“Those who come to do harm”: The Framings of Immigration Problems in Costa Rican Immigrant Law

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… Costa Rica continues being Costa Rica, although we have been bombarded by brothers from third countries and our borders have remained open, unfortunately, for many who do not come to Costa Rica to do good, but rather to do bad, many of them come to kill our women; many of them come to rob our banks; to rob our sons and daughters in the streets […]

Mr. President, fellow Congressmen and women, the moment has arrived for making decisions and to not continue with the windows and doors of our house open so that anyone can enter, and although we give them our heart, although we give them care, they come in to our house to rob us, to rape us. […] Those who have come to Costa Rica have given to our country as well, or have they simply come to take advantage of what has cost us many years to do, through not having an army and being able to invest in social issues, education, health?

Mr. President, fellow Congressmen and women, I believe that we need to and we have the obligation to close our borders now. […] Why continue opening [the country, the border] to those who come to do harm, to collapse our education system, to abuse our medical services.

Costa Rican Congressman, Ricardo Toledo (28 March 2005).¹

In 2005, just months before the 2006 Presidential election, a new immigration law (No. 8487) was drafted and passed in Costa Rica, despite controversy and vociferous opposition from immigration and human rights groups. The law framed immigration in terms of criminality and national security, focusing on repressive police measures that some human rights groups argued violated the Costa Rican constitution and international treaties signed by Costa Rica (Fonseca Vindas 2007; González 2005). Yet, in a dramatic reversal, newly elected President Oscar Arias characterized the law as “draconian,” called for immigration reform, and, at the end of 2006, sent the law back to the National Assembly both to correct inconsistencies and soften its repressive tone (Fonseca Vindas 2007; Nación 2006). How did this law, and widespread support for repressive security measures, originate? And what prompted Oscar Arias to send the already passed law back to the legislature? This paper seeks to examine the political rationales at work behind the 2005 Costa Rican immigration law and the 2007 reform project through an analysis of two rival framings of immigration in Costa Rica. Although I focus on these two specific moments in immigration law and policy in Costa Rica, my analysis speaks more broadly to

¹ Translations my own unless otherwise noted
understandings of policy making not as a technical, rational, politically-neutral practice but as a fraught process in which competing analyses and framings of a problem vie for legitimacy and authority to enact their vision in the policy arena (Greenhalgh 2008; Mosse 2005).

Migration policy\(^2\) in particular is a fruitful area of analysis because, as an administrative tool to categorize and manage outsiders within the national territory, it is the site of contentious debates over who belongs to the nation and who should and should not be allowed to enter that national space. As part of the “the administrative imperative to optimize the health, welfare and life of populations” (Dean 1999:20) migration policy depends on the ‘neutral’, depoliticized language of statistics and sciences of counting (Rose 1999). Yet, the decisions about who to classify and how are deeply political decisions reflecting conflicting interests and social discourses. “In principle, the population of a country is a relatively unproblematical number. But it is not fully determined by the distribution of bodies over a landscape. First a decision must be reached about how to count tourists, legal and illegal aliens, military personnel, and persons with more than one residence or multiple citizenship” (Porter 1995:33). A number of scholars have noted the convergence of immigration policies in various migrant-receiving countries around restrictive policies and immigrant integration as well as growing gaps between stated policy objectives and actual outcomes in immigrant importing nations (Calavita 2005; Cornelius, et al. 2004).

By reading between the lines – going past the numbers and the neutral language of counting and classifying – we can glimpse the rationalities that animate particular policy framings and problematizations. In this sense, I attempt an “emanicipatory reading” of Costa Rica’s migration laws, viewing the legal texts not as simply the codification of policy, but as

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\(^2\) The Costa Rican law is, literally translated, a law of Migration, not Immigration. Indeed, in the law itself, an immigrant is a special category of migrant, one who intends to settle in Costa Rica for an extended period of time. However, I here use both immigrant and migrant to refer to the subjects to be governed by the law.
rival analyses of the reality of immigration in the country (Apthorpe 1996:15). These discourses reflect not just a particular understanding of immigration and human rights but also broader social fears about declining social services and rising insecurity in Costa Rica and historical constructions of Costa Rican identity. They also reflect a concern with regional and global discourses on security. Indeed, over the past few years, government, international, and other organizations have directed increased attention to Costa Rica’s role as a country of transit for drugs in Latin America (Sandoval pers. comment 2009). Thus, even as it participates in global logics of securitization, the new law draws on historical constructions of Nicaraguan otherness particular to hegemonic notions of Costa Rican national identity.

