Irregular migration has become a major public issue for the European countries nowadays. It has been also framed as a political problem since the strong politicization process of the irregular migration issue in most receiving countries of migrations, as France and Spain. The politicization process has raised political divisions and oppositions, generating inflation in norms and practices in migratory policies of European countries. France and Spain have different migratory histories, since Spain has evolved in an immigration country since the middle of the 80s although France is an immigration country for more than one century.

Relations between the welfare state and the migration process have been yet underlined as by political actors as by researchers. As Bommes and Geddes show, migration has always been seen as a challenge for Welfare States as “the sovereignty of nation states over a given population and territory was and still is based on the exchange of the political provision of welfare in exchange for the internal loyalty of their citizens”, which implies the external closure of borders (Bommes, Geddes, 2003). The welfare state in western European countries was developed contemporary to the political construction of the national states and the integration of diverse populations within the nation. In that sense, the increase in the residence of foreign migrants within the welfare state raises questions about the ways to integrate these newcomers. But nation-states have achieved neither to close tightly their territory from people movements from aboard, especially since the cross-border mobility has become a normality, nor to provide complete citizenship – civic, political and social – to the population living on its territory. In that sense, each state had had to build a national inclusion ideology to deal with the immigrants integration (Brubaker, 1997; Hobsbawn, 1983). The questions raised by immigration to the national states are not only practical questions relative to the inclusion of foreigners but, more important, political and ideological questions relative to the self-conception of the State and of social relations patterns within the State (Sayad, 2006).

When researching on the status and the treatment of undocumented immigrants, two set of questions arise. The first set of questions refers to the treatment of these migrants within the “migration regime” of the state and the regulation of migration flows. The second one, refers to the status and the treatment of undocumented immigrants within the society, their accession to legal rights, social welfare and their relations maintained with the public institutions. Though, if the first set of questions is devolved to the central government of States, the second dimension associates central and local levels in the policy-making process. Following Hammar, it could be said that local level is in charge of the “immigrants policy” and the central state of the “immigration policy” (Hammar, 1985). The political incidence of irregular migration is
connected to security issues and failure in preserving the state sovereignty. As a consequence, it is difficult to consider integration policies for non-citizens whose residence on the state territory has not even been granted, people designed to live in hiding. But on the other hand, one can understand that if immigration policies are unable to prevent illegal migration, added to the fact that some legislative measures create new situations of irregularity on residence (Ferré, 1997), the presence on a territory of undocumented immigrants may be taken into account by the local government level which is addressed specific issues (Cornelius, 1994; Van der Leun, 2003; Engbersen, 2001).

Because of the orientations and instruments in place to control irregular migration, of the domination of the securitarian discursive repertoire within political expressions, the logic of borders securitization has focused the attention of researchers.

However, research on the rhetoric and logic of security, ie turning any social problem into a security issue for public action, showed that the strength of this logic is to overlapping crime issues to spill over all social facts (Krause, Williams, 1997, Bigo, 1998). Overlapping policy occurs particularly through instrumentation of public action, involving experts, technicians and specialists of security issues. The expressive dimension is also important as security discursive repertoires are designed to identify and shape the threats. It proceeds through the transformation of "social issues" (racism, suburbs, youth, unemployment, poverty, pollution ...) into "security issues". Not only immigration is no exception but it is also a privileged field for studying this process. (Huysmans, 2006, Engbersen, 2000, Duez, 2008, Ritaine, 2005).

The overlapping logic of security approach, is exercised not only with regard to illegal immigration in the first set of questions concerning the regulation of immigration, border control and internal control of irregular migration (arrest and detention). It shapes also - while in a less exposed way - the other set of questions referring to the status of the undocumented immigrants, their access to rights and the relations they maintain with respect to social institutions. This direction has been less explored by social research maybe for two reasons. First, because it seems rather absurd to many observers to raise the question of undocumented immigrants rights within the Nation-States, as they are non citizens and, more, non citizens with no right to stay. But to predetermine the absurdity of the question enlightens the fact that the migrant coding as a “criminal” and/or a clandestine was successful in pulling away the fact that “illegality” is a State category, a constructed category. Second, the politicization process of this set of questions was not as prominent as for the border control approach. Evolutions in the welfare state referring to undocumented migrants were apart from the main political debates and mobilisations.

