UNIVERSITÀ DEGLI STUDI DI MILANO

SCUOLA DI DOTTORATO

In Scienze Giuridiche

DIPARTIMENTO

Scienze Giuridiche "Cesare Beccaria", sezione di Filosofia e Sociologia del Diritto

CORSO DI DOTTORATO

I*nternational PhD programme in Law and Society "Renato Treves"*

BORDERING SUBJECT

THE UNSPOKEN INCORPORATION OF UNDOCUMENTED MIGRANTS IN ITALY

IUS/20

CANDIDATA

GIULIA FABINI

TUTOR

PROF. DARIO MELOSSI

CO-TUTOR

PROF. FABIO QUASSOLI

COORDINATORE DEL DOTTORATO

PROF.SSA PAOLA RONFANI

A.A. 2014/2015

TABLE OF CONTENTS

INTRODUCTION

In 2012, 232 million people left their countries of origin - and this is likely to double by 2040 (Caritas/Migrantes 2014). Hundreds of thousands of "People on the move" (Melossi 2013) that provoke anxiety, strengthened borders control and progressively restrictive immigration laws worldwide.

Human mobility and the attempt to control it are key protagonists of the contemporary era; even being conflicting dynamics, they still originate from the same globalisation processes. Globalization, in fact, does not regard solely transnational movements of capital, or international movement of people, but also the increasing global dimension of discourses, practices, and laws frustrating the freedom of mobility, comprising the "right to escape" (Mezzadra, 2006). As mobility is becoming more and more urgent for entire populations, so the immigration control regimes are going increasingly violent. One of the most evident and harmful effect of globalization is restrictive immigration laws originating the killing, exploitation, marginalization of group of people. As Human mobility increases, immigration laws become more restrictive especially in the western societies, should the "illegal" immigration in the Global North be considered as one of the biggest challenges national states are facing.

Catherine Dauvergne argues that immigration laws may be aimed at making nation-state borders meaningful (Dauvergne 2003) as an answer to the confusion between who belongs to the nation and who does not. In fact, transnational movement of people interrupts the Nation-states order based on clear separation between "Us" and "Them". However, national borders are not the most important borders in the contemporary era. Globalization processes are especially marked by the production of global borders dividing the "Global North" from the "Global South", more than borders dividing the diverse nation-states.

The line distinguishing "Global North" and "Global South" is far from being easily traceable. As the dynamics of globalization blur the boundaries of insider-outsider dichotomy (Dauvergne 2003), the Global North and South are not two completely distinguished spacial spheres, but rather they co-penetrate. People belonging with the Global South occupy the same space as people belonging to the Global North, albeit in a different way. In other words, global borders do not correspond to clear division between "richer countries" and "poorer countries". Global borders are transnational (Weber and Pickering 2013), they cut across states, cities, even populations. They are invisible borders for some but not for others.

Patrolling the global borders means to protect the present hierarchical global order. Global borders are here intended as spaces for interaction between migrants and the agencies of control in within the national territories. They are sites where global dynamics encounter local systems of power and belonging is negotiated.

According to Katja Franko Aas, a Northern Penal state exists, which redefines the contours of criminalization and punitiveness, and establishes whom is illegal, whom welcomed. Explains Aas that "it has been creating an elaborate legal regime that criminalizes certain forms of movement, effectively rendering large portions of the world's population "illegal"' (Aas 2013: 27). The Northern penal state has the power to export its "crimmigration control agenda" (Aas 2013: 30) and decide which states are deviant. Being a citizen of a deviant state makes the citizen of that state deviant.

I see two main criticisms about the way immigration control regimes are commonly investigated and described in scholarship. Firstly, research often overlook the global dimension of power relations that underpins immigration control regimes in western societies. Scholars situate research at the national level and, even when theoretically aware of the global dimension of the mechanisms of control, their empirical accounts tend to ignore it (see Darian-Smith 2013). On the contrary, I argue that global power relations reverberate in power relations inside national territories, and at the local level. What is essential when investigating the immigration control regime, is to take into consideration the global, transnational, national, and local dimension of the mechanisms of control. In the contemporary, power relations embedded in the mechanisms of control of human mobility have a global or transnational dimension, even if these dynamics become then manifest just at the national or local level. Analysing the phenomenon of immigration flows and mechanisms of control in the national sphere, ignoring their global or transnational dimension, it is a mistake that ultimately prevents researchers from correctly addressing the issue itself and its possible solutions for a more just law. In the contemporary, the problem of scales become crucial for understanding the operation of laws.

Secondly, socio-legal and criminological research make sense of the mechanisms of border control by taking for granted that the main aim of logics of control is one to exclude, therefore they generally focus on removal procedures. My research takes a different approach: my focus is on the far more frequent conditions under which undocumented migrants are informally allowed to remain despite official permission. Therefore, in looking at the immigration control regimes, my focus will be on undocumented migrants living inside national territories rather

than removal procedures. I am not asserting that undocumented migrants present in the territory are never considered in research; nevertheless, when considered, undocumented migrants are generally seen as resulting from immigration law failing to enforce removal. In other words, the logic to exclude that supposedly drives immigration control is not seriously questioned. On the contrary, I argue that undocumented migrants living inside national territories may be seen as the very *product* of law instead of its failure. In a sense, immigration control regimes are mechanisms that exclude through removal and at the same time processes of production of a new subject, that is, the undocumented migrant living inside national territories despite official permission. Even if the killing, exploitation, and marginalization of groups of people is the most evident and maybe harmful effect of immigration control regime, the side effect (the creation of a new subject) looks to me equally important. The question is: what happens to all those people who immigrated (lawfully or not) and remained even without the official authorization to do so? This is the case, for example, of those many migrants whose residence permit has not been renewed but they have not been removed; or those migrants who never had any residence permit but live in the receiving country; or also those asylum seekers who had asylum denied and remained. It is a fact that the deportation regime cannot remove every migrant in breach of conditions to stay. The deportation regime needs to select, and the main results of this selection is the many migrants that remain indeed.

Instead of focusing on the exclusionary logics driving the removals of some undocumented migrants, this thesis aims to enrich the literature on control by looking at the *differential inclusion* of those many undocumented migrants living in the territory. This approach becomes more relevant once we consider the fact that only a minimal amount of all undocumented migrants worldwide are actually removed or deported. Differential inclusion is a concept elaborated by Sandro Mezzadra and Brett Neilson (2013); it is an invitation to look at the mechanisms of inclusion, instead of exclusion. An inclusion that, however, is differential. According to Mezzadra and Neilson, 'differential inclusion describes how inclusion in a sphere, society or realm can involve various degrees of subordination, rule, discrimination, racism, disenfranchisement, exploitation and segmentation' (De Genova et al, 2014). In this line, the foucauldian concept of discipline goes exactly in the direction of acknowledging punishment, specifically imprisonment, as a tool to normalize individuals, in order to make them to conform to the norm and include them in disciplined societies (Foucault, 1977). Hence, inclusion and exclusion are assembled logics. Furthermore, As well as it seems a logic of inclusion the one behind imprisonment, at least at the origin of capitalism and the modern state: Dario Melossi

and Massimo Pavarini reading of the prison as "ancillary" to the factory also points at the logic of inclusion; they show that prison is aimed at disciplining the individual to labour, at producing the disciplined worker useful for the development of capitalistic economy (Melossi and Pavarini, 1981). My theoretical perspective will move from here.

According to what have been said, my research is aimed at investigating the processes and logics through which, at the local level, global border control produce who might be called "transnational subaltern subjects" (Kapur, 2003): undocumented migrants living within national territories without official permission, who are not completely included, but are not completely excluded either.

Using a case study of internal border control in Bologna, Italy, I will examine the logics underpinning global border control at the local level, as this may question the logics of global border control often taken for granted. The core of investigation will be the interaction between police and undocumented migrants at the internal borders, that is, once migrants have crossed external borders and live inside the territory. I argue that what we see in Bologna is a logic of *subordinated inclusion* rather than exclusion, whose main result is the production of a subject who may not completely belong, yet is not completely excluded either. Undocumented migrants intended as global others occupy the space of global borders, making these borders a crucial field of inquiry for scholarship on criminology and socio-legal studies.

Undocumented migrants are a product of immigration laws (Ferraris 2013). Being under the force of law and beyond its protection, they are a form of the exception, included in the legal order in the form of their exclusion (see Agamben, 1995). Importantly, the global border(s) is here understood not as a line dividing the inside from the outside, but as a space where discretion is exercised and decisions about belonging are made. This space may become a site of indistinction between the norm and exception (Agamben, 1995). According to this view, global borders represent the "frontier zone" (Weber, Pickering 2011), or no-man's-land (Barker, 2013), where social agents interact, as do global and local dynamics of power and resistance, thereby modifying expected outcomes.

One main concern of the present work is that, even if internal border control relies on similar discourses, power relations, and laws at the global level, I argue that it produce dissimilar outcomes depending on the local context (see also Weber, 2014). Therefore, by accepting Saskia Sassen's invitation to see "the global inside the national" (Sassen, 2010), my aim is to show that the global logics meet other logics, conditions, and history at the local level, which

affects the expected outcomes (see Chacrabarty, 2000). On the one hand, the outcomes of global borders control depend on the local level; on the other hand, the local dimension is the only dimension where it is possible to study, recognize and understand even global dynamics.

My case study looks at undocumented migrants in Bologna (Italy) continually undergoing police checks, being charged, and even detained. Few are actually removed; the great majority remains and finds their place in the Italian shadow economy.

Police are at the core of present investigation, as the Italian immigration law entrusts the control over undocumented immigration to general police (a specific immigration police have never been issued in Italy indeed). Even so, police practices are not taken into consideration alone: what really stands at the core of present research is the interaction between migrants and police. I consider that migrants are not passive subjects in the immigration control regime, but by enacting strategies of resistance, they oppose the police, force them towards negotiation, and contribute to the final results of interaction. The present analysis acknowledges that migrants oppose strategies of subjectivation to the strategies of subjection enacted by the police, which originates that migrants are active agents in the mechanisms of control that produce them as subjects.

Such interaction takes place in a normative context. Both migrants and police are bounded to law. Especially, police and law enter in complex relations, as the law sets the boundaries within which police make discretionary decisions. Law plays an important role in the way the interaction between police and migrants is shaped. It is here argued that the law plays a role not just through its legal implications, but also as culture (Mezey, 2001). The power of law to create meanings is a debated topic in law and society scholarship. What from this case study will emerge is that the legal discourses and interpretation of law more than the law itself have the power to affect the decisions police make during territory control activity (see Quassoli, 2013). This research will therefore consider the law, discourses, and practices. I argue that an analysis lacking one of these aspects is unable to correctly address the issue.

Immigration control regime is not just about removals, but also about controlling undocumented migrants who remain in within national territories, but the interaction between migrants and police occurring at the internal borders is still under-evaluated field of research (important exception are: Van der Leun, 2003; Kosharavi, 2011). It is likely that this lack of attention to *the shadows of border control* is due to practical difficulties in investigating such a field, or because of the political sensitiveness of results, or finally because it pushes the researcher to

revealing some illegalities taking place in the shadow of law. Despite these difficulties, I believe that what is happening in the shadows of border control may tell something of the general mechanisms of immigration control regime and may be of help to solve the urgent issue of removal, killing, and exploitation of groups of people. A new game is being played around the undocumented migrants remaining inside national territories in breach of condition, a game that is mostly played silently and remain invisible also for those who study immigration control. Shedding light on under-investigated mechanisms of immigration control, together with the strategies of resistance, has the purpose of shedding new light also on the mechanisms of control as a whole, and this is crucial for understanding something in the functioning of liberal democracies facing globalization processes. Looking at what is happening at the internal borders may reveal the current state of liberal democracies, the processes through which new subjects of democracy are being created, and the direction we are going to.

By analysing the current immigration control regime in Italy, this research contributes to policing studies, criminology of mobility, and socio-legal research on immigration control more in general.

It contributes to policing studies in four ways: it proposes to consider the theory of the state, the concept of sovereignty, and the role of law when studying police; it enriches literature on policing with empirical research on policing in Italy; it proposes a model for doing research that *talks about police without talking with police*, to overcome the difficult task of gaining official authorizations; it challenges the traditional idea of police discretion by situating police within a web of contrasting powers. The research contributes to the criminology of mobility (Bosworth, Aas 2013) by enriching it with a perspective from political economy of punishment (Melossi 2008, De Giorgi 2010). Finally, this research is aimed at providing practical and theoretical contributions to socio-legal research under changing conditions of globalisation. It proposes a bottom-up perspective on border control, suggesting that a top-down perspective does not enable socio-legal research to account for undocumented migrants living inside national territories, except as a failure of immigration laws. I propose to look at the reality of undocumented migrants present in the national territories from a bottom-up perspective on internal border control, and a conception of law as the combination of the law on the books *and* discretion. My bottom-up perspective acknowledges the existence of undocumented migrants as inside, not outside a law frame, indeed, a combination of law and action (Feeley 1976, Nelken 1981). My investigation departs from simply discussing the processes through which these

subjects are produced and seeks to identify the logics behind the processes. Specifically, I examine the processes through which the social agents involved in border control negotiate what may be called *acceptable levels of illegality*. I look at the practices and rationalities through which undocumented migrants, police, and judges interact during internal border control, and I argue that it may be seen as the process of producing new global subjects under changing global conditions and persisting blind national laws.

At stake is the ability of socio-legal research to elaborate new legal categories which may enable us to recognize the existence of these subjects as a product of law, not its failure; a product of a complex normative context, discourses, conflicting powers, and negotiation. Essentially, socio-legal research must recognize the changes globalisation processes are bringing about in the law, and most of all name them if this research is to help build the justice of new global order.

Outline

The thesis breaks down into six chapters: the first chapter presents the theoretical framework, the second one describes the context of the research, focusing on the legal norms regulating removal procedures in Italy; the third chapter explains the methodology used in the research. The fourth, the fifth, and the sixth chapters present the results of the empirical research, continuously relying on different sources and methodology.

The first chapter explores the crucial topic of the intersection between class and race for understanding contemporary borders control. Then, it provides an historical account of immigration control, aimed at showing the processes of criminalization of the vagrant intended as "the chrysalis of every species of criminal" (Duncan, 1966: 172) – which, I will argue below, anticipated the same criminalization processes that we may see today against the figure of the migrant. Today, as in the past, processes of *othering* and racialization are crucial for regulating, or rather, *producing* subordinated classes, useful for the economic system. The historic perspective on immigration control shed also light on the centrality of the police as an institution aimed not just at controlling but rather *producing* the social order. I will stress that criminology of mobility could be enriched by acknowledging the aim of immigration control regime is not only to exclude; on the contrary, I will empirically argue immigration control mechanisms may also serve to include. I will introduce here the concept of "differential inclusion" (Mezzadra and Neilson 2013) that will inform the later analysis of results of research. I will merge border

studies with studies on political economy of punishment and criminology of mobility in order to propose a perspective on the interaction between border agents and border crossers in the internal borders, intended as mobile space of discretion. The chapter proposes that interaction between police and undocumented migrants at the internal borders is the principal site where immigration control mechanisms develop, and it proposes that the primary effect of such an interaction is the production of undocumented migrant as subjects. The chapters goes on showing the interconnections between capitalism and punishment. It argues that in "immigration penalty" (Pratt 2005) police is at the core of punishment more than prison or removal procedures. The last remarks are on sociology of police and, then, on the some salient topics of interest for this research. Particular attention will be devoted to the topic of discretion and control on laborious classes. One core point of the theoretical framework is the complex interrelation bounding the law and police, which usually remains under-investigated by the sociology of police. On the contrary, I propose to consider discretionary decision, and thus discretion, as part of the law. I make the argument that police re-located the borders previously set by the law to accommodate their tasks that usually do not correspond to law enforcement but to order maintenance. Police make discretionary decisions during immigration control and actually produce borders (Neocleous, 2000); or, differently said, they perform the borders (Wonders, 2006). However, if one conceptualizes internal borders as a space of discretion where the interaction among different social agents occurs, one will see that police interact with other agents when deciding over the location of internal borders. Their power to make decisions will be affected by the actions of other agents exercising their power as well (see Foucault, 1982). In this research, I identify the undocumented migrants themselves and the justices of the peace (JP) as the other two agents who participate in the interaction and thus decide together with the police over the location of internal borders. I propose to see how the borders are performed in a local context, by focusing on the interactions between all the actors involved in border control.

The second chapter presents the context of research. It discusses undocumented immigration as a generalized fact in the countries of the "Global North" since the post-second World War, yet "illegality" has become recently an issue debated and apparently contrasted. Instead, the chapter points out that illegality of undocumented migrants is a very product of immigration laws, and it highlights that, even if all countries resort on harsh measure of exclusion on the law on the books, they present different trend of actual removals. Italy is taken as a case that reveals a steadily downward trend of executed removals in the last odd-ten years (Weber, 2014). The

chapter aims at providing the context of research. It first shows criminalization processes against undocumented migration is a political resource in Italy with a long history: "migration alarms" have been used throughout time as political resource by Italian governments (either leftist or rightist) for the purpose of scaring the public opinion via mass media and then reassuring it, reaffirming thus their power (Cornelli, 2008). The chapter then provides details on the legal norms regulating removal procedures, with a special focus on the key role of the police has within them. Then it presents the importance the concept of dangerousness has in the immigration law: dangerousness appears as a recurring frame it is hypothesized here that the law already makes the association between undocumented migrants and dangerous migrants. The last part of the chapter describes "immigration law in action" in the Italian case, and depicts a scenario where internal borders are more salient than external borders in the mechanisms of control; however, they are under-enforced in the great majority of cases. Italian immigration law is a really punitive and restrictive one: by linking residence permit and work contract, the law makes it extremely difficult for migrants to cross Italian borders with a residence permit and easy to lose it. Data show that the reality is one of migrants losing their residence permit and remaining anyway.

The third chapter explains the methodology. The empirical research is aimed at enquiring the selective enforcement enacted firstly by police and then also by justices of the peace, through which some undocumented migrants are captured in the meshes of power and some others are not. The selectivity process seems to be driven by the logic that *not all the undocumented migrants, but just the dangerous ones run, eventually, the risk of being deported*. In other words, when carrying out control over undocumented migration in Italy, police officers and justices of the peace creatively implement Italian migration law, and distinguish between dangerous undocumented migrants (to be deported) and not dangerous ones (to leave free). Our concern is with the evaluation of dangerousness made by the agencies of control: which are the (legal and extra-legal) elements part of such an evaluation? To what mechanisms of power does such an evaluation open? The first paragraph describes the case study, which is aimed at answering the following research question: what practices of control police enact in the immigration control regime in Bologna, and what are the strategies of resistance from migrants? What are the rationalities upon these strategies of power and resistance? The second paragraph presents the research method used to *do research on police without involving police,* to overcome the denied access to the field (access to the field is often lamented by many sociologists of police). I carried out a modeling research: I collected data from a variety of sources, and using

quantitative or qualitative methods depending on the sources: I collected in depth interviews with justices of the peace, undocumented and documented migrants, lawyers, journalists, and city police officers. I carried out an ethnography during trials for immigration crimes. I analysed case files on pre-removal detention and immigration crimes. Additional sources, such as news on police in the local media and immigration reports from different agencies have been used to strengthen my understanding of the mechanisms of control. The validity of data is confirmed through triangulation. The fourth paragraph presents a careful analysis of possible methodological problems and solutions: Bologna's detention center for immigrants (CIE[1] from now on) was shut down in 2013, which causes the availability of data just for different time frames[2]. Therefore, the analysis of data needs to be accurate and it requires that time frame is always taken into account and incorporated in results. Additional methodological problems come from the so called refugee's crisis, which probably caused some changes in the context of research while data were still being collected. Migrants and justices of the peace interviewed, in fact, believe that the crisis changed something in the way and frequency police officers carry out control. In this case, the fact that I collected interviews in different time frames becomes a strength for the research, as it makes possible for me to confront data and look for similarities and differences, before and after the changes in the context. An attempt has been made to distinguish between discourses and actual practices.

One of the core point of the present research is that the mechanisms of control over undocumented migrants are made up of mechanisms of formal as well as informal control. Police is the institution taking the first step in both cases. Mechanisms of informal control result in discretionary decisions made by police and never arriving before courts: they refer to all interactions between migrants and police ending with no arrest, which Bittner has named the activity of "keeping the peace" (Bittner 1967). Formal control instead starts when police, during their regular control activity, make a decision to act: such decision perhaps activates arrest, possible removal order, or even pre-removal detention, and possible removal.

1 CIE is the acronym for *Center of Identification and Expulsion* of undocumented migrants in Italy.

2 Data on pre-removal detentions are for 2011-2013; in depth interviews with migrants were collected in autumn-winter 2013-2014 and then in spring-summer 2015; in depth interviews with justices of the peace in June 2014; background knowledge on city police officers come from interviews collected in winter 2010-2011.

Both mechanisms of informal and formal control are crucial in the management of undocumented migrants living inside the national territory, in Bologna, in Italy in general, I suspect everywhere else. Chapter 6 will deal with the mechanisms of informal control from the standpoint of strategies of resistance continuously enacted by undocumented migrants. Mechanisms of informal control, that is, interaction between the police and undocumented migrants during internal borders control, are generally overlooked by research on immigration control. I argue that, by poorly paying attention to the interaction between police and migrants (important exceptions are Weber and Pickering 2011, 2012; Palidda 1999; van der Leun 2003; Kosharavi 2011), researchers fail to detect the "disciplining effect" resulting from not enforcing the law (Fabini 2012) together with the role of migrants themselves in shaping the mechanisms of control. Instead, the mechanisms of formal control will be analyzed in this and the following chapter. Especially, chapter 4 focuses on the undocumented migrants who were kept in detention in Bologna's CIE, while chapter 5 will focus on what one might call "immigration crimes", such as illegal entry and stay (article 10 *bis* of immigration law) and disobeying to removal orders (article 14 para. 5 *ter*).

Data on pre-removal detention in 2011-2012 will cross few biographical elements with justices of the peace's decisions, in order to understand the extent to which nationality and gender influence the idea that some migrants are more dangerous than others. The rhetoric of dangerousness is further analysed, by taking into account the interviews with the justices of the peace. Third paragraph analyses dangerousness as a rhetoric according to the justices of the peace, which is as it follows: *undocumented migrants who commit crimes prefer remaining undocumented so that they can be invisible and escape the mashes of control*. In this way, the undocumented migrant becomes responsible of his/her being undocumented. Three main observations may derive from the data so far: no–validation decisions concern more frequently the detention of women migrants rather than men. Also, the percentage of non-validation decision varies depending on the nationality of migrant, and also their gender. The detentions of women migrants are less frequently validated, but then women migrants spend longer period under detention than male.

In the following chapter I will continue to delineate the concept of dangerousness, through narrowing the focus on the practices of control in operation in Bologna. At the end of chapter 5 I will propose some recurring "frames of dangerousness" that I identify in the practices and discourses of the mechanisms of formal control. These "frames of dangerousness" correspond

to sub-categories of undocumented migrants, which JPs and police appoint different levels of dangerousness. Both police and JPs participate in the construction of these "frames of dangerousness" because they result from pre-selection operated by police and a peer-review process enacted by justices of the peace. The two are strictly interrelated, as the justice of the peace will make their decisions grounded on their "practical knowledge" which however rest on a pre-selection already operated by the police.

The selectivity process presented in chapter four tells just one part of the story. When it comes to police, in fact, discretionary power can be expressed either as a decision of action or inaction: whilst the former is easily observable in courts and in case files, the latter is of low visibility and can solely be observed at street level. I investigate the practices of control over undocumented migration both at street level and before the courts, as it would not suffice to pay attention either on one dimension or the other. Chapter five is about the mechanisms of informal control. It focuses on the interaction between police and migrants during territory control activity, with particular attention on the practices of resistance enacted by migrants. Resistance is framed not just as counter action, but also as subtractive action, invisibility, illegalities (Saitta 2015): all of them are ways to resist the agencies of control and removal. Most of all, undocumented migrants resist to the label of criminality: migrants interviewed, even if undocumented, do not accept to be considered as criminal. Undocumented migrants living in the territories, even using illegalities to resist the violence of law, refuse the label of criminal. They do not consider correct that police control and detain them if they do not have committed any crime, even if they are illegally present in the territory. Other strategies of resistance are: avoiding certain part of the city, especially during nights; do not hang out with not familiar people; do not hang out in group; entering the shadow economy; buying fake work contracts to have the residence permit granted; always paying the ticket on trains and buses; using irony in the interaction with police; learning to speak a good Italian; sharing information about legal procedures through journals circulating inside community (this is the case of Chinese community in Bologna); always showing confidence before police, and however respect for their authority; providing the police with fake names when stopped for an ID check. The fifth chapters closes with one reflection: the criminologist of mobility lament that immigration control regimes are turning undocumented migrants into criminals. Yet, can one really claim that such a criminalization processes is eventually successful, when undocumented migrants resist the label of criminal, do not give up with remaining inside national territories even in breach of conditions and keep on looking for their way to regularize their position?

The conclusions discuss the importance to broaden our consideration of the elements taking part in the immigration control regime. They proposes that immigration penalty is much wider than just removal procedures. They summarize the process of creation of the peculiar subject of the present case study, underling global and local dynamics of power, and it will shed light on the connection between penalty, border, and economy.

The process of bordering subjects is producing undocumented migrants as subjects, but also as others easily exploitable in within the shadow economy. The production process uses many different tools: means of law (Ferrajoli, 2010), discourses spread by mass media and government's declaration (Dal Lago, 1998), evaluation of dangerousness made by law, in courts an in the streets, police practices, and strategies of resistance. According to Giuseppe Campesi, police were historically established for a specific purpose: separating the laborious from the dangerous classes (Campesi, 2008) by performing a kind of accurate "social surgery" (Bittner, 1967): police divide population into categories for the purpose of order maintenance, the "us" is distinguished from the "them". My research acknowledges the existence of a link between the economy and penalty, and will ideally path the way for future research to understand *how* such link between the law and economics comes to be, also in the conditions of globalisation. In Italy, the complex web comprised of laws, discourses, negotiations, police regulations, judicial oversight, and migrants' strategies of resistance results in a system of control where undocumented migrants are simultaneously criminalised, informally allowed to stay, and tolerated (even welcomed) in the shadow economy. The process of bordering subjects in the specific case study of this investigation opens up for two additional considerations. On the one hand, and at least, it re-asserts that the analysis of border control should also take economy into account. On the other hand, the bodies of undocumented migrants are *per se* the concrete manifestation of the link between economy and penalty. I argue that the complex processes through which undocumented migrants are produced as subject may be analysed as one segment of "the discursive interactions of all the actors" (Melossi 2008: 7) which link penalty and economy. The research is aimed at answering the crucial question of *how* such mechanisms come to be. In fact, rather than as a well-organized and preconceived apparatus, the mechanisms of control is intended as the result of not planned actions of individual actors, who time after time look for the "best" way to manage the complex situation of undocumented immigration.

CHAPTER ONE

THEORETICAL FRAMEWORK

AT THE INTERSECTION OF RACE AND CLASS

By issuing conditions to live legally impossible to comply with, the law creates the "illegal migrant" – that I chose to call undocumented migrant (cf. De Genova, 2002). Specific immigration policies create specific immigration flows and undocumented immigration (Ferraris, 2012; Melossi, 2015). For example, as van der Leun (2003) has stressed for the case of The Netherlands, the possible "illegality" of migrants does not derive from conditions of entry, but they might depend on two additional conditions: residence and employment... After all, that the boundaries between "legality" and "illegality" are blurring when it comes to migrants, it is a fact not just in Italy but also in other countries; even if the research about the topic is still poor (van der Leun, 2003). Through what has been named "legal violence" (Menjivar and Abrego, 2012 cited in Melossi, 2015: 39), the law transforms undocumented migrants into "outlaws", it makes undocumented migrants illegal (Dauvergne, 2008), and it expels them from the system of guarantees that the law usually recognizes to legal persons. The trick operated by immigration laws is to hold migrants in a space of precarious, difficult or even impossible legality, by frustrating the possibilities to be in the country completely legally, and by making it easy to stay somehow legally but at the same time in breach of some of the conditions to stay. Migrants occupy a "space of non-existence" (Coutin, 2000), a term that Susan Coutin uses to define those spaces generated through "the multiple ways in which the contradiction between undocumented migrants' physical and social presence" encounter "their official negation as "illegals"" (27-47). A space where the boundaries between legality and illegality are blurred, and where migrants are being constructed as inferior "Others".

Kitty Calavita (2005) draws a framework in which the Otherness of migrants is created by three different but strongly intertwined elements: means of law, economic marginality and racialization, each of them depending on and originating the others. Exclusion is an inevitable by-product of immigrants' poverty, which in turn is inevitably reproduced by an immigration law that considers migrants just as contingent and cheap labour. The interesting point in Calavita's analysis is that she talks about a specific process or racialization, meaning that "race"

is not connected just with migrants' different origin or physical appearance. “Race” is a complex construction, and in Calavita's analysis it is linked to poverty. It is poverty together with different physical appearance that constructs the race of migrants living in Italy. Yet, it is the poverty besides different physical appearance that inscribes a stigma (Goffman, 1963) onto migrants. Calavita (2005) explains that what is in operation in the way immigration is managed in Italy, it is a process of racialization that is “part and parcel of the economics of alterité" (Calavita, 2005: 125), of a specific economic model that grows on cheap, docile and irregular labour force, as the one furnished by undocumented and documented migrants, insofar they will be considered as others.

The interconnections between the economic and legal sphere in the regulation of immigration flows to Italy are very complex. In a sense, the two spheres overlap, as in the legal sphere it is produced the undocumented migrant that then is useful in the economic sphere. Such overlapping becomes visible through the processes of *othering* and even racialization of migrants, who are important elements linking the economics and the legal. In fact, as Calavita shows, race should never thought of as detached by class; not even by gender. In a sense, a specific racialization process, that is, the construction of a “race”, also relates to the construction of a specific membership. The role of the immigration law in the construction of membership in the “community of value” in the UK is one of the main points made by Bridget Anderson in *Us&Them. The dangerous politics of immigration control* (2013).

The very multifaceted analysis by Anderson shows that the category of migrant is not stable and straightforward, but rather ambivalent. “Migrant” is both a political and legal category, since it does not concern solely a legal status, but also race, gender, and class, to such an extent that one could remain a migrant even once acquired citizenship (see second or third generations of migrants), while not all foreigners are defined as migrants. She makes a discourse similar to Calavita's about “race” and the extent to which it is a construction. Again, race is not just marked by skin colour, but constructed on the grounds of class and gender. Anderson argues that “it is immigration of the poor that controls are generally designed to prevent, and “poor countries” and countries whose citizenry are black are very likely to coincide” (Anderson, 2013: 124).

Anderson adds an element to Calavita's theorization on the process of racialization. This element is that immigration control is about a “community of value”, which needs to be preserved and defended and protected. Allegedly, she connects race and racialization process

with nation-building process, and she also makes a point that immigration control is more about the governmental control of general population. Race, the community of value, and the poor are strictly interrelated dimensions; and they are not independent from the nation (Anderson, 2013: 43). Following this, she asks for "a more nuanced account of racism and nationalism", showing that

> "blackness" and "whiteness" do not just relate to skin colour but rather to attitudes like rationality, self-ownership, and poverty. The supposed "racelessness" that the modern liberal democracies claim to have built, and where the "raceless policy" takes place, in the reality covers the "racialized nature of modern state" (42).

Anderson shows that "immigration controls are deeply implicated in this project" (47) of making and maintaining racial differences. The modern state itself is a "racial project" where immigration policies promote Britain as a community of value, by establishing for what purposes and conditions it is possible to cross the borders legally: characteristics such as age, marital status, nationality, earnings, education, etc.

With regards to the Italian case, and according again to Calavita (2005), it is race intended as the intersection of skin colour, class, and gender that allows distinguishing between Italians and migrants, between "Us" and "Them". Calavita argues that the racialization process in operation in Italy causes the exclusion of migrants, and at the same time it is consequence of that exclusion. In Calavita words, "immigrants' illegality (and vulnerable legality), economic marginality, inadequate housing, and lack of access to health care, are each markers of social exclusion, and themselves compound that exclusion" (Calavita, 2005: 123). The very racialization process builds on poverty that is but the very product of Italian immigration laws.

If it is true that immigration law creates undocumented migrants, it does so by being interrelated in a very complex way with specific processes of racialization, which also take poverty into account. In other words, a specific process of producing the figure of undocumented migrants exists, originating from the immigration law and its implementation, which is moving along the lines of race, gender, and class, as inextricable dimensions of what makes up the category of migrant and undocumented migrant. Nevertheless, all the concepts of illegality itself need to be better argued: Anderson offers for the context of UK a more nuanced concept of migrants'

illegality, by introducing the category of "semi-compliance with the law" (Anderson, 2013: 124 ss.) with regards to migrants staying legally but in breach of conditions. This category is easily suitable also in the Italian context. Anderson explains that semi-compliance is in fact a grey area inhabited by the diverse nationalities more or less comfortably. It is a grey area which exposes the discretionary decisions of immigration enforcement officers who pick migrants to deport on the grounds of nationality, gender, race, criminality, occupation; or otherwise the characteristics which mark their belonging to the community of value. According to Anderson, the illegality of undocumented migrants is "state-constructed" though presented as "an inevitable consequence of nation state-organized citizenship and immigration control" (118). The trick operated by immigration law is, therefore, to spoil migrants of the rights, as they were no-persons (Dal Lago, 1998) and put them in a grey zone where agents of control continuously make decisions about their illegality or legality: borders are mobile, changing, porous and depend on a continuous decision-making process resulting from the interaction among a variety of agents.

Since the police are at the core of enforcing the law with regards to migrants, I believe it is of utmost importance to investigate the role of police in this specific production process.

Police officers make decisions at street-level about which undocumented migrants to control, which to identify, which to detain, which to deport. Thus, my question throughout the whole research will be: what are the criteria behind the selection process and how does police discretionary power affect law enforcement? The police translate the law on the books to law in action according to their specific rationalities, needs, and practices.

One hypothesis on the table may be that the police today, when they enforce the immigration law and they use their discretionary power, keep on doing what, at the end of the day, they have been doing since when the modern police were created, in the early 1800s: controlling the poor, disciplining the poor to labour if not yet disciplined, distinguishing between "laborious classes" and "dangerous classes" - how they were named by Calqhuoun[3] (Philips, 2003) – for the purpose of maintaining a given social order.

Since the origin of the modern state, police have always controlled dangerous classes, that is, non-disciplined poor classes, and maintained the given social order based on a clear social

3 According to Philips, the concept of dangerous classes was made notorious by Calqhuoun, in early 1800s England,

hierarchy. An historical perspective on police control over poor classes reveals the extent to which those poor classes are, since the modern age and the process of urbanization, "people on the move" (Melossi, 2013a): they were people migrating from rural areas to urban areas, and in large part they are now people migrating from one country to another (sometimes, even within the same country, such as the case of China). Looking at the history of capitalism and the modern state, one may recognize a link between the activity of controlling poor classes in the past and the activity of controlling migrant population today; an activity of controlling people that follows rationales that appear valid still today.

AN HISTORICAL PERSPECTIVE ON IMMIGRATION CONTROL

Historical perspective on immigration control reveals that much of the control over mobility has always been related to struggle over labour and labour control, control of poor classes, and anxiety about uncontrolled masses. Neo-Marxist studies on immigration control shed light on the connections between crime and punishment, which has been going along with the movement of people from the very beginning and the original development of capitalism. Other interpretations exist that mainly focus on a cultural element, more than economic element. This is the case of Anderson (2013), who sees in the vagrant the ancestor of both the migrant and the "failed citizen"[4] (Anderson, 2013). The two figures have in common that, in the contemporary, both are excluded from a "community of value", which is the community of members of a society whose characteristics and contours the immigration law contributes to define. According to this interpretation, just as today the migrant is a threat to social cohesion, so the vagrant was the original threat. However, even in the interpretation by Anderson, cultural and economic elements co-exist in explaining why the vagrant was controlled and considered a risk for social cohesion. In fact, not even the community of value as defined by Anderson is free from the very values that fond their place inside modern societies at the same time as a capitalist economic system was developing: the rationality of the "owning" person, family unity, the protection of private property. The criminalization of contemporary movement of people has deep roots in the history of control of mobility; both economic and cultural elements may be

4 In Anderson's theory, the failed citizen is the undeserving citizen who lives at the margins and is excluded from the polity

identified in the way the need for controlling human mobility developed, even through the use of criminal law.

First of all, as Melossi explains, the profound affinity between capitalism and crime originates from nothing but "capitalism's penchant for social change". (Melossi, 2015: 5). Social change is the hidden element that makes the other two to move together. In other words, it is in the very nature of capitalism to stimulate, cause and propagate social change; mobility - as "the most obvious form of social change" - will be as stronger as "the propulsive strength of capitalism" will be heightened (Melossi, 2015). That the flourishing of capitalist economy is one of the main causes of mobility, it is true today as was it in the past.

Going back to the roots, migration is not to be intended just as people moving across states, but also people moving from rural to urban areas (Melossi, 2013a). Melossi makes a point here, that a "stigma" (Goffman, 1963) could have been inscribed onto people of rural areas as today is it inscribed on people coming from other countries, miles away from the country of arrival. In a sense, here Melossi refers to the process of attributing a stigma onto the peasants moving to urban areas as the initial step of a process of "othering" of someone considered as different from "Us". One may claim that this process of attributing a stigma can be considered archetypal of the process of racialization of migrants today.