‘We have been bombarded by brothers’: Constructing an urgent immigration problem

Perhaps the most notable aspect of the 2005 law is the sense of urgency it conveys. This urgency is visible in the hasty style in which the law was written: typos, poor grammar, and internal contradictions point to its hurried drafting and passing. For example, in establishing the minimum monthly income needed to apply as an immigrant under the category of ‘financier’ (rentista), article 77 establishes $1,000 while, for the same category, article 79 says $2,000. Other articles omit nouns or are grammatically unclear with respect to subjects or pronouns (Art. 86). Such lack of clarity and internal contradictions in the text, like that mentioned above, have prevented the Department of Migration from implementing regulations to operationalize the law (Fonseca Vindas 2007). Although this situation has allowed the Department to function through decrees and internal directives to resolve particular cases, it has also created a generalized atmosphere of uncertainty, with consular officers and migration police unsure of how to enforce or implement contradictory and unclear articles of the law.
In part, the urgency implied by this ‘rush job’ can be linked to the 2006 Costa Rican presidential election. During the 2005 campaign leading up to Oscar Arias’s re-election more than 20 years after his first term as President, immigration reform shared the stage with concerns over corruption and economic development. Although corruption scandals and the messiah-like promise of Oscar Arias’s return to the presidency came to dominate the campaign and election, migration remained a critical public and political issue. Ricardo Toledo, the Costa Rican Congressman quoted in the opening of this paper, was a candidate for the presidency. One of his major campaign platforms was precisely immigration control. But what, besides the upcoming elections, gave this urgency purchase among lawmakers and in the public imagination?

If the rushed nature of the immigration law is visible in the inconsistencies of the text itself, the rationalities behind this urgency are apparent in the wording of the law, which reflect wider social anxieties about immigration, and Nicaraguan immigration in particular. Indeed, the very basis of hegemonic notions of Costa Rican identity rely on the ‘othering’ Nicaraguan immigrants (Sandoval 2002). Hegemonic notions of Costa Rican national identity emphasize the country’s exceptionality in the region: as an island of peace, democracy, and natural beauty, in an isthmus of violence, dictatorship, and underdevelopment, Costa Rica has risen above its Central American neighbors.

Negative perceptions of Nicaraguans, in particular, serve to highlight and reinforce positive aspects of Costa Rican identity (Sandoval 2004; Arce Sandi, et al. 2001). Where Nicaraguans are ‘inherently violent,’ Costa Ricans are peace-loving; where Nicaraguans are poor, illiterate, and uncultured, Costa Ricans are middle-class and educated; where Nicaraguans are mestizo and dark-skinned, Costa Ricans are ‘white’ (Giglioli 1996; Sandoval 2002). Thus, Nicaraguan migration represents a demographic, cultural, and racial threat to the Costa Rican
nation – its identity and its exceptionality in the region. The urgency and magnitude of these ‘threats’ are reproduced and disseminated through television and print media that emphasize that the country is being ‘flooded,’ ‘bombarded,’ and ‘invaded’ by ‘illegal’ immigrants who are characterized as the primary cause of the deterioration of the country’s social services and its increased crime rates (Sandoval 2004).

But it is only in the 1990s, in the context of the end of the Contra conflict and the decline of the Costa Rican welfare state, that Costa Rican identification in explicit contrast to Nicaraguans has taken on greater salience (Sandoval 2004:444). First, this period coincided with the implementation of structural adjustment policies in Costa Rica that both encouraged Nicaraguan migration through the promotion of an export sector that demanded large-scale manual labor and reduced the Costa Rican state’s capacity to attend to the social needs of its population. While Costa Rica’s already higher levels of social spending buffered the negative social impacts of adjustment, by the mid-1990s, the impacts of declining public investment began to emerge (IDEPSO, et al. 2000; Nowalski and Barahona 2003). Today, crowded classrooms, understaffed public schools, and an overworked and underfunded health system point to the strains on public services. These crises threaten the Costa Rican discourse of exceptionality.

In this context, Nicaraguan immigrants have become the ‘other’ upon which anxieties about the deterioration of social services and rising insecurity have been projected. Costa Ricans blame Nicaraguans for long lines in hospitals, overcrowded classrooms, lack of available housing, and most significantly, increasing insecurity. “[The] undermining of public services and public investment cutback are usually represented, not as a consequence of neo-liberal policies, but as a result of Nicaraguans’ migration to Costa Rica” (Sandoval 2004:444). It is, at least in
part, the perception of declining quality of life that has created the urgency in regulationist discourses that advocate ‘closing’ the border to further Nicaraguan migration and ‘cleaning-up’ the country.

