementation patterns in the Portuguese migration regime indicate that the notion of “marriage of convenience”, especially its binary perspective opposing “authentic” to “fraudulent” marriage, is theoretically debatable and empirically unsound. Unpacking the binary thinking opposing “migrant” versus “non-migrant”, “legal” versus “illegal”, and “genuine” versus “fraudulent” marriage, I concluded that these dichotomies failed to capture the complexity of the transnational relationship trajectories observed in the fieldwork. I argued that these naturalized categories are effects of specific power configurations, and that their application is a fundamentally political issue, based on state priorities linked to the preservation of the social status quo, legitimating bordering and surveillance.
Reflecting on the Case Study: Charades of Authenticity, Illegality and Protection

The analysis of the empirical materials on marriage and migration practices focused on three aspects that emerged in my fieldwork. A first cluster regarded the imposition of normative family policies through the use of “authenticity” scales concerning marital intentions. A second cluster concerned the general social implications of (il)legalization processes, and a third examined the gendered discourse and practice regarding “protection”.

As described thoroughly in the previous chapters, current implementation of legislation in Portugal implies that subjects applying for the recognition of their rights of residency through their conjugal links are exposed to various degrees of institutional scrutiny. The law enables authorities suspecting particular couples of marrying for migratory advantage rather than “genuine” family purposes to verify their “marital intentions”. These procedures invite us to ponder the broader normative system regarding family “diversity” in European contemporary societies, and the ways in which families tends to be evaluated against a fixed standard. For instance, the normative family constructions emerging as a standard against which couples are judged and selected during their application may be compared to similar rigidities regarding same-sex conjugalities in the last years.

Other criteria used by Portuguese institutions for the selection of couples include predefined characteristics, including a certain level of economic interdependency between the spouses, and adherence to normative and gendered marital roles, including those concerning breadwinning and cohabitation. These procedures juxtapose an idealized European nuclear family model, based on romantic love imaginaries, with “fraudulent” marriages depicted as instrumental to gaining a “migratory advantage”. In this sense, behind the façade of uncovering couples’ “true motivations”, institutional selection is reaffirming pre-existing dominant discourses about gender, marriage, and family, and reproducing its inherent power relations. Many couples I interviewed have been deeply affected by the system of differential surveillance and criminalization of their conjugal relationships, and faced the risk of being excluded from regularization opportunities because they do not fit into the “authenticity” standards defined by Portuguese authorities. In this sense, institutional logics of selection may be seen as pushing couples towards “social hyper-correction” (Sayad 2004 [1999]), and to the adoption of standardized family configurations to avoid criminalization.
The choice of the interviewees constituted a means of reinforcing my disengagement from binary classifications of inter-status couples, based on “love” and “convenience”. The research participants were selected according to their legal status, on the basis of being engaged in a state-recognized form of relationship, regardless of the more or less “romantic” ideals, desire to form a family, and/or instrumental reasons that they reported as their decision to marry. Maintaining the categories open to re-interpretation enabled me to capture in what ways subjects crossing borders subverted and incorporated, implicitly or explicitly, state categories. I collected stories of couples engaged in longstanding affective and sexual relationships, in which the partners claimed having married only for a “migratory advantage”: some of these explained they did not believe in marriage as an institution, and that they felt compelled to marry to secure their own freedom of residing or moving together wherever they wished. On the other side, I collected the experience of partners who had no relationship whatsoever before the marriage and proceeded to marry through a commercial arrangement, thus fitting in the stereotypical “marriage of convenience” definition. Their stories revealed how they later developed forms of mutual support and companionship which they described as conjugal, challenging both the normative and linear notion of “romantic love” associations with marriage, and the criminalizing, monolithic notions of “fraudulent” marriage.

Notwithstanding the observed diversity, the narratives of couples demonstrate how institutional interventions produce consistent repercussions on their self-determination in terms of conjugal choices. Increasingly restrictive migration regulations are an incentive for subjects to resort to marriage in order to secure residency rights, even when they do not value marriage as a meaningful act. This constitutes a paradoxical aspect of state practices that are pushing for a formalization of unions that would otherwise have remained informal. We may assert that in this perspective several marriages I was confronted with during the case study may also be framed as logical responses to global power and economic imbalances, particularly those expressed in unequal mobility opportunities.