In the first volume of Capital, Marx explains that the original movement of people was the one from rural to urban area, taking place in the England in fifteen century. The movement was a consequence of the enclosures of common land. However, because at the same time the manufacture in the urban area were not able to absorb all "freed" workforce, "freed" peasants "were turned *en masse* into beggars, robbers, vagabonds, partly from inclination, in most cases from stress of circumstance" (Marx, 1867 cited in Melossi, 2015: 6). What Marx notices in this excerpt is that throughout Europe the law on vagrancy was issued as a bloody legislation against vagabondage; a law which was punishing people that forcefully had been turned into vagabonds, were made responsible for it, and therefore punished. As we will see, that poor people are responsible for being poor, and that crime exclusively depends on their unwillingness to work, it is also the idea behind the concept of criminal classes developed in England in the 1850s (Philips, 2003) - and that staying in Italy illegally is a precise choice of undocumented migrants, it is a belief shared by many borders agents even nowadays).

In order to deepen the knowledge of the linkage between crime and capitalism, William Chambliss and his unique study on the law on vagrancy may be of help. The study unveils

that since1349, vagrancy laws have been enforced depending on circumstances and convenience, often linked to changes occurring in the economic structure of society. Chambliss argues that vagrancy law passed, century after century, from being a tool to control the mobility of workers to one to punish criminals. Originally, in a feudal economy, vagrancy laws were aimed at preventing peasants from moving from lands, in times of scarcity of labour force. It punished beggars and those who gave charity to people enabled to work. In 1530 the law was modified and started criminalizing mobility. More accurately, it criminalized vagrants as mobile people who could not prove to live on legal activities. Especially, it criminalized the recidivist vagrant, by imposing the same punishment on him as to all criminals. The figure of the vagrant was eventually equated with the figure of the felon. The shift happened in a time when feudalism was replaced by mercantilism and commercial trades were flourishing. According to Chambliss, vagrancy laws were at the time used to contain thefts and assaults along commercial routes. In fact, despite the law, not all vagrants were punished, but just those vagrants suspected for crimes. In addition, the punishment for vagrancy was so harsh[5] that should be better interpreted as a signal that such punishment was aimed at a precise category of persons: not the vagrant, but the vagrant suspected to be a felon.

The connection between crime, punishment, control of labour, and mobility also clearly emerges when one goes back to the origin of prison. As a matter of fact, Melossi and Pavarini (1981) identify the origin of prison with the "work-house" invented between the sixteenth and seventeenth centuries (see also Melossi, 2013a). The work house "was both a form of relief for unemployed workers and a form of punishment for criminalized despondent workers" (Melossi, 2015: 7). Originally, punishment in the form of imprisonment was indeed created as a reaction to the crime of vagrancy and of refusing to work at given conditions (Melossi and Pavarini, 1981). In other words, work house and prison as its descendent are considered here as the attempt to discipline the poor to labour.

Migratory movements are, for Melossi, at the origin of all types of working class, today as in the past (Melossi, 2015; 2003). Accordingly, prison should be intended as "a sort of "gateway" through which the "newcomers" are "processed" in order to be admitted into the social contract, that is to say, into the "city"" (Melossi, 2015: 8).

5 Chamblis notes that, later on, the punishments was made increasingly more severe - reaching the limit of punishing vagrants by marking a V on their chest at first infraction, and in their front at the second one – and he argues that the severity of punishment was proofing that the law was for suspect persons;

In fact, by looking at the historical roots of immigration control – going back to the control of vagrancy and the emergence of modern prison - it becomes possible to recognize a mechanism of inclusion in what at first glance appears to be a mechanism of exclusion. It is, in fact, a mechanism of inclusion the one described by Pavarini and Melossi's investigation of the origin of modern prison, as it is a mechanism of inclusion the one described in the enforcement of vagrancy law, indeed used to discipline labour force and control crime (i.e. Vagrants had to demonstrate that they were living on licit income generating activities). Even Michel Foucault dedicated his very important book "Discipline and punish. The birth of the prison" (1977) to the operation of a specific process of disciplining acting through incarceration and domestication of bodies. The process of disciplining the body is a process of exercising power over individuals; in other words, it is the process through which subjects to power are being produced and, as such, it is a process of including through incarceration.

Not just prison, but also the police had a role in the disciplining of population and in the production of workers. In fact, the police had to divide people by categories, such as poor enabled to labour, poor disabled to labour, and idles and vagrants. Then, they had to help the poor disabled to work by offering them a place in the work-houses, compel the poor to work by forcing them to the work-house, and punish the idles and vagrants (Campesi, 2009). Foucault clarifies the role of police (beside prison) in his courses at the college de France "Society must be defended" of 1976 and "Security, territory and population" of 1977-1978. In fact, in order to select those to conduct to prison, police are in operation along the streets, that is, in the space between the diverse sites of discipline. In a sense, the police were crucial for the disciplining power to be pervasive. They spread deep control over all individuals in a given territory, receiving from the purpose of selecting vagrants and idles the legitimacy to their power to control all. The categories of vagrant and idle were vague and ambiguous ones; thank to them, the police gained the power to collect detailed information on the whole population and people moving across the territory (Campesi, 2009: 138-152). The police had to control mobility and discipline people to work.

After all, police's target has always been poverty and marginal people; not necessary crime as such, but crime committed by the poor, as also Chambliss (1964) argues with regards to the use that the police made of vagrancy law, especially in the XVIII and XIX centuries.

However, talking about disciplining power does not suffice to give an accurate picture of police. According to Giuseppe Campesi (2009, 2011), the police should be better intended as a

political technology aimed at both disciplining individuals and governing population: the police as a *dispositif* that takes care of both the poor individuals and the poor classes.

Campesi explains that at the origin of modern industrial society, the police had been made accountable for governing the consequences of the liberation of social forces originating for the new capitalistic economy, based on industrialization processes, fast urbanization, and the creation of poverty and the urban marginal population in the city. The birth of capitalism brought about deep and even violent changes, and police had to govern that. Police had to govern the *risks* connected to the new economic assets of capitalist economy and its social consequences (Campesi, 2009, 2011; Foucault, 2009). In the 1800s the modern apparatus of the public security took the shape that they still have today, as an apparatus of *social police*, aimed at governing the risks and dangers of the model of economic development adopted in the western countries. The development of the modern police can be just understood in the frame of the development of a different ratio of government, which put liberty at the core of the social and economic structure. The capitalist economy was built on free mobility of work and "free selling". Poverty was the consequence of it and police had to govern the risks connected to it. (Campesi, 2009).

We saw with Chamblis (1964) that when the capitalist economy was at the beginning and not yet developed, the role of the police was one ancillary to the work-house, and it was the role to select, force, and prevent the poor from escaping from disciplinary institutions. Now, with the new liberal ratio of government and the strong, fast and deep process of industrialization in the cities and the consequent need for labour force, poverty became an important element for the state. Poverty had not to be prevented, but preserved and governed. In the XIX century, poverty becomes the richness of nation, as the source of labour force. Police had to govern the risks of economic development; avoiding that poverty becomes pauperism on the one hand, and that it provokes rebellion, dangerousness, and revolts on the other (Campesi, 2009). In other words, at the dawn of industrialization the poor had to be self-disciplined, and police were needed to control and govern those who were not good at that. The police had to govern social dangerousness; they had to patrol the boundaries between dangerous classes and laborious classes, as Calquhoun, as a moral entrepreneur of his time, first theorized (Philips, 2003).

According to Campesi (2009), dangerous classes were at the core of theorization in XIX century, and around this problem, modern security was created. However, at the dawn of the new capitalist society, the police were not there to defend a given social order but rather to

produce it (Campesi, 2009; see also Neocleous, 2000). Campesi explains, paraphrasing Giorgio Agamben (1995), that police power represents the moment of the *physical* encounter between the sovereign power and the *bare life*, an encounter that cannot be totally regulated by means of law. If the police have the role of governing population, they do so at the margins of law and justice.

Also Jean and John Comaroff, legal anthropologists, take into consideration the relationship between crime and the making of modernity (Comaroff and Comaroff forthcoming).

Comaroff and Comaroff argue that at the origin, the modern police - that they date back to early 1800s - had a role not much in safeguarding population in general, but rather in safeguarding private property. Private property was the main value in a state dominated by the hegemony of the bourgeoisie; the criminal justice system and the police had the role to control poor people, in order to protect private property and preserve the new social order in formation. As already Foucault and Campesi observed, police do so by managing poverty and governing the risks connected to it, at the same time assuring the continuation of poverty and preventing the risk for private property. However, in this process the poor were also racialized. Comaroff and Comaroff acknowledge the merits of the Marxist perspective that,

> "in stressing both the *production* of class relations and the *protection* of class interests, has also paid attention to the ways in which criminal justice systems have been deployed to yield tractable human subjects as workers to the market – and to ensure their continued docility by policing dissent, often, we reiterate, by treating it as an offence against property. Those subjects, we might add, were frequently racialized and gendered; that is, biophysically marked as less than fully self-possessed and, therefore, as discountable, cheap labour; labour potentially unruly and uncivilized), and hence in constant need of discipline – thus interpolating race and gender into the core of capitalist modernity and its form of criminalization. (Comaroff and Comaroff forthcoming: 22)

Here, it is interesting to show the extent to which Comaroff and Comaroff insert race in their explanation of the connection between crime, crime control, and modernity. They make it clear that dissent was generally understood as a threat to private property and thus an offence to current class relations; and for that reason dissent had to be prevented. Yet, the two anthropologists add that the subjects turned into workers were considered as not fully self-

possessed; as such, the poor were racialized (and gendered), they pertained to a different race that could be exploited as cheap labour force but had to be constantly disciplined. What Comaroff and Comaroff unveil is the role of race and its connection to capitalism and the police at the emergence of the modern state.

This argument reminds one of Foucault's argument about the war of races and the constitution of the modern liberal state in "Society must be defended", the course at the College de France of 1976 (2003). According to Foucault, the construction of race is the discourse made up by the dominants to set their power forth. The population is divided between a superior race and an inferior race, where the inferior race is composed by biological enemies (not just political adversaries) that need to be normalised in order to strengthen the superior race, which also is the dominant one. The power needs a discourse on race as a discourse of truth in order to exercise sovereign power against someone, while keeping on exercising bio-political power on the general population. Racialization processes make it possible that a specific bio-power operates towards the generality of the population, while a specific sovereign power at the same time works towards some individuals among the entire population. The society must be defended from the biological dangers presented by that very inferior race that is being made up (Foucault, 2003: 56 ss.).

What Foucault want us to do is to look for "blood dried in the codes" (2003: 56) where "we must hear the rumble of battle" (ivi). There are power relations behind the laws, to such a point that the law is nothing but the continuation of war. The law makes the racialization process legal and acceptable; even invisible. The role of the law as a justification of a specific hierarchical order that needs to be preserved is a point also touched by Comaroff and Comaroff:

> "With the rise of the bourgeois state, law-making and law-breaking hinged primarily on the protection of property and the (self-possessed) persons who owned it from variously criminalized others. A historically specific culture of legality, in other words, was intrinsic to and inseparable from the birth and maturation of industrial capitalism, of its sense of order. By extension, crime-and-punishment also concerned itself, at once figuratively and concretely, with disciplining labour, especially disciplining those who sought to undermine property and productive relations" (24).

According to Comaroff and Comaroff, at the rise of bourgeois state - that also is the modern liberal state of Foucault – a specific culture of legality was established that criminalized those who put the private property at risk. Therefore, such "culture of legality" is entrenched with maturation of industrial capitalism and disciplining of labour force; and, as we saw above, with racialization processes, as those criminalized and possibly disciplined were not totally "owning" people: as such racialized, and as such at disposal of sovereign power if necessary. What Comaroff and Comaroff make clear are the connections between capitalism, race, legality and criminality. These connections were mostly visible in the colonies of Europe, where native populations were exploited as work force. Such exploitation was made through spoiling the indigenous population of their rights through another form of legal violence, which is enslavement. The criminal justice system in the European colonies, at least at the beginning, were enforcing the law to maintain labour relations: the acts that were punished were the refusal to work at given conditions and other acts arising from the refusal of work, such as insurrectionary violence, vandalism, or petty theft; because they were acts against the colonial order, they were considered as political acts.

To summarize, the police entered the XIX century as a fundamental tool for managing the poor classes. They had the role to contain the risks that poor classes posed to labour relations and property, given private property as the grounds on which the modern liberal state - and the modern liberal citizen - was built. At the rise of capitalistic economy, the poor were overcrowding the emerging industrial cities, and they put at risk the emerging social order – based again on private property – because, as Comaroff and Comaroff write, "their structural situation made them most likely to violate existing property and/or labour relations" (Comaroff and Comaroff forthcoming: 32-33). The police was a fundamental tool to *produce* the new order based on respect for private property, corroborated by a racializing discourse that were transforming the poor into an inferior race, made up of not self-possessed people who still needed to be disciplined to labour to be allowed to enter the social contract, that is the city, that is democracy of the modern liberal state (Melossi, 2002). Poor classes, as an inferior race, were dangerous for private property and the current social order; they were biological enemies for the general population. Nevertheless, these biological enemies were living with the general population, they were part of it before - though in a subordinated position, they had to be distinguished from it, and the construction of their race was needed for this. Thanks to the power to collect detailed information on general population, police could recognize the dangerous

people among them. Police have drawn the borders between classes, and thus they have produced the new order according to the need of the time.

This same mechanism can be acknowledged as still operating in the control of mobility today.

Leanne Weber and Ben Bowling, who wrote one of the few criminological works on the historicity of immigration control, agree that "class, and more specifically, poverty, has long been associated with problematic mobility and has been central to the process of sorting the deserving from the undeserving and the welcome from the unwelcome" (Weber and Bowling, 2008: 363). According to them, poverty has long been associated with a mechanism of *othering* and exclusion or control that, despite perennial, is not static. In fact, what changes over time, they say, it is not that someone is considered dangerous, but the criteria on which this not static process of *othering* occurs, "with various markers of difference providing cues for exclusion or control" (Weber and Bowling, 2008, 371). They argue:

> Where once 'foreign' simply described anyone who was not local, it gradually became linked to national identity. While poverty has endured as a way of defining difference, in the immediate post-colonial moment, 'race' became a key trope on which suspicion was based. In late modern society, a new xeno-racism has emerged (Fekete, 2001; Sivanandan, 2002), linking racism with class exclusion to define people as culturally suspect and flawed in their capacity to produce or consume. (Weber and Bowling, 2008: 371)

Differently from the conception of race by Foucault or Comaroff and Comaroff, they situate the emergence of the concept of race in the post-colonial period, and they propose that today we talk of "xeno-racism". Xeno-racism, according to Sivanandan who coined the concept, is a new racism speaking to foreigners intended as non-nationals, based on the idea of cultural superiority; it would be directed towards refugees and asylum seekers regardless of their skin colour (Sivanandan, 2002 cited in Weber and Bowling, 2008). Even giving credit to the neologism, Weber and Bowling doubt that skin colour is completely irrelevant. Rather, what they propose is that "xeno-racism draws on the tropes of class and skin colour, returning us to the historical link between poverty and racial difference". However, they also argue that "race" and "class" have been updated to the neo-liberal, and today "those earmarked for control are primarily those with a 'perceived low-economic or production value' within global markets

(Malloch and Stanley, 2005: 58)" (Weber and Bowling 2011: 366). In the globalized world, where "poor countries correspond to countries whose colour is black" (Anderson, 2013), together with Weber and Bowling, one may wonder if market principles rather than biological difference inform the contemporary conception of racial superiority. Contemporary borders anxiety explains exclusion, or better differential inclusion, with the difference in nationalities; in reality, borders control is underpinned by processes of othering that infer class and race but is justified and covered by "legal" immigration laws.

At the origin, the main concern of vagrancy law was to distinguish between deserving and undeserving poor, regardless of nationalities (Anderson, 2013; Chambliss, 1964), being deservedness mainly evident in the migrant to be willing to work even at the lowest conditions. I argue that today this relationship reversed, and it is possible to acknowledge the activity of controlling and filtering among nationalities as a cover for displaying control over migrants as contemporary vagrants. In other words, when Northern countries claim that they are checking on immigrants' nationalities at the borders, they are more likely to actually be checking on immigrants' economic condition, attitude, disposal to work at the lowest conditions, and suspicion of dangerousness. If in the past it was their poverty that officially justified vagrants' exclusion from borders or however different treatment, today it is migrants' nationality. Nationality may be read today as an updated element of a long-lasting mechanisms of control over labour and marginal population. Accordingly, in the contemporary it is important to recognize that it does not suffice that a person is of different nationality to be named as migrant, but he or she should be a *poor* person in addition to being of different nationality (Anderson, 2013).

Therefore, what the historic perspective on migration control shows, it is that migration has been linked with capitalism and economic changes in the past. Even today, in the globalized world, poverty and better life conditions, not just war and life risks, are pushing factors for people who decide to migrate from their countries of origin. However, today as yesterday legislation distinguish between useful and useless migration. If yesterday the distinction was between poor workers on one side and idle and vagrants on the other, today it is between migrants who work and migrants who do not, with the former being considered useful and welcome in marginal positions of the labour market and the latter transformed into dangerous others.

What are the mechanisms of control over mobility in operation today, what the rationales behind them? Today we discuss a lot about exclusion of migrants; we acknowledge a complex system of filters supported by the law that prevents some migrants to cross the external borders and allows some others. Looking at the brief history of control of mobility, Weber and Bowling talk of a mechanism of exclusion and control; the Marxist theorists, but also Foucault, of idea of discipline, and Comaroff and Comaroff see a mechanism of inclusion connected to the management of mobility.

However, besides the exclusion of those migrants who are prevented from entering or are removed at a later stage, there are many more undocumented migrants who remain, given that borders are porous and it is not possible to keep all undesirable migrants outside. The filters work on two levels: at the entrance, trying to exclude migrants who are not useful (see annual quota); and once the migrants are inside borders. It is however less clear how controls operate inside borders. It does not suffice to point at the procedures of selecting removes, but it is important to understand how the mass of migrants staying in breach of conditions are managed and the risks that they pose to the established social order contained.

As the control of mobility is historically connected to the production of an order, by understanding the practices and the rationales of immigration control mechanisms today, one may shed light on the order that is being produced in the Northern countries of a globalized world, in the processes of othering and racialization of those who already live inside borders without authorization. Perhaps, this will also tell something about states in time of globalization and, eventually, democracy and its hidden values.

THE BORDERS OF INCLUSION

The contemporary regime of borders control is encountering much interest from criminologists, sociologists, anthropologists, geographers; just to cite the principal investigators in the field, not the solely. Many journals, edited books, special issues of international journals have been published in recent years, addressing the issue of borders control from many different perspectives.

This is not to say that immigration had never been of interest for criminology before. In fact, the immigration-crime nexus has been a terrain of criminological study since the School of Chicago, in the 1920s in the U.S. (Melossi, 2015: 12). The criminalization of immigration has

been a hot topic in the scholarship in criminology and sociology for quite a long now. Such field of research noted a disproportionate response coming from law enforcement towards crimes committed by migrants that risks to originate a "ratchet effect" (Harcourt, 2007), according to which the disproportionate attention to migrants originates that, even given same amount of crimes committed by natives and migrants, migrants are over-represented in criminal justice system, which brings about the perception of their dangerousness and increases the control. The over representation of migrants among carceral population and their criminalization is not limited to Italy, but it is what happens more generally in European countries (De Giorgi, 2010).

When criminologists used to study the crime-immigration nexus, were studying a process of criminalization driven by the assumption that migrants are responsible for a higher number of crimes; they used to pose such questions as: how to explain migrants' misconduct? How to explain the over-representation of migrants in prison? What about the selective enforcement of immigration control? The process of criminalization of migrants was but an "othering" process, where the "other" produced was the migrant as an offender. Differently, the nexus studied today is between illegality and immigration. In other words, criminologists in the field of "crimmigration" are paying attention to the processes of criminalizing undocumented migrants that are purely based on migrants' illegal status, not migrants' possible illegal activities. However, let's make it clear: it is not that criminologists interested in borders control have completely dismissed crime as an object of investigation from their inquiries of mechanisms of control; in fact, though their attention mainly goes to the process through which migrants are made illegal (Dauvergne, 2008), and thus prevented from entering or being removed; and though crime is not the center of their attention anymore; criminologists acknowledge that migrants' criminality plays an important role in the final decision to enforce the borders. The complex relations that bound criminal law and administrative law in the activity of borders control, the deeply entrenched dimensions of "immigration control" and "crime control" are both well-known realities by now, well captured in what has been named "crimmigration", from a fortunate intuition by Juliet Stumpf (2006). Scholars in the crimmigration field mostly underline the merging of criminal law and administrative law in procedures of removal of undocumented migrants (see also van der Maude *et al.*, 2013, Aliverti, 2012, Aas, 2011). Scholars underline the use of criminal law to execute administrative removals, and of administrative removals to efficiently act against foreigner offenders (see for example Aas, 2014 for the case of Norway). By using criminal law in removal procedures, undocumented

migrants are made first illegal and then even criminal, in the United States, as in many European countries, as in Canada, Australia, and more in general in the global North.

Of course, there is a continuity between what has been recently labelled “crimmigration” and what had been called before “criminalization of immigration”; it would be incorrect to consider these two process of criminalization as not connected at all.

If a distinction is needed between the “crimmigration” frame and the “criminalization of immigration” frame, I believe it may be in the scope of the two analyses, which appears more limited in the crimmigration frame and larger in the other. Investigating the crimmigration crisis mainly means that one focuses on removal procedures in detention centers, at the external borders, or even in prison, and on the consequences of using criminal law in immigration control, and vice versa. Nevertheless, crimmigration frame disregards the material conditions and the many levels and dimensions of the processes through which immigration is criminalized, which are instead taken into account when we talk of criminalization of immigration. The critique of crimmigration by Emma Kaufman (2013) goes in that direction. She, in fact, argues that:

> In many ways contemporary migration control practices depend less on a connection between immigration and crime than on the particularly non-criminal nature of foreignness. By foregrounding the process of criminalization, the crimmigration framework can suppress this crucially non-criminal element of the relationship between crime and border control (Kaufman, 2013: 175)

The critique is that the crimmigration framework overemphasizes the process of criminalization, and even if Kaufman acknowledges that crimmigration allows to see the problematic usage of "imprisonment practices beyond the realm of the criminal law", nevertheless "notions like crimmigration can also suppress some of the key distinctions between border control and punishment" (2013: 174), running thus the risk of expanding and legitimizing the use of the label of criminal against undocumented migrants. After all, this is a critique that may be addressed to the field of “criminology of mobility” more in general.

In fact, the renewed interest in borders control brought to the emergence of a new field of studies that has been called “criminology of mobility”, from an ambitious project by Mary Bosworth and Katja Franko Aas (Aas and Bosworth, 2013; see also Bosworth, 2012).

As Ben Bowling (2013: 292) explains, criminology of mobility is an emerging sub-field merging the tradition of border studies, traditionally based in geography (see De Genova, 2004 among others), with the criminological interest in criminalisation of immigration previously shown by scholars in the field of "punishment and society" (see Simon, Sparks, 2012) dealing with borders (see De Giorgi, 2010; Melossi, 2003; Young, 2003). The latter gave priority to grand narrative accounts and imprisonment, while criminologists of mobility have developed some very important ethnographic accounts in prison (Kaufman, 2013), in detention centres (Bosworth, 2013), in policing borders (Weber, 2011; Pratt, 2005) by looking at the grassroots level of micro-mechanisms of control. Criminologists of mobility tell stories that have been hardly told so far, and try to build a new vocabulary that would allow the academia to better understand current mechanisms of control of immigration grounded in penal power. Criminology of mobility is aimed at understanding the changing nature of punishment confronting globalisation (Bosworth, 2012), by asking how the use of penal power for deporting re-shapes the relationship between identity and penal power and seek to reinvent the vocabulary used to address the changing configuration of punishment. The question may be: should the penal power of deporting be intended as punishment?

With criminology of mobility, perhaps it has changed the scale of consideration of punishment. As Aas notes, there has always been a sort of division between the internal and international in the study of criminalization; yet, this division may be disrupting due to globalization processes (Aas, 2013; Degenhardt, 2015). According to Aas, the study of punishment has always been located at the national level. Whilst, when studying the international sphere, scholars are not usually concerned with punishment, but rather with international criminal law, human rights, transitional justice. On the contrary, it is extremely important to "bring the global into the domestic and vice versa, in order to situate what may appear as "internal punishment" within the broader sphere of global geopolitical relation' (Aas, 2013: 21). Criminology of mobility devotes great attention to this dimension of the changing power to punish. Immigration control is a vantage point for relocating punishment in the global sphere, as it "disrupt[s] traditional frames of understanding within criminal law and criminology" (Aas, 2013: 21). As the global dimension may be the right dimension where to locate the understanding of punishment in the globalization era, so the national - taken alone - is not the best dimension where to study immigration control, as it prevents the researcher from recognizing globalization dynamics in the criminalization procedures (Aas, 2013; see also Melossi, 2015). After all, this goes in the direction of following Saskia Sassen's suggestion to see the global inside the national (Sassen,

2010). Analyzing penalty through national perspectives may prevent deeper understanding of global phenomena taking place at national level, while, according to Aas,

> 'by situating contemporary crime control within a broader context of international relations I show how global inequalities are inscribed into (domestic) crime control and criminalization patterns and how they in turn reinforce and reify these inequalities' (Aas, 2013: 22).

According to Aas, immigration flows and the attempt to control them may be intended through the lens of punishment, however they assume a global dimension, and talk about systems of domination that have become global.

I, however, identify a problem in that scholars in criminology of mobility usually assume that the global logic of borders control is a logic of exclusion and only focus on *how* people are excluded. They adopt a top-down perspective on immigration control mechanisms. In other words, they depart from the law and see how it operates to exclude. Even looking at the grassroots level of mechanisms of control, they simply assume the global logic of border control is one of exclusion and only focus on how people are excluded in the practices of everyday mechanisms of control. In so doing, they just ignore the reality of the many undocumented migrants remaining inside borders despite the law and the police.

However, the logic of exclusion is not the only logic proposed by scholarship on immigration control. Two different interpretations may be identified, indeed: one, the prevailing one, sees the global control of human mobility as an attempt to stop migrations, or to banish migrants once they have entered – what has been called the "ban-opticon" (see Bigo, 2006; Aas, 2011, 2013). The second argues that restrictive immigrations law (Calavita, 2005), policing at internal and external borders (see Palidda, 2009; Weber, 2011), and punishment, aim to *govern* human mobility (see Melossi, 2003).

With regards to the interpretation that sees in border control a mechanism of exclusion, it may be useful to recall the crimmigration concept. According to Stumpf (2006), at the core of operation of immigration law, just as at the core of criminal law, is the issue of membership: membership theory should be better applied to immigration law and criminal law, as "both of them approach the acquisition and loss of membership" even if "from two different directions".

In fact, if criminal law is about the loss of membership by a former member, immigration law is about possible acquisition of membership by a former non-member. Criminal law is about prosecuting a member of society, in order to decide if he or she still deserves to be considered as a member. On the contrary, "immigration law assumes non-membership. In contrast to the presumption of innocence [of criminal law], arriving aliens are presumed inadmissible unless they show they are "clearly and beyond a doubt entitled to be admitted"" (Stumpf, 2006: 400). Therefore, immigration law prosecutes non-members who remain such, unless they prove that they deserve to be included in the social contract. Exclusion is operated through means of sovereign power, it expresses non-membership in the "imagined community" (Anderson, 1983), and it creates a specific population "often identifiable by race and class, that is excluded physically, politically, and socially from the mainstream community" (Stumpf, 2006: 413). However, creating such marginal population identified by race and class is not the exclusive task of immigration law. Criminal law creates as well a population of excluded people identified by race and class (see Wacquant, 2004); however, Stumpf notes, immigration law does so under the spotlight, while criminal law operates more surreptitiously. So that, the mechanisms of exclusion towards migrants, that is, towards non-members, reaches a superior level of legitimacy than the other. The argument by Stumpf is that the criminalization of immigration law strengthens the power of immigration law to exclude from membership, as an undocumented migrant is excluded two times, as a migrant and as a criminal. Stumpf (2013) indicates in the merging of criminal law with immigration law a means aimed at better excluding. Because of the very interaction between criminal law and immigration law, in fact, crimmigration laws "tend to generate more severe outcomes" than pure administrative removals, they "limit procedural protections, and encourage enforcement and adjudication processes that segregate non-citizens' (Stumpf, 2013: 59). In other words, the participation of criminal law to removal procedure makes it easier and more "punitive" to remove undocumented migrants.

In partial disagreement with Stumpf, Aas contends that while traditional punishment is about the reintegration into society of a person convicted, expulsion is about physical exclusion from a territory - one should note that Stumpf writes about the case of the U.S. while Aas is based in Norway, which may explain the greater importance that Aas places on reintegration after incarceration compared to Stumpf. According to Aas, if one can talk about disciplinary power concerning prison, given its logic to reintegrate former-inmates, one cannot talk of

disciplinary power concerning removal measures (Aas, 2013), as removal has the aim to physically exclude undocumented migrants. According to Aas:

> "While sharing long-term exclusionary traits with such measures as life imprisonment and long-term incapacitation, expulsion differs from more customary penal measures in its lack of concern about reintegration to society. Its objective is precisely to banish or ex-capacitate rather than to incapacitate. Whether an administrative "removal;" or a more punitive "deportation", its rationality is ban-optic rather than the disciplinary panopticism and biopolitical objectives characteristic of modern penality" (Aas, 2013: 25).

In other words, Aas argues that while the bio-political and disciplinary forms of penal control are internally directed, aimed at controlling the population that occupy the state territory, expulsion is driven by a different logic; it is directed by the sovereign power, one "which sees the ban as the original political relation" (Agamben, 1995), that is marked "by the "production of bare life" and by the ability to expel life from the sphere of legal protection" (Aas, 2013: 25-6). Accordingly, Aas does not recognize any form of disciplinary control towards undocumented migrants inside borders, which is very hard to maintain face to the reality of police patrolling internal borders and entering in touch with many undocumented migrants who will not be eventually deported. The concrete reality is that the majority of undocumented migrants keep on living inside the country, and they need to be disciplined. In the light of this, borders control turns also to be internally directed, as well as externally.

This is not to deny that a mechanism of exclusion does not exist at all. However, the suspicion is that it is more a "scene of exclusion" (De Genova, 2013) than a mechanism that finalizes actual exclusion. According to De Genova, such scene of exclusion is a cover for an "obscene of inclusion". This "veritable inclusion" - enabled by the very fact that migrants are targets of exclusion – consists of a process of subjugation of migrants aimed at exploiting them as labour force.

What is problematic is the usual, almost unquestioned association between incarceration and exclusion, as well as between border control and the logic to exclude undocumented migrants. Consider Aas and Stumpf's analyses: even if Aas focuses on the re-integration after

incarceration while Stumpf on exclusion, both of them see in the very moment of incarceration a moment of exclusion of someone that was a member before imprisonment. However, it is not straightforward that prison is about exclusion. As showed in the historic paragraph on the origins of the modern state, modern police, and prisons, according to Foucault (1977) and Melossi and Pavarini (1981), prison may be more about inclusion. Given that at the origins of capitalism and the modern liberal state the control of mobility has been so entrenched with crime control and labour control, one may wonder if it is accurate to think of immigration control today purely in terms of exclusion. In fact, despite it is impossible to deny that deportation vehicles a message that the deportee is not a member of community, however the question is: to what extent deportation is the actual final outcome of immigration control, and not just a spectacle, "the Border Spectacle's scene of exclusion" (De Genova, 2013: 1193)?

Accordingly, in order to gain a more accurate picture of the operation, rationales, and outcomes of borders policing today, it may be fruitful to hypothesize that, even if under the spotlight, the exclusion is a scene, whose final outcome is not deportation and what logic is not exclusion; it is a scene that obscure the obscene of inclusion. In other words, I propose to highlight the process of inclusion, within the contemporary mechanisms of borders control, instead of exclusion. For this purpose, I propose to follow the lines of a "differential inclusion", a concept elaborated by Sandro Mezzadra and Brett Neilson (2013) that "describes how inclusion in a sphere, society or realm can involve various degrees of subordination, rule, discrimination, racism, disenfranchisement, exploitation and segmentation' (De Genova et al., 2014), in order to study the actual operation of crimmigration laws. The concept of differential inclusion suggests that research on borders control should focus on inclusion instead of exclusion; especially when it comes to undocumented migrants living in national territories, who by definition are never completely excluded. Focusing on this kind of inclusion instead of exclusion allows the researcher to see contradictions, resistance and transformation in the receiving societies.

Yet, as I said, that immigration control could be connected to a process of inclusion instead of exclusion is not something completely new in criminology; nor in the criminology that has been more interested in the mechanisms of borders control.

I link the interpretation of immigration control as a mechanism of "differential inclusion" with a neo-Marxist criminological perspective known as the "political economy of punishment". This scholarship, whose foundation is to be find in "Punishment and Social Structure" by Georg

Rusche and Otto Kirchheimer (1939), posits a link between punishment and capitalist economies. Through the principle of "less eligibility" - according to which the lowest living conditions outside prison should be more eligible than living conditions in prison – the punishment (read prison) represents a specific technology that disciplines the poor classes produced by capitalist developments, in order to use them as labour force in capitalist economies. In other words, according to the political economy of punishment, prison has always had a central role in shaping the subject in order to render him/her suitable for capitalist economic development (De Giorgi, 2010); yet, it is not clear through which processes the economy (i.e. capitalism) creates the subjects (i.e. workers) that capitalism needs to develop.

Melossi (2003) argues that mechanisms of disciplining labour force through imprisonment may be recognizable even today with regards to the control of mobility. As Calavita's work on the disciplining role of immigration law in Italy and Spain shows (Calavita, 2005), the Marxist tradition of studies about penality are crucial for understanding the processes through which undocumented migrants are today included and governed in receiving societies. In fact, the government of human mobility may be seen as "recurring process of forced inclusion, subordination, and subjectivation of recruits in a new draft of the European working class" (Melossi, 2003: 371). By the same token, Melossi (2008) argues that we cannot divide "the relationship between production, penality, and migration" (see also De Giorgi, 2010).

Through prison, "newcomers" are included, even though in a subordinate position.

However, a problem with Marxist tradition of studies about penalty is in that penal institutions are intended as "ancillary" to "the economy", so that legal and cultural aspects are intended to follow from economic aspects. If it is true that changes in the economy and in punishment are interconnected, it is not really clear how the economic sphere is supposed to influence the legal sphere of punishment. Melossi's reading of the concept of discipline needs to be clarified: discipline "has nothing to do with the kind of labour that goes on inside prison, or with "rehabilitation" as commonly intended" (Melossi, 2008a: 242). The prison is not a technology aimed at transforming individuals but it "has much more to do with *maintaining* a social stratum of the canaille - than with *transforming* it. The point of discipline seems to be to submit yourself to what the bearers of social power want you to. No more, no less". Culture is the hidden element that makes imprisonment rates and the economic sphere to move together. It is the notion of discipline, according to Melossi, that allows us to "reconsider Marx on the issue of penalty, freed from the weight of teleology and more open to "cultural" aspect". If one agree,

as we do, that populations are governed through prison, reconsidering Marx on the issue of penalty through the lens of discipline "allows to see penalty as a set of practices that have often *pioneered*, instead of *followed*, "the government of populations" - turning on its head, therefore, the "superstructural metaphor" - the idea that "cultural" and "legal" phenomena would have to follow from something "economic"' (Melossi, 2008a: 243). Newcomers are disciplined in the sense that they are forced to occupy a subordinated position within receiving society.

I argue that the two interpretations - one that sees the control of borders as aimed at banishing populations, one at governing - are not mutually exclusive; rather they need to be taken into account jointly, in order to explain the mechanisms of internal borders control. I argue that the concept of government and discipline is needed to explain the management of undocumented migrants inside borders, while the concept of banishment and exclusion is to be intended as the symbolic of law, that is, as "the Border Spectacle's scene of exclusion" (De Genova, 2013) legitimizing and covering the real outcomes of interaction between "borders agents" and "borders crossers": the production of undocumented migrant as a subject to be included in subordinate position in receiving societies.

The prison has a civilizing mission within the state: prison produces the subjects that will be exploited as labour force, and we saw that migrants are deeply implicated in such productive processes.

Nevertheless, penalty has overflown the limits of nation-state where they first found their location, it involves a more variegated set of processes and actors, and it is driven by national, transnational, global and local dynamics. In the case of undocumented migrants, penalty may be investigated as the patrolling of global borders at the local level. For example, in the UK, Kaufman explains that "Hubs and spokes turns the prison into one border of the British nation state" (Kaufman, 2013: 179). This is because "today's prisons are not simply domestic criminal justice institutions. They are places where global power dynamics unfold and where the boundaries of the nation state are resisted and rewritten every day" (Kaufman, 2013: 179), to such a point that prisons determine "who among us does not belong" (178).

What is penalty when it comes to immigration control? Looking just at prison as penalty is reductive in the case of migrants. I find it rather fruitful here to refer to the broader concept of "immigration penality" proposed by Anna Pratt (2005), according to whom:

> Immigration penality is heterogeneous and diverse; it includes but is not limited to legal regimes or formal institutions of government. Detention and deportation are the two most extreme and bodily sanctions of this immigration penality, which constitutes and enforces borders, polices noncitizens, identifies those deemed dangerous, diseased, deceitful, or destitute, and refuses them entry or casts them out. As such, detention and deportation and the borders that they sustain are also key technologies in the continuous processes that "make up" citizens and govern populations (1).

