



Autocratic Tools in Spanish Democratic Migration Governance. A Critical Analysis of the Use of Royal Decree-Laws

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Abstract

Autocratic policy tools are often associated with democratic backsliding and the erosion of checks and balances. Yet their use is not confined to illiberal regimes. This article examines whether, and in what sense, royal decree-laws in Spain can be understood as autocratic policy tools within a consolidated democracy. Although constitutionally designed for situations of extraordinary and urgent necessity, royal decree-laws temporarily concentrate law-making authority in the executive and limit or compress ordinary parliamentary deliberation, thereby reshaping the institutional balance of powers. Analysing their deployment in migration governance across three policy domains: healthcare access, labour protections for domestic workers, and unaccompanied minor, the article shows that these instruments are not only crisis-driven but can also be used strategically in politically constrained environments. Moreover, their use does not map neatly onto restrictive policy outcomes: royal decree-laws have been employed both to curtail and to expand migrant rights, and in some instances have not been used despite objective crisis conditions. The findings complicate assumptions that equate autocratic tools with illiberal content and instead highlight their procedural logic and ambivalent role within democratic systems. By reassessing the concept through the Spanish experience, the article contributes to debates on executive power, accountability, and migration governance in contemporary democracies.

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1 Introduction

One of the longstanding questions guiding immigration policy research is *who governs immigration within advanced Western democracies* (Cornelius et al. 1994; Sassen 1996; Wasen 2018). From a state-sovereignty perspective, the straightforward answer would be that, in democratic contexts, elected representatives, accountable to the electorate, shape public policies that regulate migrants' entry and access to rights. Yet decades of research suggest that migration policymaking is far more complex, shaped by competing pressures and institutional constraints. Hollifield's (1992) *liberal paradox* captures this tension: liberal democracies seek to regulate and control immigration in accordance with national interests, while economic interdependence, international legal norms, and institutional commitments constrain unilateral action (Boswell and Geddes 2011; Ford et al. 2015; Hampshire 2013).

Building in this scholarship, this paper turns attention to a specific instrument that executives use to navigate such constraints: autocratic policy tools (Natter and Slingenberg 2025, forthcoming). These instruments concentrate executive power while reducing parliamentary and judicial oversight, leading to perverse consequences such as the "aggrandizement" of executive power (García-Holgado 2025) and the erosion of accountability (Laebens and Lührmann 2021).

Although not inherently illiberal, autocratic policy tools are frequently used to advance restrictive agendas, particularly in response to perceived threats to security or national identity (Boswell and Geddes 2011; Caviades 2010). In this sense, scholars have documented how executives invoke states of emergency or urgency to justify extraordinary procedures that limit parliamentary scrutiny and deliberation and reinforce elite authority (Lundgren et al. 2020; Ingimundarson and Jóhannesson 2020; Mészáros 2024). Ultimately, the use of such tools seems to be shaped not only by procedural dynamics, such as emergency procedures, but also by the substantive political will of governments to pursue particular policy agendas in particularly difficult political environments (Delgado del Rincón 2014; Halilovic 2024; Mészáros 2024).

However, there is still limited knowledge on how democratic governments resort to autocratic policy tools. Focusing on Spain, a consolidated democracy since the late 1970s and a newcomer to the migration policy system (Cornelius 2004), this paper examines the use of a specific type of autocratic policy tool: the royal decree-law (*reales decretos-leyes*, RDLs). Originally conceived in the Spanish Constitution as a mechanism to strengthen executive capacity in situations of extraordinary need and urgency, RDLs have been extensively employed (Sanz Gómez and Sanz Gómez 2020; Belmonte et al. 2025) and this paper explores their role in Spanish migration policy.

To do so, the paper analyses the three key policy domains in which RDLs have played a decisive role in Spain's migration policy: access to health services, domestic work, and accompanied migrant children. In terms of content, they cover the range of possible dynamics: one reform expanding rights, another restricting them.

The third case is an example where, despite an objective institutional and management crisis, RDLs were not used.

The analysis is based on a close examination of the RDLs and accompanying debates, complemented by secondary literature. The empirical sections are structured in a systematic way. Each case study is organised in two parts. The first addresses when autocratic policy tools are used, to assess whether Spain relies on a “migration crisis paradigm” and whether instruments initially justified as emergency measures have become integrated into routine policymaking. The second examines the content or outcomes of these tools, exploring whether they serve to expand or restrict immigrants’ rights.

By situating Spain within broader debates on the relationship between democratic governance and autocratic tendencies in policymaking, this study offers a precise understanding of how executive instruments function in practice. In doing so, it contributes to ongoing discussions about the evolving toolkit of democratic governments operating under increasingly complex governance pressures, highlighting how procedural dynamics and political calculations interact in shaping migration policy outcomes.

This is both theoretically and normatively relevant. While often framed as pragmatic solutions, the habitual use of such tools raises normative concerns: the erosion of checks and balances, the marginalization of deliberative institutions, and the risk of normalising exceptionalism and the sidelining parliamentary and judicial oversight. As Natter (2023) argues, these tools do not inherently signal authoritarian backsliding, but they do reshape the institutional architecture of democratic decision-making, particularly in the field of migration. While their use may at times be necessary to respond swiftly to migration pressures, these instruments also pose risks: the potential for their “temporary” use to become routinised, shifting from exception to norm and gradually undermining democratic safeguards. This “state of exception” logic, where emergency powers are invoked repeatedly, threatens to erode democratic norms and transform extraordinary tools into standard governance practice (Agamben 2005; Kaneti 2025, forthcoming) while at the same time, decree-like instruments can provide governments with the flexibility to act during crises and address public and humanitarian concerns (Trompetero and Forero, 2025, forthcoming).