Inter-status marriage may be seen for some couples as a form of civil disobedience, in which they make use of the interstices of law to pursue their life projects. The instrumental choices regarding marriage I observed in the case study may be interpreted as an exercise of agency, a rational choice, and a consensual contract between two adults, therefore counteracting the victim-criminal binary stereotypes. Previous works also studied inter-status marriage as an informal commercial arrangement (Grassi 2006), a creative act of “border artistes” (Beck-Gernsheim 2011), an issue of human rights (Messinger 2013), a response to global
inequalities (Yeoh 2015), or simply one more expression of personal agency (Ricordeau 2011). Transnational conjugality is consistently misinterpreted and stigmatized because it is institutionally interpreted exclusively in some of its components, and would be best understood as a multidimensional phenomenon. The thesis argues that, to deconstruct the policing attitude, it is useful to embrace this contemporary phenomenon as a multifaceted social expression characterized by coexisting rationales, irreducible to real-fake dichotomies.

The practices of inter-status couples in Portugal constitute a challenge to narrow depictions of conjugality and mobility. Namely, these subjects embody practices that inevitably subvert the normative models embedded in institutional discourse and practice, based on naturalized criteria of fixity and homogeneity. Furthermore, the transnational trajectories of these couples potentially contribute to undermining the idea of a clearly bounded nation-state containing all its subjects, and possibly jeopardize the subjacent idea of “belonging” as requiring static and territorially-bound identities. Their existence, perceptions and practices also confront the hegemonic notions of citizenship as something “naturally” acquired and inherited. The inextricability of couples’ logics may additionally demystify the western idealized notion of marriage based on “romantic love” paradigms (Esteban 2011), intimately connected to a hegemonic, normative and nuclear formulation of family.

The analysis of empirical data enabled a reflection on the social construction of “illegality” occurring in the context of state-driven restrictions on migration and family. The research participants’ accounts exposed in particular the shortcomings of a dichotomist distinction between “legal” and “illegal”. These labels are questioned through the observation of the mechanisms at the base of institutional perception and subsequent administrative classification of individuals. The accounts of the interviewees expose the inconsistencies of bureaucratic procedures, as well as the potential obstacles that specific groups of migrants encounter when engaging with the process of residency regularization through marriage. The empirical evidence highlights that, although the law might be apparently neutral, it is unequally applied, and may have disproportionate effects on specific groups.

According to my interpretation of the data collected, the construction of illegality is deeply interlinked with socially stratified constructions concerning migrant and non-migrant subjects. For instance, migration regulations systematically favour subjects with particular nationalities. On one hand, Portuguese policies perpetuate a generally favourable treatment of countries of the global north, and on the other they maintain the country’s postcolonial links. For instance,
the privileges that a subject with a United States of America passport, holds if compared with a citizen with a passport from Pakistan, appear to support this claim. In the case of countries, which were occupied by Portuguese colonization, although bilateral agreements formally grant relatively favourable regularization conditions with respect to other nationalities, this positive discrimination does not neutralize the general policing attitude emerging at the level of bureaucratic procedures. The analysis of these nuances needs to acknowledge the political and historical nature of these regulations, determining which - and whose - practices are accepted or sanctioned. Failing to do so would for example contribute to essentialist views on specific groups of undocumented migrants as law-breakers and outsiders, and reinforce the premises of criminalizing policies.

The interviews exposed problematic assumptions regarding security and protection, on which institutions base the discourses and policies regarding “marriage of convenience”. In public discourse, state representatives justify punitive policies by linking marriages involving undocumented migrants with alarmist references to their potential involvement in organized crime groups, human trafficking and forced sex work. In some cases, they add to this the claims of “marriage of convenience” being a threat for national security and social order (SEF 2012). However, these equations appear empirically untenable, and are weakly supported by the government’s own statistical data. In this regard, I observed how the focus on external threats - such as international criminal networks- distracts attention from the ways in which the migratory system itself is currently reducing the level of autonomy of subjects, jeopardizing their opportunities to gain secure residency status.