The definition of immigration penalty by Pratt is inspiring, as she does not limit "immigration penality" to prison. In the case of immigration, penalty also comprises detention centers. Better, according to Pratt, detention and deportation are the pivots of borders control, key technology in the process of making citizens and governing population.

However, I claim that policing of internal borders, not detention and deportation are at the core of immigration penalty. In fact, borders are not just in the camps, but they cut across the territory of states: police produce borders (Neocleous, 2000) whenever they stop migrants and the process of negotiating what might be called *acceptable levels of illegality* starts. I name the fact that an undocumented migrant does not presents any other element of risk additional to the fact of being undocumented as she or he is displaying *acceptable levels of illegality*. Accordingly, during the bordering processes undocumented migrants and police identify and negotiate the acceptable levels of illegality that allow undocumented migrants to remain. I argue that, in the case of undocumented migrants, we should take seriously in consideration the role of policing as part of the penalty. Penalty, not just prison, produces subjects, indeed. The police produce subjects as well.

Bowling wonders if we can talk of 'the harms of migration control policies' (Bowling, 2013: 292) as punishment, and argues that it could be more profitable if we think of it just as punitive, as also Aas proposes (Aas, 2013). Bowling argues that the infliction of pain originating from borders control is not just an involuntary consequence of administrative control; it is used as deterrence. The recent severe immigration laws may be aimed at providing some degree of "penological justifications for infliction of pain that are necessarily required' (Bowling, 2013: 300).

If I agree with Bowling that a border is not just a "location of punishment" (Bowling, 2013: 292), I disagree that borders control and consequent infliction of pain are just punitive. In fact,

as hypothesized above, borders controls are not just directed to the external, aimed at deterring *the others* from entering - except for removing them if they are already in. Of course borders also have such a function (or are imagined to have that function from those patrolling them...); however I claim that borders are also, and perhaps especially, directed to the internal, at disciplining those migrants (undocumented and documented) who already live in the country. Borders may then be considered a "biopolitical *dispositif* which produces subjectivities, manages mobility, and governs population" (Campesi, 2012a: 10. My translation; see Mezzadra, 2007; Rigo, 2007), mobile borders of democracy (Balibar, 2002), "at once, but not simply, [as] a physical, built environment, a line on a map, a socio legal construct, a political invention, and a mechanism of inclusion/exclusion" (Pratt, 2005: 11).

The subjects are produced at the internal borders, in the interaction between undocumented migrants and the police. Therefore, the subjects so produced take directly action in the procedures that produce them as subjects. This is a main point, which requires to briefly mentioning Foucault.

In the article "the subject and power", Foucault explains that '[t]he exercise of power is not simply a relationship between partners, individual or collective; it is a way in which certain actions modify others' (Foucault, 1982: 788). He adds:

> [The exercise of power is] not violence; nor is it a consent which, implicitly, is renewable. It is a total structure of actions brought to bear upon possible actions; it incites, it induces, it seduces, it makes easier or more difficult; in the extreme it constrains or forbids absolutely; it is nevertheless always a way of acting upon an acting subject or acting subjects by virtue of their acting or being capable of action. A set of actions upon other actions. (Foucault, 1982: 789)

This article redefines the concept of relations of power, and especially the concept of power, which can never be without a free counterpart, be it the migrants or the police. Foucault specifies that his main interest, in the entire study, is not the power, but rather the subject. He says this at the beginning of this paper, explaining that its main goal, in the last thirty years, 'has not been to analyze the phenomena of power, nor to elaborate the foundations of such an analysis. My objective, instead, has been to create a history of the different modes by which, in our culture, human beings are made subjects' (777). In other words, he 'expands the dimension

of a definition of power' (778) in order to use it in 'studying the objectivizing of the subject' (ivi). He suggests, then, that the analysis of power 'consists of taking the forms of resistance against different forms of power as a starting point' or ' it consists of using this resistance as a chemical catalyst so as to bring to light power relations, locate their position, and find out their point of application and the methods used. Rather than analyzing power from the point of view of its internal rationality, it consists of analyzing power relations through the antagonism of strategies" (780).

The main hypothesis of the present research is that undocumented migrants become subjects included through their interaction with the police at the internal border, even remaining undocumented migrants. In other words, undocumented migrants are a specific figure taking part in the contemporary states, and they are also produced in their interaction with police continuously taking place at the internal borders.

WHAT IS A BORDER?

The border is understood not as a line dividing the inside from the outside, but as a space where interaction occurs, discretion is exercised, and decisions about belonging are made.

Barker (2013) hypothesizes the existence of a *no-man's-land*, which corresponds to the frontier zone of Weber and Pickering (2011): a space placed at external borders, where migrants have been not yet let in but not even forced out. Here, they are “beyond law's protection but subject to its repressive force" (Barker, 2013: 241), nor included, neither excluded. According to Barker, no-man's-land is not a legal black hole but instead is created by the presence and absence of law. After all, as Dauvergne has shown, only the law can create an 'illegal' person' (Dauvergne, 2008: 248). Similarly, a frontier zone is “a place where the rule of the law is sometimes suspended but sometimes used strategically to create illegality” (Weber Pickering, 2011).

Differently from what one may expect, such no-man's-land is not to be placed just at the external borders, in the space where borders agents have to decide whether to let someone in or not. I argue that undocumented migrants are always caught in a no-man's-land, not yet included, neither excluded. A no-man's-land is instead *produced* in the internal borders, any time police encounter undocumented migrants inside the country and migrants start negotiating the conditions of their “illegal staying” by enacting a variety of strategies of resistance. Because of

that, undocumented migrants “caught” in a no-man's-land cannot be described as pure *bare life*(Agamben, 1995[1998]). In fact, bare life is "when human beings are banned from human society and all that remains is their total subjection to sovereign power" (ibidem: 241), while the internal border is not a black hole where legal norms do not exist or the law gave up on its regulating role. At the internal border the enforcement of those many legal norms depends on police's decisions, which are also affected by migrants' actions (for strategies of resistance inside CIE see Campesi, 2015a). I approach borders the way they are seen in border studies: they are not lines nor are they fixed; rather, borders are seen as “processes, practices, discourses, symbols, institutions or networks through which power works” (Paasi, 2011: 62 cited in C. Johnson et al., 2011).

Nancy Wonders explains that the idea of borders has changed in time of globalization. She builds on Weber's idea that many different actors participate in patrolling the borders and they distinguish between desirable and undesirable migrants, using a variety of pre-emptive measures to hamper undocumented migrants to enter, and punitive measures for those who entered disregarding controls (Weber, 2006 cited in Wonders, 2010). Though recognizing the role of many different actors in borders control, Wonders opposes the idea that controls occur just at the external borders. What is patrolled, instead, is the body of migrants moving inside the country, which also means that borders are mobile (Amoore, 2006) and are performed wherever and whenever it will be considered necessary.

Accordingly, Wonders coined the concept of “performativity” of borders (Wonders, 2006), proposing that borders are performed “in locations that may be far from the actual geographic border” through “day-to-day decisions by government agents, police officers, airport workers, employers, and others” that “play a critical role in determining where, how, and on whose body a border will be performed.” (Wonders, 2006: 66 cited in Wonders, 2010: 56). What Wonders specifically means, by saying that borders are performed, is that: “states attempt to choreograph national borders, often in response to global pressures”, but “state policies have little meaning until they are performed by state agents [and] by border crossers” (Wonders, 2006: 66 cited in Salter, 2011). In other words, Wonders brings the concept of street-level bureaucrats (Lipsky, 1980) in the idea of borders control in time of globalization: she evaluates the role of bureaucrats at the street level in creating the actual policy.

Salter, building on Wonders, sees some "complementary and antagonistic roles" in the way borders crossers and border agents perform the borders; he proposes that such complementary and antagonistic roles may be read through the lens of "Goffman's term, audience, or Foucault's term, resistance" (Salter in Johnson et al., 2011: 67). The role of border crossers is particularly critical for border performance: migrants moving in space indeed determine a resistance to which power has to counteract; migrants' actions are as important as police's action to determine whether borders will be performed or not, and the outcome of border performance will depend on the strategies of resistance deployed by migrants during the interaction, as complementary and antagonistic to the action of police.

One element that is indeed underestimated in criminological analyses of borders are the possible outcomes of the interaction between undocumented migrants and police wherever a border will be performed. Many studies take for granted that removal will be the most probable outcome. On the contrary, migrants in many different geographical contexts enact certain strategies of resistance not just to avoid that borders are actually performed; they also use strategies of resistance to affect and determine the outcome of borders performance (see Campesi, 2015a; van der Leun, 2013; Engbersen, 2009). Borders are sites of discretion, and it is not always a fact that the sovereign power will intervene to exclude someone caught in the web of control: it may also happen that the undocumented migrant, even stopped at the internal border, is let go free, as part of an unspoken process of incorporating undocumented migrants in societies that are continuously under formation.

With this in mind, the center of the investigation will be the process of *bordering subjects* in globalization. In order to do so, the suggestion is "to see like a border" (Rumford in Johnson et al., 2011):

> Border studies now routinely address a wide range of complex "what, where, and who" questions. What constitutes a border (when the emphasis is on processes of bordering not borders as things)? Where are these borders to be found? Who is doing the bordering? It is still possible to ask these questions and receive a straightforward and predictable answer: "the state".

> This is no longer a satisfactory answer. Seeing like a border involves the recognition that borders are woven into the fabric of society and are the routine business of all concerned. In this sense, borders are the key to understanding networked connectivity as well as questions of identity, belonging, political conflict, and societal transformation". (Rumford in Johnson et al., 2011: 68)

Even if it may not be the state the answer to the above mentioned "who is doing the bordering", the state keeps on being the final outcome of borders policing. According to Aas (2013), the state can be redefined through processes of policing the border (see also Weber and Pickering, 2013). One may look at borders and the bordering process as the fabric of society, order and, eventually, current states.

This research focuses on the bordering process taking place within the country, once a migrant has already crossed the borders (either legally or illegally), and he or she is already living in the country in lack of authorization. On the contrary, the research disregards the bordering process taking place at the external borders, where borders control filter between migrants allowed to enter (recognized as members of the society) and migrants whose entry is prevented (non-members).

One last note: by processes of bordering subjects, I do not refer to the processes through which an undocumented migrant becomes documented[6], and as such he or she is allowed to take part in the social contract as a member. By the process of bordering subjects I refer to that process through which an undocumented migrant living in the country and passing through internal borders control remains undocumented, but somehow is informally allowed to remain. The undocumented migrant who undergoes internal borders control and still remains can also be said to have being allowed to take part in the social contract as a member, but a member only welcome in the "subterranean" (Matza, 1964) spaces of a continuously forming society. Therefore, the present investigation is about the processes of producing subjects during interaction between borders agents and border crossers, where I recognize the contours of an unspoken incorporation of undocumented migrants in local contexts.

6 Valeria Ferraris (2008) gives an accurate account of processes of acquiring a legal status even through illegal means with regards to migrants in Italy.

POLICE, BORDERS, AND DISCRETION

I argue that decisions made by police officers are located at a central point within the mechanisms of internal borders control: one may get an overview of the complexity of rationales and agents involved in the mechanisms of immigration control by taking police practices and rationalities as a vantage point. In fact, police's decisions depend not just on their subjective evaluations based on personal feelings and beliefs; their decisions also depend on requests from inhabitants and pressures from judges, police headquarters, and also the media (Fabini, 2011).

However, police more than other border agents are critical to provide a deeper understanding of immigration control mechanisms, as police officers are those who start the criminalization process towards undocumented migrants: they make decisions at the street-level, that is, the first stage of internal borders control. Of course, police are not allowed to act arbitrarily in carrying out control over undocumented immigration: law generally introduces some kind of judicial review to decisions made by police in this field. And in fact, the influence of judges (of justices of the peace in the case of immigration control in Italy) is an important topic, even if under-evaluated and under-developed in the sociology of police. We will go back to this point.

If the general police is the only institution to be responsible for borders enforcement, the interesting aspect to consider when investigating the role of police in transforming the law from law on the books to law in action, is that, according to most sociology of police, police do not act for the exclusive purpose of law enforcement. In other words, police practices do not exclusively rest on legal guidelines; rather, both legal and extra-legal factors guide police in the continuous decisions-making process at street-level (see Brooks, 1993; Waddington, 1999).

The present research will use the sociology of police in order to investigate practical and theoretical consequences of the inextricable intertwining of an immigration law - especially Italian immigration law - and street-level police officers' discretionary decisions. In fact, the sociology of police generally focuses on practices and puts the law aside. Despite the widespread agreement among police scholars that police enforce the law according to their needs and rationalities rather than the legal text, scientific research underestimates the extent to which mechanisms of power also result from police officers' discretionary decisions and their complex bonds with the law and the context.

If we follow the reading by Robert Reiner (2000*a*), (enriched by some consideration by P.A.J. Waddington, 1999 and also by Cristian Poletti, 2007). Reiner distinguishes five currents: "consensus stage", "controversy stage", "conflict stage", "contradictory stage", "crime control" stage.

During the "consensus stage" most studies consider the society to be harmonic and celebrate the "bobbie", the good police officer, as the symbol of a good police. Michael Banton, anthropologist and ethnographer, conducts the first English empirical research[7] on police observing police activity during some turns of duty (Banton, 1964). He observed how prejudice is perpetrated by police officers during their activity, and distinguishes between "law officer" - whose duty is law enforcement- and "peace officer" –whose duty is order maintenance (Waddington, 1999). There will be a widespread agreement among police studies that the principal police task is not law-enforcement but rather order-maintenance (Bayley, 2005; Maanen, 1978; Reiss, 1971; Waddington, 1993, 1999)[8]; an order that it is possible to establish not necessarily by law enforcement. The paradox here is that immigration law enforcement is demanded to an institution which is mainly committed with order maintenance (Palidda, 2000), under-enforcement or non-enforcement at all. Law enforcement ends up being just an accidental enforcement; law is a resource among others in order to answer some urgent and practical need (Bittner, 1967).

The second current is the "controversy stage", between 1960s and 1970s. The society is not harmonic anymore; rather it is divided (as a result of contextual political struggle). Symbolic interactionism and labelling theories originate at this moment, and police is considered to create deviance, instead of reacting against it, through discretionary use of power (here Reiner refers the reader to the works by Lambert (1969), Cain (1971), Rock (1973), Chatterton (1976, 1979, 1983), Holdaway (1983), Manning (1977, 1979), Punch (1979)). The main themes of this current are: racial discrimination (Lambert, 1970), the growing police autonomy (Cain, 1973; Holdaway, 1977), internal corruption (Punch, 1985), and, mostly, the critics of police's *malpractices*. Especially for the last topic, the reader may refer to the work of Jerome Skolnick

7 Nevertheless, first police research ever was conducted by William Westley, in United States, in 50s yet published in 1971. He observed police activity in Chicago, studied racial discrimination perpetrated by police officers and the creation process of a specific police culture (Poletti, 2007: 118).

8 David H. Bayley (2005), talking about "what do the police do" stresses three principal assignments, which are "patrolling", "criminal investigation" and "traffic control". John van Maanen (1978) as well claims that police spend most of their time in patrolling.

and Egon Bittner. Bittner is a very important police researcher, who started conducting observation on police's malpractices in this period (with Harold Garfinkel). Bittner mainly focused on the police's use of force, and considered order maintenance activity as important as law enforcement activity (Poletti, 2007: 119). Its approach was innovative and influenced many other researchers, such as David Bayley, Peter Manning, Jerome Skolnick, William Muir, Frederick Elliston, Robert Reiner himself, Herman Goldstein (Poletti, 2007: 122). This is the approach that I will use in the analysis of mechanisms of borders control.

The third current is the "conflict stage", which developed between the 1970s and early 1980s, and which focused on police's *wrongdoing* –as a result of discretionary power- and their *accountability* (who controls the controllers?). Marxist theories find their way in this period, with eminent scholars, such as Stuart Hall et al. (1978), Maureen Cain (1977, 1979), Michael Brogden (1977, 1981, 1982), Robert Reiner himself (1978*a*, 1978*b*), Tony Jefferson and Roger Grimshaw (1984, 1987), Phil Scraton (1985), Laurence Lustgarten (1986).

Typical of the fourth current, "contradictory stage", is the realism, intended as the attempt of doing policies-oriented research, with elaboration of *best practices* intended as a solution to police wrongdoing and their lack of accountability. Reiner explains that realism has been "contradictorily" declined, both as the leftist realism of Jock Young (1986; 1988; 1997), David Cowell, John Lea, Richard Kinsey, and as the rightist realism, mostly represented by "broken window theory" (James Q. Wilson, 1975).

The Fifth current identified by Reiner is the "crime control stage", during the 90s, when both leftist and rightist political forces started to consider crime control to be a priority. According to Reiner, this is the less critical current: there is a widespread trust on police's effectiveness, crime is considered a fact, and the only question is about how police can affect crime. Fortunately, Reiner still detects some exceptions emerging from the general trend: the works on police in the post-modernity era (Reiner, 1992; Sheptycki, 1995, 1997; McLaughlin e Murji, 1995, 1997; Bottoms e Wiles, 1996; Morgan e Newburn, 1997; South, 1997; Johnston, 1998), and the never ending current about studies on racial discrimination enacted by police (Holdaway, 1991, 1996; Cashmore and McLaughlin, 1991; Heidensohn, 1992, 1994; Walklate, 1992, 1996; Martin, 1996; Gregory e Lees, 1999).

One cannot really say that we are out of the "crime control stage", given the importance that traditional criminology still has. However, I would like to add another stage in policing studies, which still is emerging: it is the "global borders stage". The latter is connected with

globalization processes and the growing importance of borders. It takes something important from traditional police studies, and applies that to the study of border control. The main representatives of this stage probably are Leanne Weber (2015, 2013, 2011, 2006), Sharon Pickering (2011, 2006), and Ben Bowling (2012, 2010). What are investigated are the rationales and practices of police in enforcing borders in times of globalization. With regard to the Italian and the European context, it is worth pointing at the work of Salvatore Palidda about the policing of migration and processes of racialization (Palidda, 2000, 2009), and the studies on the securitization of immigration (f.i. Campesi, 2015b). The present research is situated in this last stage.

USING THE SOCIOLOGY OF POLICE

From empirical research on border policing, it emerges that police carry out "more traditional "low policing" activities through the use of immigration powers to expedite control over troublesome populations" (Pickering and Weber, 2013: 108). Such result of research easily reminds one of Chambliss' narration of the way in which vagrant laws were a tool in the hand of police used to enforce against vagrants considered as "criminal". For example, it emerges from a research conducted by Weber (2012), where she interviewed 371 operational officers in 2008-2009 in the New South Wales (Australia), that:

> "Immigration power were used as a useful tool in the pursuit of traditional policing goals of criminal prosecution and order maintenance. Checking immigration status could assist with the confirmation of identity during street stops, so that warrants could then be checked or on-the spot fines issued to the correct name and address. Immigration checks were also used in criminal investigations where they could yield evidence about the whereabouts of suspects, or *open up alternative avenues to "get rid" of individuals who were found to be unlawfully present where the criminal matter was considered minor or difficult to prosecute*" (Weber and Pickering, 2013: 102; emphasis added).

The excerpt reveals that, in the case studied in New South Wales, immigration law is normally not enforced towards an undocumented migrant who is living in the country in breach of conditions but did not commit any crimes. Rather, immigration law provides the police officers

with an alternative and more easily walkable venue than criminal law to deal with minor offences; especially when minor offences are committed by troublesome people, that is, people that police want to "get rid of". In other words, the pure undocumented migrant does not appear as the target of police. The target of police is the "troublesome" person, the one who commits minor offences. In the case that police want to get rid of someone who also is an undocumented migrant, they will be more inclined to use immigration law, which allows administrative detention and grants fewer guarantees, while criminal law would require the police officer to collect sufficient evidence to incriminate the migrant. The fact is that immigration law provide police officers with tools that enable each police officer to express a great degree of discretion over the body of undocumented migrants[9].

The point to be noticed here is that, if ever such a result would seem counter-intuitive and surprising, it is far less surprising if one comes to it from the field of the sociology of police. As I briefly mentioned, police operate for the purpose of "order maintenance" more than "law-enforcement". They enforce the law selectively: as long as an undocumented migrant does not pose any trouble and order can be maintained, there is no need to enforce the law. Allegedly, a closer look at the principal findings of the sociology of police may be useful in order to shed light on important mechanisms in the interaction between undocumented migrants and the police at the internal borders.

As we saw, police were historically established for a specific purpose: separating the laborious from the dangerous classes (Campesi, 2008; see also Neocleous[10], 2000) by performing a kind of accurate "social surgery" (Bittner, 1967). In general, police divide population into categories for the purpose of order maintenance: The "Us" is distinguished from the "Them"; and the them are in turn distinguished in sub-categories, such as "police property", "good-class villains", "rubbish", "challengers", "disarmers", "do-gooders", "politicians" (Reiner, 200b). Among them, the "police property" category is worthy to be described. J.A. Lee explains that "[a] category becomes police property when the dominant powers of society (in the economy, polity, etc.) leave the problems of social control of that category to the police" (Lee, 1981: 53-4).

9 This is the case, for example, of the possibility that the police officer in the New South Wales cancel a migrant's visa if the migrant has committed any crimes. The point is, as Weber explains, that such an instrument was issued by the government to remove "high risk" individuals; however, in practice, "it appears to be driven by relatively independent operational policing objectives" (Pickering and Weber, 2013: 103).

10 According to Neocleous, there is a "consistency" in police function since police's origins, and such consistency "resides in the centrality of police to not just the maintenance or reproduction of order, but to its fabrication" (5), fabrication at the heart of which are "work" and the "nature of poverty" (5).

Reiner (2000) adds that the dominant majority see such "low-status, powerless groups" as "problematic or distasteful", to such an extent that they "are prepared to let the police deal with their "property" and turn a blind eye to the manner in which this is done". Undocumented migrants may be intended as "police property" and the police "are armed with a battery of permissive and discretionary laws" in order to "control and segregate such groups" (Reiner, 2000).

The possibility of creating categories of people may be identified as the power of locating someone within or beyond citizenship boundaries. And this is also a more complex power when it comes to migrants who are already located within or beyond citizenship borders. The point to be made is that police enact a re-location of the borders previously set by law. In this sense, the main hypothesis here is that police power entails the specific power of borders re-location: legal and police categories do not overlap. Borders set by police tend to prevail on those set by law. The law distinguishes between documented and undocumented migrants, the first allowed to stay, and the second to be deported; police are more likely to distinguish between troublesome and non-troublesome migrants, regardless of their legal status. The former will be prosecuted; the latter will be more probably informally allowed to stay even whether undocumented. Indeed, before "police property", law becomes "one resource among others" for the purpose of order maintenance (Reiner, 2000: 93). The possibility of discretionary use of power is the core of police power.

A good definition of discretion in police work can be found in Davis (1969), according to whom a discretionary police's decision may be a decision of action or inaction. The reality is that decisions made by police officers while "dealing with the public" are inevitably discretionary as long as they are of "low visibility". Indeed, neither their superiors nor any other authority can control police's decisions made at street level, "particularly where [the police officers] have decided *not to* arrest someone"[11] (Goldstein, 1960: 10).

A common knowledge among police studies is that police discretion is on the one hand inevitable, because of the vagueness of legal provisions (Newburn and Reiner, 2012; Lustgarten, 1986: 15). This assumption becomes especially crucial with regards to public order matters, because of the particular broadness and vagueness of its definition. On the other hand,

11 This consideration makes it important to conduct empirical research on the streets, and not just before the courts, in order to observe the discretionary use of power by police.

police discretion does not mean complete arbitrariness. Indeed, police officers often have to deal with emergency situations, and have little time to make their decisions. They cannot take into account all the legal provisions on the matter, nor all the elements and peculiarities of the cases they have to deal with. As a consequence, discretionary decisions mainly are routine decisions, which need to be taken quickly. Therefore, some common practices do exist, which are created time after time within a certain police organization. These practices allow police officers to make quick decisions during territory control activity (see Galligan, 1992), when celerity is needed to deal with "practical situations" (Bittner, 1967). Of course, such common practices do not need to be in accordance with law, but rather, and according to Galligan, it is necessary that a general rule is stated at the administration level (Galligan, 1992). Street level work needs quick decisions; it is thus obvious that officers will be using recurrent patterns to quickly understand the situation they are facing. They need to categorize what they see and what they have to deal with, in order to recognize it and quickly decide how to behave. ""Discretion" in practice involves discrimination in the form of selective law-enforcement and order maintenance" (Neocleous, 2000: 100). According to Lustgarten (1986), under-enforcement is the general rule guiding police officers when dealing with most of less serious offences. Waddington (1999) pushes this statement even further and argues that police work does not finally consist in law-enforcement, but rather in law-under-enforcement. When police officers have to choose, they prefer the non-enforcement (Reiss, 1971). Therefore, paradoxically, "enforcement can be a serious abuse of power" when it occurs before a minor offence. As Lustgarten explains, "[t]he common sense which tempers full enforcement may readily become a cloak for counscious or uncounsious discrimination on the basis of political opinion, personal appearance, demeanour, social status or race. Under-enforcement becomes selective enforcement" (Lustgarten, 1986: 15). And some decisions, for example decisions made by police officers in the area of immigration control, are capable also to produce a "collective distortion" (16). Common practices are not the only criteria in guiding quick police's decisions. Also prejudices and common sense ideas are likely to enter the decision-making process at the street-level, when the decision needs to be made in a short time. They are prejudiced, just a little more than the whole of society, but in general police officers "reflect the dominant attitudes of the majority people towards the minority" (Bayley and Mendelshon, 1968: 144). ,

After all, all already mentioned above, there is a widespread agreement among police scholars that the principal police task is not law-enforcement but rather order-maintenance. David H.

Bayley (2005), talking about "what do the police do" stresses that their principal assignments are three, namely: "patrolling", "criminal investigation" and "traffic control" (see also van Maanen, 1978), with patrolling largely being the most frequent among the others. The paradox here is that immigration law enforcement is demanded to an institution which is mainly committed with order maintenance (Palidda, 2000), to such an extent that law-enforcement, when it occurs, ends up being just accidental enforcement (it is the Bittner's concept of "restricted relevance of culpability"). In other words, during territory control activity law is nothing but a resource among others to answer some urgent and practical needs (Bittner, 1967).

According to Neocleous, there is a "consistency" in police function since police's origins, and such consistency "resides in the centrality of police to not just the *maintenance* or *reproduction* of order, but to its *fabrication"* (5), fabrication whose heart consist of "work" and "nature of poverty" (5). "The legal uncertainties surrounding discretion" (102) is fundamental for state power legitimacy. In fact, "[d]iscretion allows the exercise of power with law standing at arm's length, deferring to the power of administration but using its own symbolic and political significance to confirm that same power" (103). What is important about discretion in the mechanism of legitimacy of state power?

> "The existence of discretion allows the state in general and government in particular to appear to stand at arm's length from the processes of administration, and thus the policing of civil society. Discretion encourages the idea that administration and policing are somehow outside politics. Any criticism of or challenge to the system can thus be focused on particular instances of the exercise of discretion rather than the more fundamental existence of state power behind the institutions in question" (Neocleous 2000: 104).

When talking about discretionary use of power by police, we need to take into account the complex relationship which bounds together law and police: the one hand, law leaves some rooms open for discretion and set certain limits to the use of that discretion; the other hand, police use the law as a resource to solve urgent and practical issues encountered during the territory control activity (Bittner, 1967). Police actively and creatively implement the norms, moving within the boundaries set by law, and sometimes beyond them.

The law and police have difficultly been considered as a whole, as inevitably bounded: much sociology of police have focused either on police practices, as they were not somehow constrained by law, or on police culture, as again completely distinguished by legal rules and as exclusively guiding police in making-decisions process (Dixon, 1997).

The central point that I want to make throughout this research is that police is located in a crucial site within law enforcement in general - and immigration law enforcement in particular; consequently it is important to take both law and the police into account when investigating certain system of control. Law enforcement needs to be investigated at street-level in order to understand the mechanisms of control as a whole and the system of power subtending it.

The main hypothesis here is that an overview of the extra-legal factors which enter Italian immigration control mechanisms can be produced by focusing on police (and judges)'s practices and rationalities.

THE FOCUS OF THE RESEARCH

Police have controlled human mobility and migrants as a matter of security management since the creation of the modern state (see Campesi, 2009). They have always produced borders (Neocleous, 2000) by performing accurate "social surgery" (Bittner, 1967) to separate the working classes from the dangerous ones (Foucault, 1977). Nothing really changes when it comes to immigration control. Empirical research on immigration law enforcement suggest that migrants' illegality is only strategically enforced (Weber, 2011; Aas, 2014; Fabini, 2012). Police generally enact a re-location of the borders previously set by law. Indeed, whilst law distinguishes between documented and undocumented migrants, police distinguish between troublesome and non-troublesome migrants (Fabini, 2012). Therefore, when internal borders enforcement occurs, this becomes selective-enforcement, and thus discriminatory. Police discretion is crucial. It is here that the usual socio-legal understanding of the gap between law in action and law on the books is challenged by looking at discretion as part of the law.

The usual gap between law in action and law on the books needs to be made more complex. Discretion is not an unintended consequence of permissive and vague laws. Discretion is part of the norm, is part of the sovereign power. Under the understanding that undocumented migrants present inside the borders need to be governed, discretion can be defined "as an active form of governmental power rather than a residual space created by law" (Pratt, 2005: 20).

A point that is often under-evaluated is the role of courts that do not control but rather *influence* police practices (Bittner, 1970). What usually happens between courts and the police is that courts do not *control* police, but they have the power to *influence* them, mainly due to two considerations: "the police really want to make use of the powers of the courts to punish, *and* they are fearful of scandals" (Bittner, 1970: 27). The coordination between judges and police is an important element, often under-evaluated by the sociology of police. Egon Bittner once wrote:

> It is of the utmost importance for the understanding of the role of the police in modern society that its relations to the courts be set forth as clearly as possible. It is not exaggeration to say that much, perhaps most, of the present confusion about the police, and a great deal of empty polemic, are due to the lack of clarity on this point. Most legal writers do not know enough about police work to understand how it might relate to what the courts do, and most authors familiar with police procedures do not have an adequate appreciation of the nature of the legal process to discern the proper connection. (Bittner, 1970: 22)

For example, in immigration control, police have the power to make arrests, but their power may meet an upper limit if judges decide not to validate the arrests.

Police power and police discretion is limited by judges. I argue that police practices are built through the ongoing interaction between judges, migrants, and the police.

According to the legislator, Italian illegal immigration law has been issued in order to pursue given declared objectives; notwithstanding, when it is implemented, it is likely to follow rationalities other than the law's.

In particular, the main aim of the present research is to investigate the dangerousness concept and its role in the decision making process by judges and police officers.

As already mentioned, results of a previous research conducted in Bologna about the interaction between undocumented migrants and city police officers during the ID checks, highlighted the extent to which the perception of undocumented migrant's dangerousness by the police – perception of dangerousness built on fixed elements – was at the basis of the selectivity process enacted by city police officers, when they have to decide whom among migrants to stop for the purpose of an identity check and who to let go free. Such a "rhetoric of dangerousness" seems

to be shared both by city police officers ("*If a migrant has done nothing wrong, I do not stop him/her*") and by undocumented migrants themselves ("*I'm not scared of police, because if I have done nothing wrong, they cannot do anything to me*").

As argued above, dangerousness's rhetoric is a serious discourse from a political and ethical point of view: the concept of dangerousness, in fact, seems to justify, and has always justified, police activity – even when it becomes particularly aggressive and violent. Still, is the dangerousness concept just rhetoric or is a fact? It is worth a closer look at the concept of dangerousness, to wonder about the elements which compound it, to wonder about how it is actually used and which their effects are. It could be also worth to investigate if the police's concept of dangerousness differs from the judges' or not.

The present research is aimed at investigating the enforcement of internal borders, with a focus on the interaction taking place between borders crossers and border agents in the space of borders.

Present research's focus will be on two levels: on the one hand, focus will be on decisions police make about whom to control, whom to identify, whom to detain, whom to deport, whom to release; on the other hand, focus will be on the rationalities subtending those decisions and on police's discourses about undocumented immigration control.

CHAPTER TWO

A SYSTEM OF PERMANENT ILLEGALITY

Nicholas De Genova's influential article on "Migrant "illegality" and "deportability" in everyday life" opens by making a distinction between illegal immigration, as a general element, a fact present in all the western countries since the post-World War II era (Sassen, 1998, 1999) and migrant "illegality", that "has risen to unprecedented prominence as a "problem" in policy debates and as an object of border policing strategies for states around the world" (De Genova, 2003: 419). In a quite paradoxical way, the immigration laws first create migrants' illegality (Ferraris, 2012), and then attempt to eliminate them.

It is difficult, even impossible, to get exact information about the number of undocumented migrants in national territories, but estimates exist and they talk of a generalized fact, indeed.[12]

Seeking to exclude undocumented migrants has emerged as a 'symbolic policy' of immigration control (Cornelius, et al. 1994) in Europe. All European countries, including Italy, resort to crimmigration laws (Stumpf, 2006; Guia, van der Woude and van der Leun, 2012); they manage migration as a security issue (Campesi, 2012a; Huysmans, 2000, 2006; Bigo, 2002); they build discourses linking crime and immigration (De Giorgi, 2010; Melossi, 2003, 2008) and turning undocumented migrants into illegal persons (Dauvergne, 2008; De Genova, 2004), while political elites use these processes to their electoral benefit (Maneri, 2013). The EU Return Directive (Directive 115/2008/CE) even provides common standards and procedures for EU

[12] The simplest way to get estimates about the presence of undocumented migrants living in national territories is to look at the number of undocumented migrants found to be illegally present by the agencies of border control. This is not an accurate source, as the number of undocumented migrants found to be illegally present do not depend solely on the actual number of undocumented migrants, but also on the selective strategies by the police. However, these are the only data available. They give us a clue of the minimum number of undocumented migrants present in the national territories. According to the annual statistics by Eurostat, it is estimated that undocumented migrants in Europe in 2014 were about 630,000.

member states to return third-country nationals to their countries of origin. Yet the actual implementation of these symbolic policies depends on the local context and produces different outcomes at the local level.

Each European countries present different trends of deportation. If we look at the Europe in general, based on Eurostat, they increased. However, if we look at the specific trend in the different countries, we see that in some cases they increased and in some other they decreased. This is also what for instance emerges from a broad comparative research on removals, based on statistical data from 2000 to 2011, presenting trends across ten European countries plus Australia and the US, and showing that differences among deportation practices can be discerned among countries, localities, regions, against a backdrop of apparent uniformity (Weber, 2014). More specifically, a clear upward trend in deportation practices can be detected in countries such as France and USA, on the contrary, Germany and Italy show clear downward trend. Variable trends are in Spain, Hungary and Australia.

Much criminological research assumes that border control follows the logic of exclusion and focuses on the mechanisms through which undocumented migrants are removed. I want to challenge this perspective looking at the Italian case, as Italy appears characterized by "a consistent pattern of steadily reducing levels of deportation from 2000 to 2011" (Weber, 2014: 12).

In fact, in the Italian case border control results in the far more frequent circumstance whereby undocumented migrants are informally allowed to remain, despite the lack of official permission. Undocumented migrants in Italy constantly undergo police checks which in part result in charges, and even detention. Yet few are actually removed; the great majority remain, find a place in the shadow economy (Reyneri, 2004; Finotelli and Sciortino, 2009), and try to regularize their legal status (Ferraris, 2008). The core of the Italian mechanism of immigration control comprises the police who manage 'illegality' rather than controlling, punishing or expelling illegal migrants.

In a sense, this is coherent with a characteristic proper not just of Italy, but also of countries of the Southern Europe more in general, that is, the general acceptance of illegalism and informality and the negotiation of the norms *(*Gonzalez 2009), together with the widespread black economy and the frequent use of amnesties to regulate undocumented immigration (Finotelli Sciortino, 2009; Ambrosini, 2015; Quassoli, 2013).

Nation states worldwide are also developing similar discourses on migrants as "dangerous others" (see Anderson 2013). In all European countries, politicians and media have drawn a link between crime and immigration (Maneri 2013), or between immigration and pauperism as in the United States (De Giorgi 2010?), that bring about discourses on migrants' dangerousness, feed public debate on importance of external border control and removal of undocumented migrants (internal borders control), and are useful for electoral benefit.

IMMIGRATION IN ITALY

When thinking of immigrant population in Italy, one should resist the temptation to think of two distinguished groups, one of documented migrants and the other of undocumented. Rather, the unlawfulness of legal status is cyclical for migrants in Italy (Ferraris, 2008), because it is the very product of restrictive immigration laws and dependent on the high probability of sooner or later losing their jobs and therefore residence permit. Undocumented and documented migrants in Italy do not take part in two separated groups, but are more likely to cyclically be part of one group or the other, depending on temporary conditions. As a matter of fact, this would require continuous police control at the internal borders, in order to identify undocumented migrants, or at least try to govern and discipline them.

Immigration flows to Italy started in 1970s but became evident after 1990s[13], meaning that Italy acknowledged to have become a receiving country just in early 1990s. Until then, it had been a country from where people have been emigrating: 30million Italians left between 1860 and today.