Focusing on Spain, a consolidated democracy with a relatively recent transition to mass immigration (Hazán and Bermejo 2022), this article examines this specific type of autocratic policy tool: the royal decree-law (RDL). It proceeds as follows. Section 2 situates the study within the literature on migration governance and autocratic policy tools. Section 3 develops the conceptual framework and research design, outlining the analytical approach and justifying the focus on Spain and on RDL as the key instrument under examination. Section 4 analyses the use this tool in the three domains of Spanish migration policy: healthcare access, labour rights for migrant domestic workers, and protections for unaccompanied minors. In each case, it examines when RDLs are employed and for what purposes. The final section discusses the implications of these findings for debates on democratic governance, executive power, and accountability in migration policymaking.

2 Theorising the Role of Autocratic Tools in Migration Governance

2.1 Intra-State Drivers of Migration Governance

Migration policymaking in liberal democracies has captured immense attention (Collrin and Bauder 2025). As Hollifield (2004) has argued, migration governance is shaped by a structural tension between economic openness, rights-based constitutionalism, and demands for control. States must simultaneously manage markets, uphold legal commitments, and respond to political pressures linked to security and identity. Building on this insight, migration policies must be understood not only as responses to external flows, but as outcomes of internal political and institutional dynamics. In a similar vein, Castles (2004) highlights how migration policies are deeply embedded in internal political conflicts, institutional constraints, and competing interests within national systems.

Building on this literature, four intra-state elements are particularly relevant for understanding the potential resort to decree-like instruments in migration governance: public opinion, security and national identity discourses, judicial constraints, and economic and labour pressures.

Among the most studied influences, public opinion plays a central role in migration policymaking, often favouring restriction for reasons ranging from labour competition to welfare concerns (Citrin et al. 1997; Fetzer 2000; Lahav 2004; Kessler and Freeman 2005; Van Hauwaert 2023). Freeman (1995, 2011) argues that immigration politics often reflect a tension between concentrated interests and diffuse publics. Governments may face electoral pressures to signal control or responsiveness, particularly in contexts of heightened politicisation (Hatton 2017).

Second, security and national identity discourses have intensified in the aftermath of crisis such as 9/11 terrorist attacks (Boswell 2007; Geddes 2003) and the 2015 European “refugee crisis” (Thym 2016). They have contributed to dynamics of securitisation of migration, justifying more restrictive and executive-led policy responses, all over the world (Huysmans 2000; Slaven 2022). Yet countervailing pressures exist. Courts and judicial oversight have historically expanded protections for migrants and constitute a key intra-state constraint in liberal democracies for restricting migrant’s rights (Hollifield 1992; Joppke 2001). These constraints may generate institutional tensions that shape the choice of policy instruments.

Finally, economic interests and labour market considerations often push for openness to secure labour supply (Cornelius 2004) influencing migration governance. These tensions illustrate Hollifield’s (1992) governance dilemma: governments must balance rights, markets, security, and identity, often resulting in fragmented and contradictory outcomes.

In addition, migration governance frequently unfolds within multi-level institutional settings (Scholten and Pennix 2016). While border control in Europe is mainly a supranational competence linked to Schengen space, core competences over entry and nationality remain at central state level, and regional and local authorities play important roles in areas such as healthcare provision, social

policy, and integration. In the Spanish case, this layered governance structure may generate coordination pressures but also political tensions and disputes between levels of government (Subirats 2006; Parrado 2010). These dynamics do not constitute a separate driver, but they shape the institutional context in which public opinion, security narratives, judicial constraints, and economic interests interact, and may influence executive choices regarding the timing, content and design of policy instruments.

Taken together, these intra-state dynamics create a complex environment in which executives must balance competing imperatives. While that context does not automatically lead to the use of autocratic policy tools, they may increase the attractiveness of instruments that allow governments to manage timing, agenda-setting, and institutional constraints. In such, settings, executives may seek instruments that allow them to act swiftly at the central level while managing intergovernmental and political tensions. Whether such instruments operate in an autocratic manner depends on the degree to which they concentrate law-making authority and limit effective parliamentary or judicial oversight in practice.

2.2 From Migration Governance to Policy Instruments. Conceptualising the Use of Autocratic Tools

In response to increasingly complex legal, political, and institutional pressures, recent scholarship has shifted attention to analysing how governments navigate those pressures to manage migration. A key contribution in this regard is the conceptualisation of autocratic policy tools (Natter and Slingenberg 2025, forthcoming). These are defined as legal and procedural mechanisms that concentrate authority and power to make laws and rules within the executive, thereby reducing, compressing or reshaping effective parliamentary or judicial oversight. These tools include not only formal legal mechanisms, such as decree-laws, ministerial directives, delegation of legislative authority or discretionary powers, but also soft law and informal practices such as budget reallocations.

Crucially, as Natter and Slingenberg (this special issue) emphasize, autocratic policy tools do not constitute a rigid or binary category. Their classification depends on the degree and intensity of executive power concentration within a given institutional context. Such instruments are not inherently tied to autocratic regimes, nor do they automatically signal democratic backsliding. Rather, their defining feature lies in their procedural logic: the reallocation or compression of law-making authority in ways that reshape deliberative processes, sequencing, and accountability structures.