If such rhetoric has positioned immigrants, and Nicaraguans in particular, as outsiders who use and abuse services, discourses linking immigrants to crime offer another threat to Costa Rica’s exceptional status as a country of peace and human security. Sensational news coverage that links Nicaraguan immigration to crime has facilitated the replacement of the political threat of ‘communism’ with the social and cultural threat of ‘Nicas’ since the end of the Sandinista Revolution (Sandoval 2002:51). Between 1994 and 1996, a series of kidnappings committed by several ex-Contras made big headlines, helping to criminalize the Nicaraguan population as a whole. The media “did not emphasize this relation between Contras and kidnappings as the most prominent feature of said events,” instead emphasizing criminality and nationality (Sandoval 2002:51).

More recently, in March 2005, as the immigration law began to be debated in the Assembly and in public, live news footage of a bank robbery in Monteverde, a popular tourist destination in the mountains, featured a standoff between Nicaraguan bank robbers and Costa Rican police (Vizcaíno, et al. 2005). The coverage featured grisly shots of the robbers’ bodies, lying on the steps of the bank, and emphasized their Nicaraguan nationality and previous criminal activity (Vargas M. and Rodríguez 2005; Vizcaíno, et al. 2005).³

The perceived urgency of the immigration ‘crisis’ and the threat of criminal Nicas, in particular, allowed Costa Rican lawmakers to push forward a law that read more like “a few emergency actions” than a comprehensive immigration package (Borge 2006:14). In the next

³ Indeed, it is to this specific incident that Toledo refers to in his speech on March 28, just weeks after the standoff.
section, I trace how the discourses of threat examined here emerge in the framing of the ‘immigration problem’ and the restrictive solutions outlined in the text of the 2005 law.

**Sorting out the good from the bad: the discourse of migration in the 2005 immigration law**

Given the representations of Nicaraguans in news media, the association of Nicaraguans with criminality and illegality, and the upcoming presidential elections, it is not surprising that the law passed in 2005 focused almost exclusively on border control to stem the ‘tide’ of Nicaraguan migration. Here, I focus on the ways in which these discourses about *Nicaraguan* immigration are incorporated into the 2005 law, which governs *all* immigration, and the ‘work’ that these discourses do (Ferguson 1990), namely justifying border and security measures to limit immigration.

In the 2005 law, immigration policy forms an integral part of national security (Art. 2). In this logic, certain immigrant groups threaten the cultural, social, and economic integrity of the nation. Thus, migration policy is oriented towards protecting the nation by minimizing this threat. Such a notion of national security depends on what Feldman describes as “a territorial imaginary that is a horizontal grid of culturally particular units in which a state is authorized to protect the identity of the titular nation” (Feldman 2005:680). One of the first articles of the Costa Rican law states that immigration policy should be directed toward “the protection of the customs and the peaceful coexistence of the country’s inhabitants, as well as the respect for the rights of minors and women, which will be reflected in policies restrictive of the entrance of foreign persons when this alters the elements and values of coexistence cited in this section” (Art. 7). Here, we can see, almost in a legal translation of Toledo’s words (quoted in the epigraph), that immigrants threaten the rights of children and women (whom Toledo says
immigrants come to rob and kill). Further, the entrance of immigrants threatens the customs and unique way of life of Costa Ricans. Thus, national security measures are directed against “security threats from individuals uprooted from elsewhere and now an alien presence in a putatively homogenous state” (Feldman 2005:680). The state’s responsibility, then, is to protect the nation (in which people and territory are conflated) from such invasion, maintaining Costa Rica’s integrity and exceptionality in the region.

In the text of the law, these threats of immigration emerge in discourses of criminality, abuse of social services, and disease. First, potential immigrants are characterized as potential criminals. Article 54 explicitly lists all the crimes for which would-be immigrants may be barred from entry: “for willful crimes against life, genocide, acts of terrorism, trafficking drugs or psychotropic substances, trafficking of people, fraud, illegal association [for criminal purposes], illegal carrying and activity of guns or explosives, crimes of sexual abuse of minors, trafficking of cultural, archeological or ecological patrimony, tax evasion or crimes against minors, senior citizens, the handicapped, or for domestic violence” (Art. 54). As if this list were not enough, the following section goes on to add restrictions to all those whose “criminal history make it likely that they could compromise public security, public order, or the state of law,” though how such ‘likelihood’ should be defined is not addressed (Art. 54). This comprehensive list targets a wide range of ‘problematic’ immigrants – including those mentioned by Toledo and made visible in the national news – but also expanding the notion of criminal immigrants to include groups associated with drug trafficking, convenience marriages, and terrorism.