In 2014, Italian population is of 59.685.227 units. Foreign residents[14] are 4.387.721 (caritas/migrantes 2014), and 3.874.726 of them are third country-nationals (ISTAT 2014), that is citizens of a non-European country. Half of foreign residents in Italy are female, 24.1 per cent of them are minors (Caritas/migrantes, 2014). The first ten countries of origin are: Morocco; Albany; China; Ukraine; Philippine; India; Moldova; Egypt; Tunisia; and Bangladesh, with the first five nationalities informing half of the total foreign population.

Foreign residents are unequally distributed among Italian regions, with the majority of them

13 In the early 1990s, Italy was the principal destination of Albanians.

14 Foreign nationals are people living in Italy and being a citizen of a European country or non-European country alike.

living in the regions of Northern Italy (61.8 per cent), 24.2 per cent in the Central regions, and 14 per cent in the Southern. This unequal distribution is originated by the opportunities of finding employment, as the economy in Northern Italy is stronger than Southern.

Since Italy have become a receiving country, in the early 1990s, foreign population has been harshly criminalized and stigmatized. One of the evidence for this is that foreign population in Italy has always been over-represented among prison population: in 2014, for example, foreign residents compose the 7.4 per cent of the total population but about the 33 per cent of prison population, and the same trend can be observed also in previous years or even decade, since 1990s (see Crocitti, 2014 for a deeper analysis on Italian case). These data should not be read as a signal of higher rate of committed crime among foreign residents. In fact, prison rate are telling something about the process of criminalization rather than crime (Melossi, 2010).

Out of a total population of about 60 million people, documented migrants are about four million (ISTAT 2014), while the undocumented migrants are estimated as 500,000[15] (ISMU 2012): one out of eight migrants in Italy is unlawfully present.-Unlawful legal status is often a cyclical condition for undocumented migrants in Italy. Law 189/2002 links a residence permit with a work contract (Quassoli, 2013), with two main consequences: on the one hand, migrant workers cannot risk losing their job and are therefore forced to be obedient, disciplined workers (Calavita, 2005); on the other hand, they may lose their residence permit but still remain and look for a way to regularize their position. The link between crime and immigration has been a crucial topic in Italy.

THE MEDIA, THE POLITICS AND CRIMINALIZATION

In the last twenty-odd years, public discourse on dangerousness of undocumented immigrants in Italy seems to have given legitimacy to the immigration law. Discourse on the illegality of undocumented migrants has a major role within Italian immigration control regime; regime which has always been one structurally inadequate to effectively address such a complex and many-sided issue as the immigration management is (cf. Mosconi, 2007). The discourse on

15 It is very difficult to understand how many undocumented migrants are present in the territory. One way it was easier to understand this was through using the number of people presenting request during amnesties. Thanks to the frequent amnesties, it has been always quite easy to estimate how many undocumented migrants were present in Italy.

immigration in Italy has always considered immigration (especially undocumented immigration) as a threat to citizens' security, thereby justifying harsh immigration policies and the criminalization of migrants (Melossi, 2002, 2007, 2008).

The word "illegal" officially became part of Italian political discourse when the crime of illegal entry and remain in the country was created in 2009. Italy is not the only country where this terminological change has occurred: in recent times, politicians, media, and lawmakers in most European countries have made massive use of the adjective "illegal" when speaking of third-country nationals present irregularly in the territory (Dauvergne, 2003). Similarly, most European countries share a tendency to equate immigration with criminality and, thus, to manage immigration flows as "security" issues (Bosworth, 2008).

According to Catherine Dauvergne, illegal is a "false liberal legal neutral category" (Dauvergne, 2008), with the power to enforce the exclusion by means of law, while covering the racialization underpinning that very exclusion. I see the word illegal as a new label with the power to push a preexisting mechanism of exclusion to an extreme: once undocumented immigrants are turned into illegal immigrants, they are outside the law and its legal guarantees. If exclusion has always been at the core of the immigration discourse in Italy[16], the new label of illegal has definitely increased state power to exclude by means of "nam[ing] the other not only as an outsider to a particular nation, but as an outsider to any nation. As such, the other is outside the law itself, in a word, illegal" (Dauveregne, 2003).

The prevalence of a discourse on dangerousness and concomitant policies of criminalization in immigration law in Italy seems mainly due to political convenience. Italian political actors have promoted the criminalization of undocumented immigrants since the huge political crisis of the early 1990s, when almost the entire Italian political class went on trial for corruption[17]. This occurred in the middle of an economic crisis, terrorist attacks perpetrated by the mafia against important judges, and the first wave of immigration to Italy. The trial for corruption exacerbated public disaffection with political parties and undermined government's legitimacy (Cornelli, 2008). But Italian politicians used the discourse on immigrants' dangerousness and criminality as a symbolic resource to foster a feeling of insecurity among citizens, to persuade them

16 This was the case when immigrants were racially labeled "vu cumprà" (literally meaning "do you want to buy?") in the 1990s, and afterwards, when they were labeled "extra-comunitari" and "clandestini".

17 The trial titled "Mani pulite" (literally, clean hands) was complicated; it went on for months, causing political crises and public disaffection with political parties.

something had to be done and the government was essential to citizens' security. In this way, political elites attempted to regain the consensus they had lost (ibidem). In other words, one response to the political crisis was the development of a securitarian ideology against immigration. Such an ideology necessitates an internal enemy, and immigrants—especially undocumented ones—were identified as that enemy. In the 1990s they were regularly represented in the public arena as dangerous criminals and as posing a serious threat to citizens' safety and state security (Dal Lago, 1999). Since then, the discourse on undocumented immigrants' dangerousness and austere immigration policies has become common political tools, especially during elections.

It seems that in Italy the discourse on dangerous immigrants did not emerge as an *ex-post* justification of an illegal immigration law. Rather, the reverse seems to be true: the discourse came first, and the law followed. In Italy, the illegal immigration law was issued in response to a public discourse on immigrants' dangerousness, otherness, and, finally, illegality; it was a populist law, totally ineffective in its official aim of removing undocumented immigrants. At the same time, once a law is issued, it necessarily becomes productive of meanings (Mosconi, 1986). In Italy, the law creates an image of undocumented immigrants as dangerous and illegal others; this prompts insecure citizens to ask for protection from the threat; this, in turn, enables lawmakers to issue even more severe laws. And so on.

The close interaction of law and common sense is explained by Luigi Ferrajoli: "There is a relation between integration and legal equality as, conversely, there is one between legal inequality and the fact that no-rights people are perceived as unequal and subordinate" (Ferrajoli, 2009: 124). As long as undocumented immigrants are granted no rights and considered non-person by the law, they will also be perceived as *anthropologically* unequal and even as a safety threat (ibidem). This engenders a racist perception of undocumented immigrants, which justifies their legal discrimination. The higher the social exclusion produced by legal discrimination, the more extensive the public desire for racist laws.

Migrants either documented or undocumented have always been addressed as other, dangerous, and criminal. The fact of them having become illegal, non-persons by law (see Jakobs, 2005) originates the perception of migrants as inferior by nature, which presents some important consequences in police practices on immigration control. Not differently from the general population, police usually consider migrants to be more dangerous than Italians (Mosconi, Padovan, 2005: 39), and consequently are more likely to stop and check them rather than Italian

citizens (Melossi, 2000).

I propose adding one element to the interaction of law and common sense, as explained by Ferrajoli. Here, I look to Calavita again, who proposes if a racist immigration law is the product of racism in society, the reverse is also true: the law produces racism (Calavita, 2005). This is why the symbolic dimension of the law is so important. Otherness finds its place in the common imaginary because the illegal law provokes very material consequences which produce otherness and distance.

Clearly, the disproportionately repressive response to the criminal offenses committed by immigrants (such responses always accompany the discourse on dangerousness and illegality) has a symbolic dimension. This repressive response is a separate mechanism that "reaffirms collective stereotypes of the immigrants as potential criminals" (Calavita, 2005: 144). Even though administrative law affects immigrants' everyday life more than criminal law, the latter is more powerful than the former from a communicative and symbolic point of view (Ferrajoli, 2009). Using criminal law has never been an efficient strategy for managing immigration flows to Italy; however, it has always been useful as a symbolic resource (and a political tool) to reassure the public (Masera, 2009).

Political convenience is one of the main reasons why immigrants in Italy are principally "governed through crime" (Simon, 2007). The other, of course, is economic and it has to do with making migrants easily exploitable workers on the shadow economy. Migrants are others, they are symbolically excluded but actually included and hardly removed.

THE ILLEGAL IMMIGRATION LAW

There is a persisting process of criminalization of undocumented migrants in Italy, taking place thanks to an immigration law that can be said to be illegal itself.

According to Richard Ericson, an illegal law is a form of counter law that comes into being when "new laws are enacted and new uses of existing law are reinvented to erode or eliminate traditional principles, standards and procedures of criminal law that get in the way of preempting imagined sources of harm" (Ericson, 2007, 24). Following Ericson's definition, in the title of this paragraph, the adjective "illegal" can modify both "immigration" (the illegality of undocumented migrants) and "law" (the illegality of immigration law). This wordplay sheds light on the paradox of a discourse on undocumented migrants' illegality originating from an

immigration law that is itself illegal. On the one hand, labeling undocumented migrants illegal marks them as "non-persons" in law (Dal Lago, 1999) and enables immigration law to place them in a constant "state of exception" (Agamben, 1995); they become "bare life" (ibidem) immediately exposed to the police's sovereign power and their large margins of discretion, granted by the law, in administering that power. On the other hand, this label enables the law to justify its illegal character on the grounds of necessity, emergency, exception.

Italian immigration law is "inconsistent, scattered, and changeable" (Ferraris, 2013: 1), for three reasons. First, in the last twenty-odd years, political parties have been using the immigration law as a political resource to gain electoral consensus, so that laws keep on changing depending on the political orientation of the major parties. Second, Italian immigration law developed at two different levels, a criminal and an administrative one (Ferrajoli, 2009), with criminal law being used in defense of "the administrative activity of expelling immigrants' (Caputo, 2007: 58), thereby creating confusion in the "traditional tripartite division of the law's branches: criminal law, civil law, administrative law" (Savio, 2013: I), with regards to the principles pertaining to each branch (Caputo, 2003; Ferrajoli, 1989). Finally, immigration law has changed as a consequence of the continual changes in national laws, European legislations, international treaties, and labour law, not to mention the many decisions of the European Court of Justice and the Constitutional Court.

This section analyzes the illegality of immigration law. It begins by describing its historical evolution, providing some details about the disputes between the Italian government and the Constitutional Court, and, more recently, between domestic lawmakers and the European Court of Justice; both institutions have been constantly intervening to make Italian immigration law comply with higher principles and legislations. Then, the section will take a closer look at the discretionary power of police. A major part of the illegality of Italian immigration law originates in the amount of discretion the law has granted to the police. In effect, the immigration law places the police — not the judiciary — at the center of the mechanisms of control.

THE HISTORY OF LAW'S ILLEGALITY

The entire history of Italian immigration law is one of illegality, but it can be divided into four stages. The first includes the legal regulations before the early 1990s, when immigration became a concern. During this stage, immigrants were mentioned only in the *Testo unico sulle*

Leggi di Pubblica Sicurezza (TULPS)[18], that is, the code regulating police power. Here, migrants were mentioned with respect to their possible expulsion if considered a threat to state security. At this point, they were either not of concern or were treated as "dangerous others" (Calavita, 2005). As there were no rules regulating immigration, immigrating to Italy was not difficult before the 1990s: immigrants could easily cross the borders, enter the labour market in the country, and stay. The original focus of the police on immigrants' possible dangerousness persisted in the subsequent immigration law (Ferraris, 2012) which, just like TULPS, pays attention to removal procedures rather than the living conditions of migrants.

Preliminary attempts to regulate characterized the second stage of Italian immigration law, between 1990 and 2002. For example, law no. 39 of 1990, the so-called Martelli Law[19], regulated visa policies, flow decrees, border control, and family reunification. At the same time, it broadened the category of crimes for which an expulsion order could occur. Administrative expulsion occurred when immigrants disobeyed *any* of the legal norms issued. It also introduced expulsion for dangerous people and expulsion for public order and state security. In other words, the core of the management of immigration remained expulsion procedures (Caputo, 2006)[20]. The same can be said about law n. 296 of 12 August 1993[21], which raised the number of the crimes for which expulsion could occur[22]. In 1995, the Dini Government Decrees[23] continued to broaden the category of expulsion orders, by introducing expulsion as measure of prevention. They established that removal orders would be the rule to execute expulsion orders, and forced removal would be the exception. They also opened up the possibility that the judiciary could restrict an immigrant's residence to a particular location to identify the person and prepare his/her return. Allegedly, the Dini Decrees laid the foundation for pre-removal detention, which was fully established three years later.

The Turco-Napolitano law[24] was issued in 1998 and represented the most articulate effort to

18 TULPS is the consolidated act of public safety laws, Regal decree no. 773 of 18 June 1931.

19 Law 39/1990, 28 February 1990, Regulations on the matter of asylum (Conversion into law, with amendments, of Decree-Law 416 of 30 December 1989)

20 Caputo claims that the perspective that the Martelli law adopted was still one that mainly sees immigration as a concern of State security. For deeper analysis see Pastore 1998.

21 Law 296/1993 converts the Law decree n. 187 of 14 June 1993, better known as "Conso decree".

22 Conso decree also introduced a category of expulsion on request for migrants who were under pre-trial detention or were sentenced for less serious crimes.

23 Decrees-Law 489/1995, 22/1996, 132/1996, 269/1996, 376/1996, 477/1996. Decree-Law is a temporary law issued by the government; it is immediately enforceable, yet needs the approval of Parliament to become Law. Dini Decree was prolonged five times, until the Constitutional Court stopped it. It was implemented for the time it was in force but never became a proper law.

24 Law 40/1998 shaped the Legislative Decree no. 286 of 25 July 1998, Comprehensive text on immigration law.

create an efficient, coherent system for immigration management in Italy, as it was aimed at both expelling undocumented immigrants and integrating documented ones[25]. In the context of the present analysis, this law is particularly important because it introduced the detention centers for undocumented immigrants. According to the Turco-Napolitano law, a returnee receiving an expulsion decree from the *prefetto* of police[26] and who had to be expelled by means of forced removal[27] could be "hosted" in a detention center for a maximum period of 30 days before being removed. However, all police decisions on expulsion orders, forced removals, and detention orders required judiciary validation before being executed.

The third stage is marked by harsh, frequent disputes between the Italian government and the Constitutional Court, with the latter constantly intervening to make immigration law consistent with constitutional principles. During this stage, immigrants' living conditions in Italy deteriorated as a result of the severe immigration laws. Law no. 189 of 30 July 2002, better known as Bossi-Fini law[28], was particularly severe: it considered both documented and undocumented immigrants dangerous *per se*, and was aimed at preventing them from entry[29]. The police perspective on immigration, previously softened by the l. 40/1998, was pushed to the extreme just three years later. It is especially noteworthy that the Bossi-Fini law introduced new (and illegal) procedures for pre-removal detention, triggering harsh disputes between government and the Constitutional Court.

To understand the point of view of the Constitutional Court, we need to take a step back. In 2001, before the enactment of the Bossi-Fini law, the Court passed judgment no. 105 on the constitutional legitimacy of pre-removal detention. It declared pre-removal detention was legitimate but warned it had to comply with the constitutional principle (Art. 13) of inviolability of personal liberty[30]: On the one hand, one's personal liberty could be violated only "by order of the Judiciary" and "only in such cases and in such manner as provided by the law"[31]; on the

25 For deeper analysis of Turco-Napolitano law, see Calavita, 2005.
26 Usually the prefetto is in charge of expulsion decrees.
27 The chief of police is in charge of this decision. The expulsion decree can be executed as a removal order, voluntary return, or forced removal. If the forced removal cannot be immediately executed, it may require a pre-removal detention order.
28 Law no. 189 of 30 July 2002 (Changes in regulations on the matter of immigration and asylum)
29 The law made the legal entry of immigrant workers almost impossible by rendering employment a necessary pre-condition for obtaining a residence permit; by reducing the flown decree; by lowering the duration of residence permit from two to one year; by requiring a migrant to have proper accommodation, a regular job, and a certain amount of incomes, in order to ask for residence permit or its renewal.
30 Art. 13 Const.
31 Art. 13, par. 2, Const.

other hand, police could take provisional measures – which required validation of the judiciary — only "in exceptional circumstances and under such conditions of necessity and urgency as shall conclusively be defined by the law"[32]. The Bossi-Fini law, issued a year later, completely ignored these previsions. First, it established that pre-removal detention was the rule for executing expulsion orders and increased the maximum period of administrative detention from 30 to 60 days. Second, it introduced new procedures for the judiciary validation of expulsion orders: the validation might occur once an expulsion order had already been executed, leading to a lack of judiciary control over police decisions to expel or deport someone. Third, it introduced mandatory arrest for immigrants disobeying removal orders[33], along with a maximum period of prison detention ranging from six months to a year. Under the Bossi-Fini law, the violation of personal liberty due to administrative detention went far beyond the limits set by the Constitution. Hence, two years later, the Constitutional Court declared the constitutional illegitimacy of a large part of the expulsion procedures.

More specifically, with two judgments (no. 222 and 223 of 2004), the Court declared that the validation procedures established by the Bossi-Fini law[34] violated the constitutional right to defense (Art. 24 Const.), the constitutional right to cross-examination in due process (Art. 111 Const.), and, obviously, the constitutional right to personal liberty (Art. 13 Const.). In addition, the mandatory arrest for immigrants disobeying removal order[35] was constitutionally illegitimate, as arrest could be justified only by pre-emptive detention; yet pre-emptive detention was not suitable for such a minor offense (Caputo, 2006: 316-7). Finally, instead of complying with the judgments of the Constitutional Court, the government immediately made three, mainly cosmetic, adjustments with Law-Decree no. 241 of 14 September 2004. First, disobeying a removal order turned from a minor offense into a serious crime, now punishable with a period of detention ranging from one to four years. This meant the crime was now serious enough to allow the use of pre-emptive detention and, thus, of mandatory arrest. Second, the government accepted judicial validation had to occur before the expulsion was executed; but it transferred the entire process from ordinary judges to the Justice of the Peace[36], rendering

32 Art. 13, par. 3, Const
33 Art. 14, par. 5 Quinquies, Leg. D. 286/1998
34 Art. 14, par. 5-bis, Leg. D. 286/1998
35 Art. 14, par. 5 Quinquies, Leg. D. 286/1998
36 Justice of the Peace are honorary judges for minor offenses both in criminal and private law, and were issued with the law no. 374 of 21 November 1991. They are not proper judges; they are lawyers selected by the Italian Ministry of Justice and are in place for a maximum of eight years.

judicial control ineffective[37]. Note that these are still the validation procedures in force (validation procedures will be analysed more in depth in Chapter 4).

More detrimental changes followed the Bossi-Fini law, with two laws better known as the two "security packets" of 2008 and 2009. Law no. 125 of 2008[38] worsened the punishment for the crime of providing false ID and introduced irregularity as an aggravating circumstance[39] — with the latter declared constitutionally illegitimate[40]. Law no. 94 of 2009[41] increased the maximum period of pre-removal detention from 60 days to 6 months, and created the crime of "illegal entry and stay" (Article 10-*bis* TU), whereby lack of entitlement to stay is a criminal law offense *per se*, punished with a high fine (5,000–10,000 Euros) or with a judicial return decision instead of the fine. Article 10-*bis*, still in force, is a harsh punitive measure and a very symbolic one.

The fourth and final stage of the history of the illegality of Italian immigration law is characterized by the changes promoted by a new European directive on common standards and procedures in Member states for returning third-country nationals (Directive 115/2008/CE), and the subsequent dispute between the Italian government and the European Court of Justice. The Return Directive introduces removal procedures that are very different from those implemented by the Italian government: it prioritizes voluntary return[42] over forced return, and considers pre-removal detention as the last choice in a gradation of measures to execute the forced removal. Italy, instead of changing its procedures, has tried to avoid enforcing the Directive, first by introducing Art. 10-bis mentioned above and then by transposing the Directive onto a domestic law (l. 129/2011) that ultimately frustrates its aims.

Art. 10-*bis* was introduced in 2009, shortly after the return directive was issued, and it should

37 The Justices of the Peace know little about the intricate immigration law; they do basic administrative work, and their wages depend on the number of trials they run; the trials are fast, and there is not a proper "evidence hearing": they base their judgments on the evidence provided by the police, because, according to Mazza (2013), lawyers are generally called the day before the trial and cannot present much evidence. Finally, the justice of the peace is supposed to supervise the existence of the expulsion decree and removal order, not their content. These practices have been confirmed many times by the Court of Cassation. (SAVIO)

38 Law no. 125 of 24 July 2008 (conversion into law, with amendments, of Decree-Law no. 92 of 23 May 2008)

39 The punishment for crimes committed by immigrants when present irregularly in Italy is one third more severe than same crimes committed by Nationals.

40 Constitutional illegitimacy of irregularity as aggravating circumstance is then declared by judgements no. 249 and 250 of 2010 of Constitutional Court, since it violates both the constitutional principle of equality (Art. 3 Const.) and the principle of *nullum crimen sine iniuria*.

41 Law no. 94 of 15 July 2009. Dispositions on the matter of security

42 The returnee can ask for a period of between 7 and 30 days in order to voluntarily leave the country.

be mainly understood as an attempt to take advantage of one Article [43] of Directive 115/2008/CE, which prescribes that Member States may decide not to apply this Directive to third-country nationals who are being removed as a consequence of a criminal law sanction. Art. 10-*bis* describes the act of irregularly enter and stay as a criminal offense punishable with judicial expulsion and was intended as an instrument to exclude the majority of return decisions from the scope of the Return Directive (see also Campesi, 2012b), but to the disappointment of the Italian government, this plan did not succeed. In fact, the EU Court of Justice decision in the Sagor case [44] determined the judicial return decision cannot serve as an alternative punishment for a fine [45], and domestic interpretation of the legislation must move in that direction[46].

After Article 10-*bis* failed to achieve its goal, Italy issued law no. 129 in 2011[47] (long after the deadline of 24 December 2010) as a response to the judgment of the European Court of Justice in the El Dridi case on 28 April 2011. In this case, the Court declared Art. 14, co.5 Quinquies[48] of Italian immigration law was contrary to Directive 115/2008/CE and noted the considerable distance between Italian removal procedures and European ones.

As a result, Italy finally accepted the Directive, albeit with a law that manages to neutralize those points of the Directive most adverse to Italian procedures. L. 129/2011 uses two main tricks for this purpose. The first is a wide application of the "risk of absconding" exception: Art. 13, par. 4-*bis* of l. 129/2011 assumes the mere fact of the immigrant's irregular presence in the territory constitutes a risk of absconding[49]. According to the Return Directive, when there is risk the returnee may abscond, the return decision must be executed by forced removal, and

43 Art. 2, par. 2, ind. B of 115/2008/EU.

44 Judgment of 6 December 2012 of the European Court of Justice in the Sagor case.

45 For an in-depth analysis, see Savio 2011

46 This point is too complex to be developed here. For further analysis see Savio 2011.

47 Law 129/2011, 2 August 2011, Conversion into law, with amendments, of Legislative Decree 89/2011, 23 June 2011, Implementation of European Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying non-EU nationals

48 Art. 14 co. 5 Quinquies impose a prison sentence on undocumented immigrants solely on the grounds of their refusal to obey a removal order: this, according to the EU Court of Justice, defeated the purpose of executing the immigrants' removal.

49 According to Art. 13, par. 4bis, immigration law, the risk of absconding occurs "in at least one of the following circumstances based on which the prefetto establishes, case by case, the danger that the alien might escape the voluntary execution of the expulsion order: a) failure to have a passport or other equivalent valid document; b) lack of suitable documentation to demonstrate the availability of housing where the alien can be easily traced; c) have previously stated false personal data; d) have failed to fulfill one of the orders issued by the competent authority pursuant to paragraphs 5 (on voluntary departure) and 13 (on re-entry in the national territory), and Art. 14 (on expulsion enforcement); e) have violated one of the measures referred to in paragraph 5.2 (measures linked to voluntary departure).

no period for voluntary return is granted. As a consequence, no deportation decree can be executed as voluntary return. The second trick is that even when there is no risk the returnee may abscond, there is no automatic application of voluntary return: the expulsion order may be executed as a voluntary return only if the returnee him/herself asks for it. We might expect (and the Return Directive prescribes) that expelled migrants are properly informed about the possibility of voluntary return and the consequences of not asking for it. Given the history to date, it should come as no surprise that they are not informed[50]. In sum, illegal provisions continue to dominate Italian undocumented immigration law even after the Return Directive.

POLICE DISCRETION

Police, not the law or the Justice of the Peace, are at the core of the entire removal procedure. First, police regulate pre-removal detention. The law states that police may decide to use pre-removal detention if forced removal is not immediately implementable due to "transitory conditions"[51]. These transitory conditions are not specified, so anything can potentially be a condition for pre-removal detention. Second, police decide who will be held in the detention center, and police decisions are generally confirmed by the ensuing validation. In fact, validation procedures have become routine and almost ineffective since 2005, when the judicial oversight of immigration detention was transferred to the Justices of the Peace (see above). Third, police supervise the entire period of administrative detention in practice. A regular review of the detention takes place every two months,[52] and at that point, police explain why the detention should or should not be prolonged due to the execution of forced removal and ask for judiciary validation. Their suggestions are usually validated. Notably, the trials that should accompany the scheduled reviews do not even take place in certain cities, because the Justices of the Peace are not paid for them[53]. According to Mazza (2013: 63), the decision not to pay was a political one, an attempt to push judicial control outside administrative detention and to keep it as a separate system of deprivation of liberty, not pertaining to judiciary power (Savio, 2011: 22), but to policing. Administrative detention is contrary to the Italian Constitution.

50 For in-depth analysis see Mazza 2013.

51 Art. 14, par. 1, D.Lgs 40/1998

52 Recently trials are taking place in the regular review of the detention, due to the Judgement of Cassation no. 4544 of 24 February 2010. Before then, the judge simply signed a form filled in by police, asking for a prolonged detention period. The migrants are not allowed to request reviews during their detention.

53 These trials are not regulated by law but were introduced by a judgment of the Italian court of Cassation (no. 4544 of 24 February 2010)

Although the Constitution limits the violation of personal liberty by setting limits of time and methods to both state and police power to detain, the immigration law does not respect any of these[54]. Thus, in Italian detention centers, "police liberties" (Brossat, 2007) continue to grow, escaping judicial control (Campesi, 2011: 187).

Police have always played a preeminent role in immigration control in Italy. Early in 1975, Franco Bricola—a well-known Italian jurist—noticed the constitutional legitimacy of the legal norms regulating immigration inside police law had never been questioned, despite the lack of any judicial oversight on police decisions in matters of immigration control. The jurist suggested three possible explanations of this bizarre circumstance: 1) these provisions are at the intersection of two different branches of the law, administrative and penal, and, thus, are overlooked; 2) these provisions are immediately executed, which precludes judicial control; 3) there may be a secret, collective persuasion that immigration is a political issue and its regulation should be entrusted to the executive which can better guess and adapt to changes in political will. The latter is the main reason immigration laws have always left ample room for discretion.

THE DANGEROUSNESS IN THE LAW

THE REMOVAL DECREES

In general, according to Italian law, removals of undocumented migrants may be ensured by push-back at the external borders[55], or expulsions[56] . In what follows, push-backs will not be considered, as they mostly occur in places close to the external borders, and this is not the case

54 First, judges do not determine the length of detention: their only decision is whether to validate or not a period of detention of 30 or 60 days. Second, the law does not regulate life within the detention center (i.e., the methods of detention): private governing institution of each detention center do. Furthermore, the living condition In Italian detention centers have been condemned as inhuman and degrading by the European Committee for the Prevention of Torture. For deeper analysis see: Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 25 May 2012 (http://www.cpt.coe.int/documents/ita/2013-32-inf-eng.htm).

55 Article 10 of Immigration law

56 (Articles 13, 15 and 16 Immigration Law, article 3 para 1 of the 2005 Law no. 155, article 235 and 312 Penal Code, article 86 President of Republic decree No. 309/1990)

of Bologna, where the majority of migrants are apprehended when living in the territory even if irregularly[57].

Italian immigration law provides with many different typologies of expulsion[58], which often require some kinds of evaluation of dangerousness.

The first form of administrative expulsion taking into account the category of dangerousness is the administrative expulsion against migrants who "threaten public order and national state security"[59] . The Minister of Home Affairs is in charge with the adoption of such an expulsion and must report to the Prime Minister and the Minister of Affair, which exhibits the political nature of such expulsion (Savio, 2012: 111). However, such type of expulsion has been rarely adopted: twice in 2007 and 2011; 5 times in 2008; 3 in 2009 and 2010 (Di Martino et al, 2013: 55). Similar to this one is the expulsion as an anti-terrorism measure[60], issued after the terroristic attack in Madrid in 2005. Differently from the other, both the Minister of Home Affair and the *prefetto*[61] may adopt such a measure. Removal decrees as anti-terrorism measure and removal decree for threatening public order and national state security can be adopted regardless of the legal status of migrants, which means that also documented migrants may be removed under this article.

The most common typology of expulsion adopted against migrants found to be illegally in Italy is the removal decree issued by the *prefetto* on a case-by-case basis when: a) one migrant crossed the border illegally without being pushed-back; b) one migrant is living in Italy in

57 Article 10 of the Immigration Law provides for two cases of removal: push-back at the border and delayed push-back. *questore* (police super intendant) adopts delayed push-back when people have already entered Italy avoiding border controls and have been intercepted at the entrance or immediately afterwards (being the time of "immediately afterwards" not specified by law); or when people entered irregularly and were temporarily admitted for emergency aid. Moreover, push-backs do not require judicial control, and therefore these data could not have been gathered throughout this research, as the quantitative data were collected not at the police department, but at the office of the justice of the peace.

58 Expulsion, removal, and deportation are here considered synonyms. The terms will be used interchangeably to refer to the same mechanisms of removing undocumented migrants, and avoiding annoying repetitions.

59 Article 13 para. 1 of Immigration law

60 Regulated under article 3 para. 1 of Law no. 155 of 2005

61 *Prefetto* is the Italian prefetto, that is, the provincial governor depending from the Minister of Home Affair. It is the representative of Home Affairs Bureau in the provinces.

breach of conditions, unless any *force majeure*[62] may obstacle return; c) one undocumented migrant belongs to one of the categories of *dangerous* people[63].

When the law mentions "dangerous people"[64], it explicitly refers to the category of dangerous people under the article 1 of Law 1423/1956 and amendments, or law 575/1956 and amendments. The first one lists as indicators to detect the dangerousness of someone the following elements: being a threat for minors and public health, public security and public order. Being a repeated offender; living off the profits of criminal activities. The second one refers to persons involved in a criminal organization. Nevertheless, there is a difference between the way this category is applied to migrants and Italians. In fact, with regards to Italian people, the evaluation of dangerousness pertains to the judiciary: defining someone as a threat to public security allows for the application of preventive measures; with regards to migrants, the evaluation of dangerousness is left to administrative authorities, that is, the *prefetto*: defining a migrant as a threat for public order and national state allows the *prefetto* to issue a removal decree. The *prefetto* has broad margins for discretionarily deciding on the dangerousness of any migrants: such evaluation is not subjected to any form of judicial control.

Even removal decrees regulated under Article 15 (expulsion as a security measure) and Article 16 (expulsion as a substitute or alternative measure to punishment) of the Immigration law are strictly connected to evaluations of dangerousness. However, differently from the previous one, these removal decrees are adopted by a judge.

Article 15 of the immigration law states that an ordinary judge may adopt the expulsion as a "security measure" for one migrant who has been identified as a "socially dangerous person" (art. 202 and 203 of Italian penal code), and who has committed one of the crimes listed under article 380 and 381 of Italian Penal code: those are the many typologies of crimes for which apprehension is mandatory or allowed. The security measure will be executed after the migrant will have served his or her sentence in prison. The law provides a risk index for deciding about the "social dangerousness" of one person under article 133 of Penal code: motivation for crimes,

62 Concerning *force majeure*, its meaning has been defined in the jurisprudence.
The main principles can be summarized as follows: Force majeure is *an external force that acts on individual completely excluding the ability to react.* The force majeure shall be demonstrated by the part who invoked it submitting specific and concrete circumstances before the issuing of the removal order It is not force majeure: - the detention of the immigrant - the proposal of an employment - the need to take care of an old and sole person. The legislator did not specify the criteria that constitute *force majeure.*

63 Article 13 para. 2 of Immigration law.

64 Article 13 para. 2 let. c)

criminal's attitude, criminal records, life style, general behavior, his or her family and social life. De Martino et al. (2013) notice that expulsion as a security measure with regards to Italian offenders is provided only for cases of conviction for serious crimes (e.g. crimes punishable by a minimum of 10 years' detention). The crime itself is an indicator of the person as a danger for society. Instead, with regards to migrants, the judge shall order the removal of one migrant whenever he or she is convicted and sentenced to more than two years' imprisonment (article 235 of Italian Penal code). Therefore, article 15 of immigration law "introduce[s] a presumption that all immigrants pose a social risk and reinforce the stereotype of immigrants as "dangerous people" who may be removed in order to remove the threat they pose to society. In fact, expulsion as a security measure now relates to various crimes, which are not always symptomatic of a concrete risk, and the measure has now become an ordinary tool to neutralize any presumed social threat posed by immigrants" (De Martino et al 2013: 39).

The other typology of judicial expulsion is regulated under article 16 of immigration law. This is expulsion as a measure applied in substitution for criminal detention. It is ordered by an ordinary judge but it is enforced by the *questore* (police superintendent). Differently from expulsion under article 15, which may be adopted regardless of the migrant's legal status, expulsion under article 16 can be adopted just against undocumented migrants. The judge issues an expulsion decree to substitute for criminal conviction when the undocumented migrant has to serve a sentence of less than two years; or when less than two years are left for one convicted migrant to serve in prison. The migrant removed under article 16 is prevented re-entry in Italy for between 5 and 10 years. The 2009 "Security Package" provided that expulsion as a substitute measure may be adopted by the justice of the peace in the case of conviction for the crime of irregular entry or stay (Art. 10 *bis* Immigration Law)[65]. Yet, this does not usually happen (it never happened during observation in Bologna and it mainly depend on the orientation of the different offices of JPs). Differently from all the other removal decrees, this one cannot be adopted against "dangerous migrants". This is because expulsion is considered a more favorable measure than detention. However, the *Court of Cassation* (Cass. Pen. Sez. I, 20.12.2011, n. 47310) has issued an important statement that expulsion as substitute for detention cannot apply if the migrant is considered dangerous, and that one may infer migrant's dangerousness from the fact that the migrant was convicted for "any *reati ostativi* that as such are hint of

65 De Martino et al. say that it would equate to a criminal expulsion; Savio says that the law itself makes it impossible for the JP to substitute expulsion for the fine (see Savio 2012: 85-6).

dangerousness…" (Savio, 2012: 175). In this way, the Courts of cassation broadens the cases in which a migrant may be considered as dangerous.

Other typologies of expulsion also originate from undocumented migrants guilty of immigration crimes, such as violating re-entry ban (article 13 para. 13), disobey removal orders (article 14 para. 5), or even the crime of illegal entry and stay (article 10 *bis*). I will examine these crimes in the next chapter.

VOLUNTARY RETURN

Voluntary return was introduced by law no. 89 of 2011, which adopted the European "Return directive" (115/2008/CEE). The return directive established that voluntary return should be always preferred as a way to enforce removals, while detention should be used as the "last tool" in a gradation of measures. Despite this, in Italy forced removal is instead the rule.

According to law no. 89/2011 the decision on voluntary return is taken by the *prefetto* at the moment of adopting a removal decree. Yet, voluntary return can be adopted when some conditions are met. If they are not, forced removal should be preferred, as prescribed by article 13(4). There are two sets of conditions that forbid adoption of voluntary return. Voluntary return can never be adopted in the case of expulsion explicitly linked to an evaluation of dangerousness, such as: expulsion as an anti-terrorism measure (art. 3(1) of law 2005/155); expulsion for public order and national state security reasons (Art. 13(1) of immigration law); expulsion because the migrant belong to a specific dangerous category (Art. 13 (2) let. c) of immigration law). Coercive expulsion should be furthermore preferred over voluntary return in all cases when: the request for a residence permit was rejected because it was manifestly unfounded or fraudulent; the period granted for voluntary return has not been respected without a justified reason; when in the past the returnee violated one of the precautionary measures provided by the *questore* to ensure his or her effective return (Article 13 para 5.2); when the expulsion order was issued by a judge (articles 15 and 16 Immigration Law); and when there is a risk that returnee absconds.