This paper therefore asks two interrelated questions: when are autocratic tools used in democratic contexts? and, secondly, what are they used for (restricting or opening migration policies)? Regarding the first question, several studies identify that democracies may deploy autocratic tools when facing difficult or urgent policy dilemmas. The functional logic of such “autocratic policy tools” in crisis or emergency situations is particularly visible in European democracies (Geddes 2003; Guiraudon 2000). In the realm of migration governance, Guiraudon’s (2000) concept of venue shopping illustrates how policymakers rely on exceptional legal

instruments to evade institutional scrutiny, while Boswell's (2007) work on crisis-driven executive action shows how governments strategically select instruments that insulate decision-making from contestation, especially in moments framed as urgent or exceptional.

This dynamic became particularly evident during the so-called "migration crisis" of 2015, where emergency framings facilitated the adoption of exceptional measures and contributed to their increasing institutionalisation within ordinary governance frameworks (Venizelos 2016; Ramji-Nogales 2017). In such contexts, autocratic policy tools may shift from being exceptional responses to becoming routine instruments that constrain wider public debate and concentrate agenda-setting power in the executive, pre-structuring parliamentary choice and contributing to what has been described in the area of migration as "the legal construction of crisis" (Ramji-Nogales 2017).

Building on this insight, this article contends that democratic governments may also turn to autocratic policy tools in "non-crisis times" when their room for manoeuvre is otherwise constrained, for instance, by strong public opposition to liberal reforms, or by lengthy and unpredictable parliamentary debate or judicial constraints. In such cases, the appeal of these instruments lies not mainly in their responsiveness to urgency, but also in their capacity to structure, compress or prevent political contestation within parliamentary arenas. Autocratic tools may therefore function as strategic instruments when the content of the reform is politically sensitive or contested by other migration policy actors.

The second research question concerns what autocratic policy tools are used for: whether they advance illiberal policies or enable rights-expanding reforms that would otherwise stall in the regular legislative process. Distinguishing between the rationale for using autocratic tools and its content is not straightforward as Freeman's (1995) analysis of immigration politics in liberal democracies illustrates. Yet, as the editors of this special issue caution, autocratic governance techniques should not be conflated with the illiberal or restrictive content of migration measures.

In a similar vein, Natter (2023, p. 682) notes that "autocratic politics creates more room for open immigration reforms compared to democratic politics if this suits the economic, foreign policy or domestic political priorities of the country's leadership". In terms of policy outcomes, autocratic tools can therefore be mobilised to enable liberal reforms just as easily as to restrict rights, particularly when governments seek to overcome political or institutional resistance. The analytical task is thus to disentangle procedural logics (crisis-driven vs strategic use) from substantive outcomes (restrictive versus rights-expanding reforms). If autocratic tools operate primarily as crisis-driven instruments, their use should correlate with objectively framed emergencies and temporal immediacy. If, by contrast, they function strategically, their deployment may extend to contexts of institutional blockage, political negotiation, or policy contestation.

Building on this framework, the paper examines whether the use of autocratic policy tools in Spain has been crisis-driven or strategically deployed, and how their procedural logic relates to their substantive policy outcomes. A strategic use may extend beyond coping with "real" crisis to situations of institutional blockage, legal uncertainty, or politically sensitive reform. All those contexts can be conceptualised

as “political types of crisis” (Slaven 2022). In such difficult environments, when governments face pressures in multiple directions and uncertainty about achieving their preferred objectives (restriction or openness), autocratic policy tools may emerge as an attractive option even within democratic regimes.

2.3 Autocratic Policy Tools in Spain: RDL as a Tool for Governance

Spain offers a compelling case for exploring how autocratic policy tools function within democratic regimes through its decree-like instruments. The Royal Decree-Law (Real Decreto-ley, RDL) is a constitutionally sanctioned instrument under Article 86 of the Spanish Constitution, intended for decision-making in contexts of “extraordinary and urgent necessity”. Particularly relevant is the distinction between RDLs and Royal Decrees (Reales Decretos, RD). These are two distinct legal instruments in the Spanish legal system, with different constitutional foundations and normative functions. RDs are executive regulations used to implement or develop existing legislation; they do not have the force of law and cannot create or amend primary legal norms. In contrast, RDLs are legislative acts with the force of law, adopted by the executive in situations of extraordinary and urgent necessity and subject to parliamentary ratification within thirty days. In this sense, it is important to underline that although both RDs and RDLs are issued by the executive, they belong to different normative categories: Royal Decrees are regulations (secondary legislation) adopted under the government’s regulatory powers to implement existing laws, whereas RDLs are executive legislative acts (primary legislation) with the force of law.

Another relevant element is the multi-level political and administrative structure of the Spanish State. Spain is a decentralised state in which both the central State and the Autonomous Communities possess executive and legislative powers. While Article 86 of the Spanish Constitution provides for Royal Decree-Laws at the state level, most Statutes of Autonomy also authorise regional decree-laws. Although this article focuses exclusively on state-level Royal Decree-Laws in the field of migration, an area largely reserved to the central government, the broader institutional design illustrates that executive law-making is not confined to the national level within the Spanish constitutional system and that political negotiations are often key in this area.

RDLs were originally conceived as an instrument for crisis management, for contexts of crisis or social unrest in which the government needs to address urgent situations swiftly. They empower the government to legislate with the force of law on a provisional basis. While RDLs must be ratified by the Congress of Deputies within 30 days, their immediate legal effects make them a potent tool of executive governance, especially in sensitive policy areas such as migration.

Spain’s constitutional design thus accommodates a controlled form of executive lawmaking, framed as compatible with parliamentary sovereignty through ex post controls. However, frequent and strategic reliance on RDLs—especially since the 2010 economic crisis—has prompted growing concern regarding the reinforcement of executive power, the erosion of legislative authority and the gradual weakening of

democratic deliberation (de la Iglesia Chamarro 2013). As Díaz de Mera (2011) has observed, the RDL mechanism is increasingly used to address not only urgent crises but also routine or politically contested matters, including migration.