This paper will be focused on this political aspect: how was defined and implemented the excluding process of undocumented immigrants from social welfare benefits, under a security approach of the Welfare State? We will study the excluding process itself but also the breaches, the leeway in the system. We will also pay attention to the claims and alternative political discourses which are rooted on other discursive and normative repertoires. We'll examine the intent of the actors using a “right to have rights” repertoire to counterbalance the security approach1.

1This presentation is based on my PhD work - under completion - which examines French and Spanish cases, at a regional level. It is based on a fieldwork carried out in Catalonia, Andalusia and Aquitaine from 2004 to 2007. The main sources of this presentation are the interviews made with local/regional administration officers,
I – From the formal exclusion from social rights to the local implementation of internal control of undocumented migrants

Illegality and illegitimacy: The progressive exclusion of undocumented migrants from social welfare provisions.

Legal aliens have benefited in most European countries from a relative extension of their social and economic rights during the last 30 years. This dynamic is due in part to their characterization as immigrant workers. Indeed, the importance of having at disposal a healthy and qualified workforce justified in part the equalization logic between aliens and nationals when referring to social rights. When speaking of social rights and of Welfare states building in France and Spain, the national logic of citizenship has been partly substituted by a residential logic.

This progressive linkage between residence and social rights has enabled the possibility for undocumented migrants to benefit from social rights as well as legal immigrants. The counterpart of the residential logic is the loss of many social provisions in case of the return of immigrants workers to their country of origin. The linkage of social rights and residence has also led to the territorialization of social policies. In Spain, the « basic social provisions » are conditioned to the inscription on the municipal census (the Padrón) which are open to undocumented migrants on the base of a proof of local residence. In France, the decentralization process of social welfare has been put in place since the beginning of the 80s and is divided between several institutions. But the central State still controls many of social provisions and these central state institutions were subjected, more than the others, to the securitization process of welfare.

Welfare provisions have not been central in the definition of irregular migrants patterns of control at the beginning, in France and Spain. However, discourses emerge in the public and political arena to illegitimate the undocumented migrants’ right to benefit from social welfare. The complexity of irregular situations of migrants are reframed into one main figure, the common image of the irregular migrant, coming illegally to find a job in Europe. This situation is just one among many others but framing irregular migrants as « criminals » evidences the kind of instruments and the orientation of migration policies. As Didier Fassin stated, « the law, by determining who has the right to reside on the national territory and who is illegally in it, is drawing a rather clear boundary between what is inside and what is outside of the society, at least in matter of citizenship ; moreover, it is an active process, which fits well with the basic sense of the word exclusion » (Fassin, 1996).

In France, the extreme right party Front National, has systematically included within its political statements the claim for the exclusion of undocumented migrants from any social aid and support since 1985. In many public speeches, its leader, J.M. Le Pen points out the social provisions of which undocumented migrants may benefit. From then on the rhetoric which

representatives from NGOs and pro-migrants activists. Some interviews were also made with undocumented immigrants. Other useful sources for this paper are composed by administrative documents from local institutions (regions/municipalities) and NGOs.

2Statistics shows that a majority of regularized migrants had yet lived in a regular situation before living illegally.

3Fassin D. (1996), Clandestins ou exclus ? Quand les mots font les politiques in Politix, n°34, p 77-86

4He generally insists on this point but he claims for the general exclusion of all non-nationals from the Welfare
makes of the illegal immigrant a social burden for the state widespread in French society. Illegal aliens have been progressively excluded from social welfare during the 85-95 period. The Pasqua law (24 of August 1993) has extended the exclusion of undocumented immigrants from social insurance, family provisions, non-urgent health care, housing aid, and others social services. Since then, social rights of irregular migrants remain diverse but are reduced to a basic safety net. Indeed, the emphasis on political control and repression of illegal immigration has led to put away the undocumented immigrants from the main devices of immigrant integration. In Spain, although immigration is a new phenomenon and emerge in the public debate only at the end of the 90s, the question of the benefit of the welfare state's provisions to undocumented immigrants is central for the right wing Popular Party. This question is part of a general enforcement of the central State's authority and in a general diffusion of the securitarian approach. In the 2003 reform of the Ley d'Extranjeria (Alienage law), the willing to exclude undocumented migrants from social provisions is materialised in a measure which allow the police to access the municipal census to verify the legal situation of immigrants. This measure introduces the de facto auto-exclusion of the undocumented immigrants who fear from being located by the police.