The risk of absconding has a broad definition (art. 13 para. 4 *bis* of Immigration Law). According to the law, the risk that the returnee absconds may be determined when: he or she does not have a valid passport; he or she does not give any evidence of housing where being easily traceable; he or she has provided fake names in the past; he or she has disobeyed a

removal order, or has violated the term for voluntary return, re-entry ban, or any of the measures issued by the *questore*. Such broad definition of risk depicts the contours of an undocumented migrant who wants to remain invisible to the mechanisms of control: the rationale of the law suggests that the migrant provided a fake name to commit crimes in the shadows of law, and he or she does not want to leave the territory, as it is proofed by the fact that he or she violated removal orders, re-entry ban, *questore's* measures, etc. The problem is that the concept of risk as depicted by law is so broad that any undocumented migrants becomes potentially dangerous, and voluntary return is no but a very marginal option (which in fact is never applied). Moreover, in the case that voluntary return applies, the returnee must give evidence of sufficient and lawful economic resources. Afterwards, the *questore* prescribes one or more of the following measures: withdrawal of the passport or equivalent valid document – to be returned at the time of departure; obligation to stay in an identified place where the immigrant may be easily contacted; obligation to report to the local public authority (article 5.2). The word "dangerousness" never appears explicitly. Nevertheless, all cases listed remind of someone who wants to escape the net of control.

THE ORDER TO LEAVE AND THE DETENTION IN A CIE

The prefetto, the judge, the justice of the peace, or the Minister of Home Affair, all of them may issue a removal decree. On the contrary, the *questore* is the only figure who is always in charge of its enforcement – there is only one exception, that is, the judge enforcing expulsion as a security measure (art. 15 of immigration law).

Since the prefetto never issues a voluntary return, the removal is always executed as a forced removal. When forced removals cannot be immediately accomplished due to "transitory conditions" that may obstacle it, the returnee will be detained in the closest CIE with available beds for a maximum period of three[66] months. The measure should be validated by the Justice of the Peace of the place where the CIE is (validation procedures will be dealt with in the next paragraph). If the detention in CIE is not possible for lack of available beds (in the majority of cases, indeed, the undocumented migrant will be ordered to leave "autonomously" the country

66 They were 18 at the time of research.

in seven days (Article 14 para. 5-bis). However, it is very rare that an undocumented migrant ordered to leave actually departs from Italy.

The invitation to leave autonomously the country in seven days ("invitation to leave" from now on) is adopted by the *questore* and, differently than detention, it does not require any judicial validation: this leaves to the *questore* very big discretionary power to decide who in abstract is not allowed to remain. By issuing either an order to leave or detention in CIE the *questore* locates internal borders wherever he or she thinks it is more convenient. In fact, removal orders and detention decisions relate to internal border control in different ways. I believe that the two measures suggest two different "levels of acceptable illegality": if the level of illegality of one undocumented migrant is somehow acceptable, then the *questore* will issue an order to leave; if it is not really acceptable, the *questore* will adopt detention in CIE. The undocumented migrant detained in CIE is not a desirable undocumented migrant. By issuing a detention decision the *questore* is "performing" internal borders: the returnee is detained in order to be actually removed – even if about half of undocumented migrants detained in CIE actually return. The removal order is, instead, a less clear tool when considered in the context of locating internal borders. First of all, even if the removal order is presented as a way to enforce removal, one should keep clear in mind that nobody voluntarily leaves Italy after receiving a removal order: the police, the legislator, the JPs, and even the migrants are aware of this. The migrants I interviewed, always referred to received orders to leave not as big deal (see chapter 6). Receiving one removal order does not kick you out from the country – even if accumulating many removal orders on the same person may do. When the *questore* issues a removal order, I am proposing that the level of illegality of the migrant ordered to leave is not as unacceptable as the level of illegality of the migrant detained. However, it is less acceptable than the level of illegality of the undocumented migrant who is stopped by police but who is then let go.

When the police stops someone during territory control activity, and the *questore* issues a removal order instead of detention, they are still performing internal borders, to a certain degree. They are, if one can say so, showing that there is an internal border that the undocumented migrant ordered to leave is risking to be stuck in. Yet, the removal order may be intended in the same manner as a warning from the police. Choosing between detention and an order to leave is a discretionary decision made by the *questore*.

Given the selectivity enforcement that underpins the mechanisms of formal control, one first question might be as it follows: What are the reason why one undocumented migrant is detained in CIE instead of being ordered to leave?

One of the justices of the peace explains that decision as follows:

> Eppoi devo anche trattenere al CIE, chi? Intanto, va bene, le persone pericolose, proprio relativo alla sicurezza pubblica o in genere alla sicurezza. (…) Le persone definite pericolose, che hanno commesso dei reati. O comunque le persone per le quali si presuppone che oppongano resistenza, ma che non si tratta solo della resistenza fisica, è giuridica.
>
> Gli do il termine di sette giorni [removal order] perchè da un lato magari non è una categoria pericolosa: non ha commesso reati, ha soltanto opposto resistenza al decreto amministrativo. Oppure perchè non c'è posto al CIE. (JP1)

The informant explains that the questore enforces the removal by ordering the migrant to leave the country in seven days, instead of detaining him or her, when the migrant is not dangerous, s/he did not commit any crime, s/he might have just opposed a previous order to leave, or there are no available beds in CIE. The dangerousness of one migrant is again taken into account, and it is often thought to origin from someone having criminal records.

THE SPECIAL LAW OF THE ALIEN

Concerning the branch of criminal law, whenever irregular migrants are found to be not in compliance with removal order, or whenever they do not respect the terms of the prohibition on return, they break the law and commit a crime which is punished by means of criminal law. Until 2011, the crime of disobeying removal order was punished with conviction[67]. Currently, it is punished with a very high fine of thousands euros, which does not soften the situation. Moreover, in 2009 it was issued the crime of "irregular entry and remain within the national territory", which is punished with a severe fine of thousands euros as well. Therefore, it is clear that Italian illegal immigration law provides irregular migrants with harsh punishments,

67 A minimum of one year, up to five years terms of imprisonment.

disproportionate when compared to punishment for other more serious crimes.

Angelo Caputo, a notorious Italian lawyer, elaborated the notion of 'special law of the alien' in order to identify the main characteristics of the Italian illegal migration law. The special law of the alien seems to be aimed at punishing not a behavior but rather a status -namely that of being an immigrant irregularly present in the state territory. Caputo (2007) argues that the "special law of the alien" contrasts the constitutional protection of fundamental rights to the extent that immigrants' fundamental rights enter a very peculiar "*administrativization*" process. In fact, migrants' fundamental rights ultimately depend on administrative law: as long as a migrant is not regularly living in the country, he or she cannot access the same rights as a national. To some extent, the "special law of the alien" shapes a specific 'enemy penology' within Italian law (Caputo, 2007). As it is well known, the enemy penology is a theoretical conceptualization created by Günther Jakobs, notorious German lawyer. It is conceived as a parallel track of criminal law, aimed at legally fighting against whoever is defined, from time to time, as the enemy within, that is, a non-person in a legal sense (Jakobs-Cancio Melia, 2005; Zaffaroni, 2006). Nevertheless, at the end of the day, there is nothing really new in the measures which are part of the "special law of the alien". As I already wrote somewhere else (Fabini, 2012), it is more likely that certain peculiarities were already existing within the Italian law, which made it easier for migration law to be shaped as a kind of enemy penology. Firstly, some legal features aiming at 'fighting the enemy' have historically existed within Italian criminal system from the very beginning (Sbriccoli, 1998; Petrini, 1997; Pavarini, 1975; Pastore, 1988), even when the enemies were different. This is the case of the norms against idlers, vagrants, and Roma people, which had already found their place in the Savoy Kingdom and were aimed at punishing not the offense but rather the offenders. Secondly, it seems to be old habit among Italian governments to face 'emergency situations' (or situation addressed as such) through special legislation. The peculiarity of special legislations is that they usually survive even when the emergency situations they were intended to serve for come to their end. It is their capacity to introduce permanent legal distortions within the frame of the legal system (Moccia, 1995). Therefore, if any innovation can be found in the special law of the alien, I argue that this is not about the legal tools implied. It is more about the legal discourses involved. Italian migration law is aimed at making undocumented migrants the enemies within, through means of both norms and discourse

THE LAW IN ACTION

Although their explicitly aim is to 'stop the invasion', then, Italian immigration laws actually produce 'illegality' (Ferraris, 2012; see also De Genova, 2004).

Since 2002, when the harsh "Bossi-Fini" law on immigration was issued in Italy, migrants are required an employment contract to gain residence permit and enter legally in Italy[68]. According to the Bossi-Fini law, crossing the border as "economic migrant" is only possible within the quotas that are established in the annual "flux decrees", one problem being that such quotas are always lower than both demand and supply of work[69]. Such regulation implies that, for one migrant to enter legally in Italy as economic migrant, that is, with a work contract in hand, an employer should hire him or her from abroad without having even met him or her before then. It is easy to infer that such a restrictive legislation ideally prevents economic migrants to enter at all. As an obvious consequence of this, all that is left to migrants who want to arrive anyway – not necessarily for the purpose of remaining in Italy, but also for passing through Italy to reach some other European countries - is to "innovate" (Merton, 1938) the [socially legitimate] means to crossing the borders.

Commonly, undocumented migrants living in Italy in breach of conditions to stay have entered legally anyway[70], through a touristic visa that expires in three months; the strategy generally adopted by migrants is to remain even after the visa expires, in order to look for a job when already crossed the borders. When someone accepts to hire them, they leave from Italy, except for entering again in the annual quotas as migrant workers regularly hired. This is not a secret strategy, but a well-known one among academics, political actors (even those who pretend not to know), and employers. Valeria Ferraris (2008) has shown the extent to which documented migrants living in Italy have always passed through a period of "illegality" before becoming "legal". As a matter of fact, in Italy documented migrants do not meet difficulties just in

68 Other ways to enter legally in Italy is through family reunion or as an asylum seeker. Or better, when a migrant asks for asylum enters illegally and then becomes quasi-legal during the procedures, and legal in case of acceptance or illegal at rejection.

69 Demand and supply for work refers to Italian employers' need for labour force and migrants' demand for resident permits for work reasons.

70 That undocumented migrant living in Italy in breach of conditions to stay have entered legally through a touristic visa has been true for a long time (75% of them entered this way: EMN 2012; for qualitative research on this see Sbraccia 2007). It is not sure that this is still true in the present time of what have been called "refugees crisis". In fact, as a consequence of war and political instability it is actually impossible for some citizens in some countries, such as especially Syria, Afghanistan to ask for any visa to the EU, which forces them to look for other way to immigrate, via sea or via land, as we got used to see in media and the news for the entire 2015.

crossing the borders legally, but also in remaining as legal migrants once entered. In fact, on the occasion of each resident permit's renewal, migrants living legally in Italy will have to meet the same requirements that they were asked to comply with when the residence permit was issued the first time: after entry, the loss of work contract causes loss of residence permit and, consequently, a previously regular migrant becomes undocumented. The possibility of staying legally in Italy is strictly linked to a work contract, not just for entry procedures but even in order to remain: the law requires that migrants renew their residence permit every one year or two, depending on circumstances. From this it emerges the strict linkage between migrations flows regulation and labour market regulation.

In a very important work on the policies of immigration control in Southern Europe, Kitty Calavita (2005) pointed out that the strict link between work contract and residence permit forces regular migrants to accept underpaid, precarious, unskilled jobs, and to be docile and obedient workers, in order not to risk losing their job and thus the permission to remain legally in Italy. Such a workforce is incredibly useful for the Italian productive system and its widespread shadow economy. Migrants tend to concentrate in specific sectors of the economy, such as agriculture, construction, some parts of industry or what remains of it, and especially care-work – an economic sector that someone called "invisible welfare" (Ambrosini, 2015). In the post-Fordist economy (De Giorgi, 2002) – centered on the-"immaterial work" of finance, start-up, information, self-employed work, and new technologies - migrants are employed in those kinds of jobs at the margins of productive process, but that at the same time are crucial for the economic system to continue. Calavita (2005) masterfully and accurately shows to what extent in Italy the economic marginality and consequent Otherness of documented and undocumented migrants are legally produced and then reproduced again from within.

Intended to "stop the invasion", Italian immigration laws provoke that migrants easily lose their resident permit, and remain in the territory unlawfully. Contrary to the letters of the law and discourses of politicians, undocumented migrants find their place in Italy indeed. They are not just tolerated but even welcomed in the widespread Italian shadow economy, which account for 35 per cent of the Italian GDP (Ambrosini, 2015), in construction, agriculture, and care services. Undocumented migrants are useful in the Italian economy. Contrary to what seems to happen in other European countries, police in Italy generally do not make controls in work places.

If the restrictive immigration laws discipline documented migrants via the linkage issued between work contract and residence permit, an additional disciplinary mechanism is needed to discipline undocumented migrants. I argue that it is the police.

Immigration law establishes that undocumented migrants are to be prevented to cross the borders or are to be removed. Yet, the majority of undocumented migrants *became* undocumented, due to the immigration law. Therefore, control over undocumented immigration is more likely to occur by means of searching for the undocumented migrants living inside the territory, rather than preventing undocumented migrants from entering. In other words, the mechanisms of control over undocumented immigration in Italy take place at the internal borders rather than at the external ones.

Table 2.1. compares the number of refused entries (an indicator of external borders control) with the number of migrants stopped and charged with an order to leave (an indicator of internal borders control). In fact, Italian illegal immigration law establishes that migrants found to be illegally present in the territory may receive an order to leave and be removed, no matter whether they had been regularly living in Italy for years before losing their jobs and thus their residence permits.

TAB. 2.1. DATA ON ENFORCEMENT OF IMMIGRATION LEGISLATION IN ITALY – FROM 2008 TO 2014

	Refused entries at the external borders	Migrants found to be illegally present and ordered to leave	Migrants returned following an order to leave
2008	6.405	68.175	7.140
2009	3.700	53.440	5.315
2010	4.215	46.955	4.890
2011	8.635	29.505	6.180
2012	7.350	29.345	7.365
2013	7.370	23.945	5.860
2014	7.005	25.300	5.310

Source of data: Eurostat 2014

In Italy, immigration control occurs mostly at the internal borders, rather than at the country's external borders. During the period 2008-2014, the number of migrants found to be illegally present and ordered to leave was higher than the number of refused entries (Table 1). As the last column of table 1 shows, only a small percentage of the many migrants ordered to leave

have actually done so. Moreover, the number of undocumented migrants illegally found in Italy and ordered to leave is decreasing.

If based solely on the quantitative data, it is not easy to understand if the decrease in the number of the "third country nationals found to be illegally present" in Italy – from about 62 thousands in 2008 to 23 in 2014 – represents a decrease in the number of undocumented migrants in Italy or in the frequency of immigration enforcement by the police.

The table shows more fluctuating data on returns, so that it cannot be said that clear and straightforward decrease occurred just based on Table 1. Yet, looking at other sources for data on removals in Italy, the decreasing trend looks confirmed.

Removal is not the most common outcome of undocumented migrants found to be illegally present in Italy: just a small percentage of the migrants ordered to leave because undocumented are also returnees.

Table 2.2. provides with some additional data concerning removal procedures in Italy between 2007 and 2013: if just a small percentage of undocumented migrants encountered by police and ordered to leave follow such an order, just an even smaller percentage of those undocumented migrants who undergo pre-removal detention are then eventually removed.

TABLE 2.2. NUMBERS OF DETAINEES IN ITALIAN CIES – FROM 2007 TO 2013

Category of detainee	2007	2008	2009	2010	2011	2012	2013
Asylum seeker	104	1589	384	150	184	120	150
Repatriated	4,459	4,321	4,152	3,399	2,905	4,015	2,749
Released as not identified	3,198	3,060	3,945	1,234	1,064	415	300
Escaped from the CIE	244	156	268	321	539	1,049	909
Detention not validated	503	497	734	704	491	948	646
Released for other reasons	1,047	796	1,248	1,084	1,956	1,274	1,165
Arrested within the centre	89	119	178	147	135	123	96
Died in the center	3	1	4	0	0	0	1
Total number passing through a CIE	9,647	10,539	10,913	7,039	7,274	7,944	6,016

Source: my calculation based on Ministry of Home Affair data

Table 2.2. shows that in general, about half of undocumented migrants detained are forcefully removed every year (Colombo, 2012), sometimes even less. For example, in 2010 just the 26.7 per cent of the total expulsion orders were executed (Colombo, 2012).

What clearly emerges from data concerning mechanisms of border control in Italy is that, on the one hand, control at the external borders do not appear to be the most important mechanism of control regulating undocumented immigration in Italy. On the other hand, mechanism of control on internal borders do not seem to be really effective, as migrants ordered to leave actually do not leave the country, in fact

The context of the present research is also characterized by an important element that is the economic crisis starting in 2008 and still producing effects.

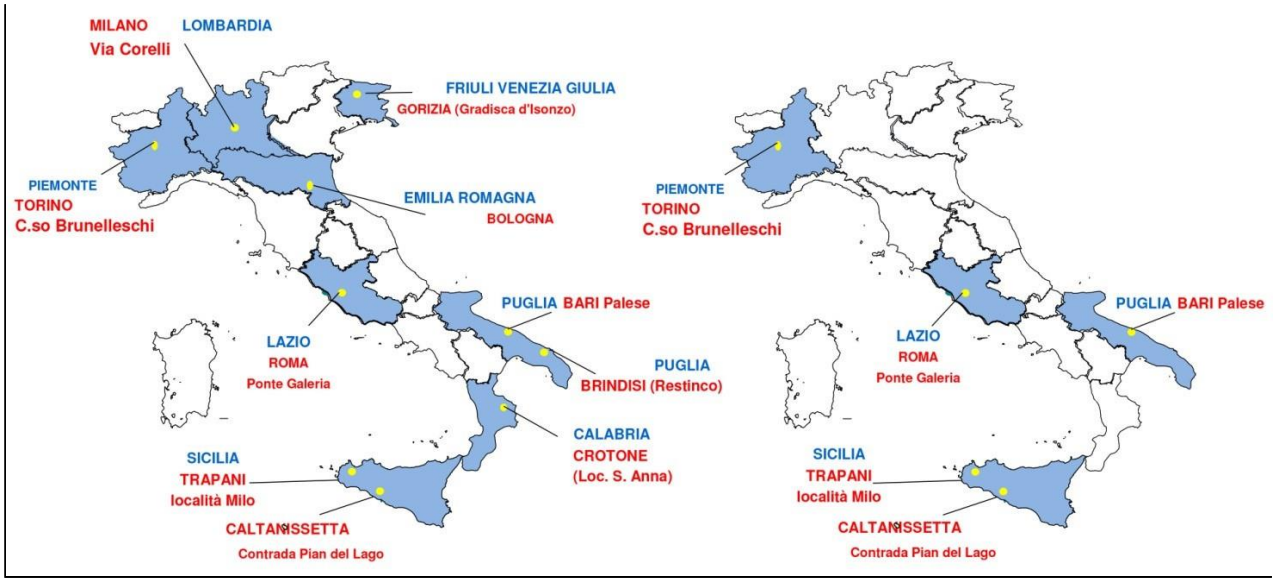
It is here hypothesized that economic crisis affected the mechanisms of control over undocumented immigration. On the one hand, as we will see in chapter five, looking for job has become increasingly difficult for migrants just as for Italians, and it probably made it more difficult for migrants to present regular work contracts in order to renew their residence permits. In other words, economic crisis produced irregularity for migrants living in Italy. One may guess that if remained undocumented, many migrants would make the choice to leave in order to look for their luck elsewhere; however one should not take this for granted. Reyneri, an important Italian sociologist of labour and immigration, explains that even if it is true that many migrants leave when an economic crisis comes, those migrants leaving are more likely to be documented: just documented migrants will go back to their country of origin or will emigrate in another country in the EU to look for jobs, while undocumented migrants are more likely to remain. In fact, the latter are trapped inside borders: if they leave the country as undocumented migrants they will report themselves as undocumented migrants to the authority and as a consequence they will lose the chance to re-enter in the country legally for years (Reyneri, 2004). Now, many migrants, even if undocumented, have been leaving in the receiving country for years, they may have a life here. So they would probably have liked to go elsewhere for a while if they had been allowed to do so. Borders are said to be porous, yet they are porous just in the way in, not either way. However, economic crisis also provoked another consequence, this time on the part of mechanisms of control: the economic crisis has weakened the removal procedures by weakening the Italian system of CIEs.

A very curious phenomenon took place in Italy roughly in 2013, which is many Italian CIEs being shut down. No doubts that Italian CIEs closed for a number of reasons, also variably

connected to the economic crisis, and mainly because they were damaged from within by the migrants detained.

Table 3 compares the system of Italian CIEs in 2012 (on the left) with the same system in 2014 (on the right).

TABLE 3. ITALIAN SYSTEM OF CIES COMPARED BETWEEN 2012 AND 2014.



Source: Website of the Italian minister of interior, www.interno.gov.it

Eleven CIEs were in operation in Italy in 2012: Bari, Bologna, Brindisi, Caltanissetta, Crotone, Gorizia, Milano, Roma, Torino, Trapani e Trapani Milo In 2014, they are just five: Bari, Caltanissetta, Roma, Torino, Trapani.

In 2014, CIEs in Brindisi, Crotone, and Gorizia are temporarily closed for work in progress. Trapani-Serraino Vulpitta's CIE will turn into a center for asylum seekers. Milano's CIE was shut down in late December 2013 due to restoration. The CIEs in Trapani (Serraino Vulpitta) and Brindisi were closed in June 2012 for the same reason, so Lamezia Terme's CIE in November 2012. Bologna's CIE was closed in February 2013 and Modena in August, due to restoration.

Since August 2014, Bologna and Milano's CIEs have been used as reception centres for newcomers.

How many returnees might be accommodated in such a system while awaiting removal? How much might such a pre-removal detention system effective? And what about removal procedures? Based on Italian minister of interior, the number of total available beds in Italian CIEs for migrants to return are 842 in February 2014. The migrants under pre-removal are even less: 460 undocumented migrants detained in February 13 2014, 469 in March 4th. In July 2014, the Italian minister of Interior, Angelino Alfano, declared that just 500 beds were available in the Italian system of CIEs.

As it will be shown in the case study, the majority of undocumented migrants in Italy are stopped, charged, and released several times. Some (not few indeed) are held in pre-removal detention more than once. Immigration control mechanisms in Italy overturn the traditional interpretation of the mechanisms of immigration control that commonly sees a real logic operating to exclude, with detention centres as the pivot of the exclusion procedures. On the contrary, Italian case challenges both the logic to exclude and the central position of detention centers for governing undocumented immigration. Throughout the present research, I will propose that since when it was established in 1998 the system of CIEs in Italy has most of all had a symbolic power, one of turning undocumented migrants into others and internal "enemies". Even if Italian immigration law is restrictive, the actual enforcement operate in a different way from what law and politics say. Immigration control over undocumented migrants in Italy operates on the ground of informal control and negotiation between migrants and police, rather than removal. Internal borders control relies on illegal norms, discourses on undocumented migrants' illegality, and police's discretionary power rather than on actual removals, in order to apparently exclude undocumented immigrants from within.

Other European countries have recently shown a similar multiplication of measures of "internal immigration control" (Van der Leun 2003), such as the exclusion of undocumented immigrants from public services, housing, and the labour market, harsher surveillance by the police, and increasing rates of incarceration and deportation (Broeders and Engbersen 2007; Engbersen, 2009; Van der Leun 2006). Such measures are aimed not just to deter and discourage potential immigrants but also to "complicate and frustrate [immigrants'] living and working conditions to such a degree that they will turn round and try their luck elsewhere" (Broeders and Engbersen, 2007). Engbersen and Broeders argue this kind of internal surveillance on irregular

immigrants has recently intensified, especially in northern states of the European Union (EU) such as Denmark, Germany, and the Netherlands.

It seems the Italian strategy to contain and control immigration has always included attempts to frustrate the lives of both documented and undocumented immigrants, even by means of illegal laws. One Italian peculiarity, however, is that the exclusion of undocumented immigrants is mainly symbolic, as long as it comes together, as we will see, with police informally allowing undocumented immigrants to live irregularly in the country and work in the underground economy. By referring to symbolic exclusion, I do not mean undocumented immigrants' exclusion in Italy is imaginary: it is concretely manifested in material conditions of deprivation. Rather, I mean symbolic exclusion is the consequence of a punitive discourse on immigration mainly used to gain political consent; such discourses are not accompanied by actual physical exclusion but by a form of hierarchical inclusion.

CHAPTER THREE

METHODOLOGY

THE CASE STUDY

My research looks at undocumented migrants who are tolerated in the Italian shadow economy and informally allowed to stay. It queries the process through which these subjects are produced at the Italian internal borders. The research draws on quantitative and qualitative data. It is a bottom-up investigation of global border control at the local level, meaning that it moves from the micro-mechanisms of control to the broader logics underpinning them.

As I explain in Chapter 1, socio-legal and criminological studies make sense of control mechanisms at global borders drawing upon the assumption that the main aim of global logics of control is to exclude those who do not belong to the polity or the nation-state, or even to any state. Therefore, those studies tend to focus on the conditions under which undocumented migrants are eventually removed. Conversely, this thesis aims at enriching these studies by taking a different approach. It focuses on the far more frequent conditions under which undocumented migrants are informally allowed to remain despite official permission.

In order to do so, this research investigates the processes and logics through which, at the local level, global border control may produce new subjects: undocumented migrants living within national territories without official permission. Using a case study of internal border control in Bologna, Italy, I have examined the logics underpinning internal border control at the local level, as this focus is relevant to inquire on the logics of global border control often taken for granted. A perspective on border control from a Southern European country may challenge current understandings of global border control, for example, in the U.S. and Northern Europe.

Bologna was chosen as a case study of internal border control for several reasons. It is a medium-size city of fewer than 400,000 inhabitants located in Emilia-Romagna region (north-Eastern Italy). About 57,000 foreigners live in Bologna, almost 15% of the total population, one of the higher rates in Italy and the higher percentage in the region (ISTAT, 2012). Their average age is 33 years old. It may be estimated that roughly 7,000 undocumented migrants live in Bologna, or one out of eight migrants, as in Italy generally. Bologna have had a detention center (CIE) from 2002-2013, holding both female and male migrants. The presence of the CIE

was relevant to choose Bologna as a case study for the following reasons: 1) the CIEs are managed by the local police. Therefore, it is Bologna's prefetto of police and Bologna's chief of police who manage it. 2) Migrants stopped in Bologna are detained in Bologna's CIE,[71] so analyzing the population of migrants detained here sheds light on the various ongoing selectivity processes in the city. Moreover, in order to study internal border control rather than control at the external borders, it was important to pick one of the few CIEs in Northern Italy instead of any CIEs in the Southern. In fact, the CIEs in the South are mainly used to manage the arrivals of migrants by sea and, therefore, are relevant sites to explore external border control rather than internal border control.

Bearing this in mind, I looked at undocumented migrants in Bologna (Italy) who have been continuously undergoing police checks, being charged, and even have been detained. Few are actually removed; the great majority remains and finds their place in the Italian shadow economy. In this sense, it if possible to affirm that in the city of Bologna there is a logic of "differential inclusion" (Mezzadra 2014?) rather than exclusion, which produces subjects who may not completely belong, yet are not completely excluded either.

Bottom up perspectives in immigration control takes as point of departure the actual existence of requires undocumented migrants in the territory. Hence, from a bottom-up perspective, I should be able to elaborate new socio-legal categories which may enable us to recognize the existence of these subjects as a product of law, and not its failure; this is: as a product of a complex normative context, discourses, conflicting powers, and negotiation.

Therefore, the present research looks at the interaction among the agents who mainly determine the rationales and practices of such a production process, which are: a) the police, as the institution responsible for actually carrying out control; b) the justices of the peace, as the institution that influence decisions that police take during the territory control activity; and c) the migrants, that become active participants in the process producing them as subjects by enacting a variety of practices of resistance. The research is based on both qualitative and quantitative methods.

71 One third the beds in Bologna's CIE are for migrants stopped in Bologna. The others are for migrants stopped in other cities.

The present research builds on background knowledge, coming from a previous study I conducted in 2010-2011 in Bologna on the interaction between migrants and police during ID checks (Fabini 2012). The research was based on in-depth, semi-structured interviews with eleven city police officers and sixteen documented and undocumented migrants. Previous research has produced background knowledge for the design of the present investigation, and has provided some of the hypothesis this research has deepened, questioned, or validated. Data of previous research have also been used to better analyze outcomes of the present research.

The case study is intended to answer the following questions: what practices of control police enact in the immigration control regime in Bologna, and what are the strategies of resistance from migrants? What are the rationalities upon these strategies of power and resistance?

DOING RESEARCH ON POLICE NOT INVOLVING POLICE

The following description presents the methodology used to *do research on police avoiding to involve police*, in order to overcome the denied access to the field – the difficult access to the field is often lamented by many sociologists of police.

I carried out a modeling research, gathering data from a variety of sources and using quantitative and qualitative methods depending on the sources. I collected in depth interviews with justices of the peace, undocumented and documented migrants, lawyers, journalists, and city's police officers. I conducted an ethnography during trials for immigration crimes. I analysed case files on pre-removal detention and immigration crimes. Additional sources, such as news on Bologna's police in the local media and immigration reports from different agencies have been used to strengthen my understanding of the mechanisms of control. The validity of data is confirmed through triangulation.

As I mentioned in chapter two, in Italy there is not a proper immigration's police service. There are many police force, such as: the city police, the state police, the tax police, and the *carabinieri*, which tasks and responsibilities are to control immigrants. Each of them is under a different authority: the city police is led by the City major; the state police is under the minister of interior; the *carabinieri* is led by the ministry of defence, and the tax police is guided by the Minister of Economy and Finance. While the task of tax police is self-evident, there is no such

a thing as a formal division of tasks among the other three police forces72, rather the division is informal (and not very clear for whom is not a police officer) and mainly territorial: the city police operate in the municipality and they generally deal with misdemeanour and petty crimes, the state police operate in the whole Italian territory, and the *carabinieri* mainly in small villages.

In the paste I had already conducted researches on police practices of immigration control in Bologna, but the research was exclusively based on city police. However, I conceived the present research aiming at deepening the general knowledge and understanding of police practices when checking on illegal undocumented immigrants. Therefore, the current research exclusively started as a research on police assigned at controlling the borders, also focusing on state police. Only later, during its making of, it evolved to a research about the interaction between police, migrants and the justices of the peace. Since the very first moment, opening up the research to the justices of the peace was an inevitable choice I had to make, due to the fact that I did not gain official permission from the state police to collect interviews from street-level police officers (see next session). I started the fieldwork during trial on the crimes of mobility as an alternative way to investigate internal border control in Bologna. However, while doing the fieldwork, step by step, I gained a different understanding regarding the internal borders' complexity of the mechanisms of control. This very first step of my research was at the beginning an obstacle, but then it became an actual opportunity for me to open up my investigation. Therefore it evolved to a research about the interaction of police, migrants and the justices of the peace instead of 'just' a research on police practices. Even though police is at the core of border control mechanisms, considering that they take the first step in the criminalization process, it is also true that police are inserted in a web of power which influence their decisions and moreover contribute to the final result. As a matter of fact, justices of the peace participate in the construction of a specific concept of dangerousness that also reverberates in the practices of control carried out by the police, and furthermore they also influence police officers' decisions during the territory control activity through the validation procedures. On their part, undocumented migrants are not just passively subjected to police

72 From a conversation with Paolo Braccesi

power, but they also influence police practices and decisions during territory control activity by enacting a variety of resistance practices.

According to the previously outlined new design of research, the mechanisms of control taking place within the internal border in Italy and particularly in the specific case study analysed in this research is seen as result not only from discretionary decisions made by police officers, rather from a complex web of power built up by the decisions made by the justices of the peace, the police actions or inactions, and the migrants' resistance.

A DIFFICULT NEGOTIATION OF THE FIELD

I did not gain official permission from state police to gather interviews from street-level state police officers. Time management was not on my favour as the access to the field was denied after two years of negotiation. I firmly believe, the process through which access was denied is worth being told, as it in itself provides important material for research.

My first encounter with a representative of Bologna's police, the vice chief of Bologna's state police, occurred in summer 2012, almost one year after I started my Ph.D. I had spent the first year trying to gather information about how to approach the police in order to ask permission on conducting focused interviews to street-level police officers and carrying out observation sessions during their turns on duty. Few information exist on handbooks about this delicate part of the process, moreover I dedicated some time to investigate on the researchers were actually successful in gaining access to the field. Mainly three strategies were presented by my informants: 1) gaining the trust of a key keeper, who could introduce me to the head of police aiming at getting him to send an official authorisation to the minister of interior. The key keeper should know my research enough to be able to reassure him about my intention in order to negotiate the conditions of conducting the research. 2) Directly sending an official request of accessing the field to the head of police, by also scheduling an appointment and explaining the research's plan. 3) Conscious of the fact that Italian police do not allowed researches to be carried out even if they get authorised, directly trying to get through the field taking advantage of informal contacts.

My key keeper was the vice chief of Bologna's police. Since the very beginning, the vice chief of police showed interest in my research thanks to his personal sensitiveness to the immigration

issue. Besides his interest, he explained me that I should have organized an intern-ship at the state police in immigration issues also in collaboration with the Emilia-Romagna's county in order to have the opportunity to accomplish my aims. Unfortunately, despite the interest of both the Region and state police in Bologna, after several months it became clear that it was not possible to activate the intern-ship. Even though my key keeper discouraged me from repeatedly asking for permission to the chief, persuading me about the impossibility of receiving it, I tried anyway.

I first called the chief of police' office to schedule an appointment. During the appointment, which I attended with my supervisor, I explained my research and made the official request to gather interviews with street-level police officers. My proposal was to interview police officers working in "unità mobile" and in "immigration office", as these two services are the ones who frequently deal with undocumented migrants; the former interact with migrants during territory control activity and the latter during residence permit procedures. One month later we received a positive response, scheduling a further meeting, but this time round with the vice-chief of the immigration office. I had two official meetings with the vice-chief, the second one month after the first. During the first meeting, the vice-chief was absolutely welcoming, open to my requests and really supportive in fact I was told that I could interview police officers and do participant observation in the office during their duties. Yet, her attitude had totally changed in the second meeting one month later. It was as if vice-chief of the immigration office changed her mind, to the point that I was neither authorized to interview the officers nor I could do participate observation at the office. She appeared anxious and behaved as we had never talked about that topic before. She restricted herself giving me only few data of the office immigration activity in 2012 (one single page A4 format), and instead she insisted on offering her-self for the interview. I carried out the interview but in the meanwhile I realised she was quiet nervous, also she exclusively answered to questions concerning the legal norms, dismissing the ones concerning the strategies of control. When I explained her that we reached different agreements on the previous meeting, according to which I could interview some police officers and doing participant observation in the office, she got angry, scared and even uncomfortable with me and the whole process. She told me she could not trust me, also supposing that unbeknownst to her I could have taken a recorder in the room. Then she asked me to go away adding that the immigration office could not have helped in any other way.

One month later, the secretary of the police's chief unexpectedly phoned me to schedule another meeting with the chief of the Mobile Unities in Bologna. Once again, the Mobile unities chief welcomed me and my research, explaining details on how the state police and the *carabinieri* coordinate during territory control activity in the city of Bologna and how the mobile unities of state police are organized with the turn of duty, then we scheduled some interviews with 20-odd police officers. However he advised me that I would have hardly discovered something more than street-level police officers being racist. Unfortunately I never managed to conduct those interviews. Again, the day before I was supposed to start interviewing street-level police officers, I received a phone call from the chief of Unità Mobile, saying that we had to re-schedule the beginning of the interviewing process because he was still waiting for the official authorization. After that, I made some pressure to have an answer to my request for conducting the research going once again to the office of the head of police, and even to the "ufficio comunicazione e stampa". I eventually received the final negative answer from the chief's office of the police. Someone, in a phone call, explained to me that I could not conduct the interviews because "it was not convenient73" that I would interview street-police officers. In this occasion, state police in Bologna showed to be in fear. This answer may be considered as a result of research and one may actually wonder what exactly meant "not convenient" doing research on police.

I finally tried to enter the field through some informal contacts. I contacted a police officer working in Bologna, who I met one year earlier. We had a first meeting where I explained my research interest more in depth and asked him to introduce me to some of his colleagues. He said it was not a problem at all, he started to think of possible contacts and we re-scheduled a second meeting. During the second meeting I interviewed him and recorded the interview. Then we stayed out for a beer and I tried to gain his trust. But here the problems of being a female researcher started; he started to text me and asked me to hang out with him and friends. When I refused explaining him that mime was a simple research interest, the police officer just disappeared and never answered me again. I was not luckier with Unions. I had a first meeting with my contact, we had several phone calls, we almost organized the interviews with some of her colleagues, but nothing never happened. Maybe I should have insisted more, she was very

73 "Non è opportuno"

busy with some problems going on in within the Union, but I choose to just abandon trying to interview the police. The all process took me almost two years of negotiation.

This research (on police) actually ends up lacking interviews with police officers. In other words, this is the reason why this research talks about the police without actually having talked directly to the police.

I have been gathering information regarding police practices by interviewing migrants (as a direct experience of interaction), analysing case files on pre-removal detentions and immigration crimes, and by interviewing the justices of the peace. Thanks to this, I started to understand that mechanisms of control do not depend solely on police decisions, mostly because police decisions are themselves inserted in a web of power composed by sometimes contrasting rationalities and practices carried out by diverse social actors. Therefore, the present research consider police action in relation to the actions of the other social agents, such as migrants and justices of the peace. Moreover, I will use the data gathered through the interviews with city police officers in previous research. In fact, even if city police is less important than state police in immigration control in Bologna, data gathered with these interviews are however relevant because consistent with what undocumented migrants and justices of the peace interviewed have been saying and explaining to me.