The Spanish Constitutional Court has recognized the legitimacy of RDLs when the conditions of urgency and necessity are met. Nonetheless, constitutional scholarship argues that the “urgency” (and so, necessity) requirement has become elastic, allowing the executive to consolidate a form of legislative discretion that, while technically legal, challenges the normative foundations of parliamentary democracy (Barreiro González 2024). Moreover, scholars have observed that in some instances decree-laws are publicly announced or politically anticipated well in advance of their formal adoption. When RDLs are used to formalise agreements negotiated over time, the element of anticipation inherent in such negotiations may sit uneasily with the constitutional requirement of immediacy embedded in the notion of “extraordinary and urgent necessity” (Barreiro González 2024). This practice is characterised as a “deviated use” of RDL, highlighting the erosion of their exceptional character and the weakness of parliamentary and constitutional controls (Aragón Reyes 2016; Astarloa 2017). Empirical data reinforce this concern: between 1979 and 2018, 574 Royal Decree-Laws were enacted (Sanz Gómez and Sanz Gómez 2020), representing roughly 30 per cent of legislative output in certain periods (Astarloa 2017). Such figures suggest a shift from exceptional recourse to more habitual reliance, reinforcing the executive’s central role in legislative production.

This trend has its parallel at regional level. Autonomous Communities have made extensive use of decree-laws, and empirical studies document a marked increase in their frequency, a very low rate of parliamentary non-validation, and limited recourse to their subsequent transformation into ordinary legislative bills (Marco Marco & Pérez-Gabaldón, 2023). In several regions and legislative periods, decree-laws have approached or even surpassed ordinary legislation in quantitative terms, contributing to what some authors describe as a process of parliamentary marginalisation within the autonomous institutional framework. Although regional decree-laws are not the focus of this study, their proliferation illustrates the broader normalisation of executive law-making within Spain’s democratic system.

Two central criticisms emerge from this evolution that raise fundamental questions about the democratic legitimacy of executive-led lawmaking. Firstly, the progressive dilution of the urgency principle, as the increasingly habitual use of RDLs contradicts their original constitutional purpose as emergency instruments. Secondly, the disruption of parliamentary sovereignty: by allowing the government to amend or override existing laws through temporary decree, RDLs limit deliberative scrutiny, potentially undermine legislative coherence, and dilute protections for minority interests and vulnerable groups. While it is true that the Parliament ratifies the RDL and transforms it in law, this is often an expedited and largely formalised process that offers limited scope for substantive parliamentary scrutiny (de la Iglesia Chamarro 2013). Recent analyses also show that, although the number of RDLs has decreased since the pandemic, their average length and complexity have significantly increased (Belmonte et al. 2025).

In this debate, while defenders argue that RDLs are essential in responding to contemporary governance challenges, critics emphasise that over-reliance on this

mechanism risks altering the separation of powers, especially when decisions affect constitutionally protected rights or politically marginalised communities. Nonetheless, Article 86 CE incorporates formal safeguards intended to limit abuse. These include material constraints on the subjects RDLs can address (excluding areas such as basic institutional rights, electoral law, and the core structure of government), and the requirement of parliamentary ratification within thirty calendar days. These features aim to preserve the check-and-balance architecture of the Spanish constitutional system, even while enabling executive flexibility in exceptional contexts.

Still, practice reveals tensions between constitutional theory and political reality. Some authors argue that the growing normalisation of RDLs across a wide range of policy areas, including migration, suggests a form of procedural drift, where formal legality obscures a deeper reconfiguration of institutional roles (García Majado 2016; Montes 2023). This legal transformation, though gradual, has significant implications for the rule of law and for the balance between executive responsiveness and parliamentary legitimacy. This tension provides the analytical backdrop for examining whether, and under what conditions, RDLs in migration policy align with the procedural logic identified in the concept of autocratic policy tools.

3 Research Design and Methodology

3.1 Research Context

Spain's status as a country of immigration has evolved rapidly over the past four decades (Cornelius 1994, 2004; Arango 2000; Hazan and Bermejo 2022). Early analyses on migration governance highlighted the reactive nature of Spanish migration policy, characterized by ad hoc or exceptional measures, such as large-scale regularisations, reflecting limited long-term planning capacity and weak institutionalization (Arango 2013; Arango and Finotelli 2009).

This reactive phase began to shift in the early 2000s. Policy learning, EU membership and administrative capacity gradually produced a more structured immigration framework. A pivotal moment came in 2000 with the Organic Law on the Rights and Freedoms of Foreigners and its immediate restrictive reform: a sequence that reflected the initial polarisation of immigration politics and the salience of migration in electoral competition (Colectivo IOE 2001). At the same time, Constitutional Court jurisprudence progressively extended fundamental rights to non-citizens, creating legal imperatives for reform and shaping the balance between restrictive and liberal measures. These dynamics revealed a structural tension between judicially driven rights expansion and partisan competition, with some actors advocating restriction and others focusing on integration.

Overall, Spanish migration policy has oscillated between openness and closure. While border controls have been strengthened, the employer-driven admission system (Finotelli and Kolb 2015), recurrent regularisations, preferential treatment of Latin Americans, and policies of social integration point to a relatively liberal orientation in certain domains. Even during the 2008–2011 economic crisis, Spain

avoided wholesale retrenchment, instead promoting programs to improve employability and maintain integration policies (López-Sala 2013).