Despite the implementation of and exclusionary policy, irregular migrants can have access to a set of social provisions. The decision to maintain such social rights has not obey to other framework than the security approach. For example, according to a report made by two French senators for the Special parliamentary commission on illegal immigration in 2005, the suppression of the AME (State Medical Aid) would lead to “risks regarding the infectious diseases these persons could carry on themselves”, the banning from basic education would lead to a “marginalization” which could “engender undoubtedly serious problems of delinquency”. On its part, the general exclusion from emergency provisions and aid, “might lead to reactions of desperate violence which could threaten public safety”.

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Social rights granted to undocumented immigrants in France:

**Health**: The State Medical Assistance (AME) for illegal aliens remains a jurisdiction of the central state. This medical assistance is the last social service specifically designed for undocumented immigrants, which is the case in some other European countries. It replaces the Free Medical Assistance (AMG), designed for all people with no social security, since 2000 when the French State created the Universal Social Security (CMU) for legal residents who lacked of sufficient resources to access social security. However, access to the AME has been restricted since 2005 to persons who are residing in the French territory for more than three months, which leads to the exclusion of newly arrived immigrants, and is granted under conditions of resources.

**Education and Family policy**: The education is an obligation for all residents until the age of 16. Children of undocumented immigrants enjoy this right as well as other children. Several services are opened to undocumented immigrants, on certain conditions, especially when it concerns care for families and children. This social welfare is defined and implemented in a relatively binding normative framework and often delegated to territorial institutions, the French départements governments or in Centres of Municipalities Social Action (CCAS). The undocumented immigrants have right to access to Maternal and Child Prevention centres (PMI), they may be taken in charge by the Social welfare for Children (ASE) or access to communal nurseries. Every

**Work**: Undocumented immigrants have right to be indemnisés en cas d'accident du travail. Il peuvent aussi exiger de bénéficier des droits et salaires issus d'un travail illégal.

**Social emergency and Welfare provisions**: They have also access to emergency structures for the homeless. They can benefit from extra-legal aid implemented at the local level by municipalities to respond to social emergencies presented by undocumented immigrants. They can also benefit from free legal assistance under some conditions.

Social rights granted to irregular immigrants in Spain:

The situation of the undocumented immigrant is conditioned to his inscription on the municipal census, the *Padrón*.

If not registered, the irregular migrant has no access to any of social rights, in exception of emergency health assistance and health care in case of women pregnancy.

If registered by municipalities, undocumented migrants benefit from « basic welfare provisions ». These provisions vary from one Autonomous community to another, but generally include:

- Access to education for children under 18 and
- Health care: it is implemented through the possession of a universal « sanitary card » which grants access to ambulatory health care.

The definition of the « basic welfare provisions » is devolved to the Autonomous communities and, therefore, more social provisions may be granted to undocumented migrants.

For example, according to the Catalanian Decree 188/2001, Catalonia's basic welfare provisions (opened to undocumented migrants) are: basic primary services of social attention, home attention, access to dinning halls and residences of limited stay, access to open centres for children and teenagers, urgent social aid.

Municipalities can also add other kinds of social provisions. As an example, the city of Barcelona has voted a “Municipal Charter” which states that the City council can further the social rights for undocumented immigrants in subjects such as woman promotion, health and environmental protection, youth, sport and culture. The adult and non obligatory education also derive from the inscription on the municipal registries.
The decentralization has affected welfare in all European countries, as in historically centralized states like France, as states based on a strong delegation of power to the sub-national level like Spain. Social policies have been usually part of a larger decentralization process within the State, from central to local administrations. Indeed, the rhetoric of “proximity” makes of the local level the level able to deal with social issues better than the central state administrations, as a result of supposed major close comprehension of people's needs. A growing pattern of power sharing allocates to the local level issues referring to what Bourdieu calls the “left hand” of the State while the sovereign prerogatives, the “right hand” of the State, are still largely controlled by the central government (Bourdieu, 1993). Management of immigration in general, and illegal immigration in particular, is already shared between these two levels of power. This division in terms of policy implementation, but also in terms of policy conception creates mismatches which may lead to the better understanding of what is at stake in contemporary public action.