Undocumented migration control mechanisms are extremely complex and composed of several and strictly interconnected elements. I will use a Foucauldian perspective to look at the mechanisms of control of undocumented immigration in Italy. According to Foucault, power is a web where the actions of each actor affect and limit the actions of the others (Foucault 1982). All actors exercise both power and resistance in relation to the others. According to this frame, not only police or judges have power; so undocumented migrants do too. Which is the degree of power of each actor will be established through the research. For the purpose of understanding the operation of the selectivity process, it is convenient to pay attention on the three actors who take part in the mechanisms of control: police, judges, and migrants.

MIX METHODODOLOGY

Immigration control in Bologna responds to certain patterns. When encountering a migrant illegally present in a territory, the police makes decisions under conditions of low visibility of

either action (enforcement: arrest) or inaction (under-enforcement: turning a blind eye on 'illegality'). In the case of arrest, the police walks the undocumented migrant to police headquarters and identify him/her. The migrant receives a removal decree, and he/she is either be invited to leave the country voluntarily in seven days or detained in the closest CIE (Center of Identification and Expulsion) with available beds, for a maximum of three months[74]. In the case of detention, a validation hearing takes place before a justice of the peace. Detention occurs only when a validation sentence is handed down. If the justice of the peace does not validate the detention, the undocumented migrant enters a limbic status, still illegally present in the territory but with no order to leave[75]. Detention in a CIE does not always end in removal. If the authorities cannot execute the removal, the detainee will be released with the invitation to leave the country voluntarily within seven days, or at the end of three months, or at any time. When arrested, the undocumented migrant found to be illegally present may be charged with the crime of illegal entry and stay (Article 10-*bis* T.U.) or disobeying a removal order (Article 14 co.5-*ter* -*quater*). He/she will stand trial before the justice of the peace. In Bologna, the trial starts about three months after the migrant is stopped. When found guilty, the migrant is given a high fine (5,000-30,000 euros).

This proceeding suggests that police discretion needs to be studied in two areas: 1) when the police makes *a decision to act* - a decision to charge, arrest, or even detain; this can be investigated in court trials and case files on pre-removal detentions; 2) when police make a *decision not to act* - a decision without any legal effects; here, discretion can only be investigated at the street level. The decision to charge or not, or even to ignore an undocumented migrant, reveals the conditions under which undocumented migrants are informally allowed to stay, and the conditions under which they are not.

For this study, data were collected in relation to four points of internal border control: validation hearings, pre-removal detentions, trials on immigration crimes (Articles 10-*bis* and 14 co.5 -*ter/quater*), and territory control. Each site needs to be studied alone and in connection with the others. The validity of the findings is ensured by comparing results of research gathered using different methodology and sources to study different aspects of the same issue. Furthermore,

74 At the time of data collection, the maximum length of detention was 18 months; in November 2014 it was reduced to 3 months.

75 For further details on the administrative procedures for removals see Colombo 2013.

findings from one source informed the later analysis of findings from another source (van der Leun, 2003):

ETHNOGRAPHY DURING TRIALS ON CRIMES OF MOBILITY

Between December 2013 and May 2014, I have conducted ethnography during trials for article 10 *bis* and article 14 para. 5 *ter* and *quarter*, such trials take place publicly every Tuesday and every Wednesday in one room in the office of the justice of the peace in Bologna. I did not attend all the trials, but most of them. Every case lasts no more than 20 minutes. Migrants never show up before the courts, and hardly know they are on trial. Four justices of the peace are on weekly rotation for these trials. I gathered information through informal chats during the period of observation, along with four one-to-one in-depth interviews with the justices of the peace at the end, covering the following topics: understanding of the law; relations with police; the importance of the dangerousness of the migrant to judicial validation; their liberty to make a choice; perception of their own role. I have taken ethnographic field notes during the entire period. All interviews were recorded, integrally transcribed, and analysed.

Collecting data in the office of the justice of the peace also represents a way to overcome the difficulties posed by police to prevent the researcher to access data. Moreover, by looking at the mechanisms of border control in the office of the justice of the peace rather than at the department of police, one cannot just access the quantitative data of whom is stopped, why, under what conditions, etc. Let's say, one does not solely see where, when and against whom the borders are performed. Rather, one can also see how the borders are "worded".

CASE FILES ANALYSIS

CASE FILES ON PRE-REMOVAL DETENTIONS

I have conducted this analysis both for a broader sample of cases (all detentions in Bologna's CIE in 2011-2012 (N=1177)) and a smaller one (detentions in January-February 2013 (N=70)). I expect to make sense of mechanisms of formal control at two levels, one at a more general level but acknowledging a larger time frame, and the other in-depth analysis considering a shorter time frame.

Initially, I have collected few data for each case file in a longer time frame, in order to understand nationality and gender of migrants entering the mechanisms of formal control.

At the office of the justice of the peace in Bologna, where I conducted ethnography and also collected data for the quantitative analysis, I was authorized to use a software providing easily a few information on the total population of detainees in Bologna's CIE. However, the official dataset does not show the gender of migrants undergoing detention hearings. In order to have access to this important information, it was necessary to analyze each case file manually. I spent almost three months (part-time) to collect these data. As a result, I built an original dataset using Excel software. I have analysed 1,177 case files on pre-removal detention in Bologna's CIE (2011-2013). Each case files contains: the decision made by the justice of the peace (along with the grounds of decision); the expulsion order; the detention order; any probable extension after the first month of detention. I collected data on: validation decisions; nationality, age and gender of migrant; city where migrant was arrested; motivations for the few non-validation sentences; duration of detention; the name of judge who made the decision.

These are original data never collected before in any Italian CIE.

Then, I have collected more detailed information for the smaller sample of case files in January-February 2013. This small sample provided me with a deeper understanding of what undocumented migrants are selected in the mechanisms of formal control.

Together with the information mentioned above, I have paid special attention to validation hearings (duration, motivation of sentence, line of defence and prosecution); circumstances of the encounter with police; possible criminal records of the migrant; possible prior removal or expulsion orders. Information was coded, and an original dataset was built and analysed with Excel software76.

I found very collaborative attitude in the office of the minor judge in Bologna to such a point that it was possible to go back to the field once data have been analysed and I considered that some were still missing.

These data are unique in the Italian scenario. Even if some data may be gathered from one report or another, such as the numbers of migrants detained in CIEs, length of detention, executed removals, migrants in these reports usually appear as homogeneous category of people, which

76 This part is included in a broader comparative research on the jurisprudence of the justices of the peace in immigration matters in five Italian cities, run by the University of Roma Tre.

makes it impossible to cross the variables of gender and nationality. Systematic information about the characteristics of migrants detained goes missing.

CASE FILES ON TRIALS ON CRIMES OF MOBILITY

I have also analysed a sample of case files of undocumented migrants stopped in Bologna and charged with either crime of illegal entry and remain (10-bis) or the crime of disobey a removal order in January-February 2013.

The sample is N=50. I have picked the stops occurred in Bologna in January and February 2013 because I had previously gathered data on undocumented migrants detained in Bologna's CIE in the same period of time. I expected that I could cross the results, since all the migrants arrested in Bologna and detained also in Bologna's CIE should have been charged with one crime or the other. Consequently, I could have compared the two samples and disclose those migrants who were charged with either crime of mobility had also been selected for detention in CIE. By comparing the two samples, I have expected to highlight the selectivity criteria due to which some undocumented migrants, who were found to be irregularly present, are charged with the crime but are not detained, while other are charged with the crime and are also detained. Furthermore, case files on crimes of mobility provide with more information on undocumented migrants than case files on detention in CIE: for example, they provide such information as criminal records that are not provided for migrants detained in Bologna's CIE. Therefore, analysis of the sample was also expected to help additionally framing the figure of undocumented migrant living in Italy, at least of those undocumented migrants undergoing the police selective control.

However, the comparison was not possible because just four of the people detained in Bologna's CIE have been also charged with one crime or the other.

IN DEPTH INTERVIEWS WITH MIGRANTS

I have carried one-to-one, in-depth interviews with 20 migrants on their experience of being controlled. Interviews were conducted during November 2013-June 2014 and January-May 2015. Migrants were selected using opportunity sampling: from one self-managed Italian School, one festival where I volunteered, in one pizza shop managed by a Syrian man, in a political squat, and from among friends. Then I used a corrected snow-ball sampling method.

Migrants were undocumented at the moment of interview or had been undocumented before then. They had been living in Bologna for at least two years at the time of the research (one interviewee had been in Bologna for a year and a half). They are 18 males between 20 and 40 years old and 2 women, mainly from Senegal (6) and Morocco (6), but also from Tunisia (1), Pakistan (2), India (1), China (1), Cuba (1), Egypt (1), and Syria (1). Although the sample is not representative of migrants residing in Bologna, it still provides deeper understanding of mechanisms of control operating outside the courts.

I privileged discursive interviews. I considered migrants as offering a knowledge I did not have, avoiding to behave as a researcher who gather information and work them to a more complex true that migrants cannot see. I opened up to other possible explanation, knowledge, and understandings. I was asking migrants about their understanding of immigration control in Bologna, based on their own experience and the experience of their beloved and friends; then I was asking how they face the difficulties, that is, how they resist the mechanisms of control. Finally, I used to ask them what would they want different, how would they change that. Then I was always asking if there was something they would have told but I did not ask. This made me feel more and more comfortable and open up my understanding of problems linked to lack of residence permit.

ADDITIONAL SOURCES

Additional sources and secondary data included 11 one-to-one in-depth interviews with city police officers conducted in Bologna for previous research on ID checks (Fabini, 2012), a variety of reports on immigration in Italy from different sources, news on Bologna's police in the local media in the time frame considered for research.

TRIANGULATION

Validity of the findings is ensured by using different methodologies to study different aspects of the same issue, which is known as the method of triangulation. Furthermore, using different sources for collecting data was also useful because findings from one source informed the later analysis of findings from another source (van der Leun, 2003). In order to strengthen this latter aspect, I have connected one field to the other at different times. I have started the field being

strong from background knowledge on the interaction between city police officers and undocumented migrants. Previous fieldwork was based on in-depth interviews with migrants and police and highlighted that city police officers in Bologna tend to enforce the law against undocumented migrants considered dangerous, while under-enforcing the law towards undocumented migrants considered non dangerous. I have started the present research with additional interviews with migrants, focusing on some aspects that have emerged from previous research: fear of police, working career, strategy of resistance. I was studying the law in the meantime and negotiating the access to the field with police. Then I started collecting news on police in local media, I have gathered interviews with key informants such as journalist and lawyers, and then I have started the fieldwork at the office of the justice of the peace. While doing participant observation during trials I was analyzing case files, having the chance to ask for clarifications in informal chat. Then, I have gathered in depth interviews with the four justices of the peace and lawyers. I took a six-month period during which I have analysed data on case files and in-depth interviews gathered by then, and I re-defined my theoretical framework and the research question. Finally, I went back to the field, collecting additional interviews with migrants, trying to select them in different contexts, and collecting missing data for statistical analysis.

Collecting data in different times was relevant to re-define the research question and to gain a deeper understanding of my subject of studying while still doing research. All of which have had an important impact on the moment of carrying the interviews. However, a methodological issue may emerge from having collected interview in different times, mostly because things have changed a lot lastly in immigration control mechanisms, due to the massive immigration flows of refugees from Syria. A way to overcome this methodological problem is to have in mind the change in the context of my research during the years when I have been collecting data. Therefore, the analysis of data needs to be accurate and it requires that time frame is always taken into account and incorporated in results77.

77 Data on pre-removal detentions are for 2011-2013; in depth interviews with migrants were collected in autumn-winter 2013-2014 and then in spring-summer 2015; in depth interviews with justices of the peace in June 2014; background knowledge on city police officers come from interviews collected in winter 2010-2011.

METHODOLOGICAL PROBLEMS: CHANGES IN THE CONTEXT

Bologna's CIE was shut down in 2013, which causes the availability of data just for different time.

Additional methodological problems come from the so called refugees' crisis, which probably caused some changes in the context of research while data were still being collected. The massive flows of refugees occurring in the last year and something irrupted in between my research and turn on the table. Migrants and justices of the peace interviewed, in fact, believe that the crisis changed something in the way and frequency police officers carry out control. It seems that I conducted some interviews in between an extraordinary event, which changed something in police strategy. Therefore, the analysis of data needs to be accurate and it requires that time frame is always taken into account and incorporated in results.

However, the fact that I collected interviews in different time frames becomes a strength for the research, as it makes possible for me to confront data and look for similarities and differences, before and after the changes in the context.

CHAPTER FOUR

VALIDATION HEARINGS AND PRE-REMOVAL DETENTION

This chapter moves from a fact: some undocumented migrants living in Italy and encountering the police during their control activity undergo pre-removal detention in CIE and possible removal; some other – the great majority indeed – do not, and police let them go free.

When the police encounter a migrant illegally present in the territory, police make decisions either of action or inaction under conditions of low visibility (Davis, 1969). In the case of action, police will decide to enforce the law and accompany undocumented migrants to the police headquarter to at least charge them with a removal order; in the case of inaction, police will probably turn a blind eye on the "illegality" of one undocumented migrant, they will let the migrant go and thus will under-enforce the law. Through deciding which undocumented migrants they select to charge, detain in CIEs, forcefully remove, ignore, or let go, police actually decide who is temporarily allowed to cross the borders and who is not. In other words, through their discretionary decisions about whom is allowed to stay and who is not, police "perform" the internal borders (Wonders, 2006).

The Justices of the peace possibly affect police's decisions to detain an undocumented migrant by controlling upon the "legality" of their decisions. JPs may validate detention in CIE or may not. When they do not, they free the undocumented migrant that police have previously selected. Therefore, justice of the peace's decision may nullify police's decision. When carrying out controls in general the police officers try to maximize the possibility of selecting among the passers-by those who will eventually reveal themselves as criminals (Sacks, 1983). In the field of immigration control I hypothesize that police will try to select those undocumented migrants whose detention is more likely to be validated. And this is why JP's decision may affect the performance of internal borders. My aim is to verify if the decisions of the justices of the peace may influence police practices in immigration control. If the activity of performing the borders

starts with the police, it is plausible that it is also affected by JPs' decisions. My argument is that this occurs on the double levels of practices and discourses.

I argue that police and justices of the peace decisions are interrelated not just on the level of practices, but also on the level of the rhetoric informing the practices. The bridge between police and judges may be the concept of "dangerousness" that permeates Italian immigration law. In fact, the concept of dangerousness, more than the illegality of migrants, seem to be the core of immigration control in Italy (see also Campesi, 2003; Quassoli, 2013). Yet, the concept of dangerousness is fuzzy. Maybe it is not fuzzy in the letter of law, i.e. in the penal code, but it is ambiguous when it should be used "in action", every time the "dangerousness" of someone needs to be proofed on the grounds of actual facts. The point is that both the police and justices of the peace participate in the definition of dangerousness that seems to drive the performing of internal borders in detentions in CIE, but also in trials about "immigration crimes" (chapter 5), or during territory control activity (chapter 6). In this chapter, through the analysis of quantitative data on detentions in Bologna's CIE and the interviews gathered with Bologna's justices of the peace, I will start to delineate how the concept of dangerousness is signified during the operations of possible removals and detention.

In order to shed light on the evaluation of dangerousness operated on behalf of police officers and justices of the peace, in this chapter I will detect whom among migrants are allowed to cross the internal borders despite their "illegality" and whom are not. The final goal is to highlight the mechanisms of power underpinning the system of immigration control in Italy.

This chapter is aimed at giving a sense of the mechanisms of formal control through the very concept of dangerousness, by following the way it is presented in the law, as well as it is interpreted, understood, enforced, and finally (in chapter 6) even resisted.

When carrying out control over undocumented migration in Italy, police officers and justices of the peace explain through the "search for dangerousness" their sometimes creative implementation of Italian migration law. According to such search, the selectivity process is driven by a logic according to which *not all the undocumented migrants, but just the dangerous ones, run, eventually, the risk of being deported*. The empirical research presented in this chapter deals with undocumented migrants undergoing pre-removal detention. The main questions are: How many migrants undergo formal controls? Who are them? What are the criteria according to which an undocumented migrant undergoes formal control? When is

detention not validated by the justice of the peace? Who is actually removed? However, an accurate analysis of the procedures through which migrants end up in Italian CIEs cannot be limited to the inquiry of practices but it needs to take into account also the rhetoric accompanying them.

If it is true that when enforcing borders, police but even justices of the peace bring themselves to look for dangerousness to such an extent that, when asked, they say that immigration law is enforced just towards those undocumented migrants perceived as dangerous, however my point here is that looking for dangerousness is not just something that police officers, during territory control activity, or justices of the peace, when controlling police's decisions, do on their own initiative. Rather, the search for dangerousness is required by law, more or less explicitly, more or less between the lines. The concept of dangerousness, in fact, as we saw in chapter 2, sometimes appears as such in the letter of law, sometimes it has been introduced in the legal frame through the decisions of Constitutional Court or the jurisprudence of the *Court of Cassation*. Sometimes, then, the search for dangerousness may be readable between the lines in the report of validation hearings or in casual conversation between justices of the peace and representatives of *Questura* (police headquarter).

In this chapter I analyze quantitative data on the undocumented migrants entering the Bologna's CIE in 2011-2012 (N=1177) and in January-February 2013 (N=70). Then, I will confront the results of quantitative data with the narratives offered by the justices of the peace interviewed. That some kind of selective enforcement occurs during the internal border control is a well-known reality, at least in the sociology of police research (see also Palidda, 1999; Quassoli, 2002, 2000; Weber, 2011). However, it is not really clear which migrants are selected, and why. If they will cross borders or will be stuck in them. Data presented here will give a sense of the selective enforcement and will provide the empirical dimension of borders. Based on data and interviews, I will try to identify the various rationales underpinning selection.

MIGRANTS UNDERGOING VALIDATION HEARINGS IN BOLOGNA

Undocumented migrants are selected by the police for the purpose of pre-removal detention either during territory control activity or at dismissal from prison (15% of total detainees in Bologna's CIE in 2011 came from prison). In fact, when undocumented migrants are released

from prison, they follow two possible patterns: they are either immediately deported[78] or directly sent to CIE for an additional period of time, for the purpose of identifying[79] them or preparing their removal.

When the *questore* decides that an undocumented migrant needs to be detained in CIE, then a validation hearing takes place and the justice of the peace will be asked to validate detention. Validation hearings take place four days after arrest, which means that all migrants undergoing validation hearings spend at least four days in CIE. Among them, some will be released after validation hearings, in the case that the justice of the peace does not validate their detention; some will be deported during the first months of detention; some others will be kept in CIE for a longer time, up to one year. Finally, among the migrants detained, some will exit the CIE with an order to leave, some other with forced removal.

I identify in the validation hearing itself one internal border that the undocumented migrant will be allowed to cross (in the case of non-validation decision) or not (in the case justice of the peace validates detention). What may be interesting to notice is that when an undocumented migrant is released after validation hearings, that migrant will keep on being undocumented but allowed to stay. So it will be released in a space that one may call of non-existence (Coutin, 2000): s/he is not legal but not removed. The four days that undocumented migrant may spend in CIE before validation hearing represent a discretionary tool at disposal of police that may use it even arbitrarily. I argue that even this process of keeping someone under administrative detention for four days is already part of the making of internal borders.

What I will present here, thus, it is a picture of the situation in Bologna's CIE in 2011-2013. I will use a larger sample of cases (2011-2012) to provide an overview on nationality and gender of migrants detained. Afterwards, I will use the smaller sample of cases (January-February 2013) to give some clues of migrants detained (circumstance of encounter; how many former prisoners; how many former documented migrants; how many had a removal order in the past). On the contrary, I will rely on in-depth interviews with justices of the peace to make sense of changes in a longer time frame. In fact, all four justices of the peace interviewed have worked in the Bologna office for at least 7 years.

78 According to interview with vice-chief of Bologna's immigration office, all undocumented migrants released from Bologna's prison in 2012 were immediately deported.

79 This happens when detainees are not identified when still in prison, that often happens in Italy (Bertin et al., 2013)

THE BIGGER SAMPLE

This sample presents data on undocumented migrants undergoing validation hearings before Bologna's justice of the peace in 2011-2012.

The first evidence is that some nationalities are selected more frequently than others.

Table 1 shows migrants detained in Bologna's CIE in 2011 and 2012, divided by nationality and gender. Gender and nationality are indeed the most important independent variable as predictors for the possibility that one migrant is detained or not in CIE.

TABLE 4.4. UNDOCUMENTED MIGRANTS DETAINED IN BOLOGNA'S CIE IN 2011-2012.

	2011		2011 Total	2012		2012 Total	Grand Total
Nationalities	**M**	**F**		**M**	**F**		
Tunisia	229	4	233	180		180	**413**
Morocco	86	11	97	67	8	75	**172**
Nigeria	6	79	86	8	68	76	**162**
Albania	28	15	43	22	16	38	**81**
China	3	28	31	5	22	27	**58**
Algeria	12	4	16	22	1	23	**39**
Ukraine	3	16	19	2	18	20	**39**
Moldavia	3	12	15	2	10	12	**27**
Senegal	7	2	9	6	6	12	**21**
Brazil	1	7	8		4	4	**12**
Georgia	1	1	2	5	5	10	**12**
Pakistan	8		8	3		3	**11**
Serbia	4	2	6	1	4	5	**11**
Bosnia	3	2	5		3	3	**8**
Peru	3		3	1	4	5	**8**
Russia		2	2		5	5	**7**

Croatia		1	1		5	5	**6**
Dominican Republic				1	5	6	**6**
Ex-Yugoslavia	1	2	3	1	2	3	**6**
Colombia		3	3	1	1	2	**5**
Turkey	2		2	1	2	3	**5**
Ghana	1		1	1	2	3	**4**
India	1		1	3		3	**4**
Macedonia				2	2	4	**4**
Uruguay		4	4				**4**
Argentina		1	1	1	1	2	**3**
Mexico	1	1	2		1	1	**3**
Others	10	8	18	13	13	26	**44**
Grand Total	**414**	**204**	**618**	**348**	**208**	**556**	**1174**

Source: Original data

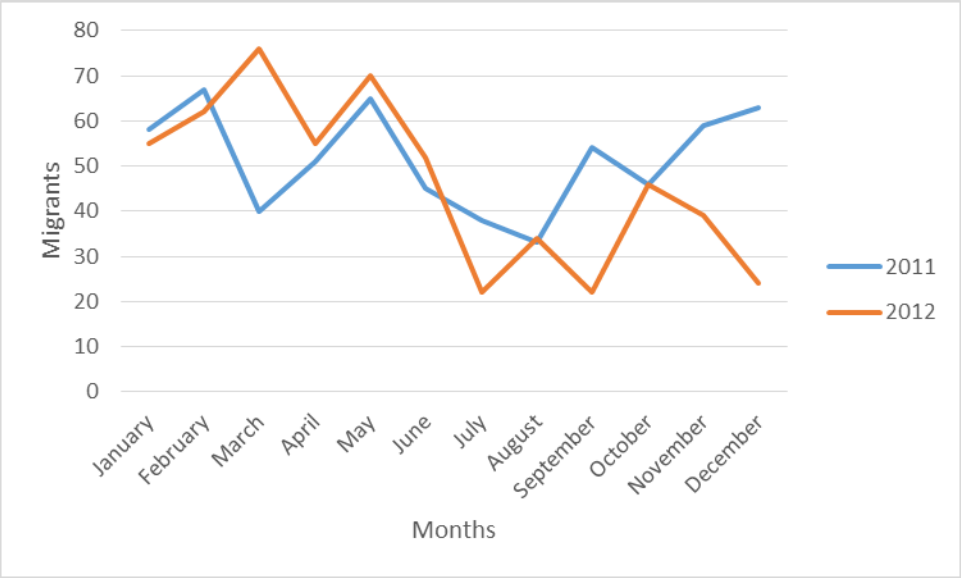
As it emerges from Table 4.4, great variation is both between different nationalities and between males and females within the same nationality. The majority of people present in Bologna's CIE in 2011 and 2012 are from Tunisia (413), Morocco (172), and Nigeria (162). They alone make up the 63.7 % of all people present in Bologna's CIE. It may be useful to mention here that Tunisians, Moroccans, and Nigerians however do not represent the most numerous national groups in Italy, nor in Northern Italy[80]. This means that some migrants are selected more often than others.

The many Tunisians present in Bologna's CIE is a consequence of Arab Spring and the massive flows from Tunisia to Italy occurring especially in 2011 (on the Arab Spring see Campesi, 2011). In fact, Tunisian present in Bologna's CIE in 2011 are 233 (37.7% of total), in 2012 they still are the most numerous national group, even if they are fewer: 180 (32.4%). The detention of so many Tunisians in Bologna's CIE on the one hand reflects the higher numbers of Tunisians present in Italy during those years; on the other hand they explain the great variation

80 In fact, in Italy in 2014 Moroccans are 449.058, and 54,1% of them are male; Egyptians 103.713, 67,5%, Tunisians 96.012, 61,9%, Senegalese 94.030, 72,6%, Nigerians 71.158, 49,8%. (www.comuni-italiani.it/statistiche/stranieri/africa.html

between 2011 and 2012 of numbers of detainees in Bologna's CIE, particularly in September, November, December, and March.

TABLE 4.5. MONTHS OF ARRIVAL IN BOLOGNA'S CIE, COMPARISON BETWEEN 2011 AND 2012



Source: original data

In Bologna's CIE, there were 5 Tunisians in March 2011 but 33 in March 2012; 29 Tunisians in September 2011 but just 2 in 2012; 32 in November 2011 but 11 in 2012. Finally, in December the variation needs to be explained both with arrival of Moroccans (14 in 2011 and 3 in 2012) and Tunisians (14 in 2011 and 7 in 2012).

It is however interesting to notice that the Tunisians detained in Bologna's CIE until September 2011 mainly came from Agrigento's CIE. Agrigento is a city in Sicily, and undocumented migrants coming from there were newcomers who had arrived in Sicily by boat and were pushed-back. On the contrary, in December and November 2011 and March 2012, Tunisians detained in Bologna's CIE come from cities in the Northern Italy, meaning that they were arrested while already living inside territories or while trying to reach the Northern European countries.

The second most numerous national group, Moroccans, are less than half the number of Tunisians: 97 in 2011 and 75 in 2012. Almost at the same level as Moroccans are Nigerians (86 in 2011 and 76 in 2012). In general, the numbers of migrants detained in Bologna's CIE is

higher in 2011 than 2012. Yet, the variation in numbers of Tunisians alone explains the variation.

As mentioned earlier, the gender variable has an impact in the selective enforcement. For example, Tunisians are almost exclusively men (women migrants among the Tunisian detained in Bologna's CIE are 4 in 2011 and none in 2012). Similar the picture concerning Moroccans in Bologna's CIE (women migrants are just 11 among 97 in 2011 and 8 among 75 in 2012).

Opposite is the picture regarding Nigerians, as the grand majority of migrants detained coming from Nigeria are women. Women migrants from Nigeria are 79 among 86 in 2011 and 68 among 76 in 2012. Moreover, according to data of January-February 2013, women migrants from Nigeria arrived in CIE because apprehended in the territory, they were never released from prison. From data it also emerges that half of population of Nigerian residents in Italy[81] are composed of migrant women (for example, 49.8% is the percentage of women among Nigerian residents in 2014 in Italy). Therefore, only women among Nigerian migrants are selected by police during territory control activity.

Similar selective enforcement occurs with regard to Chinese migrants (female are 28 among 31 in 2011 and 22 among 27 in 2012), Ukrainian migrants (female are 16 among 19 in 2011 and even 18 among 20 in 2012), Moldavians (female are 11 among 14 migrants in 2011 and 10 among 12 in 2012).

THE SMALLER SAMPLE

This sample presents data on undocumented migrants undergoing validation hearings before Bologna's justice of the peace in January-February 2013. They focus on elements, such as: circumstance of encounter with the police; how many former prisoners among them; how many of them had residence permit, and for how long they have been living in the territory; how many received a removal order in the past; what kind of typology of expulsion did they receive.

Typology of expulsion

81 Nigerians resident in Italy are 48,220 in 2011, 56,476 in 2012, and 66,833 in 2013. They mostly live in North Italy (16.4% in Emilia-Romagna, 19.2% in Veneto, 13.9% in Lombardia, 10.6% in Piemonte)

The sample is of 70 detainees for the two months, but as in one case it was not possible to determine the typology of removal decree, the sample is of 69.

TABLE 4.1. TYPOLOGIES OF REMOVAL DECREES FOR DETAINEES IN BOLOGNA'S CIE IN JANUARY-FEBRUARY 2013

Typology of removal decree	
Article 13 para. 2	**32**
irregular entry	**18**
irregular residance	**13**
refused permit	4
overdue permit	3
lack of notice of arrival	5
n.d.	1
dangerous person	**1**
Article 13 para. 13	**8**
Article 14 para 5 ter	**24**
Article 16	**3**
Article 15	**2**
n.d.	**1**
Grand Total	**70**

Source: original data

Table 4.1 shows that removal decrees under article 13 para. 2 are the most commonly issued. This is the removal decree adopted by the *prefetto* on a case-by case basis (N=32): 18 returnees had entered avoiding external borders control; 13 overstayed their resident permit, did not give any notice to Italian Public Authority of their arrival in Italy (as they should do by eight days

from arrival), or their permit was refused; for one it was not possible to determine why the residence was irregular. As the table shows, it is not very common that the prefetto adopts a removal decree following an explicit evaluation of migrant's dangerousness: in two months, such typology of removal decree was used just one time, against one migrant who had been convicted for sexual violence against a minor. Instead, it is very common that a removal decree is issued as a consequence of "immigration crimes": 24 detainees received a removal order because they disobeyed a removal order (art. 14(5 *ter*)) and 8 because they had been removed and violated re-entry ban (art. 13(13)). Finally, judicial removals were issued five times: 3 undocumented migrants received a removal decree as substitution for detention (art. 16) and two as a security measure (art. 15).

Most of the times, the *prefetto* adopts typologies of expulsion that are not directly connected to dangerousness criteria. However, a kind of evaluation of dangerousness can always be read, more or less explicitly, between the lines: this is particularly manifest in the way the *prefetto* in Italy never allows for voluntary return (article 13 para. 5 immigration law) instead of forceful removal.

Voluntary return was never issued by the prefetto for migrants detained in Bologna's CIE in January-February 2013. Just one time, during validation hearing, the justice of the peace, the prosecutor, and the lawyer agreed that voluntary return should have been issued by the prefetto. Therefore they granted it. The returnee was a 25 years-old woman from Albania, who had a residence permit from 2005 for family reunion, got divorced in 2007, turned the family permit into a work permit, but then its renewal was refused in 2009. Since 2011 she has not had a regular job, and she said that she wants to return to Albania. She does not have any crimes on her record, and when the lawyer asked for voluntary return to be issued the representative of *Questura* agreed (lawyers often ask for voluntary return during validation hearings, but the representative of *Questura* never agrees). The JP subordinated the possible voluntary return to documents proving housing, economic resources, and a one-way flight ticket to Albania.

According to the analysis of one of the justices of the peace interviewed, the rationale of voluntary return is not to execute removals, but rather it is a way for non-dangerous undocumented migrants to regularize their legal position. In fact, when the *prefetto* adopts a voluntary return, he gives the returnee a term of between 7 and 30 days to voluntarily leave the country. Yet, the JP is allowed to extend such term for an undetermined period of time.

According to the informant, this means that the JP may extend the term until the returnee finds a way to legally remain in Italy:

> La fattispecie di allontanamento volontario presuppone un dialogo continuo con l'amministrazione perché ha accertato che una persona che aveva un lavoro che adesso non ha più, aveva un nucleo familiare, ha dei redditi per cui possiamo presumere che.. Oppure ha chi lo garantisce, familiari, che non commetta reati. E quindi io come stato intervengo con questo provvedimento che poi è prorogabile. La finalità di questo provvedimento non è tanto l'espulsione, ma è far uscire dalla irregolarità queste persone che magari possono addivenire ad una successiva regolarizzazione. (…) Io amministrazione praticamente dico: allora, preso atto che tizio aveva un lavoro e l'ha perso, ha famiglia, non è regolare perché il permesso di soggiorno non l'ha rinnovato. Però ha comunque familiari che studiano qui. Comunque la moglie lavora, ha possibilità di vivere sostentandosi senza ricorrere ad attività criminali. Quindi, vabbè, tu sei irregolare. E allora qual è la finalità dello stato? Metterti i riflettori! Ti do i trenta giorni per allontanarti. Ma la finalità però non è allontanarti. E' metterti sotto i riflettori di una irregolarità per poi regolarizzarti. (…) Se tu trovi lavoro e ti regolarizzi, basta è fatta, non te ne vai più! A questo serve per evitare che le persone scompaiano dal territorio dello stato! Io ti metto in una corsia, ti do le proroghe, vedo che comunque non combini reati, hai chi ti sostenta, e io ti do le proroghe. Vedo che poi riesci a trovare lavoro... io ti ho dato la decisione di rimpatrio: la revoco. (JP3)

The aim of the return directive, according to the informant, is to spotlight the non-dangerous undocumented migrant who may have a job, even irregular, have a family, had a residence permit but did not ask for its renewal, and his/her partner works. This is an undocumented migrant deserving to remain. Voluntary return is needed to give deserving undocumented migrant as many extensions as possible until he or she finds a way to regularize his or her legal status.

At this point, the question I wish to raise after several months of observation, analysis of data, interviews and informal talk is the following: when will an undocumented migrants be finally considered non dangerous? When will he or she be finally considered as deserving voluntary return instead of forced removal?

When the *prefetto* issues a removal decree, he or she always justifies the necessity to do so by providing the migrant's crime records, previous violated removal orders, not collaborative intentions, aliases, etc. All these elements pertain to the sphere of risk and dangerousness, not simple unlawfulness of legal status. And these elements, in abstract, pertain to all undocumented migrants.

Some degrees of "dangerousness" is taken into account not just by the prefetto when issuing a removal order, but also by the *questore* when adopting a removal order. This is what the next paragraph investigates.

Circumstance of encounter

With regards to the circumstances of encounter with police, the sample is N=66, as in 4 cases among 70 it was not possible to determine the occasion of encounter.

TABLE 4.2. CIRCUMSTANCE OF ENCOUNTER WITH POLICE, VALIDATION HEARINGS OF BOLOGNA'S CIE (JANUARY-FEBRUARY 2013)

Encounter with police		%
Released from prison	17	24.3
Encountered in territory	45	64.3
Self-report	3	4.3
Stopped in Airport	1	1.4
n.d.	4	5.7
Grand Total	**70**	**100**

Source: original data

Data on the small sample show that the majority of migrants were encountered in the territory (64.3%), while 24.3%[82] came directly from prison.

82 This percentage is a little higher than the percentage of 15% of released from prison for detainees in Bologna's CIE in 2011. The difference might be because of the months when data were collected, as in the winter time there are fewer people in the streets and thus there are less migrants to be apprehended by police.

The detainees in Bologna's CIE who came from prison are 17, however former-prisoners among them are even more: at least 30 of all detainees in Bologna's CIE in January-February 2013 had served a sentence in prison in the past before detention in CIE, indeed. At the same time, however, 20 of them had never entered a prison (for 20 it was not possible to determine (N=50)).

The legal status

Data from the smaller sample also confirm that lawful legal status is a circular condition for undocumented migrants in Italy, indeed.

Table 4.3. Legal status of migrants undergoing validation hearings (Bologna's CIE, January-February 2013)

Legal status	
Previous residence permit	22
Never been documented	33
EU citizen	1
n.d.	14
Grand Total	**70**

Source: original data

Table 4.3 shows that 22 among undocumented migrants undergoing validation hearing had been documented during their staying in Italy. At the same time, 33 have never been documented, while for 14 it was not possible to determine this element (N=56).

However, the fact of being previously documented or not does not necessarily depend on the length of staying in Italy. In fact, among the 22 undocumented migrants who had a residence permit in the past, 13 had been living in Italy for at least 10 years by the time of present validation hearings (among these 13, 4 have been living in Italy for at least 20 years). Yet, also among the 33 undocumented migrants who have never been documented there are 11 migrants who have been living in Italy for at least 10 years (and 5 among these 11 for at least 20 years).

In general, with regards to the whole sample, one migrant entered Italy in 1988, 9 migrants entered in 1990s, 29 in 2000s, and 23 in 2010s. For 8 migrants it was not possible to determine the year of entrance (N=62).

Finally, the majority of migrants (46) had already received an order to leave before being selected for detention. Just 6 migrants had never been ordered to leave before then: among these 6, 3 have never been undocumented and have been living in Italy for 1 or 2 years before apprehension, the other 3 had a residence permit before and entered Italy in 2000s. For 18 migrant it was not possible to determine (N=52).

THE JUDICIAL OVERSEEING

Summarizing what said so far, in the case of apprehension, the police will accompany the undocumented migrant to headquarters and identify him/her. The migrant will be given a removal decree by the prefetto, and he/she will either be invited to leave the country voluntarily in seven days or detained in the closest CIE with available beds for a maximum period of three months (they were eighteen month at the time that data were gathered). In the case of detention, a validation hearing will take place before a justice of the peace. The law establishes that the *questore* submits request for validation within 48 hours from apprehension and the JP makes a decision within 48 hours from notification. When submitting request for validation to the JP, the *questore* also notify the decision to the person concerned. The notice should be translated in a language that the person may understand, or English, Spanish, or French. 96 hours may pass between apprehension and possible validation: four days during which the migrant could be detained on the grounds of a decision solely made by police. This decision could be completely illegitimate but will last for 4 days before ending[83]. When it comes to migration, police have the power to detain migrants for at least four days.