This text also reflects a concern with regional and global discourses on security. Indeed, over the past few years, government, international, and other organizations have directed increased attention to Costa Rica’s role as a country of transit for drugs in Latin America
(Sandoval pers. comment 2009). Thus, while such a focus on crime and preventing the entrance of dangerous immigrants reproduces national discourses on identity, it also echoes rhetoric borrowed from U.S. immigration policy, and regional discourses of terrorism, crime, and security (Borge 2006).

The phrasing and tone of the law also assume that immigrants continue to represent criminal threats once inside the country. The wording of articles regarding detention and sanctions establish the migration police’s [right] to detain and interview “presumed offenders” (Art. 18). Articles on the implementation of sanctions assume that immigrants have broken the law; they never explicitly mention, for example, that a sanction such as deportation will be imposed only once a violation is proven (Fonseca Vindas 2007). Ironically, this focus on the criminality of migrants obscures the victims of some of those very crimes. Since immigrants are presumed offenders and already possible criminals (even before entering the country), they need not be considered victims of sex trafficking or other human or labor rights violations.

The law also presumes that immigrants are ‘users’ of the social services offered by Costa Rica but contribute little to the social security system. Thus, in terms of planning, the law exhorts the Migration Department to take into account: “The reports of the Costa Rican Social Security [Fund] (CCSS) about the capacity of the Social Security System to attend to the immigrant streams” as well as the “local capacity” of educational institutions (Art. 8). Although these passages do not explicitly state that immigrants are overwhelming social services in Costa Rica, they do focus on ‘immigrant streams’ and imply that such services should be able to meet the needs of Costa Rican users first. Further, the law ignores the issue of immigrants who already pay into the social security system through payroll taxes or voluntary insurance programs. It focuses on the capacity of social services as criteria for the entrance of immigrants rather than on
how these services respond to the needs of the immigrant population. Similarly, in terms of employment, the law again frames immigrants as individuals who take that which is not theirs, threatening the livelihoods of Costa Rican workers. Thus, immigration policy is also oriented to ensuring “the no displacement of national labor by the incorporation of immigrant workers” (Art. 7).

Finally, if immigrants represent a threat to national culture, security, and social services, they also represent a significant danger to the national body in terms of health. The law restricts entry to those who “carry, suffer from, or have been exposed to infectious or transmissible diseases that could signify a risk for public health” (Art. 54). However, it does not establish how threats to public health will be determined or who or what might qualify as such a threat. This formulation of immigrants as threats draws on discourses that figure migrants not only as parasites that suck dry the resources of the nation but also as germs that infect the otherwise healthy national body (See Chavez 2008).

The threats posed by immigrants, then, orient migration policy as part of a project of governmentality that “seeks to enframe the population within what might be called *apparatuses of security*,” (Dean 1999:20). If immigration itself represents a threat to national security, then the role of immigration policy should be to minimize this threat. Thus, immigration policy is envisioned as a responsibility to “regulate migration flows that favor the social, economic and cultural development of the country, in concordance with public security” (Art. 5). Regulation is focused on entrances and exits, on the movement of people across borders, but largely ignores what happens to migrants once they are in Costa Rica. This means that Costa Rican public policy, as embodied in this law, focuses on the repression of immigration itself, but offers no way to deal with immigrants’ incorporation in society other than policing them through
sanctions, detention, and deportation. These policing measures, though, risk contradicting Costa Rica’s own constitution as well as international treaties such as the Rights of the Child (Fonseca Vindas 2007). For example, despite national and international protections against arbitrary detention, the 2005 law allows migration police to confiscate a person’s identification documents and detain a person for “the time necessary” to “determine his migration status and to process and execute the pertinent sanctions” (Art. 18).

This policing of immigrants, both within the country and at the borders is, again, a matter of aligning people with their corresponding states (Feldman 2005). Thus, in addition to deportation measures for immigrants, the 2005 law seeks to encourage the return of Costa Ricans living abroad (Art. 6), again leaving little room to incorporate emigrants into national development policies in any other way than through their physical return to the nation.