Studying the Portuguese government policies from a transnational perspective led to a more encompassing questioning of how civic stratification influences the practices of citizenship. Seeing migrants and non-migrants as actors interacting in the same social context revealed for instance the similarities in the logics of criminalization regarding both marginalized and “poor” citizens, and “undesirable” migrants. Such a perspective potentially reveals the workings of transversal inclusion and exclusion mechanisms, facilitating a critical stance on the mutually reinforcing production of inequality and “illegality”. A closer look at institutional paradigms reveals in particular how the groups falling into the institutional risk profiles as potential victims often overlap those considered a social risk as potential criminals. The observation of migration authorities discourse and practice in Portugal confirmed how “marriage of convenience” control is constructed on the basis of essentialist portrayals of “victims” and “villains” (Anderson 2008). The representations in the state discourse depict
specific social groups as requiring state safeguard to avoid them being (unknowingly or for economical needs) enticed into “marriage of convenience” frauds. This portrayal acts as a justification for the criminalization of transnational marriage, by providing a “humanitarian” rationale for punitive measures.

The transnational approach allows us to gain insight into how migration law also affects Portuguese citizens: when the latter fit into certain stigmatized social profiles, they are subjected to economistic and moralistic evaluations similar to those encountered by migrants. In authorities’ justifications of “protection” approaches, women in particular are depicted as defenceless, naïve preys, incapable of autonomous choice and in need of tutelary support from institutions. Portuguese women from marginalized social groups are considered to be easily convinced to marry for a sum of money. This group is also depicted as being at risk of being inadvertently tricked into marrying undocumented foreign men seeking regularization opportunities. Likewise, migrant women, especially of some specific nationalities and social backgrounds, are believed to be prone to fraudulent marriages, and are considered to constitute a risk on the basis that they may be enticed into illicit and dangerous activities. In the dissertation I noted how working class women engaged in informal jobs are particularly exposed to a policing of their conjugal choices, especially if they are classified as undocumented migrants. Following an ambivalent paternalistic and policing logic, institutional discourses thus portray subjects in financially or socially precarious situations as preferential targets of surveillance, as if by default they were more disposed to engage in illicit practices. Furthermore, women as a whole are considered in need for a tutelary action of the state in order to prevent them from falling prey of human trafficking networks, although the data available does not permit sound conclusions regarding the association of inter-status marriages and trafficking networks.

STRUCTURAL FACTORS, STATE INTERVENTIONS AND COUPLES’ AGENCY

Building on previous research (amongst others Grassi 2012, Peixoto 2012), I argued that any analysis of contemporary mobility should take into account the interconnections and repercussions between Portugal’s migration regime and Portugal’s current economic situation. The specific timeframe in which I was collecting data was crucial in fostering these reflections, in that the “economic crisis” and the so-called austerity measures imposed in the
country deepened the privation of specific social groups along the same stratification lines which I observed in “marriage of convenience” criminalization patterns. The way in which these factors mutually reinforce each other demonstrates the transversality of socioeconomic subordination, and reveals how migration status plays out as one more stratification factor.

It is worth recalling that migrants, women, and working class subjects are disproportionately affected by the economic situation and policies in Portugal. As confirmed by statistical sources (Eurostat 2015, INE 2015), this results in higher unemployment and increasing pay gaps compared to other social groups, as well as rising percentages of subjects living below the poverty line. These data are significant since, as argued in the thesis, the groups targeted by harsher public criminalization policies appear to overlap significantly with those that have higher probabilities of having their regularization processes obstructed due to their social background.

Stimulated by the imbalances and apparent contradictions I observed in migration policies, I set out to speculate on what might be the political rationale for the specific contemporary configuration of the Portuguese migration regime. As suggested by studies in other geographical contexts, one of the incentives for (il)legalization policies may lie in the fact that maintaining a sector of the migrant population in a situation of administrative precariousness allows the state to benefit from the existence of a large, rentable, and subjugated workforce, maintaining the current socioeconomic order (Mezzadra and Neilson 2013, Domenech 2013, Galliano 2008). This order is reinforced through the establishment of stratifying regularization opportunities. Similarly to what was observed in other European countries (including by Bonjour and de Hart 2013 in Holland, Muller Myrdahl 2010 in Norway, Block 2012 in Germany, Charsley et al. 2012 and Wray 2006 in the UK), in Portugal the scope of “marriage of convenience” restrictions goes well beyond the prevention of organized crime or the protection of potential victims of abuse: rather, the regime in place constitutes in itself a system of regulation and selection of migration, intersecting with a range of issues, from the labour market to social norms concerning marriage.