3.2 Case Selection and Analytical Focus: Four Decree-Laws

Spain's case is particularly valuable for understanding the use of autocratic policy tools in democratic contexts. Its relatively recent transition to a country of mass immigration has exposed the limits of long-term planning and generated recurrent reliance on exceptional measures such as regularisation processes (Arango and Finotelli 2009). Moreover, decree-like instruments have been used profusely (Sanz Gómez and Sanz Gómez 2020). Furthermore, Spain's location at the EU's external border, combined with the political salience and growing polarisation of immigration, creates strong incentives for governments to bypass ordinary deliberative procedures in order to act swiftly and decisively. These dynamics, an institutional setting marked by administrative complexity, multiple ministries involved in decision-making, multi-level governance structures, rights jurisprudence that constrains restrictive measures, and partisan competition between restrictive and integrative approaches (Hazán and Bermejo 2022), although not unique to Spain, offer fertile ground for analysing how democratic governments resort to exceptional instruments under institutional and political pressure. For these reasons, Spain constitutes a particularly insightful case for assessing how RDLs have been used in migration policy-making within a consolidated democracy.

The empirical analysis builds on qualitative desk-based documentary research, combining the analysis of legal documents with contextual interpretation of parliamentary debates, newspaper sources, and secondary literature. Legal texts, including the Constitution, the RDLs themselves and relevant case law, constitute the primary empirical material. Parliamentary debates and newspaper sources are used contextually, to reconstruct the political setting, public justification and timing of each RDL, rather than as a corpus for systematic discourse analysis.

Within this framework, all four RDLs adopted since 2000 that either directly regulate migration-related issues or have a major impact on migrant populations identified through a systematic search of the *Boletín Oficial del Estado* (Official State Gazette) using migration-related keywords and cross-referenced with secondary literature. These four RDLs constitute the full universe of RDLs relevant to migration governance in Spain during the period analyzed. For analytical purposes, they are presented as three case studies, since two of them address the same policy domain (access to the National Health System). This structure allows for a systematic comparison of how the same policy instrument is used across different domains and diverse political contexts.

Each case represents a different dimension of migration policy: healthcare access (RDL 16/2012 and RDL 7/2018), labour rights for migrant domestic workers (RDL 16/2022), and protections for unaccompanied minors (RDL 2/2025). Focusing on these cases makes it possible to capture variation in policy content (rights-expanding vs rights-restricting measures), and situations of crisis or non-crisis use, underscoring the variable impact of RDLs depending on political context.

This research design makes it possible to examine both when RDLs are used in migration governance and for what purposes, distinguishing between their procedural logic (urgency versus strategic use) and their substantive policy outcomes (rights-restricting, rights-expanding, or non-use despite objective crisis). Taken together, these cases allow for an assessment of the conditions under which RDLs may function as autocratic policy tools within a democratic system, as conceptualised in Sect. 2, and of their consequences for migrants.

4 Case Studies: RDLs and Migration Governance in Spain

4.1 Case 1. Royal Decree-Laws for Regulating Access to Health Services

The Spanish healthcare system is characterised by universal access, rooted in the principle that health is a fundamental human right. Two critical RDLs relevant to immigrants' access to the National Health System (NHS) are RDL 16/2012 and RDL 7/2018.

RDL 16/2012 was enacted during a period of economic austerity and imposed significant limitations on healthcare access for undocumented migrants, restricting their entitlement primarily to emergency care, maternal, and child healthcare services. This legislative measure, framed as necessary to ensure the sustainability of the NHS, generated considerable ethical and public health concerns. Critics raised alarm over its impact on vulnerable populations, particularly immigrants (Moreno Beltrán & Ballesteros Pena, 2015). In contrast, RDL 7/2018 marked a pivotal reversal of the 2012 restrictions. It reinstated universal access to the NHS for all residents, including undocumented migrants, reaffirming the Spanish government's commitment to inclusivity and aligning healthcare policy with human rights standards. By framing healthcare as a right for all individuals living in Spain, irrespective of legal status, the 2018 RDL represented a significant shift toward a more inclusive policy framework.

The interplay between these two decrees exemplifies the tension between economic and political motivations on the one hand, and human rights imperatives on the other. Their contrast reveals how RDLs can be mobilised both to restrict and to expand rights, depending not only on context but also on government ideology and strategic aims. While both were enacted with formal reference to urgency, their underlying logics differ sharply: the 2012 RDL served a restrictive economic agenda, justified by the need for "a regulatory instrument with immediate effect that responds without delay (...) the necessary conditions of extraordinary and urgent necessity are present" (BOE 2012). By contrast, the 2018 RDL responded to political will to restore rights, stressing "the need to guarantee the universality of healthcare (...) this need is urgent and immediate (...) the circumstances of extraordinary and urgent necessity are present" (BOE 2018).

The 2012 RDL was passed in a legislative landscape already criticised for the government's overuse of decree-laws, which some described as a disruption of the institutional balance between Parliament and the executive. Delgado del Rincón (2014) argues that the government had effectively become "master of the sources of

law” and singles out RDL 16/2012 for its substantive impact (regulated important rights) and its questionable use of an exceptional legislative procedure. In this sense, the economic rationale behind RDL 16/2012 was to reduce the public deficit and cut healthcare spending, with the stated goal of saving approximately €7 billion (Rubio Velasco 2021). However, the contribution of the measure, restricting rights to immigrant with irregular status, to that aim has been questioned: undocumented migrants typically form a younger, healthier segment of the population with lower healthcare usage. Thus, excluding them from regular care would have had negligible economic impact, while potentially increasing costs due to greater reliance on more expensive emergency services.