The exclusionary process has to be linked with the very essence of the Welfare state, which lies in the determination of insiders and outsiders of the social provisions of the State. In a context of privatization of parts of the Welfare State, the exclusionary discourses settle and are relayed largely in the political arena as they organise the competition for the social public benefits (Hassenteufel, 1997). The particular situation of Spain has to be underlined as, like others southern European countries, its welfare state is built in the 80s after the democratic transition. The instrumental and budgetary extension of the welfare state is clear but it is mainly characterized by the development of a “regional welfare” system (Gallego, Goma, Subirats, 2005)

On the counterpart, the specific pattern of the welfare state in Spain has allowed some areas to put in place original policies furthering social care for foreigners. But instead of implementing the same global political framework in matter of immigrant inclusion, each Autonomous Community and in a lesser extent, each city, have created its own political devices. The disparity in policy making is counter balanced by the exchanges existing between the communities and the cities in that matters: exchanges of good practices, communication on the policy developed in territorial forums… But inequalities in terms of funding capacity for the immigrant integration between wealthy and poor regions, and between regions concerned by immigration and the others are patent. The State fund for immigration management and integration designed to the Communities and to the municipalities have helped the poorest regions as Andalusia to face immigration care but the question of territorial equality is still unsolved. The evolution of the contemporary nation state, which power is challenged “up, down and out” (Guiraudon, 2001, p.34), by supra and sub-national levels of power as by private actors, has renewed the problematic of its capacity to provide welfare to the population residing in the country. But it also enlightens a general de-nationalization process in migration policy.

*Exclusion in practice: irregular migrants experience of the street level bureaucracy*

The conjunction of both processes – the general excluding process of undocumented
immigrants and the decentralization process of Welfare – raises questions about the functionality of the securitarian exclusionary regime. Indeed, the decentralization process, shifting the implementation but also the decision-making process to territorial powers, does not fit well with the conception of a general pattern of control and exclusion of irregular migrants. Considering local practices we may emphasize the existence of heterogeneous patterns and logics for the public action. However, the size of the welfare state and its shifting process down to local actors and out to private entities, continue influence greatly these practices.

Paying attention to the local implementation of social policies to undocumented migrants introduces heterogeneity and complexity. The question whether the practical implementation of local social attention intensifies or softens the exclusion of undocumented migrants is difficult to determine. As beyond the law exclusionary practices, as official and unofficial inclusive practices can be observed in practices. The association of these practices design « grey areas » which are both « arenas of contradicting policies of inclusion and exclusion and a metaphorical notion representing moral ambiguities and dilemmas » (Rosenthal, 2007)

In a sense, the security approach within social and political institutions may lead to the reproduction in practices of the general exclusionary process. Everyday interactions draw boundaries in many situations for irregular migrants. In Spain, the concrete exercise of the right to be registered on the municipal census for undocumented immigrants, which give them access to basic social and medical aid, has always been restricted in practice as many municipalities refuse their demand. This practice might be a deliberate local policy, an initiative from local officers. Most of the time, they do not oppose a clear refusal but complicate the process, by requiring unnecessary documents for example (Sindic de Greuges, 2008). The success in the diffusion of the security approach of migration concerning welfare provisions, lies in the practices of these street-level bureaucrats. Indeed, due to the successful discourse which separate what is legal and what is legitimate, the local officers often proceed “in good faith” while excluding “illegally” illegal migrants. But they operate an implicit hierarchy of the clients ‘right to have rights’. Michael Lipsky shows how the place for discretionary judgement of street-level bureaucrats within the institution allows this “unequal” treatment among clients and allow them to divert for the norm, generally with the blessing of the institution (Lipsky, 1980). The legal uncertainty in many parts of Immigration laws in France and Spain, the autonomy granted to street-level bureaucrats play a great part in increasing the leeway between the legal framework, politics and practices. In France, it can be acknowledged by the numerous improper refusals of celebrating weddings when one in the couple has no residence permit or reports made by social workers or teachers to the French “prefectures” (state administration in charge of immigrants residence permits).