After these first four days, detention will continue only when a validation sentence is handed down. On the contrary, if the justice of the peace does not validate the detention, the undocumented migrant will be in a limbo: still illegally present in the territory, with an expulsion decree issued by the *prefetto*, which was not enforced yet[84]. Moreover, even when detention in CIE eventually occurs, it does not always end in removal. If the authorities cannot execute the removal, the detainee will be released with the invitation to leave the country voluntarily within seven days, or at the end of the maximum length of detention, or at any time.

83 This is the case, for example, of three migrants detained in Bologna's CIE in 2011: for two of them the justices of the peace said that the detention was illegitimate, and the third one had Swiss citizenship.

84 For further details on the administrative procedures for removals see Colombo 2013; Fabini, 2014; Savio, 2012.

How does actually a validation hearing take place? A validation hearing usually lasts few minutes. Based on the sample of validation hearings in Bologna's CIE in January and February, the average length of hearings is 17 minutes; however, the great majority of them lasted between 10 and 15 minutes. One hearing even lasted 3 minutes, while the longest one counted 75 minutes. During the hearings are present: the judge, the chancellor who is sometimes replaced by a police officer, the detainee, a lawyer, an interpreter, and a representative of the *Questura*. The chancellor and the judge usually write the report and the decision by hand, with just one exception in the case of Bologna represented by one JP who uses his own pc for writing sentences. The presence of the person to be removed is mandatory and the returnee was always present, indeed, in Bologna's case.

During the validation hearing, at the very beginning, the returnee has the chance to tell her or his story, but usually these stories are not supported by any evidence because the lawyer is notified one day before the hearing and does not have time to collect it; also, most of the times lawyer and returnee have not met before the hearing takes place. Therefore, it is up to the JP whether believing or not the stories that undocumented migrants tell. With regard to such stories, one JP says:

> poi quelli erano racconti privi di riscontro, perché tu assorbivi questo racconto che poteva essere verosimile e però non è che avevi la prova che questa viveva con questo signore e che a un certo punto si è stufato e l'ha denunciata alla polizia perché se la voleva togliere di torno (JP1)

According to the law, the justice of the peace should just take into account facts supported by evidence, such as documents. In the reality, it happens that the JP decides whether to believe the story or not regardless of documents. Sometimes, in fact, in their decision, JPs write that the story is not supported by any evidence, so that they cannot take it into account; but sometimes they write that the story can be believed even without documents supporting it because it is credible.

One question here may be the following one: Why do the Justices of the peace may not validate detention? As the immigration law provides many repressive tools to issue and execute forced removal, it also identify many conditions to avoid those same removal. Article 19 of immigration law always forbids removal when there is risk that the authorities in the receiving

country violate the returnee's fundamental human rights; removal is also forbidden in the case of minors, pregnant women[85] until six months after the birth, and cohabitation of the immigrant with relatives (up to second degree of kinship) or with an Italian spouse. Removal is also forbidden in the case of long-term documented residents in Italy or in another EU member State, yet it does not apply for long-term residents in the case of serious reasons of public order or national security reasons (Article 13 para. 1 immigration law), to prevent terrorism (under article 3 2005 Pisanu Decree), or if he or she belongs to the category of dangerous people (article 13 para 2 letter c) immigration law).

Article 13 para. 2 *bis* of immigration law identifies conditions that should prevent removal against undocumented migrant exercising their right to family reunification. In such cases, the law establishes that the *prefetto* considers the returnee's family ties, the length of his/her residence in Italy, the possible connection with the country of origin. However, again, people considered dangerous (article 13 para. 2 letter c)) are excluded from the scope of this article. The most frequent arguments lawyers build to oppose the removal are linked to family or romantic ties within territory and the strong integration of the migrant. In most cases the justice of the peace does not see these arguments as sufficient reason for preventing detention, often due to lack of documentation, for example when one migrant says that he or she is in a romantic relationship and share accommodation with an Italian citizen. Notably, some other times the lack of document does not become a reason not to validate.

The third sets of conditions that prevent execution of removal may regard all those formal rules that should be respected by both questore and prefetto when issuing the acts: notifications, correct translation, signatures, time limits, etc.

According to the law, during validation hearings, the JP oversees police's decision to detain someone in CIE by verifying the respect of the delays prescribed by the law, the existence and legitimacy of the expulsion decree, the existence and legitimacy of decree issued by the *questore* for executing removals, and the respect of conditions stated under article 19.

The removal decree of *questore* is a pre-printed form with the diverse reasons justifying detention (e.g. lack of travel documents, lack of transport capacity, identification problems; other reasons), and they are filled in by hand, by just marking one of the options. It often

85 And her husband (see Constitutional Court, judgment 376/2000). It does not apply to her cohabitating partner (see Constitutional Court, ordinance 192/2006) (Di Martino et al 2013)

happens that the marked justification does not correspond to reality: it is the frequent case of one migrant who is detained because identification problems, but he or she has passport.

With regard to the expulsion decree, it is not very clear what the judge's verifications should cover for. For example, the judge just verifies if the factual conditions to order the expulsion were present (Court of Cassation, 1st Criminal section, No. 5322/2008). As a consequence, any irregularity or illegitimacy of the previous acts may not affect the validity of the expulsion order: all violations of the rules established to protect fundamental rights do not bear any effective consequence.

NON-VALIDATION DECISIONS

Data of migrants undergoing validation hearings may testify the selection operated by police during territory control: what migrants are stopped and proposed for removal? Is the nationality an important variable for police, and why? Is gender an important variable?

Data on validation decisions, instead, tell something about the orientation of the justices of the peace: which migrants' detentions do they validate more frequently, which ones do they do not?

One should be careful in managing these two sets of data, as they refer to two different territorial units. In fact, while the decisions on validation or non-validation are made just by the justices of the peace of Bologna, and thus they testify to the orientation of justices of the peace in this city, migrants who undergo validation hearings are selected from different police forces in 77 cities, mainly in Northern Italy[86]; thus they testify to police's orientation about selective enforcement in many different cities.

The fact that migrants undergoing validation hearings are selected in so many cities would have not been a problem if we had been sure that police in different cities follow exact similar criteria for selecting undocumented migrants. However, it does not seem the case as a one of the JPs has confirmed:

> Bologna prevalentemente ci mandava comunque persone con precedenti penali già alla seconda

86 In 2011-2012, when Bologna's CIE was still in operation, other CIEs were also in operation in Northern Italy, namely in Modena, Turin, Gorizia, and Milan. However just Bologna's, Milan's, and Turin's CIEs also had a female section.

> o terza espulsione non ottemperata quindi gente che manifestava volontà di non abbandonare il territorio nazionale per fatti concludenti. E poi ci si poteva trovare anche qualche straniero senza precedenti, incensurato, che veniva prevalentemente però da altri questure. Altre questure perché Bologna raccoglieva sia dalla Toscana, dal nord d'Italia a seconda della disponibilità dei posti quindi c'erano altre questure che avevano altre strategie (JP2JP2).

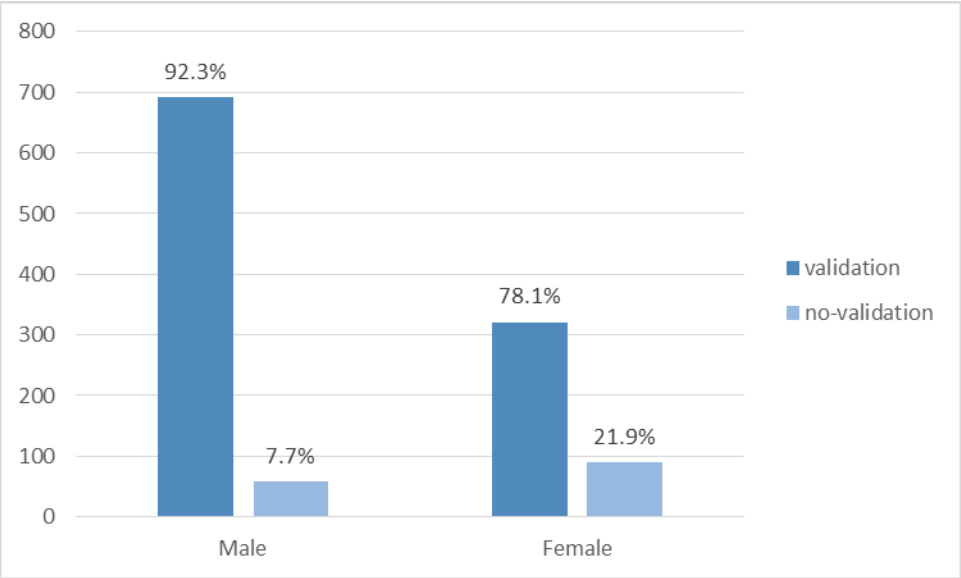
The justice of the peace explains that Bologna's police propose detention just for undocumented migrants with some crimes on their records, while sometimes the police in other cities also sent undocumented migrants with no crimes on their records, which testify that the police in different cities follow partially different strategies. We will see that this seems to be particularly true when it comes to women migrants checks.

The law, in fact, provides the police with many legal norms to deport undocumented migrants; on the other hand, the law itself provides the justices of the peace with many different tools to stop the removal of non-dangerous undocumented migrants, or possible asylum seekers. Therefore, two opposite trajectories coexist in immigration law, creating big discretionary powers in the hands of the police and justices of the peace. Based on participant observation, case files analysis, and interviews, agents of control appear to behave both as law-enforcement agents and "moral agents" (Fassin, 2011) who evaluate the policies they are asked to implement. Nevertheless, in the chaos of decisions there is a line being worth to be followed, and this is the evaluation of dangerousness.

In general, with regards to Bologna's CIE, the justices of the peace made 53 non-validation decisions among 616 total validation hearings (8.5%) in 2011 and 95 among 555 (17.1%) in 2012.

The first evidence coming from the quantitative analysis of data is that non-validation decisions occur more frequently with regards to female migrants than male migrants. Female migrants' detentions are not validated in 21.8% of cases (90 out of 413), male migrants' detentions in 7.6% (58 out of 762). Female migrants comprise 35.1% of the total CIE population, but 60.8% of total non-validation decisions.

Table 4.6. Total hearing in Bologna's CIE in 2011 and 2012



Source: original data

Table 4.6. shows that validation decisions concern women migrants more frequently than male. Yet, the high percentage of non-validation with regards to female migrants also leads to another unexpected hypothesis: the justices of the peace operating in Bologna and the police operating in several cities in the Northern Italy do not agree on how to deal with female migrants: police arrest them, but the justices of the peace frequently do not validate their detention in CIE.

The Table below breaks down data on non-validation decisions by nationality and gender, in order to explain how gender variable impacts on the decisions of JPs. In fact, one hypothesis could be that the gender variable impacts on the justice of the peace's decision not as such, but because it is also connected to a nationality variable: for example, almost all Chinese and Nigerian detainees are women, while almost all Moroccan and Tunisian detainees are men (see table 4.4.).

Therefore, table 4.7. breaks down data on non-validation decisions by gender and nationality.

TABLE 4.7. NON-VALIDATION DECISIONS IN BOLOGNA'S CIE, DIVIDED BY GENDER AND NATIONALITY, 2011-2012

	2011		2012		Grand Total
	Male	Female	Male	Female	

Nationality	Tot	No-val	Tot	No-val	Tot	No-val	Tot	No-val	
Tunisia	229	4	4		180	16			407
Morocco	86	7	11	1	67	4	8	1	169
Nigeria	**7**		**79**	**9**	**8**	**2**	**68**	**16**	162
Albania	28	2	15	4	22	4	16	2	80
China	**3**	**1**	**28**	**9**	**5**	**1**	**22**	**10**	58
Algeria	12		4		22	3	1	1	39
Ukraine	**3**		**16**	**5**	**2**		**18**	**7**	39
Moldavia	**3**		**11**	**1**	**2**		**10**	**4**	26
Senegal	7	1	2		6	2	6	6	19
Georgia	1		1		5		5	1	12
Pakistan	8	2			3	1			11
Serbia	4		2	1	1		4	1	11
Bosnia	3		2	1			3		8
Peru	3	1			1		4	1	8
Russia			2				5	2	7
Croatia			1				5	1	6
Dominican Republic					1		5	2	
Ghana	1				1		2	1	4
Turkey	2	1			1	1	1	1	4
Others	14	3	26		21	2	24	2	85
Grand Total	**414**	**22**	**204**	**31**	**348**	**36**	**207**	**59**	**1173**
%	**100**	**5.3**	**100**	**15.2**	**100**	**10.3**	**100**	**28.5**	

Source: original data

We already saw that Tunisians make up the most numerous national group both in 2011 and 2012, which means that they are the most frequently selected migrants by the agencies of control in the territory. The justices of the peace also validate their detentions in almost all cases: just 4 detentions among 223 hearings concerning Tunisians were not validated in 2011, which make up 1.8% of total hearings. In 2012 non validation are 16 among 180 (8.9%). Both are very much lower than the average non-validation decisions in Bologna's CIE, which as mentioned is 8.5% in 2011 and 17.1% in 2012.

With regards to Moroccans, no–validation decisions are 8 out of 97 in 2011 (8.2%, in line with the general trend) and 5 among 75 in 2012 (6.7%, very much lower than the general trend).

With regards to Nigerians, the third biggest national group in Bologna's CIE, 9 out of 86 were not validated in 2011, and 18 among 76 in 2012, which make up respectively the 10.5% in 2011 and the 23.7% in 2012. Non-validation decisions among Nigerians are higher than the average, but this may be explained by the fact that the majority of Nigerian migrants detained in Bologna's CIE are women. The same explanation may be offered with regards to percentage of non-validation decisions of Chinese, Ukrainians and Moldavians, which are unexpectedly high in both years. Chinese, Ukrainians and Moldavians undergoing validation hearings in Bologna's CIE are almost exclusively women migrants[87]. The percentage of non-validation for women migrants from China is 32.1 % of the total female Chinese in 2011 and 45.5% in 2012. The detention of women migrants from Ukraine were non-validated in 31.3% of cases in 2011 and 38.9% in 2012, while just 1 among 11 detentions of female migrants from Moldavia was not validated in 2011, while 4 among 10 was validated in 2012, that is, the 40% of total.

Last look is with regards to migrants from Senegal. Senegalese undergoing validation hearings in 2011 are just 9 (7 male and 2 female) and 12 in 2012 (6 male and 6 female). While in 2011 the detention of migrants from Senegal was not validated just in 1 case (1 male), in 2012 non-validation are even 8 among 12 hearings, the 66.7%. Even more surprisingly, none of female migrants from Senegal undergoing validation hearing was eventually validated.

So far, a pure quantitative analysis provides the reader with a general framework on the selective enforcement of internal border. I equate, indeed, a validation decision to the act of performing a border that one undocumented migrant will not be eventually allowed to cross. For the same token, the non-validation decision equates to allowing the undocumented migrant to actually cross the border that one police officer has previously performed. However, this does not mean that non-validation is an interruption in the mechanisms of control: my main argument, instead, is that even the non-validation decision takes part in the broader mechanisms of immigration control towards undocumented migrants living inside territories. A process of social control that uses the law-enforcement or law under-enforcement and that has the effect

87 90.3% of Chinese in 2011 and 81.5% in 2012 are women. Female are 84.2% of Ukrainians in 2011 and the 90% in 2012. Female are 78.6% of Moldavians in 2011 and 83.3% in 2012.

to produce a specific subject, which is the undocumented migrant allowed to live inside national territory.

THE GROUNDS OF NON-VALIDATION DECISIONS

How the justices of the peace officially justify their decisions? Why do the JPs sometimes decide not to validate? Furthermore, why do they validate women's detention less frequently than male's detention?

In this session we will first have a look at the motivation for non-validation, based on case files analysis. Analysis of motivation based on case files gives some additional hints to why some migrants are not validated more often than others. Later on, we will add the interviews with justices of the peace and other informants to make more sense of results.

The implications of basing the analysis on just case files should be accurately considered. In fact, research argues that judges usually take their decisions mainly as moral agents, and then apply the legal provisions better fitting their ideas. Therefore, if one wants to grasp the real rationales pushing judges to make their own decisions, one cannot rely solely upon the official motivations written in the decisions. The case of justices of the peace enforcing internal borders in Bologna does not differ from others: it seems likely that the justice of the peace in the first place decides if the migrant "deserves" detention or not, and then he or she will apply the most favorable legal provision according to an already formed idea. However, analysis solely based on case files does not suffice to give accounts of the actual rationales behind decisions.

Table 4.8 exhibits the motivation of non-validation decisions in Bologna's CIE in 2011-2012. It was not possible to examine all the motivations of case files, so that my analysis is dependent on 109 case files among a total of 148 (N=109). The coding was very difficult, because motivations for non-validation are sometimes long, including more than one argument. I picked and chose one argument for each sentence of non-validation, that is, the most relevant argument for the justice of the peace who made the decision[88]. Moreover, I decided to group diverse motivations under some categories with the purpose of making certain elements to emerge.

88 I will provide an example: sometimes, the justice of the peace did not validate because "the migrant has valid passport", but what he or she really meant was that there is not risk that the migrant abscond. This happens when the police justify the risk of absconding with lack of passport towards one undocumented migrant who has passport.

Motivations could have been grouped differently. For example, in the table below, I consider "missing translation" as a sub-category of language issues group, but I could equally have considered it as a sub-category of "mistakes in police procedure" group. Also, I could have inserted sub-categories such as "formal mistakes" and "nullified removal order" could under the group "Return directive". Yet, I listed them under "mistakes in police procedures" when the failure of respecting return directive was not explicitly mentioned by the justice of the peace. The group that I called "S/he is integrated" contains motivations for validation based on the fact that the returnee has family, or is waiting for amnesty procedures, or even has family ties with Italians.

TABLE 4.8. MOTIVATION FOR NON-VALIDATIONS IN 2011-2012 IN BOLOGNA'S CIE

	2011		2011 Total	2012		2012 Total	Grand Total
	M	F		M	F		
S/he is integrated	**1**	**4**	**5**	**5**	**6**	**11**	**16**
Family conditions allow for a residence permit	1	1	2		2	2	4
Amnesty procedures in progress		3	3	2	3	5	8
Family ties with Italians				3	1	4	4
Mistakes in police procedures	**8**	**5**	**13**	**6**	**10**	**16**	**29**
Formal mistakes	4	2	6	3	5	8	14
Time limits	3	2	5	1	1	2	7
Nullified removal order	1	1	2	1	4	5	7
Language issues	**2**	**7**	**9**	**3**	**9**	**12**	**21**
Missing interpreter		1	1	1	2	3	4
Missing translation	2	6	8	2	7	9	17
Return directive	**9**	**7**	**16**	**3**	**14**	**17**	**33**
S/he has passport		1	1		1	1	2
Return directive is not respected	2	4	6		3	3	9
Should be voluntary return		1	1	1	4	5	6
No risk of absconding	7	1	8	2	6	8	16
There is or could be international protection		**3**	**3**		**1**	**1**	**4**
Other motivations		**2**	**2**	**1**	**3**	**4**	**6**

Illigitimate detention				1	2	3	3
Already served detention in CIE		1	1				1
Personal conditions do not allow detention		1	1		1	1	2
S/he is Schengen citizen				1		1	1
(blank)	**2**	**3**	**5**	**18**	**16**	**34**	**39**
Grand Total	**22**	**31**	**53**	**36**	**59**	**95**	**148**

Source: original data

In 16 cases the detention was not validated because the migrant appeared as integrated: in 8 cases family conditions should have allowed them to have a residence permit; in the other 8 cases migrants are waiting for amnesty procedures and thus they appear as harmless irregular workers. In 29 cases non-validation decisions depend on some mistakes in police procedures, such as overcoming the time limits of 96 hours between apprehension and possible validation, or other "formal mistakes" - i.e. missing signature, or missing notification, removal decree providing wrong information - which leads to the justices of the peace nullifying the removal decree. Language issues[89] is a recurrent pattern in the defence built by lawyers and it is also often accepted by justices of the peace, with however significant variation depending on the JPs making decision. Finally, 33 non-validation decisions depend on some of the changes introduces through adoption of return directive: 16 times the detention was not validated because there was not risk of absconding.

There are 16 cases of detentions not validated because the justice of the peace did not confirm risk of absconding detected by the police; yet, there are many more times when justices of the peace validate detention even when lawyers ask that the very risk of absconding is not recognized. In general, Italian immigration law gives very big power to police to apprehend and propose migrants to detention. Among other measures, the risk of absconding gives the police big discretionary power to draw borders against some undocumented migrants. When the justice of the peace does not recognize the presence of risk of absconding, it is particularly evident that they are opposing police's decision, acting as moral agents.

Also from the smaller sample the lack of risk of absconding emerges as an argument made by the lawyer in 8 cases (and it is accepted as such by the justices of the peace in 4 cases). In many

89 A particular attention to a correct translation was required by the return directive.

cases, however, lawyers just oppose detention decision in general terms, by using the formula "I oppose", and that's it (26 cases in 82). Finally, also the lack of translation is a frequent argument for lawyers to avoid detention, and its efficacy depends on the orientation of the single judge.

Furthermore, from the small sample it also emerges the importance of criminal records in discourses justifying validation. In fact, even if having crime records is not an official condition for one undocumented migrant to be detained, it is however strongly presented as an important element affecting a decisions made by justices of the peace. Even if the removals for dangerousness, security, or anti-terrorism, or as a security measure are not so frequent, some kind of evaluation of dangerousness is always connected to the decision to detain or not one undocumented migrant. And the evaluation of dangerousness is said to be linked to crime record, circumstance of apprehension, or resisting arrest. Unfortunately, from case files analysis, it is not possible to check the real crime records of migrants arrested, so it is not possible to verify if the justification truly follows the analysis, or, differently said, if the practice really follows the rhetoric. However, here, it may suffice to notice that, with regards to the smaller sample, all the case files where the prosecutor affirmed that the migrant had committed crimes (34), the detention was validated, but three exceptions: 1) one migrant was un-removable due to article 19; 2) one migrant was waiting for 2009's amnesty procedure; 3) one removal decree did not respect return directive. In 47 cases among 70, the prosecutor just asked for validation, using a simple formula such as "asks for validation". Often, the representative of police headquarter pointed at crime records, police records, and aliases of the migrant indicted, presenting these elements as the evidence that pre-removal detention is needed.

As one of the JPs claims in the following extract, the system of control should reward those undocumented migrants who do not commit crimes even if they are undocumented, and be harsh against those undocumented migrants who want to be undocumented and thus invisible:

> Il sistema valido [è quello] che da un lato sia premiale per chi pur essendo irregolare non commette reati, dall'altro efficace contro chi è in Italia, non solo in Italia irregolare, non in una situazione di ritardo nell'aver chiesto il permesso, ma perché io voglio essere irregolare. (…) Anche i criminali italiani metterebbero la firma su questo, perché non esisti, sei un fantasma. Ecco perché devi essere colpito, ecco perché la penalità. (JP3)

The JP claims that "criminal undocumented migrants" take advantage of being invisible, and for that reason they need to be punished, even by using the criminal law (see next chapter).

From an accurate analysis of case files, it emerges the big discretionary power of justices of the peace (a power that they do not use so often, however). This is the case for article 19, which forbids the removal of migrants to unsafe countries of origin. With regards to this, the same day, the same justice of the peace decided for one validation and one non-validation towards two women, both Nigerian. One was non-validated because, even being a former-detainee, the Tribunal had forbidden her removal because "Nigeria is not able to protect her political and civil rights". However, the justice of the peace decided to validate the detention of another Nigerian women, despite same nationality.

However, if this was completely true, we would have had a non-validation decisions just in cases of formal mistakes on behalf of police. Instead, JPs sometimes do not validate the decision made by police not just on the ground of the above mentioned criteria, but also because, let's say, they do not think that the person deserves detention (there was not risk of absconding, because of family ties, etc.)

In the practice, even if the police take the first step in the criminalization process and thus have more power than the justices of the peace in deciding where to locate the internal borders, who to remove, and who to allow remaining, also the JPs participate in the drawing of the borders. Even if it is true that the Justices of the peace validate police's decisions in the great majority of cases, it is also true that sometimes they do not. This mainly occurs when the undocumented migrant undergoing validation hearing belongs to non-dangerous categories in the JP's eyes.

THE LENGTH OF DETENTION

According to the law, when in the first validation hearing justice of the peace validates detention, he or she establishes that the returnee may be kept in CIE for a period of time until 30 days. If it will be not possible that the detainee is removed in 30 days, a second hearing will take place before the JP in order to possibly extend the length of detention of 60 days more. Such first extension may be followed by other extensions, every two months, for a total length of detention up to 18 months (this was the maximum length of detention at the time of research, now it is 3 months).

In Bologna case, differently from other cities[90], the returnee is always present during extension hearings (as required by the Court of Cassation with judgment No. 4544/2010): police escort him or her from CIE's cell to the CIE's room where hearings take place. During extension hearing, the JP should check that the police have done all necessary effort to enforce removal. If they did not, the JP should not validate. One JP tells me that she feels the discretion in extension hearings is huge:

> Io quello che mi ricordo di queste convalide è che il giudice ha una discrezionalità enorme, perché la legge gli permette comunque di dare delle motivazioni giuridicamente (…) possibili, giuridicamente corrette, che giuridicamente possono sussistere. (…) Io vedevo una grande discrezionalità di giudizio, perché tu comunque devi dire che la questura ha fatto tutto il possibile per mandarla fuori e non ce l'ha fatta. In realtà la questura quello che fa è mandare dei fax, quindi è chiaro che alla seconda terza proroga come fai a dire che la questura sta facendo il possibile per mandarla fuori e non ce la fa a mandarla fuori? (JP1)

> Come quando mandavano la lettera tre giorni prima [dell'udienza] ai consolati... loro avevano trenta giorni, quindi in certi periodi io i miei li liberavo perché succedeva che la procura per sue dinamiche finiva a fare richiesta tre giorni prima della data di proroga (JP2)

Two elements emerge from the excerpts above. The first one is that, even if it is claimed that pre-removal detention is needed to enforce removals, the police is not active in preparing the procedures for activating removal. This might suggest that pre-removal detention in CIE is often used as simple detention: a prison for migrants managed by the police. The second element is that the discretion of the JP during validation hearings is hot topic and his or her perception of having discretionary powers varies depending on the JP. Some of them feel they have discretion, others think that the law just requires "one move. It is a closed circuit". However, what it seems interesting is that the discretionary power of the judge (that is the power of the judge to not validate police's decisions), mainly emerge when the returnee is not considered dangerous, as it emerges from the following extract of interview:

90 See the reports for Turin's, Rome's, and Bari's CIEs collected on the website of Osservatorio della giurisprudenza del giudice di pace.

> a volte ti trovavi della persone che magari avevano blocchi di precedenti penali di questo ge*nere (mima una gran massa di precedenti pen*ali) oppure situazioni di persone che potevano avere altre problematiche, appunto magari più sociologiche ma meno … magari non avevano carriere criminali alle spalle. Quindi lì la discrezionalità del giudice per me era veramente amplissima. A me veramente venivano le vertigini a volte perché tu ti trovavi a giudicare una cosa veramente delicatissima sulla libertà delle persone. (JP1)

The informant explains that she or he feels that the discretionary power is huge when the JP is asked to validate the detention in CIE of undocumented migrants who do not have crimes on their record, while it is reduced when migrants whose detention may be validated have many crimes and aliases. Towards former undocumented migrants, the JP perceives that his/her possibility not to validate is real, and she/he also feels responsible to decide over something very sensitive, such as the right to liberty[91]. The same discretion is not when it comes to migrants with crime records (or police notices, which even if different are not considered so different form JP's perspective). This is interesting, because from here it emerges that the justices of the peace mainly expect to have to deal with dangerous undocumented migrants and they found themselves in a moral dilemma when they face some undocumented migrants not perceived as dangerous.

As we saw, the concept or risks and dangerousness are always present even in between the lines in the legal text. At the end of the day, the JPs show to conform to it. In the excerpt above, one of the interviewees said that the discretionary power that law left in their hands allows them to free a "non-dangerous" undocumented migrant easily; yet, I add, it is also true that the same easiness is for them to always validate the detention of migrants that they consider "dangerous migrants": "*la legge gli permette comunque di dare delle motivazioni giuridicamente (…) possibili, giuridicamente corrette, che giuridicamente possono sussistere*". And this is true in either cases.

91 One should consider that Immigration law is the unique field where the JP is asked to judge over such a delicate issue.

Table 4.9 below provides a general overview on length of detentions in Bologna's CIE in 2011 and 2012, divided again by nationality and gender. We will first focus on the general population, then we will break down the data by gender and nationality.

TABLE 4.9. LENGTH OF DETENTION IN BOLOGNA'S CIE, DIVIDED BY GENDER AND YEAR, WITH PERCENTAGES (2011-2012)

		2011 Male	2011 Female	2011 Total	2012 Male	2012 Female	2012 Total	Grand Total	Grand Total Male	Grand Total Female
Validation Hearings	non-validation	22	31	53	36	58	94	147	39.46%	60.54%
	Validation									
	Total	**250**	**115**	**365**	**241**	**133**	**374**	**739**	**66.44%**	**33.56%**
<1 month		228	84	312	205	75	280	592	73.14%	26.86%
>1<2 months		86	34	120	38	26	64	184	67.39%	32.61%
>2<4 months		59	25	84	46	31	77	161	65.22%	34.78%
>4<6 months		10	9	19	7	13	20	39	43.59%	**56.41%**
>6<8 months		5	10	15	5	2	7	22	45.45%	**54.55%**
>8<10 months		1	6	7		1	1	8	12.50%	**87.50%**
>10<12 months		1	4	5	1		1	6	33.33%	**66.67%**
Grand Total		**412**	**203**	**615**	**338**	**206**	**544**	**1159**	**64.71%**	**35.29%**

Source: original data

The great majority of migrants (58.5%) are detained in CIE for less than 1 month: 312 among 562 in 2011 (55.5%), 280 among 592 (62.2%) in 2012. 184 (18.2%) stay between 1 and 2 months[92], and 161 (15.9%) between 2 and 4 months. Few migrants stayed in CIE for more than 8 months: 6 stayed 10-12 months while 8 stayed 8-10. Therefore, even if the law at that time

92 A great variation is between detentions of 1-2 months in 2011 (120, 21.3% of total detentions)) and in 2012 (64, 14.2%). This is again explained by flows of Tunisian migrants, as Tunisians staying between 1 and 2 months are 72 in 2011 and 17 in 2012.

was prescribing that detention in CIE may last for a period of time up to 18 months, no migrants were detained in Bologna's CIE in 2011 or 2012 for more than 12 months, even being 12 months an extensive amount of time. The great majority, instead, stayed for less than one month.

According to Caterina Mazza, three criteria explain the selective enforcement towards undocumented migrants: one is an organization criteria (organizzativo), linked to the availability of beds in one CIE; one is the management of security (gestione della sicurezza), and it is linked to the social dangerousness of each migrants; the third one is a managerial criteria (manageriale), linked to the possibility that migrants are actually removed (Mazza, 2013:72). The managerial criteria directly depend on the country of origin: collaborative countries will make it easier that the undocumented migrant apprehended and detained will be actually removed. It is likely that those migrants who are staying the minimum amount of time will be also those who will be successfully removed: migrants removable are those whose countries of origin collaborate with Italy, providing documents for their citizens to repatriate, and accepting and recognizing them[93].

In order to test the validity of the managerial criteria proposed by Mazza, I will break down data presented in Table 4.10 above by nationality.

TABLE 4.10. MONTHS OF DETENTION IN BOLOGNA'S CIE, TOP TEN NATIONAL GROUPS, 2011-2012

	<1	>1<2	>2<4	>4<6	>6<8	>8<10	>10<12	Grand Total
Tunisia	246	79	55	5	1		1	387
Morocco	80	30	26	6	5	2	1	150
Nigeria	41	37	32	11	6	3	3	133
Albania	66	2		1				69
China	17	5	6	5	2	2		37
Algeria	17	6	9	2	1			35
Ukraine	16	1	7		3			27

93 The countries that accept to be collaborative towards Italy, by accepting returnees will have granted more visas in the annual quota.

Moldavia	16	2	2	1				21
Brazil	9	2	1					12
Senegal	8	1		1				10
Georgia	2	2	6					10
Grand Total	**518**	**167**	**144**	**32**	**18**	**7**	**5**	**891**

Source: original data

As a first evidence, it emerges that some nationalities are especially likely to stay the minimum amount of time. This is the case of Albanians, for example: 66 out of 69 exited the CIE by the first month of detention. It is plausible that Albanians are more easily removable due to readmission agreement and also the proximity of Albania to Italy (and therefore the limited cost of the trips), thus confirming the managerial criteria.

> Guarda, a me un sacco di volte mi sono capitati gli albanesi, poi anche gente pregiudicata che diceva: "vabè, mandami a casa in fretta perché io adesso passo la pasqua con mia mamma e poi torno. Più di una volta. Per cui che dire? questa è gente dedita ad un certo tipo di vita per cui gli è permesso di andare e tornare quando gli pare, non è che la norma che l'ingresso è reato... tanto tu torni per fare una rapina oppure torna per sfruttare la prostituzione. C'è sempre da capire la persona che hai di fronte, è questo il problema. C'è anche il clandestino poverino che torna a casa e non torna più qua. Cioè una persona per bene che se la rispedisci in Uzbekisthan (ride) non ce la fa più. Eh, però... questi soggetti che sono poi la maggioranza di quelli che frequentano il mondo dell'espulsione sono così. Vanno e vengono a loro piacimento. (JP2)

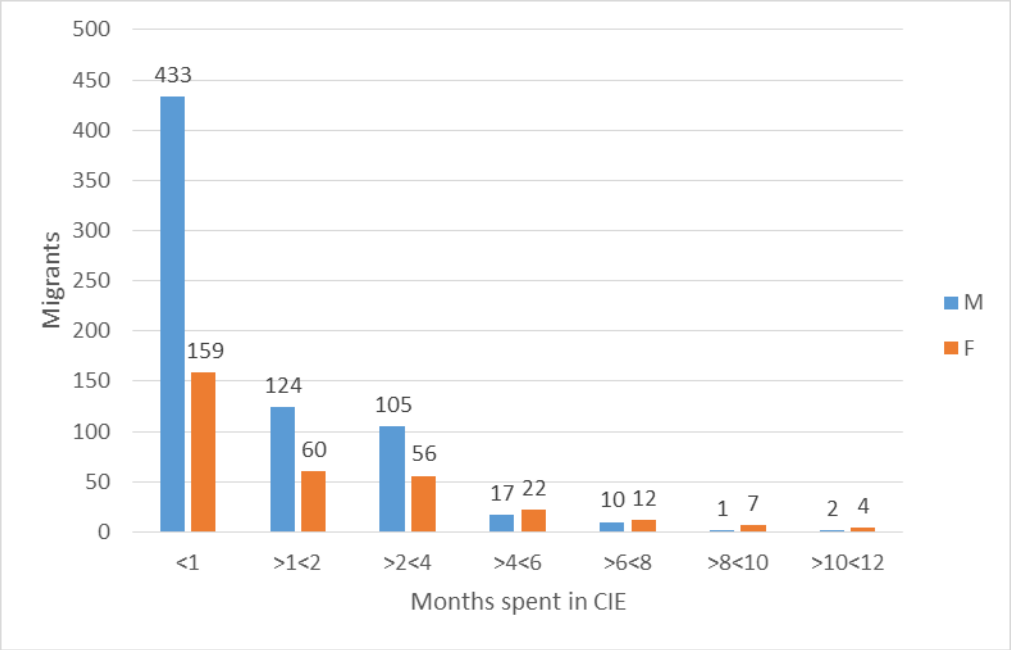
The informant explains that Albanians are not worried about possible removal because it is very easy for them to come back to Italy. The informant says that many Albanians are people with criminal records, and they can come and go as they wish. These, according to the informant, are indeed the people who mostly take part in the field of removals, and harsh laws are useless as they come back to Italy to commit armed robbery or exploit prostitution. Then, she says, there also are good people, and the difficult thing is to recognize them, indeed. In fact, the informant explains, it could also happen that one sends a good migrant back to Uzbekistan and then this migrant will never be able to come back again. Two important elements in this extract: 1) recognizing which among the others are the good migrants who do not deserve removals is the difficult task of the justice of the peace; 2) Migrants coming from Albanians come and go

as they wish, and it is very easy for them to commit crimes. Here, the nationality becomes an element to understand the possibility that one migrant will commit crimes or not.

Nigerians detained in Bologna's CIE in 2011 and 2012 challenge the managerial argument. In fact, Nigerians, especially women, are in the opposite situation to Albanians with regards to length of detention. Among undocumented migrants detained in Bologna's CIE in 2011-2012, Nigerians women were indeed kept in CIE for the longest periods of time.

It may be interesting to notice from Table 4.11 above and more exactly from table 4.10 that in general women's detentions are validated less frequently, but then they stay longer in CIE.

TABLE 4.11. MONTHS SPENT IN DETENTION IN BOLOGNA'S CIE IN 2011-2012, DIVIDED BY GENDER



Source: original data

Both tables show that among migrants detained in CIE for between 6 and 12 months, women are 23 while male 13. In other words, women are 63.9% of total detentions lasting for 6-12 months, while they are the 31.6% of total validation decision.