Legally, many argued that such a major reform should have been handled through ordinary legislative procedures, allowing parliamentary debate and the introduction of amendments. The link between the economic crisis and the restriction of healthcare access for undocumented migrants was not convincingly substantiated in the preamble of the RDL. While the text referred in general terms to the need to “guarantee the sustainability of the NHS” (BOE 2012), it did not provide concrete evidence, such as fiscal data, health system performance indicators, or specific studies, demonstrating that excluding undocumented migrants was an urgent or indispensable measure. This omission raises doubts as to whether the constitutional requirement of “extraordinary and urgent necessity” was genuinely fulfilled.

During the six following years the 2012 RDL was in force, and the Spanish Supreme Court played a key role in defining its scope. In a 2019 ruling, the Court confirmed that re-grouped family members of EU citizens were not entitled to automatic access to public healthcare, stressing that such access depended on not imposing an undue burden on the system (Rubio Velasco 2021). In another decision, the Court invalidated regional attempts to circumvent the national RDL through autonomous legislation, thereby upholding the primacy of the state-level restrictions (Delgado del Rincón 2019).

RDL 7/2018, by contrast, was a political promise by the incoming Socialist government, aimed at reversing the previous administration’s policy. It explicitly framed healthcare as a universal right, stating: “Access to the National Health System under conditions of equity and universality is a fundamental right for all individuals. Ensuring the exercise of this right and effectively protecting citizens’ health becomes even more critical when those deprived of standardised healthcare are particularly vulnerable groups, threatened by social exclusion, such as undocumented foreign populations not registered or authorised to reside in Spain.”

This decree reflects a transformative shift in healthcare policy, recognising that individuals without legal residency still require protection due to their heightened risk of marginalisation. It stands in stark contrast to the 2012 decree and reinforces the role of RDLs as instruments not only for crisis response but also for political signalling and policy change. Nonetheless, the necessity underpinning RDL 7/2018 can also be debated. Some scholars argue that ordinary legislation could have been used to achieve the same policy aims (Gómez Zamora 2016), thereby allowing for greater democratic deliberation.

In sum, both RDLs faced criticism regarding the invocation of urgency: the 2012 decree—restricting rights for young, non-NHS-dependent immigrants—raised

questions about whether an emergency instrument was justified for that purpose; the 2018 RDL, although framed as an electoral promise, arguably could have followed a standard parliamentary process. In both cases, however, the governing party had sufficient parliamentary support to ensure ratification within 30 days—an absolute majority in 2012 (PP) and a functional majority in 2018 (PSOE with allied parties supporting the measure). This suggests that the choice to use a RDL was not solely determined by institutional deadlock or lack of parliamentary support, but reflects political will to advance specific policy outcomes.

Ultimately, this case illustrates that autocratic policy tools like RDLs can be employed to either restrict or expand rights, depending on the political priorities of the government in power. While formally justified on grounds of urgency, their actual deployment often reflects broader ideological and strategic choices. The Spanish case thus underscores the importance of distinguishing between the *procedural logic* (urgency vs. political expediency) and the *substantive content* (restrictive vs. expansive) of autocratic tools in democratic settings.

4.2 Case 2. Royal Decree-Law 16/2022 and its Impact on Domestic Workers

The enactment of Royal Decree-Law 16/2022 represents a significant legislative effort to expand labour protections for domestic workers in Spain, especially concerning unemployment benefits. Its approval responded both to a political commitment by the coalition government (PSOE-Unidas Podemos) and to the need to comply with a ruling by the Court of Justice of the European Union, which deemed it discriminatory to exclude domestic workers from unemployment protections (CJEU 2022).

Domestic work in Spain is substantial compared to other EU countries: it represented 3.6% of total employment in 2005 (EU average ranged from 0.2% to 1.4%) (European Commission 2006) and in 2024 still involved over 560,000 registered workers, 87% women and 54% migrants, alongside a 32% informal sector (Ara.cat 2024). The preamble of RDL 16/2022 explicitly recognises that “a high percentage of those performing domestic work in Spain are not Spanish nationals, so differential treatment in their working and social security conditions may have social consequences that could even amount to discrimination on the grounds of racial or ethnic origin” (BOE 2022).

This decree aligns with previous legislative measures, such as RD 1620/2011 (not RDL), that sought to regulate this sector, but many challenges remained regarding enforcement and protection of rights. The introduction of RDL 16/2022 aimed to build on these earlier reforms by expanding protections, particularly in light of the challenges faced by domestic workers during the COVID-19 pandemic. The RDL 16/2022 included measures that improved access to unemployment benefits for domestic workers, recognising the unique vulnerabilities they face, especially those linked to gender, migrant status, and informality.

The rapid implementation of this RDL raised concerns regarding the absence of parliamentary debate and scrutiny. The expediency of using decree-laws in this context reflects a broader trend in which urgent social issues are addressed through

accelerated legislative processes that compress ordinary deliberation and reduce amendment opportunities at the agenda-setting stage (Martín Núñez 2024).

As to urgency, the preamble grounded it not in fiscal emergency but in compliance with EU equality law after *C-389/20, TGSS v. CC* and in the State's commitment to ILO Convention No. 189, framing swift action as necessary to end unjustified differentials in protection for a workforce "constituted almost entirely by women," a high proportion of whom are non-Spanish nationals (BOE 2022). While this rights-based framing differs from austerity-driven urgencies in other RDLs, critics argue that governing by decree still narrows plural input and degrades legislative quality even in socially progressive reforms (Martín Núñez 2024).