The current policies overlook the way in which restrictive laws themselves are making it profitable to engage in residency-related businesses, such as commercially arranged marriages, and in crimes such as trafficking. The results of the case study indicate the need to radically reformulate the current migration regime to question the premises of illegalization processes, rather than their effects. Therefore, rather than targeting members of organised
crime who have simply “responded to the opportunities created by policy”, our attention should be focussed on policies that are actually endangering subjects, such as John Davies’ comments on trafficking policies (Davies 2008:126). The empirical data indicates that autonomous conjugal and mobility choices, when occurring without the interference of migration regulations, do not appear to be a source of vulnerability as such (cf. Grassi 2006). The interviewed couples who had encountered obstacles in their process of regularization consistently underlined how restrictive state regulations would push them towards commitments they would not have chosen, and in some cases to recur to intermediaries who could exploit their precarious situation. In this perspective, facilitating access to stable and secure residency rights to subjects residing in Portugal could be seen as priority policy item for authorities, substituting criminalizing surveillance policies.

Arguably the interest of subjects in marginalized situations, or in situations of risk or abuse may be best served with positive policies supporting their self-determination and autonomy, such as an autonomous access to citizenship rights. However, as many of the accounts collected during fieldwork confirm, current policies paradoxically reinforce the same vulnerabilities and issues of “illegality” and “vulnerability” they claim to be addressing. Punitive regulations are hindering individual opportunities of emancipation, since they can tie migrants to exploitative situations, for instance in the workplace, due to fear of their undocumented status being exposed. Current laws expose undocumented partners to formal dependency on the sponsor of their application, tying their legal status to relationships that may become abusive, as well as exposing them to criminalization through “marriage of convenience” regulations. As I recalled in the last chapter, in one of the last interviews I explicitly asked Adelaide, a Portuguese woman whose partner was a Pakistani national in an undocumented position, what she thought of the state justifying “marriage of convenience” policing mechanisms as a form to protect vulnerable women from abuse and trafficking. Interestingly, Adelaide vehemently contested these public policies, and shifted the focus of attention on state interests, affirming “they are not protecting women, they are protecting the state!”.

Along the dissertation, I made an effort to include in my account the inner contradictions and non-linearity of the migration regime. However, the picture of the state resulting from my comments may suggest a monolithic portrayal of a state following a pre-defined script based

284 Int. 17 Adelaide. More details on the interview are provided in chapter four.
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on supposedly fixed priorities, as summarized in Adelaide’s exclamation. Even though fieldwork focussed on an institutional ethnography was not my objective in this dissertation, I consider the case study could be enriched by additional explorations of the internal negotiations, gaps and contradictions emerging from different actors and agencies within the state system.

I acknowledged that the Portuguese state has addressed with legislative reforms some of the shortcomings of its migration policy, in terms of formally recognized rights or more consistent implementation of the norms that facilitate a dignified settlement for subjects who are living in Portugal. Yet, the theoretical interpretation I proposed suggests that it would take a radical paradigm shift to dislodge the exclusionary mechanism at the heart of its policy. This shift would imply challenging the naturalized differentiation of access to resources between human beings on the basis of their nationality or place of birth. This would require a deep questioning, within the sphere of public institutions, of the differential distribution of rights and resources according to the criteria of belonging to a particular nation-state (or social group). Due to the acknowledgment of such entanglements of state policies, my analysis does not establish fixed causal relations between the authorities’ regulation and the couple’s trajectories, acknowledging the couples manage in many cases to make their own choices prevail also thanks to the gaps and interstices emerging in law enforcement and bureaucracy. The interviews reveal the capacity of migrants to “bend the law” when it is perceived as an obstacle (Morawska 2001). Migrants and their partners are not powerless victims of structural dynamics, on the contrary they may transform hegemonic social constructions through their “responses and resistance to them” (Basch et al 1995).

Yet, it is worth acknowledging that the “subversive” configurations of some transnational conjugalities take place in an inevitably reduced margin for self-determination and that couples’ space for agency needs to be contextualized within global relations of power. Institutional pressure appears to shape and restrict the conduct of individuals to varying degrees, according to intersectional differentiation markers. The choices available to individuals and couples are diminished by mutually reinforcing factors related to legal status, gender, class, and nationality, amongst others. On the basis of the empirical data, I argued that subjects who hold some privilege (i.e. related to nationality and/or class) might have more opportunities to choose their trajectories free from state interference. Conversely, in the current neoliberal economic frame, individuals who do not have a formalized, secure income appear to be considered “undesirable” migrants, unfit to be family reunification sponsors. In
this sense, the interviews stress the agency of the individuals involved, but also highlight the power of the state to constrain the scope of this agency in a specific migration context through the regulation of (il)legalization processes.