Of course, not all the characterizations of immigrants in the 2005 law describe their negative characteristics and impacts on Costa Rica. An immigration law based on regulation and restriction is, after all, just as much about who should be allowed ‘in’ as who needs to be kept ‘out’. Thus, regulation of migration should also be oriented to “selecting migration flows, with the objective to increase the investment of foreign capital and strengthen the technological, cultural and professional knowledge, in the areas that for the State are defined as priorities” (Art. 6). Some migration flows – that is, those that come from wealthy countries and bring with them capital for investment or technology for the economic development of the country – should be openly encouraged. Thus, the law also urges consulates abroad to provide information to prospective immigrants on the “profile of specific projects for the installation of small and medium sized enterprises that may be attractive to immigrants with capital” (Art. 20). The tone of articles and sections dealing with immigrants with capital (assumed to be European and North
American immigrants) is markedly different from the rest of the law. Here, we find no reservations about the characteristics of these immigrants, as long as they have money to invest.

The narrow framing of immigration as a problem of crime and excess that requires a solution dedicated to border and police activities helps us to understand why immigration has not been included or contemplated in other public policies in Costa Rica (Borge 2006). The framing of a policy problem determines or at least limits the kinds of solutions that can be considered (Shore and Wright 1997; Apthorpe 1996). Thus, the framing of the 2005 law as an issue of criminality, illegal actions, and excess immigrants who overwhelm the nation parallels Feldman’s reading of Estonian immigration policy in which, “the construction of security threats […] both enables and contains the range of policy options available to deal with such threats,” which include restrictive policing measures and administrative sanctions (2005:680). This framing further limits the kinds of information considered by the state to determine specific policies: economic impact, resources used and available. Thus, policy drives the collection of information and analysis of data that will in turn drive future policy decisions (Apthorpe 1996).

The composition of the National Migration Council, charged with reviewing and proposing new migration policies, reflects this narrow framing and illustrates the absence of immigration in other policy areas. The Council is headed by the representative of the Ministry of Governance and Police; a representative of the ministry of public security; representatives from the ministry of justice, foreign affairs, employment and social security; the Costa Rican Tourism Institute, and then the director of Migration. Key here is that the law stipulates that no one on the council can have a “conflict of interests in migration activities” (Art. 10). The absence of social institutions and groups that represent immigrants’ interests, including human rights organizations, reflects “strategic silences” around other possible framings (Riles 2006). In this
case, these silences revolve around the contributions of immigrants to Costa Rican society and the ways in which the Costa Rican economy depends on migrant labor. They thus allow the nation to continue benefiting from migrant labor while disciplining that labor through a rhetoric of criminalization, eschewing responsibility for the social costs of labor reproduction. I now turn to an analysis of an alternative framing of immigration that was silenced and excluded from the 2005 law but that resurfaced in the 2007 immigration reform project.

Consultation but not consensus: Discourses of Human Rights and the Immigration Reform Project

The urgent nature of the immigration problem as framed in the 2005 law allowed opponents’ concerns to be brushed aside in the process of drafting and passing the bill. Further, a disconnect between Costa Rican politicians and academics, who have widely discredited the discourses of threat employed in the 2005 law, meant that academic and non-governmental opponents of the bill had little power to influence the Assembly (Borge 2006).

Within government sectors, opposition to the bill – which was also ineffectual – reflected economic concerns. Mario Zamora, the Director of Migration, expressed concern over the lack of police, equipment, and installations to implement the new law and resources to enforce it.

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4 I was in Costa Rica in 2004-2005 when the bill was being debated. Through my work with NGOs dealing with migrants and the Permanent Forum on the Migrant Population, I was privy to correspondence between these human rights groups and the National Assembly. For example, just a few days after Toledo’s comments in the National Assembly, Gustavo Gatica, then an official of Caritas, replied to Toledo in a letter, criticizing him for couching his xenophobic comments in a rhetoric of ‘Christian love.’ However, as far as I can tell, the response was never published in Costa Rica.