In conclusion, while RDL 16/2022 constitutes a meaningful step forward in the recognition of domestic workers' rights, especially those of migrant women, its effectiveness hinges on effective implementation across administrative levels. Uneven regional capacity and resource constraints have hindered consistent rollout (Sanz Sáez 2024; Roldán Martínez 2024). As Ripoll Pascual (2020) has shown in the broader context of domestic work regulation in Spain, formal legal recognition does not automatically translate into effective protection, given structural challenges related to informality and enforcement. In this sense, although the decree formally expands protections, its transformative potential depends on sustained administrative follow-through. This case illustrates how decree-laws, though capable of producing expansive outcomes, may also be deployed in contexts that do not reflect immediate emergency conditions. Given the support of the left-wing coalition government in Parliament, there was little doubt about the decree's eventual ratification, further highlighting how political alignment can ease the path for executive instruments even in the absence of genuine urgency.

4.3 RDL on Reception of Unaccompanied Foreign Minors in the Canary Island

The case of unaccompanied foreign minors illustrates how political dynamics can delay the adoption of RDLs, even under pressing humanitarian conditions. In this case, both regional and national authorities enacted legislative responses: first, the Canary Islands Government issued Decree-Law 23/2020 (BOC 2020), while the national government did not respond until RDL 2/2025 (BOE 2025), adopted five years later.

Decree-Law 23/2020, adopted on 23 December 2020 by the Government of the Canary Islands, was an emergency response to a sharp increase in arrivals of unaccompanied minors amid the COVID-19 pandemic and broader migratory pressures. The decree focused on expanding and adapting the region's Immediate Reception Centres. It addressed three main areas: (1) lifting the cap of 20 minors per centre to allow greater capacity based on resources; (2) authorising the temporary use of facilities such as youth hostels, student residences, or tourist accommodations that met minimum safety standards; and (3) easing licensing rules so that provisional centres could be authorised during emergencies. The regional Parliament ratified the measure in January 2021, underlining the need for flexible, urgent interventions during emergencies.

Despite these efforts, by the summer of 2024 the system in the Canary Islands was again overwhelmed, hosting more than 5,500 unaccompanied minors. President Fernando Clavijo publicly advocated for redistributing minors across Spain's autonomous communities and urged the national government to issue a RDL to facilitate this. He also called for a reform of the Foreigners Act to include mandatory redistribution clauses (Bautista 2024; eldiario.es 2024).

However, the national government, then led by a left-leaning coalition in parliamentary minority, delayed action. Two factors explain the postponement: first, the government sought political guarantees from the opposition Popular Party (PP), which governed the Canary Islands, to ensure that a RDL would be ratified in Parliament within the required 30-day period. Second, it intended to link the redistribution mechanism to a broader legislative reform of the Foreigners Act, particularly Article 35,¹ thus complicating the timeline. The paradox is that, despite an objectively urgent humanitarian context that would have justified the immediate adoption of a RDL, political calculations took precedence. This illustrates that the use of RDLs is not determined by urgency alone, but by broader political dynamics: government may choose not to exploit the advantages of RDLs powers if their ratification or legislative strategy is uncertain. Thus, this case underscores that RDLs operate as autocratic policy tools precisely because their deployment is contingent on executive discretion and political convenience, rather than on the constitutional criterion of "extraordinary and urgent necessity".

Negotiations addressed not only legal changes but also financial investment and minimum reception standards. The Canary Islands' PP authorities pressed for central government support, while Minister of Territorial Policy acknowledged that a RDL was possible but insisted on cross-party consensus. By early 2025, the number of unaccompanied minors in the Canary Islands exceeded 5,500, intensifying political and media pressure. Regional divisions over voluntary relocation mechanisms further exposed the failure of existing systems. Under mounting pressure, the central government reached a minimal political agreement with the PP, sufficient to secure parliamentary validation of the RDL.

Eventually, on 18 March 2025, the national government enacted RDL 2/2025, introducing urgent measures to guarantee the best interest of the child under extraordinary migratory conditions. This decree established a framework for the redistribution of unaccompanied minors across autonomous communities and set basic quality standards for reception. While welcomed by the Canary Islands, some critics considered the measure overdue, given the prolonged nature of the crisis.

This case demonstrates how decree-laws are not only responses to migration crises but also tools of political negotiation. The delay in the adoption of the 2025 RDL—despite months of public calls from the Canary Islands—shows that

¹ Article 35 of Spain's Organic Law 4/2000 assigns regional governments responsibility for unaccompanied foreign minors but does not mandate their redistribution, leaving transfers voluntary and uneven. The proposed reform aimed to create a binding mechanism to ensure fairer burden-sharing—especially for the Canary Islands, Ceuta, and Melilla—and to provide legal certainty to this system of interregional solidarity.

procedural urgency is often subordinated to political calculations. While the Canary Islands' insistence on a RDL underlines the need for urgent legal mechanisms in addressing humanitarian crises and the need to alleviate pressure on their reception system, it also carried a political dimension aimed at compelling the central government to act. Meanwhile, the national government weighed the need for urgent action against the demands for parliamentary oversight and to advance its own strategic objective and political agenda of reforming the Foreigners Law. In this sense, RDLs serve as a rapid executive tool but also reflect the concentration of power typical of autocratic mechanisms, even within democratic regimes.

In this case, if the proposal did not move forward as a RDL, the reform could still proceed through a proposition of law for the modification of Article 35 of the Organic Law on Foreigners. This path, however, would have implied a longer timeframe and greater uncertainty. In this instance, the use of a RDL did not primarily reflect a willingness for open parliamentary deliberation, but rather a strategic choice to minimise political risk, avoid prolonged debate, and ensure legislative viability. The choice of format reflected both coalition dynamics and the government's minority status, as well as a broader effort to secure a foothold for more comprehensive migration reform. In this sense, the 2025 RDL illustrates how autocratic tools in democratic regimes are often deployed at the intersection of urgency, political expediency, and institutional constraint.