LIMITATIONS AND FUTURE RESEARCH AVENUES

The numerically limited group of research participants I involved in the study, and their diversity along a series of social indicators, does not allow for statistically relevant conclusions or automatic generalizations of my reflections. Aware of this limitation, I chose nonetheless to maintain a diverse representation of social groups wishing to contribute to a wide-ranging exploration of the themes in focus, each of which I would be eager to inquire in future projects. I equally acknowledge that the analysis of gendered aspects of migration policies was more thoroughly developed in relation to women’s experiences, and that the present research might be complemented by investigating further other facets of gendered policies. For instance, increasing attention has been brought to the ways in which men, particularly non-white men of certain nationalities, appear to be the objects of specific stigmatization patterns in the context of marriage and migration policies (cf. Charsley 2012), a theme which is being increasingly studied in Portugal (Grassi 2012).

The complex web of academic fields I weave in this thesis, although implying less exhaustivity, may turn this dissertation into a starting point for further investigations. In particular, my multidisciplinary approach stimulates critical reflections on the role of academia in the issues surrounding mobility policies, especially with regard to the un-problematized use of categories such as “migrant”, “integration”, and “vulnerability”. My critique of such practices is meant to interrogate some of the classifications, terminologies, and epistemologies through which migration scholarship in particular is organized, which feed into the public debate and possibly into exclusionary policies.

I believe that bordering and transnational approaches enrich the debate on the notion of citizenship, and enable us to move beyond narrowly defined migration issues. In this sense, by considering mobility as a mirror of the societies we are embedded in, may contribute to “reverse” the predominant perspective and overcome the rigid “state mentality” (Sayad 1999a) that pervades academic and policy approaches to migratory flows. The data I collected aims at contributing to a more nuanced look at the relationship between human mobility and
the political organization of society, exposing how social hierarchies are based on constructions of “otherness”. Reading mobility as a social fact permeating the lives of all residents regardless of their legal status may pave the way to overcoming discriminatory state mentalities, in which only certain types of migrants and citizens are useful and desirable (Palidda 2010), and therefore “authorized”.

Rather than proposing a univocal interpretation of contemporary phenomena of conjugality in a mobility context, I opted to provide an input in terms of empirically-based reflections on the repercussions of such policies on couples and individuals. Hopefully, the completed research, building on the previous work in the Portuguese context (Grassi 2006, Grassi and Vivet 2014, Raposo and Togni 2009), may support research avenues in the area of transnational conjugality studies. I argue that embracing the multiple and layered nature of transnational lived experiences enables us to gain some insight into how society’s internal borders, classifications and power relations are created, and how narrow administrative classifications may be transformed or put under pressure.

As expected, my exploratory study produced more questions than answers, suggesting the need to pursue deeper insights departing from the debates articulated during my analysis. It would be interesting in future research to exploit the potential of a more detailed study on the consequences of different models of intimacy for individuals whose private lives might not conform to dominant societal norms (Luibheid 2002, Almeida 2009, Friedman 2006, Wray 2006). Future paths of research could also concentrate on “intimate politics” (Friedman 2006), focusing on the articulation between state intervention, marriage and migration, examining the policing of sexuality and issues of heteronormativity in migration policies and practices, as well as the racialization involved in public policies.

Alternatively, I would deem relevant to systematize knowledge on micro-level experiences touching on transnational mobility, which challenge dominant securitarian paradigms. I believe there is space for research inquiring for example into the concrete possibilities of divestment from a policy approach based on the “unearned privileges associated with national citizenship status” (Luibheid 2015). Making visible a wider range of alternative, tangible and sustainable examples of approaches to mobility and citizenship would contribute to a more nuanced debate, and destabilize the naturalization of illegalization and marginalization processes in contemporary bordering policies. The underlying stance is that to engage with
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borders means not only to make their inherent inequalities visible, but also to expose the possibilities of resistance, renegotiation, and transformation of their exclusionary effects.
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National Legislation


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NOTE: The English of this dissertation has been proofread by Jon Goodman, in 2015.
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