5 Indeed, the U.N. High Commission on Refugees (called ACNUR in Spanish) submitted a strongly worded letter to the National Assembly criticizing the bill and detailing the articles that conflicted with human rights treaties in effect in Costa Rica. However, because the letter represented internal documents intended to pressure the Costa Rican Congress to change the wording of the bill, rather than publicly emitted declarations, I cannot find copies of the correspondence online or in the ACNUR archives.
(Murillo M. 2006a; Murillo M. 2006b). However, then Costa Rican President Abel Pacheco refused to veto the law because it had the support of the majority of lawmakers: “If I veto a law like that (with so much support) I expose myself to the [possibility] that the representatives re-seal [approve] it, and I wind up looking ridiculous” (Alvarado B 2005). However, the refusal may also reflect Pacheco’s political opposition to Oscar Arias’s candidature. Indeed, former president and 2006 candidate Arias asked Pacheco to enact a partial veto to resolve the most repressive measures.

While campaigning in an informal settlement on the edge of San Jose that is home to many Nicaraguan migrants (and to many naturalized Nicaraguans, who might be potential voters), Arias “[accused] the new legislation of being draconian and attribute[d] it to a growing wave of xenophobia that does not [fit] with the best Costa Rican values. In support of his argument, he [invoked] our ample tradition of asylum and then [placed] the issue in today’s reality to ask, ‘What would our economy be without the Nicaraguans?’” (González 2005). Arias’s argument, whether a clever election ploy or reflecting alternative understandings of immigration and regional history, highlights other aspects of national identity that position Costa Rica as a historic receiver of ‘less-fortunate’ foreigners, whether they be political refugees during his last tenure in office or economic migrants seeking a better life in Costa Rica today. Later, when Pacheco refused the veto he commented that “he [didn’t] consider that it [referred] to a draconian law, as some sectors have wanted to see it” (Alvarado B 2005). Further, Pacheco’s insistence that it was Arias who was playing politics by calling for the veto reinforces the idea that Pacheco’s refusal to reconsider the bill was also a political move: “I don’t know if don Oscar says this because he’s in politics” (Alvarado B 2005).
In the end, Arias did win the election. Although a manual vote recount and looming debates over the Central American Free Trade Agreement took some focus off the immigration law, Arias took steps to initiate reform. Mario Zamora, the Director of Migration, framed the reform as an opportunity to strengthen border control, professionalize the migration police force, and introduce high-technology equipment in immigration control ('Reformas a la Ley' 2006). For others, like the Jesuit Migrant Services (SJM), the promise of reform offered an opportunity to talk publicly and to consider legally the “great vicissitudes that the migrant populations in the country face, as well as the urgency of having an integral normative framework that respects the fundamental human rights of foreign persons” (Fonseca Vindas 2007).

The immigration reform begun in 2007 is interesting not only because it represents a legislative initiative of the Executive Branch, rather than the legislature itself, and the interests of a new administration to reverse the decisions of a previous administration, but also because the process of reform was hailed by many as ‘reaching a consensus’ among broad political and social sectors (Fonseca Vindas 2007). When it became clear that the ‘reform’ actually required entirely new legislation, the Department of Migration circulated drafts of the proposed changes to social groups and human rights organizations working on immigration and even invited feedback from them. Organizations run by migrants, including the National Network of Civil Society Organizations for Migrations, played an important role in offering alternatives. However, as Karin Fonseca, director of Jesuit Migrant Services notes, the suggestions are just that – suggestions, in no way binding on either the Department of Migration or the final text as presented in the National Assembly (Fonseca Vindas 2007). It is a text that was “consulted, but not made in consensus” (Fonseca Vindas 2007). Indeed, the text largely did not change the
security focus of the law, although it expanded that focus to include the security and rights of certain migrants.

Despite the resiliency of the security framing which constrained the ability of human rights groups to change the terms of the debate (Porter 1995), academics and activists were able to offer some alternative problematizations of and responses to migration. Fonseca (2007) notes as major achievements the incorporation of language promising “respect for diversity and customs”; “recognition of multicultural richness”; and the orientation towards “promoting the integration of migrant persons and the compliance of the legislation in human rights material.”

Under the alternative framing offered by human rights organizations, immigration represents “a human challenge” related to development rather than crime (Borge 2006:2). This orientation understands the major issues with relation to Nicaraguan migration as: the economic contribution of Nicaraguans to the Costa Rican economy and economic dependence of Costa Rica on migrant labor; the respect for human rights and cultural diversity; and the lack of effective public policies in Costa Rica, for which migrants are blamed rather than ineffective political processes. The first two foci serve to dismiss arguments enshrined in the 2005 law – that immigrants come to take Costa Ricans’ jobs and abuse social services. These arguments justify Nicaraguans’ presence and urge tolerance and acceptance on the part of Costa Ricans. The third turns anxieties about failing social services back onto the state, asserting that it is state failure (and the private sector’s noncompliance) rather than immigration that has created chaos and crisis within the health, education, and housing sectors (Mojica Mendieta 2003).