Conversely, face to face practices and local policy-making may lead to soften the general exclusionary pattern. The capacity for the bureaucrats to benefit from autonomy and discretional power can make them express solidarity or to adopt an « activist » position, making their own convictions prevail on the general rule. Joanne Van der Leun following Hasenfeld's study of Human Service Organisations, shows that this type of attitude may differs in function of two criteria: the organisational structure of the institutions varying through the technology implemented (people processing, people sustaining or people changing) and the type of clients. Second, she shows that the professionalisation within the institution has a great incidence, in particular by granting a larger autonomy to some of the workers (Van der Leun, 2006). Our research has also proved that the autonomy on work and professionalisation is correlated with
the presence of ‘softening’ practices at a lower level. The emblematic case is represented by professors who benefit from a large autonomy within schools and have put in place protection systems who prevent children from being deported.

*The ambiguities in Subcontracting undocumented immigrant care and social welfare to non-profit organisations.*

With the securitization of the public welfare provisions, NGOs and social organizations remain the principal operators for people without residence permits. In the three case studied, three types of non-profit organisations were sub-contracted by the public institutions to care social inclusion for migrants. The first are the big and generalist social organisations as Caritas or Red Cross in Spain, or *Secours Populaire, Secours Catholique-Caritas* in France. One must add also associations with a specific concern as health assistance (MdM: *Médecins du Monde*, MSF), providing free food (*Restos du Cœur* in France), etc. These organisations provide general social assistance to the poorest and integration immigrants in their general programs. Though, they could have developed specific programs with public funds in direction to immigrants. The second type of organisations has had a specific history. They are organisations which have specifically reoriented their initial concern to care immigrants’ social needs. These organisations, which could be said opportunist organisations with no moral judgement, are especially active in Spain, as immigration appeared as a great concern since the 90s. For example, the association MPDL wasn’t designed to care immigrants but to be an association of international solidarity, what it still is in part. It is the same for FMP, a feminist association which develops programs for migrants and not only for women. The third type of organisations is composed of specialised associations in the migration field. It can cover the most important associations, covering a wide territory and many activities, to little immigrants associations. We already mentioned *Andalucía Acoge* which is the biggest association along with CEPAIM in Spain and we could mention ASTI (*Association pour le Soutien aux Travailleurs Immigrés*) and Cimade (*Comité Inter-Mouvements Après des Evacués*), in France. Plus, the associations of migrants are also very important in the care of undocumented aliens, but they often lack enough resources to implement a large social assistance to undocumented migrants. We must not neglect the aid provided within the ethnic communities with funding not coming from public institutions.

Despite the design of the current French migration policy, leading to an exclusion of undocumented immigrants from political integration and social policies, collaboration between public institutions and private associations exist through the policy implementation at the local level. Though, the forms of collaboration are often not explicit, and follow a rather complex pathway. The immigrant policy remains in France mainly driven by the central level and we hardly observed the creation of an integrated network for public action at the territorial level. However some leeway exists for local institutions in the implementation of devices for undocumented immigrants. Care for undocumented migrants is supplied by non-profit organisations, working with public social services or in autonomy with funds from the national level of the organisation.

In Spain in general, the association of public and private institutions to provide welfare
is one of the main characteristics of its welfare state. Management of social welfare for undocumented immigrants is no exception and workers for non-profit organisations have fulfilled new competencies deriving from the new immigration. The SAIER in Barcelona is a good example of partnership between public and private organisations in that matter. It is marked by a form of management involving the supervision of the municipal council of Barcelona, which provides financing for the service and carries the primary reception and information of migrants, and the direct management of the structure by NGOs and trade unions. Each of these entities manages a particular service. This shows the flexibility given to local authorities to organise the reception and integration policy for foreigners and the specificity of Catalonia, which includes an emphasis on learning of the Catalan language in the integration process. Similarly, the city of Malaga has delegated the management of its OMINI to the association MPDL. This association is autonomous in its program implementation but it is accountable to the municipality which provides the funds. Again, the irregularity is only marginally taken into account explicitly by the public action. But undocumented migrants are not systematically excluded from the general social provisions design. Public actors are indeed aware of the weight of illegal immigration on the territory, in some municipalities and generally in the region, and of the need to provide basic services for this population.