While multilevel tensions were particularly visible in this case due to the concentration of arrivals in a specific autonomous community, similar intergovernmental dynamics were less salient in the healthcare and domestic work cases, where state-level competence predominated.

5 Conclusion. Autocratic Tools in Democratic Migration Governance: A Critical Analysis of Spanish Decree-Laws

This paper has examined how the Spanish government has used RDLs to shape migration policy, analysing three cases in which executive-led instruments were used to address different aspects of migrant policies: healthcare access for undocumented migrants, labour protections for domestic workers, and the redistribution of unaccompanied minors. These cases demonstrate that RDLs, while procedurally exceptional, have become a part of Spanish policymaking and have been incorporated in Spain's governance of migration, deployed not only in response to emergencies but also as part of a broader strategy to overcome institutional and political blockages.

The Spanish case highlights how constitutional provisions, such as Article 86 of the Spanish Constitution, allow for the concentration of legislative power in the executive, under the justification of "extraordinary and urgent need." This legal framework enables the deployment of this type of autocratic tools within a formally democratic order.

Drawing on Natter and Slingenberg's (forthcoming) definition of "autocratic policy tools" as executive instruments that concentrate decision-making power and weaken horizontal accountability, we have shown how the use of RDLs in Spain

fits within this procedural logic. However, we also challenge the assumption, common in the literature, that these tools necessarily serve restrictive ends. In the Spanish case, they have been used predominantly to extend protections and rights to migrants when used by left-leaning governments. The use of RDLs to enact progressive reforms underlines an important analytical distinction: the tool may operate in an autocratic manner in procedural terms, but its function and effects depend on political context and intent.

Even when RDLs are used to expand rights or correct injustices, their procedural implications remain normatively significant. The reliance on executive-led instruments to achieve progressive outcomes may recalibrate expectations about the ordinary legislative process and weaken the culture of parliamentary scrutiny over time. In this sense, the democratic risks associated with procedural shortcuts cannot be fully neutralised by substantively positive outcomes.

This observation is critical in reassessing how executive tools operate in democratic regimes. Spain's use of RDLs has often been framed in terms of urgency and necessity, but our case studies reveal a more complex picture on how "urgency" is framed and used. The decision to use a RDL is frequently the result of strategic calculations—how to sidestep legislative gridlock, how to avoid prolonged public debate, or how to ensure rapid policy implementation in politically sensitive domains. The case of unaccompanied minors further underscores this point: despite an objectively urgent humanitarian context, the government initially refrained from adopting a RDL until political guarantees could be secured, showing that strategic considerations may override even clear emergency conditions.

One of the most pressing concerns is the circumvention of full parliamentary debate, which is crucial for ensuring robust policy responses in a pluralistic society. Decree-laws, while efficient in addressing immediate needs, frequently bypass the nuanced scrutiny typically afforded by the legislative process. For instance, the rapid expansion of healthcare access to migrants was framed as an emergency measure but lacked comprehensive consideration of the distinct health challenges faced by migrant populations. This approach not only undermines stakeholder involvement but can result in policy that inadequately addresses complex social needs.

In this regard, scholarship on parliamentary accountability underlines that *ex post* ratification mechanisms rarely substitute for full legislative deliberation, particularly when amendment opportunities are limited and voting discipline is strong (de la Iglesia Chamarro 1998; Martín Núñez 2024).

The findings of this paper complicate existing arguments in the literature, such as those of Sanz Gómez and Sanz Gómez (2020), who contend that governments with a simple parliamentary majority resort more frequently to decree-laws. While this logic holds in some cases, the evidence from Spain suggests that coalition fragmentation is only one factor; others include the desire to embed short-term measures within long-term legislative agendas, and the willingness to leverage emergency instruments to force political compromises. Thus, the use of autocratic policy tools in democracies cannot be reduced to parliamentary arithmetic—it reflects a broader governance logic that mixes urgency, constraint, and strategic opportunity.

Beyond questions of intent and timing, our case studies also illuminate the functional ambiguity of RDLs and their implications for democratic governance.

Designed as exceptional instruments to address unforeseen events, RDLs in Spain have become a frequent mechanism in the governance of complex policy areas such as migration. As quantitative studies have shown, the number of RDLs, in general, increased significantly and their cumulative weight in legislative production has remained substantial (Sanz Gómez & Sanz Gómez 2020; Belmonte et al. 2025).

This evolution raises important normative concerns. What was originally designed as a temporary emergency instrument appears, in certain domains, to have become more embedded within ordinary policymaking. This development raises questions about legal precarity and institutional balance, particularly regarding the cumulative effects of executive-led lawmaking on parliamentary deliberation and accountability. As Agamben (2005) and subsequent scholarship have argued, the routinisation of exceptional tools may blur the boundaries between emergency and ordinary governance (Boswell 2007; Slaven 2022). While Spain cannot be characterised as operating under a “state of exception”, the increasing reliance on executive emergency powers in democratic systems raises broader concerns about the gradual reconfiguration of institutional balances and the subtle expansion of executive discretion.

The Spanish experience therefore invites a broader normative question: whether procedurally exceptional instruments can be justified by substantively progressive outcomes, or whether the cumulative normalisation of executive shortcuts ultimately reshapes democratic expectations about how law should be made.

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Declarations

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