The influence of these alternative framings is clear in the text of the revised law, passed in September 2009 (No. 8764). The marked contrast between the framings incorporated in the 2005 and 2009 laws reveal how alternative “ways of naming and framing set policy agendas
differently” (Apthorpe 1996:24). The new law explicitly recognizes the importance of immigration for the country. Instead of calling for the regulation of migration flows, it enjoins the state to “regulate the integration of migrant persons, respect their culture and favor the social, economic and cultural development of the country, in concordance with public security; it [the State] will also watch out for social cohesion and the legal security of foreign persons that inhabit the national territory” (Art. 5). In this logic, migration flows are not streams to be stopped, restricted, or cut off, but rather represent opportunities for development and cultural diversity. Though public security remains a major theme throughout the law, it is tempered by an equal emphasis on human rights and the legal and civil rights of migrants. Thus, migration policies under the new law should focus on “orienting and ordering the dynamics of immigration and emigration in such a way that they contribute to national development” in an economic, social and cultural sense (Art. 6).

A focus of the new law is “the regularization and integration of immigrant communities in Costa Rican society” as well as building strong links between Costa Rica and its emigrants abroad (Art. 6). The integration of immigrant communities and the explicit need to maintain links with emigrant communities is more than just a shift away from repressive border control measures. It signifies an acknowledgement that Costa Rica is not simply a receiving country – bombarded by less fortunate migrant neighbors – but is also a country of emigrants, whose development depends on migration flows both in and out of the national territory. This entails an understanding that the alignment of national bodies with their respective national territories is impractical and unrealistic under current economic and social conditions in the region.

Further, by recognizing immigrants’ contributions to Costa Rican society and opening the possibility for the regularization or legalization of immigrants already in the country, the 2009
law helps to mute some of the rhetoric of criminalization so prevalent in the 2005 law. The final text contains no list of supposed crimes of potential immigrants, and it contains clauses that stipulate the sanctions will be imposed *in the case of violations*, rather than presuming the guilt of immigrants (See Art. 31). Further, the new text explicitly protects migrants from crime and violations of their human rights. Sex trafficking and the trafficking of minors are explicitly mentioned (Arts. 18; 249), not simply as crimes committed by foreigners, but rather as crimes from which vulnerable migrant populations must be protected by the Costa Rican state.

However, I would emphasize that rather than representing a whole-hearted shift from restrictive immigration policy to a focus on immigrant integration, the new law corresponds to what Calavita (2005) and Cornelius and Tsuda (2004) describe as the increasing correspondence between restrictive orientations and integration programs for migrants already present. Yet these changes, while they limit the repressive response of the Costa Rican state and police apparatuses, do not represent a withdrawal of the state from the regulation of immigration or the elimination of the security discourse. Rather, the 2007 immigration reform project corresponds to a project of governmentalization: “the juridical and administrative apparatuses of the state come to incorporate the disparate arenas of rule concerned with this government of the population” (Dean 1999:20; See also, Peters and Pierre 2006). Thus, the new law integrates the analysis and management of migration across a wide range of governmental and non-governmental institutions and actors. The National Migration Council, while still headed by the Ministries of police and public security, now also includes the ministers of National Planning and Economic Policy; Health; and Education (Art. 10). Most importantly, the clause dealing with ‘conflict of interests’ was deleted and in its place, the Council must now include two representatives from
civil society organizations with links to migration issues, named by the Ombudsman Office (Art. 10).

Such comprehensive management of migration requires comprehensive information about migrant populations. Thus, the law requires a large range of institutions, including public universities, to contribute technical information on immigration, emigration, the population’s characteristics, needs, etc. (Art. 8). Instead of reports about the ‘capacity’ of the health and education systems to withstand the pressure of migration streams, under the new law, these reports should detail “the demand in services, and compliance of employer contributions, in the case of the contracting of foreign workers, and the voluntary insurance of independent workers” (Art. 8). The last part of the clause refers not only to migrant workers, but to all those workers who voluntarily insure themselves. The planning process demands data that details the characteristics of migrants, demands on and capacities of state institutions and services, as well as contributions of both national and foreign workers, and employers to the national insurance system. The law thus seeks to render the social landscape, inhabited by both citizens and immigrants, visible, knowable, and manageable.