This delegation process raises some questions concerning the welfare state in both countries. As Lipsky and Rathgeb Smith state, sub-contracting welfare raises questions to the capacity of non-profit organisations to fulfil the same objectives as the state as these organisations develop a specific point of view and not an universalistic one (Lipsky and Rathgeb Smith, 1993). They stress the possible discordance between the two actors in terms of values and principles and the danger of the huge interdependence they face: NGOs comply with specific missions the state can no longer assure, but they are dependent from the public funds, and consequently to cut in taxes, to do so.

In matters of undocumented immigrants care, one can only acknowledge that non-profit organisations have played a great role in social care, occupying the loopholes in the integration policy. This sub-contracting process have permit private organisations to assist people public institutions can’t – don’t want to – assist as they lack of many social rights, but with public funds. The discordance between both actors has helped to maintain a minimal social assistance for these undesired people, forced to live in hiding. One could argue on the other hand that the role of these organisations helps to maintain this illusion of “clandestine” resident people who are ignored by the public institutions unless they are “discovered” and sent back to their former countries. The delegation of many devices of the integration policy to private entities and associations has helped to develop policies at low cost, relying heavily on voluntary work developed in these organisations.
II – Politicization and depoliticization strategies about undocumented migrants’ social citizenship:

The politicization of immigration has led to the assumption by the state of new competences which were excluded from its traditional competencies before. The development of the Welfare state has been made by the political mobilisation of diverse actors who have changed ancient or new social facts into political problems. Our purpose here is to link the routines of social services professionals directed to undocumented immigrants to the construction of a political problem called “illegal migrants” in the local space. What is happening when this question passes from its original and confidential public definition by some specialized actors - experts, scholars, social services or migration management professionals - to the political arena, becoming an unavoidable issue for the medias and the public opinion as for political actors and leading to a competitive problem definition.

In fact the politicization process may lead to contrasted consequences referring to irregular migration issue. Authors from the sociology of social movements have shown how social mobilizations have achieved to politicize a question by establishing new definitions of a public problem conceived as a technical, private or consensual issue. The politicization process lead to renew the political instruments to manage an issue but also to changes in the collective definition of a social problem. Concerning irregular migration, authors have shown that the collective action of undocumented migrants and their supports has enabled a change in the collective perception of “illegal migrants”. In France, the semantic turn from naming undocumented migrants “clandestins” (clandestine/illegal) to the term “sans-papiers” (without papers) has arisen from the social movements of 1996 in Paris and has contributed to a change in the social perception of undocumented immigrants who are not considered from then on only as a security issue (Polac, 1996). The collective action of undocumented immigrants has also led to concrete political victories, as regularization processes in both France (Siméant, 1998) and Spain.

The social mobilization of immigrants and the politicization of the undocumented migration issue may lead to an extension of the migrants’ rights and to a redefinition of irregular migration from a security issue to a social and political problem, grounded on matters of social justice and inequality between northern countries and impoverished countries. But Guiraudon has shown on the contrary that, concerning the allocation of social rights for immigrants “rights are more likely to be granted when they are confined to bureaucratic or judicial venues” (Guiraudon, 2000). She shows that social rights equality between legal aliens residents and national residents has been reached more rapidly in France, Netherlands and Germany than political rights equality, as social rights don’t need a political consensus to be strengthened. Bureaucracies and courts had an interest due to their structural organization in furthering social rights for immigrants.

We wonder if this statement is functional with undocumented immigrants: Guiraudon evidences that illegal aliens are not included in the progressive allocation of social rights to immigrants, as would be expected, but the social care of undocumented immigrants, a socially vulnerable population, deserves our attention. As far as undocumented immigrants are concerned, which is the most effective in furthering social rights: bureaucracies and courts or

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7The denunciation, the public expression of claims and grievances are at the heart of the politicization process which turn social facts into social and political issues (Kitsuse, Spector; Gusfield)
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