Finally, the law figures migration as a priority interest for the development of the country and for its institutions (Art. 2). “This suggests that each public institution should establish programs and strategies that permit the realization and execution of public migration policy defined by the Executive Branch” (Fonseca Vindas 2007). Because the regulation of migration is no longer envisioned in terms of entrances and exits, it can (and must) now be incorporated into a diverse set of institutions that participate in the project of governance of migrant and national populations.

Implementation: The Uncertain Future of Immigration Policy in Costa Rica

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While the language of the newly passed law represents a marked break with the repressive tone of the 2005 law, some migration activists and academics are still cautious about its achievements. Although the new law incorporates new perspectives on human rights, details responsibilities of protecting migrants from crime and especially trafficking, and recognizes the cultural diversity that migrants bring to the country, it does not change the fundamental orientation towards national security. Indeed, the dispersion of responsibility for reliable data on immigration among various public and state agencies risks solidifying this security focus across a wide range of social institutions. Further, the 2009 law does not erase the difference between immigrants with capital and immigrants without, even if it does not automatically assume that immigrants without capital are criminals. It also continues to burden immigrants with the responsibility to pay into the Social Security system, without sufficiently addressing the issue of employer compliance (Fonseca Vindas 2007). It incorporates the views of different actors, including sectors of civil society linked to migration, but their proposals are not binding, just as they were not binding in the consultation process within the reform project. Fonseca cautions against “the seductive employment of a more inclusive language and the incorporation of notions of interculturality and human rights” that may not materialize in the implementation (Fonseca Vindas 2007).

The controversy over the 2005 law and its eventual reform reinforce the argument that how policy gets framed and written is not, despite its language of neutrality, a politically neutral process (Rose 1999; Shore and Wright 1997). The 2007 reform project and resulting new law widens the legitimate discursive field, opening immigration policy to a larger range of actors. Thus, the attempt to diffuse the responsibility for the analysis of migration’s impacts among various institutions including universities offers political opportunities for contestation and
argumentation among new actors. With the legal backing for their at least nominal inclusion in future policy making, academics and activists have gained political legitimacy in policy circles and state institutions. It remains to be seen if they will be able to form new alliances and assert their alternative framings of immigration and the responses it requires in effective ways.

The reformed bill was signed into law in August 2009, published in September 2009 and went into effect in March 2010. However, the extent of the changes in the law is still a matter of debate. The development of statutes and regulations and the first attempts to implement the new law will begin to make clear the degree to which the more inclusive framings of migration as an issue of development and human dignity will affect immigration policy enforcement. Yet, the real question is whether these alternative framings will gain wider purchase in the public imaginary – whether they will affect only policy and its implementation or will change social discourses on immigration in the larger Costa Rican society.
References

2006 Reformas a la Ley de Migración serán presentadas al Congreso en enero próximo. In La Nación. San José.

Alvarado B, Eduardo E.
2005 Presidente Pacheco descarta veto a 'Ley de migración'. In La Nación. San José.

Apthorpe, Raymond

Arce Sandi, Ana Gabriella, Tatiana Vanessa Roldan C., and Cesar Villegas Herrera

Borge, Dalia

Calavita, Kitty

Chavez, Leo

Cornelius, Wayne A., and Takeyuki Tsuda


Dean, Mitchell

Feldman, Gregory

Ferguson, James

Fonseca Vindas, Karin

Giglioli, Giovanna

González, Armando
Greenhalgh, Susan  

IDEPSO, UNFPA, and Foro Permanente sobre Población Migrante  

Lundquist, J. H., and D. S. Massey  

Mojica Mendieta, Francisco Javier  

Mosse, David  

Murillo M., Álvaro  
2006a Gobierno propondrá atrasar nueva ley de migración. In La Nación. San José.

—  
2006b Gobierno rechaza aplicar ley de migración. In La Nación. San José.

Nowalski, Jorge, and Manuel Barahona  

Peters, B. Guy, and Jon Pierre  

Porter, Theodore M.  

Riles, Annelise  

Rose, Nikolas  

Sandoval, Carlos  

Sandoval, Carlos  

Shore, Cris, and Susan Wright  
Toledo Carranza, Ricardo

Vargas M., Otto, and Ramiro Rodríguez

Vizcaíno, Irene, Carlos Arguedas, and Ronald Moya
2005 Nueve muertos y 17 heridos dejó secuestro en banco de Monteverde In La Nación. San Jose.