The nationality of the women migrants who have being detained for so long before exiting the CIE is an important variable as well. In fact, as one informant has warned me, the motivation for duration of detention may depend on the nationality rather than on gender, even if the two are connected:

> Insomma non è tanto uomo o donna, questo è un argomento che io ho orecchiato dal personale della questura che ai tempi se ne occupavano. Non è tanto il problema del sesso, uomo o donna, il problema è della nazionalità. Cioè, c'erano stati che collaboravano e stati che non collaboravano. C'è stato il periodo in cui la Tunisia il Marocco ma soprattutto la Tunisia nel momento in cui lo stato italiano finanziava il rientro arrivavano e li prendevano tutti e li portavano a casa. Arrivava il console e imbarcava aerei pieni. Però per quei paese partono prevalentemente uomini, dai paesi, capito? Dalla Nigeria, dopo forte è la presenza della prostituzione, partono anche donne. Ma i nigeriani non hanno mai collaborato. (JP2)

The justice of the peace provides plausible explanation for Tunisians and also Moroccans staying for a short period of time, especially Tunisians, when there was an agreement between Tunisia and Italy, with Italy funding the removal of Tunisians. Then she explains that when it comes to Nigeria, the situation is different, because Nigeria has never been a collaborative state and was never recognizing its citizens. Then, she explains that migration flows from Tunisia, Morocco and Nigeria differentiate for the percentage of women, being the first two migration flows mainly male migrants and the third just female, and more specialized in sex work. However, this is a misconception of the reality of migration flows from those countries: the women among Tunisians, Moroccans and Nigerians resident in Italy are in all cases roughly the 50 per cent of total residents. For sure, the misconception is provoked by what the justice of the peace experience during validation hearings. Her experience, in other words, relies on a pre-selection operated by the police during territory control activity. For some reasons, police will perform borders towards male migrants when it comes to Tunisians and Moroccans, but female when it comes to Nigerians.

The point to be made here is that, even if it is well-known, as the justice of the peace says, that the Nigerian migrants will be hardly removed, police do not stop selecting them in the activity of enforcing internal borders. As we saw in the validation session above, 10.5% of Nigerians were not validated in 2011 and 23.7% in 2012. However, when they enter the CIE they stay for a long time. When I asked the justice of the peace what was happening then, if the Nigerians who were entering Bologna's CIE could not be removed, she explained:

> E quindi si creavano questi *stormi di nigeriane* che cantavano io mi ricordo... ti ricordi (*si rivolge all'altra giudice, presente in sala*) quando non convalidavi una nigeriana, questi facevano Bum bum, e queste che iniziavano tutti i loro canti africani con gli urli, uuuuh... hai capito? (JP2)

As one might have expected and just as the informant confirmed, the consequence of detaining in Bologna's CIE women migrants who could hardly be removed was that they were remaining there, until a justice of the peace, in one of the hearings for deciding possible extensions of detention, might have decided not to validate the extension: in that case the woman could go back to the limbo between legality and illegality were she was before. The informant tells that any time something like that was happening and a woman was freed, the other were starting singing and celebrating. There are no many doubts that in such cases the detention in Bologna's CIE, rather than a pre-removal detention, was becoming something else: it was a substitution for prison. Women migrants were punished for their being sex worker, rather than undocumented. We can already see here the extent to which it exists and it is performed a category of dangerous migrant: this is the sex worker. According to the informant, the sex worker often is Nigerian. It is unlikely that a women migrant from Tunisia or Morocco is a sex worker, as she explains in the following extract:

> Insomma sono le attività che questi compiono che sono legati al sesso e sono legati anche al paese di provenienza. Insomma, io non ho mai visto molte tunisine migrare e finire al CIE. Poverina insomma, qualche donna sarà migrata, però io al CIE non le ho viste. Tranne qualche episodio rarissimo che poi dopo se ci fossero dietro episodi di prostituzione, per donne musulmane che sai rientrare da sole non potevano. Ma il mondo del nord Africa è più legato alla figura maschile, mentre il fenomeno della prostituzione dalla Nigeria... (JP1)

In the extract she says that migration from North Africa is more connected to the figure of men, while sex work mainly comes from Nigeria.

Another national group for which the detention in CIE, based on data at disposal, may be considered as punishment is the Chinese. Chinese, in fact, just as Nigerians, could be hardly removed. Yet, police do not stop selecting them. According to one informant:

> Come la Cina. La Cina non collabora, almeno anni fa non collaboravano. (…) Qualche cinese arrivava, qualche volta li portavano da Prato da Firenze al CIE, che rimanevano lì e poi non venivano manco mai espulsi perché tanto non collabora la Cina, e questa è famosa questa cosa. (JP2)

The consequence is that Chinese used to undergo long detentions in CIE. Interestingly enough, as we saw, also Chinese mainly are women. And it may be also interesting to notice that the percentage of non-validation for female migrants from China is quite high, being 32.1 % non-validation decisions for total female Chinese detainees in 2011 and 45.5% in 2012. As it emerges form case files, also the category of Chinese women migrants is apparently linked to sex work. When interrogating the motivations why so many Nigerians and Chinese are not validated, it emerges that motivation mainly is the lack of translator for Chinese, and the prohibition on deporting Nigerians, according to article 19 of Italian immigration law (prohibition on deporting migrants to unsafe country of origin).

ACTUAL REMOVALS

From original data collected it is possible to know the length of detention, but not how migrants detained exited Bologna's CIE. In fact, as already shown in chapter 2, not all migrants detained in CIE, but rather roughly half of them are forcefully removed. The others may exit the CIE with an order to leave the country voluntarily (which they generally do not), or because of medical reason, or they even escape (Medici per i diritti umani 2013).

In order to make some clarity on this point, I will use official data from Italian state police, as they are elaborated in a report by *Medici per i Diritti Umani* (2013). The report just refers to 2012, but includes many different pieces of information[94]. In 2012, Bologna's CIE counted 95 beds. Officially the available beds were 95 as well, we know this is not true. The daily cost for migrant was 28.5 euros (the lowest in the Northern Italy, which created inhuman and degrading living conditions and thus protests and even riots). The percentage of psychiatric treatment is

94 I will then confront my data about the composition of population with some other data about Bologna's CIE and Italian CIEs more in general that I found in different reports. Usually these reports are random for one year or the other. I gathered some reports concerning 2012 and one concerning 2011. Allegedly, sometimes I will go deeper with information about 2011 or 2012, but hardly for both years.

one of the highest in Italy: 66% of migrants detained are under psychiatric treatment. Higher than this there was just Milan's CIE, where the percentage of psychiatric treatment was 90%.

According to another report (De Martino et al, 2013), the total pre-removal detentions in Bologna's CIE in 2012 were 508, 308 male and 200 female. The total non-validation decisions were 108, 36 male and 72 female[95]. Furthermore, according to the report, asylum seekers[96] were 27 (6 males and 21 females). Migrants eventually deported were 45.7% of the total detainees: 232 people of which 162 were man and 70 were women. Migrants released after pre-removal detention are relatively few: 21 for the entire 2012, 11 male and 10 female. There are also other ways than removal through which migrants exited the CIE: 43 of them – all males – evaded; 63 (36 males and 27 women) were released for various reason, such as health issues, pregnancy, appellants, and the system of justice more in general. Finally, 14 of them – all males – were apprehended while detained.

From these reports it was possible to know the absolute numbers of removals from Bologna's CIE. However, it was not possible to understand whether migrants from some nationalities were removed more frequently than others. Neither was it possible to understand if gender affect possible removal, and how it does so.

In another report (De Martino et al, 2013) it was possible to collect some information about detainees in Bologna's CIE in 2011. According to the report, in 2011 there were 665 detainees, including: 249 from Tunisia, 91 from Morocco, 90 from Nigeria, 38 from Albania, 21 from China, 21 from Ukraine (other nationalities less than 20). These data do not correspond exactly to the ones I collected; however, being the difference just about 5 units each national group (instead, the difference for Tunisians is 20-odd units), they can be trusted. According to the report, 104 among detainees in Bologna's CIE (15.6%) came from prisons. Executed removals in 2011 were 334 (50.2%): 134 Tunisians, 56 Moroccans, 31 Albanians, 13 Chinese, etc. Only 10 of the 90 Nigerians were expelled. One may advance some considerations based on these data: they confirm that high percentages of detainees from Tunisia, Morocco, and Albania are removed. These are the nationalities who are kept in Bologna's CIE for the shortest period of time (both 2011 and 2012, according to my data). Most of them stay for less than one month,

95 My original data on the number of people who underwent pre-removal detention or who were not validated do not correspond exactly with data on this report. However, one may consider that in the number of non-validation they count together non-validation during validation hearings and possible extensions hearings. And that they already take out the asylum seekers from the count of people under pre-removal detention.

96 Even if it is not clear when one becomes an asylum seeker, if before entering the CIE or also once you entered

and I hypothesized it meant that they were successfully removed. The present data confirm this hypothesis. These data also confirm that Nigerians are hardly removed (according to the report, 10 of the 90 Nigerians were removed), so that Bologna's CIE was working as a prison for Nigerians, mainly women, who were undergoing the longest periods of detention. One may wonder if however Nigerians were not deported because they could be granted international protection. According to the data, this again does not seem the case. In fact, 192 persons asked for international protection in 2011 (of which 89 Tunisians, 51 Nigerians, and 52 other nationalities). However, just 30 people obtained a resident permit for reasons of protection. Among these, 9 are women and 21 men. Considering that Nigerian are almost all women and Tunisians are almost all men (and being 52 people of other nationalities), one may hypothesize that no more than 9 Nigerian had international protection granted. Therefore, of the 90 Nigerians detained in Bologna's CIE in 2011 one should conclude that: 10 were removed, a maximum of 9 were granted international protection, and the remaining 71 underwent long detention periods, as Bologna's CIE was a prison instead of a place to keep people while waiting for removal. The last consideration one may arise looking at the data concerning Chinese. In fact, high percentage of Chinese were removed in 2011: 13 out of 21 total Chinese detained (61.9%). This data oppose the hypothesis I proposed with regard to Chinese people: I have argued that it is likely that CIE may be considered a prison also for Chinese people because, just like Nigerians, they are mainly women and they are kept in CIE for longer periods. Instead, it seems that, differently from other nationalities, Chinese people are removed not in the first month, but little by little in the longer period. However, the percentage of successful removals is high. Moreover, these data also reveal the incorrectness of one informant's witness, who said that it is notorious that Chinese people are never removed. Chinese people are removed, but they spend more time than other nationalities under pre-removal detention before being removed.

THE RHETORIC OF DANGEROUSNESS

At the core of immigration control in Italy, at least in the black letter of the law, there is the will to remove – which many times paradoxically coexisted with huge amnesties. Under the surface, what moves the mechanisms of formal control seems to be the search for “dangerousness”. However, dangerousness is an ambiguous concept. To a random observer, neither sensitive nor careful in judgements, dangerousness may collide with the fact of being irregularly in Italy. In

order to assess dangerousness, in fact, the law refers to the existence of alias, non-valid passport, previous disobeyed removal orders, risk of absconding, etc. (see Chapter 2) These conditions potentially refer to every undocumented migrant. Yet, the law also identifies many conditions that do not allow one migrant to be removed, such as family ties both with Italians or non-nationals. However, throughout the chapter, a more nuanced concept of dangerousness has emerged: undocumented migrants are not dangerous because they are undocumented, but they are undocumented because they are dangerous, because of something they have done.

What is the concept of dangerousness that seems to drive both the police's and judges' decisions? This research outcomes shed light on the criteria of perceived dangerousness which seems to guide police and judges' decisions in undocumented migration control.

The case files' analysis does not provide enough elements to evaluate the correspondence between the practices and the rhetoric informing the practices. In other words, we do not have elements enough to say whether the migrants undergoing validation hearings are actually "criminal migrants" or not. However, these data does provide enough elements to assert that, instead, a "rhetoric of dangerousness" exists, regardless its actual enforcement.

According to the rhetoric of dangerousness, that is: the rhetoric shared by the agencies of control, undocumented migrants whose detention is validated are always those who have committed certain crimes - usually illegal drugs dealing or minor theft – which are considered to deserve punishment in the form of detention in CIE and possible removal, or as a high fine (see chapter five). They are described as 'bad migrants' deserving punishment, because, it is claimed, they *want* to remain undocumented, they want to remain invisible. In fact, by remaining invisible they hide themselves from the agencies of control and can carry on their criminal activities, risking less than Italian offenders. The justices of the peace never consider the possibility that the reason why undocumented migrants commit crimes might be found in the immigration law itself, which through such restrictive rules for taking a residence permit forces migrants into the irregularity and then criminality. But even most importantly, they do not consider the exceptions to this general rule that are easily detected through an analysis of case files, such as the fact that women who would pertain to the category of the care-worker and whose detention is validated anyway, Or even a migrant who may be considered as a perfect labourer, or family member whose detention in CIE is validated anyway.

There are many considerations to make about such a rhetoric of dangerousness. The first one is about the short circuit of the justice of the peace evaluating the dangerousness of an

undocumented migrant in a few minutes, based on evidence uniquely furnished by the police. Or about the presence of some or many aliases on the undocumented migrant is record as hints that he or she wanted to hide himself or herself in order to commit crimes more easily. None of Bologna's JPs doubts that aliases inform a strategy enacted by undocumented migrants to perpetrate a criminal career in the shadow of the law, while, according to migrants interviewed, it should be more frequently considered as a strategy of resistance that they enact in order to carry on with the migratory project (see chapter 6).

By adopting such a rationale as punishing undocumented migrants who committed crimes and rewarding those migrants who do not commit crimes despite being undocumented, the mechanisms of formal control act as a criminal law for undocumented migrants. The justices of the peace interviewed never question that existing criminal law should suffice to punish migrants who commit crimes: no, it seems that a special criminal law to punish and stop undocumented migrants who commit crimes, different from the general criminal law, is needed. A special law of the aliens, indeed (Caputo 2007). Therefore, migrants in Italy undergo a double punishment and double criminal law - one is the criminal law, the other one is administrative law to punish crime committed by undocumented migrants – because they are guilty for a two-fold crime: that of being criminal and that of being migrant (see Sayad, 1999). Bologna's CIE, for the way it was managed and with regards to the people detained there, it was a prison for migrants.

One of the JPs explains that undocumented migrants that Bologna's police used to select for detention were bad migrants for real, migrants that one should be careful with. In fact, there were many riots and beds burnt. One summer, CIE was even closed to men, because they used to seriously damage it during riots. What the JP does not consider here, however, is that the very living conditions of Bologna's CIE – that eventually were one of the most important reasons why the CIE closed – originated the riots.

Yet, the mechanisms of formal control towards undocumented immigration are never clearly introduced as such, that is, as criminal law for migrants. They are claimed to be mechanisms driven by administrative law for removing undocumented migrants.

If CIE is a prison for undocumented migrants, it is however a prison with lower guarantees for detainees - or even no guarantees-, faster trials and a weaker right to defense. One may claim that CIE is a tool at disposal of the police deciding who enters and for how long he or she stays. Many researches have detected that undocumented migrants consider detention in prison more

"comfortable" than detention in CIE (see Sbraccia, 2007 among others). Some casual chat I had with a police officer few years ago confirms this. The officer stated that detention in CIE had to be bad, so that migrants would "confess" their nationality and would assume a collaborative attitude towards deportation procedure if that could help to exit that horrible detention._

What purpose does punishment pursue? Who needs it? Durkheim used to say that punishment is for honest men, to establish the common boundaries of shared morality (Durkheim, 1893). Is such punishment needed from honest migrants in order to define the boundaries of a shared morality? And is it at the same time needed to punish those who commit crimes? Or those who disobey authority? For sure, CIE is a piece of the puzzle in the mechanism of control, and it contributes to define the rules that informally allow the majority of undocumented migrants to remain in the territory. Based on results of research, these rules differ depending on degrees of dangerousness that are primarily derived from the nationality and gender of migrants.

The CIE, together with the police and the justices of the peace, work as a filter in the management of undocumented migrants. During the 4 days of detention before the validation hearings, during the validation hearings themselves, in the possible detention, removal, or dismissal in a legal limbo, which we might define as "liminal legality" (Menjivar, 2006). In fact, Cecilia Menjivar uses the term of liminal legality to express the temporariness of the migrants' condition of being undocumented, but that for some undocumented migrants extend indefinitely, to such a point that it has become their legal position. She says:

"This liminal legality is characterized by its ambiguity, as it is neither an undocumented status nor a documented one, but may have the characteristics of both. Importantly a situation of "liminal legality" is neither unidirectional nor a linear process, or even a phase from undocumented to documented status, for those who find themselves in it can return to an undocumented status when their temporary status end" (Menjivar, 2006: 1008).

The "liminal legality" is the condition of a migrant who can be legal and suddenly turn to be illegal, or being legal but irregular worker, or being illegal but tolerated, etc. Internal borders are differently performed to create the subject who will remain.

CHAPTER FIVE

CRIMES OF MOBILITY

This chapter investigates the role of criminal law in mechanisms of formal control over undocumented immigration in Italy.

Italian immigration law includes some criminal norms aimed at criminalizing specific violations of administrative laws regulating immigration. Using both administrative law and criminal law in the management of immigration flows is not peculiar to Italian mechanisms of control. It also characterizes immigration laws in other countries (see among others Aliverti, 2013 for UK; Stumpf, 2006 for US; Aas, 2014 for Norway; Caputo, 2006 for Italy). What is interesting about using criminal law in immigration issues is that the legislator decides to criminalize specific behaviors that only undocumented migrants may enact.

The empirical research presented in this chapter is centered on how the police and the justices of the peace actually enforce violation of an order to leave (article 14 para. 5 *ter* and *quater* of immigration law) and the crime of illegal entry and stay (article 10 *bis*) in the city of Bologna,

The role that criminal law plays in the management of immigration in Italy is ambiguous and not very clear. Both the crime of disobeying an order to leave and, especially, the more recent crime of illegal entry and stay, were introduced to harshly punish undocumented migrants not complying with the law. In fact, disobeying to a removal order was punished with compulsory arrest and detention in prison, while illegal entry and stay was punished with removal. Even if these crimes are now punished with "just" high fines[97], they were introduced to harshly criminalize mobility per se. They are "crimes of mobility" (Aliverti, 2013) aimed at "making the people illegal" (Dauvergne, 2008). However, looking at their implementation, one gets a sense that crimes of mobility in Italy are more afflictive in words than in practice, especially because they eventually result in high fines that convicted migrants will never pay. Therefore, what is the aim of inserting such crimes in the Italian immigration law if they do not really serve to increase the possibility of actually removing undocumented migrants? I will inquiry to what

97 Punishment for such crimes was modified as a consequence of pronunciations of Italian Constitutional court with regards to 10 *bis* and the European Court in the El Dridi pronouncement with regard to art. 14 para. 5. See chapter 2 for deeper analysis.

extent prosecution of such crimes is still important for the processes through which internal borders are performed and undocumented migrants living in Italy possibly disciplined. One hypothesis that I will explore is that such crimes are mainly needed by the police for the purpose of territory control. In order to verify this hypothesis, I will analyze which migrants are stopped by the police at patrol and charged with the crimes of illegal entry and stay or disobeying an order to leave, in Bologna. Especially, I will collect data on their encounters with the police, their crime records, possible alias, and possible previous orders to leave.

The administrative sphere and the criminal sphere of immigration control indeed communicate with each other. And they communicate also in some unexpected and not immediately obvious ways. One of the informants, in fact, explained that, by looking at the characteristics of migrants who are caught in the penal mechanisms of immigration control, it is possible to understand the nature of undocumented immigration in general. This means that, through the experience of which migrants are taken to criminal trial, the justices of the peace get a sense of undocumented migrants and elaborate an idea of their supposed nature. The JPs will base their decisions on such opinion – which was formed in the context of criminal trials - also when they have to make decisions during validation hearings.

This chapter is divided in five paragraphs. The first paragraph presents the legal norms regulating formal mechanisms of control over undocumented immigration through the criminal law. It clarifies what are the behaviors punished by the law and what is the room for discretion of justices of the peace to acquit undocumented migrants selected by the police. The second paragraph builds on the analysis of a small sample of case files (January-February 2013), the ethnography during trials on crimes of mobility, and in depth interviews with the justices of the peace of Bologna. It first describes trials and questions the actual aim of such crimes. Then it focuses on the influence between police and the justices of the peace and it proposes that immigration crimes are useful to the police as useful tools during territory control in order to manage undocumented migrants rather than for actual removal. The third paragraph shows how these norms are enforced. It shows who are the migrants stopped by the Bologna police, by paying attention both to the discourses of JPs and then to the practices. The analysis of case files is intended to test the rhetoric displayed by the informant during interviews. The fourth paragraph proposes a special focus on women migrants and police during territory control. In fact, through the police selection and the JP's decisions, both during trials and validation hearings, undocumented women migrants are distinguished into two categories: care-workers

and sex workers. The mechanisms of producing these two categories and of attributing one woman to one category or the other is also the mechanisms through which internal borders are produced, performed, and collocated in one place or another: albeit undocumented, the woman will be allowed to cross the border if she is categorized as care-worker, while she will be prevented to cross it if categorized as sex-worker. Focusing on the mechanisms through which women migrants are policed in Bologna will possibly focus on the mechanisms through which the justices of the peace and the police produce internal borders that crisscross the population of undocumented migrants living in Italy, excluding some of them and including others. The fifth and last paragraph present the conclusions.

THE LAW THAT CRIMINALIZES MOBILITY

According to article 14, para. 5 *ter* of immigration law, any undocumented migrant who were ordered to leave autonomously in seven days and, without due cause, disobeyed the removal order by remaining in Italy, commits a crime punishable by a fine between 6,000 and 15,000 euros. Article 14, para. 5 *quater* establishes that the punishment for violation of a second order to leave is an even higher fine, between 15,000 and 30,000 euros. Undocumented migrants undergo trials before the justice of the peace roughly three months after apprehension, following a simplified and faster procedure.

According to article 14 para. 5 ter, the JPs acquit those undocumented migrants who have due reason for disobeying an order to leave, and "due reason" is a very broad concept that potentially open to the possibility of acquitting many undocumented migrants charged with the crime. The Italian Constitutional Court, in the pronunciation no.5 of 2004, established that all reasons preventing deportation also represent a due reasons for undocumented migrants to disobey a removal order[98]. Among the others, also an absolute lack of economic resources should be considered. However, as we will see, it is not very frequent that a JP decides to acquit an undocumented migrant, especially for luck of economic resources...

98 "I motivi che a mente dell'art. 14 co. 1 legittimano la P.A. a non procedere all'accompagnamento coattivo alla frontiera non possono non costituire sicuri indici di riconoscimento delle situazioni nelle quali può ravvisarsi, per lo straniero, la sussistenza di giustificati motivi per non ottemperare all'ordine del questore. E ciò in specie (ad impossibilia nemo tenetur) quando l'inadempienza dipenda dalla assoluta impossidenza dello straniero che non gli consenta nel termine di recarsi alla frontiera" (in Savio, 2012: 156).

Article 10 *bis* was introduced in the immigration law by the 2009 "security package". It establishes that any migrant who enters and stays in Italy illegally, or otherwise in violation of any provisions of immigration law, is committing a crime punished by a fine of between 5,000 and 10,000 euros. Article 10 *bis* does not apply to people who cannot be deported - for example, migrants who are protected against deportation under the scope of article 19 of immigration law.

When the justices of the peace decide to acquit one undocumented migrant responsible for the crime of illegal entry and stay (10 *bis*), the JPs apply article 34 of legislative Decree no. 274 of 2000 about the minor nature of the offence (t*enuità del fatto*). Article 34, in fact, establishes that the justice of the peace may not punish the offender if the nature of the offence is minor99. In rare cases, JPs apply article 34 also to acquit undocumented migrants charged for the crime of violating a removal order.

In the case of Bologna, the indications of the Constitutional Court have turned into the question often asked at the beginning of trials: "does *this* have criminal records?" In fact, one of the justices of the peace explains that when there are no criminal records, JPs in Bologna have agreed in applying article 34.

> *Il giudice mi spiega che non assegna la sanzione penale quando l'individuo non è pericoloso (non ha precedenti penali), e in quel caso applica l'art. 34 per particolare tenuità del fatto, e si viene assolti. Quando il migrante non è pericoloso non si attua la sanzione penale altrimenti si cadrebbe nell'istituto del diritto penale amministrato. Invece quando l'irregolarità viene usata come schermo per sfuggire al controllo delle autorità, allora in quel caso scatta la sanzione penale*. (Informal chat with JP3JP3, from ethnographic diary)

According to the justice of the peace of Bologna, criminal records are hints for dangerousness of undocumented migrants that as such justify their punishment. In other words, it is not the illegality, but rather the dangerousness of undocumented migrants to be on trial.

99 It was the Italian Constitutional Court, through pronunciation no. 250 of 2010, that suggested applying article 34 to soften the severity of article 10 *bis* when "*esiguità dell'offesa all'interesse tutelato, dell'occasionalità della violazione, del ridotto grado di colpevolezza e del pregiudizio recato alle esigenze di lavoro, di studio e di famiglia dell'imputato*" (see Savio, 2012: 86 ss.)

Crimes of mobility apparently do not add anything to administrative removal: they do not fasten nor simplify the procedures. Before the *El Dridi* sentence in 2011, violation of removal order was followed by compulsory apprehension, immediate trial, and it was punished with between one and four years detention in prison. It is clear that such crime was meant to criminalize undocumented migrants, and deter them from entering. Now it is punished with a fine and despite softer punishment, such crime is still present in Italian immigration law. Its rationale is not very clear anymore. Article 10 *bis* was introduced in Italian immigration law to take advantage of article 2 of Return Directive (115/2008/CEE) and thus overcome the limits to deportation established by the Directive. In fact, article 2 establishes that member states may execute removal beyond legal guarantees if the returnee is being removed as a consequence of crime. By introducing removal as a consequence of crime – the illegal entry and stay, indeed – the Italian government was looking for a strategy to execute expulsion outside of the scope of the Directive (see Chapter 2). However, the fine is rarely substituted for removal in Italy, nor was it in Bologna during period my ethnography or in case files. If it is clear why such crimes were introduced, it is less clear why they are still there. A first explanation may be the symbolic impact of such norms on public opinion. As someone[100] said, the important element with regards to crimes of mobility in Italian immigration law seems to be that the word "crime" is there. In fact, transforming an administrative violation such as being in Italy in breach of conditions from violation of administrative law into a proper crime gives to public opinion the perception that undocumented migrants are dangerous as such. In other words, via immigration crimes, the undocumented migrant becomes dangerous per se. This is not surprising: since the early 1990s, discourse on a supposed link between crime and illegality with regards to undocumented migrants has had a major role in Italian immigration control regime.

A few times, during trials, the justices of the peace declared that some among the undocumented migrants indicted are not dangerous and thus acquitted them because not deserving punishment. Can it be said that migrants charged with one of the crimes of mobility and acquitted for that are informally allowed to cross the borders, similarly to when undocumented migrants' detention in CIE is not validated? As shown in chapter four, the fact that one undocumented migrant is informally allowed to cross internal borders does not mean that his or her legal status is automatically regularized: neither acquitted migrants nor non-validated ones will see their legal status regularized. In other words, being allowed to cross internal border for an

100 From a conversation with Guido Savio.

undocumented migrant in Italy means that he or she is informally allowed to remain even lacking residence permit. It means, for that undocumented migrant, to live in a limbo of legal non-existence: neither inside nor outside, nor legal but accepted.

AN ETHNOGRAPHY OF CRIMES OF MOBILITY

When the police arrest an undocumented migrant living irregularly in Italy, the *prefetto* will issue a removal decree and the *questore* will adopt it. However, at the same time, the undocumented migrant will also be charged with the crime of illegal entry and stay - if he or she is arrested for the first time - or of disobeying a removal order. In other words, according to the law, two procedures should contemporary start at the moment of apprehension: one is regulated by administrative law, and it leads to a possible administrative removal (chapter 4). The other one is regulated by criminal law, and it punishes the undocumented migrant through fine or criminal expulsion - additional to administrative removal. Administrative procedures start immediately after apprehension and they may result in order to leave in 7 days, voluntary return, detention in CIE, or immediate removal. Rather, trials for the crimes of mobility[101] will start about three months after apprehension: in the time between apprehension and trial, the migrant indicted may be free with pending a removal decree, detained in CIE, or already removed via administrative expulsion. If the migrant will have been already removed through administrative procedures, the trial does not take place.

Observation during trials has been crucial for getting a sense of paradoxes embedded in mechanisms of formal control over undocumented immigration in Bologna, as well as in Italy. In fact, it is not really clear what is the aim of these trials. This is the first extract from my ethnographic diary:

> *December 4th, 2013*
>
> *Il luogo in cui si tengono i processi è una stanza piuttosto spoglia e non molto ampia, munita di grandi finestre, pareti bianche e un unico grosso cartello di legno scuro che, appeso alla*

101 The trials are regulated under articles 20, 20 bis and 32 of Legislative Decree no. 274 of 2000.

parete alle spalle del giudice, riporta la scritta "la legge è uguale per tutti". Entrando, sulla sinistra sono sistemate tre file di sedie disponibili per avvocati, testimoni, e chiunque desideri fermarsi a seguire le udienze - che infatti sono pubbliche. Dall'altro lato sulla destra di fronte alle tre file di sedie si trova il tribunale, separato dal resto da una ringhiera di legno. Al suo interno su di un piano rialzato il tavolo del giudice, al quale siedono giudice e segretario. Di fronte al giudice il tavolo degli imputati, al quale trovano posto avvocato e pubblico ministero. Quando per la prima volta entro nella stanza in cui parecchie altre volte entrerò nel corso dei mesi successivi, le sedie sono tutte vuote e l'udienza sembra già iniziata da qualche decina di minuti. Mi sorprende che nessuno degli imputati (i migranti irregolari) sia presente in aula e mi chiedo se ce ne fossero prima che io arrivassi. Capirò presto nel corso delle osservazioni successive che gli imputati sono tutti processati in contumacia e nessuno è mai presente al proprio processo salvo che non sia un detenuto in carcere scortato dalla polizia (cosa che comunque non accade particolarmente di frequente: quattro o cinque volte nel corso dell'osservazione).

In aula ci siamo solo io, il giudice, il procuratore e l'avvocato. Quest'ultimo è un avvocato d'ufficio che ha accettato di occuparsi di tutti i casi che dovranno essere trattati nella giornata odierna – una decina - poiché nessuno degli altri avvocati cui erano stati affidati d'ufficio si è presentato. Ogni processo dura una manciata di minuti. Il giudice legge ad alta voce il nome dell'imputato e l'imputazione a suo carico, ne chiede conferma al procuratore e apre la fase istruttoria in cui dovrebbero venire raccolte prove di colpevolezza. Di solito niente viene aggiunto alla documentazione già contenuta nel fascicolo. Finita la fase istruttoria, il procuratore formula la sua accusa e l'entità della multa o ammenda. L'avvocato, interpellato, si limita ogni volta a chiedere le attenuanti generiche e il minimo della pena. Il che significa letteralmente che l'avvocato si alza in piedi, pronuncia le parole "chiedo il minimo della pena e le attenuanti generiche", e si siede. Questa è l'unica difesa cui il migrante (comunque non presente in aula) avrà accesso. Il giudice condanna al minimo della pena con le attenuanti generiche e il pagamento delle spese processuali, a volte ricorre ad una formula più severa. Tutto è molto veloce. Tutto già da quella prima volta sembra essere parte di una routine che poi rivedrò parecchie volte nel corso delle mie osservazioni – senza togliere i casi di avvocati e difese appassionate che pure di volta in volta faranno la loro apparizione nei mesi successivi. Nei circa venti minuti di osservazione, un imputato viene condannato al pagamento di una multa di 15mila euro, un altro di 7mila, altri due al pagamento di una multa di 10mila euro a testa. Alla fine dell'osservazione mi avvicino al giudice di pace e mi presento. Il giudice mi confessa che i processi sono tanto veloci che a volte fa fatica a far durare l'intera seduta almeno un'ora.

Some elements are worth to be noticed: indicted undocumented migrants are never present during trials. One justice of the peace, in fact, explains that it is very unusual for a migrant to attend trial. Undocumented migrants attend trials uniquely when it is a sure thing that he or she will be not convicted: this is the case when there was a big mistake in the charge apprehension and trial, or the migrant is married to an Italian citizen or permanent resident, or he regularized his/her legal status in the meantime. Also personally hired lawyers suggest to their clients not to attend trials, because showing up before the JP is actually useless if not even dangerous. Trials generally last few minutes; they are so fast that sometimes the Justice of the peace is not able to make the entire session to last one hour! Defenses are not very effective: lawyers often use ritual formula and present similar and general arguments – often even outdated in the jurisprudence, another JP explains. Defendants use recurring arguments seeking to nullify removal decrees, such as lack of translation, formal mistakes, or wrong information in the removal decrees - arguments similar to those in validation hearings. When a lawyer is personally hired personally hired lawyer, defense strategy is likely to be stronger because a personally hired lawyer is in touch with the indicted migrant and can ask to provide documents testifying that the migrant has family, economic, or personal situations that do not allow deportation. Yet, in many cases, as informants explain, defendants are court-appointed layers not in touch with the indicted migrants. They are informed of trial because it was notified to their office. In fact, when the arrested migrants are asked for an address where to send communication, migrants always give the address of the lawyer's office. But then they make themselves even unreachable by the lawyer. For this very reason, undocumented migrants do not receive any communication about trial and even hardly know they are on trial.

Given that, the evidence taken into account during trials is solely that produced by the police. Sometimes, lawyers ask the JP that the police officer who arrested the migrant is heard as a witness, in order to collect additional evidence that may possibly prove the migrant's innocence. However, this strategy is hardly successful: at least three months pass between apprehension and police witnessing during trial, which means that the police officers do not remember with sufficient clarity all details of arrest. When witnessing during trials, therefore, police officers just read loud before the JP the crime report already contained in the file, the same that they themselves had written few months before. This adds nothing to the evidence already collected. Eventually, justices of the peace decisions' rely only on the

evidences produced by the police. Responsibility for what might be called the low quality of defense is not to be based uniquely on the lawyers (some very passionate and thoughtful defenses emerged both during observation and in case files). Responsibility for low level defense is mainly to be found in the whole mechanisms.

At the end of the day, even if the final decision is formally made by the justice of the peace, it could be said to have been made by the police, because the police is the only agent to provide information about the migrant stopped and to give an opinion about his or her dangerousness. As we will see, in trials for crimes of mobility, the rationales of justices of the peace to convict or acquit seem to reproduce the rationales of the police. One final remark is that judges usually convict indicted migrants to paying fines of thousands euros that nobody will ever pay.

Furthermore, especially with regards to crime of illegal entry and stay, fewer and fewer undocumented migrants are charged with it. And those who are charged are however acquitted in the majority of cases. Researchers explained such decreasing trend with the fact that fewer undocumented migrants are present in Italy (see i.e. Colombo, 2012). However, some JPs have guessed that such data may exhibit that police are simply stopping fewer migrants:

> Q: Di 10 *bis* all'inizio ce ne erano molti di più ed erano condanne, quasi tutte condanne; pochissime assoluzioni. Adesso la situazione sembra cambiata'...
>
> Ma perché la polizia ha smesso di controllarli! Cioè, noi abbiamo l'idea che se non arrivano i 10 bis è perché la polizia ha smesso di controllarli, perché la polizia sa benissimo quando chiede i documenti... penso che lo immagina una persona in che stato è, quindi il fatto che non arrivano notizie di reato è il fatto che non li controllano... io, io non me lo spiegherei diversamente. (JP1)

> Secondo me, ma è una mia opinione personalissima, probabilmente ci sono delle ondate di controlli più o meno intense, adesso siamo in una fase di controlli meno intensi per questo tipo di reato. (…) In questo momento storico in cui non ci sono [10 *bis*], sul clandestino non si lavora quasi ormai più: che lo penalizzino o lo depenalizzino è un problema irrisorio perché non c'è proprio il controllo. Si lavora sul 14 co. 5, ma perché? Perché lì vengono fuori persone che sono fermate mentre stanno facendo un furto, stanno facendo una rapina, li beccano

> mentre buttano via il sacchettino con dentro la droga. E allora gli fanno I controlli. Fermati in sede di altro reato, li controllano e viene fuori che sono stati ripetutamente espulsi e che quindi nasce la notizia di reato relativa all'omesso... (JP2)

One important element emerges from the two extracts: migrants are not even stopped. According to the JP, undocumented migrants who are charged with these crimes are migrants who were committing crimes. They are migrants who were stopped for some other reasons, and then it turned out that they also were irregularly present in Italy, and so they were charged with either crime. What seems to drive police' decisions to select undocumented migrants are very different rationales from expelling undocumented migrants. The justices of the peace firmly believe that the police act against crime, not against unauthorized presence of undocumented migrants in the territory. Police do not enforce borders against all undocumented migrants, but just some undocumented migrants.

Also, one of the JP just mentioned one very interesting element, which also possibly explains why at the moment of conducting interviews and doing ethnography undocumented migrants present in Italy were not prosecuted with the crime of illegal entry and stay (10 *bis*):

> *Adesso non arrivano più i clandestini, arrivano i profughi. Arrivati i profughi non fanno più controlli perché altrimenti diventano tutti clandestini... (JP1)*

Here the JP explains that undocumented migrants arriving now in Italy are not any more labeled as "clandestine", as it used to be, but they are now labeled as "refugees". When I was collecting data through ethnography and in-depth interviews with JPs, what then has been called "refugees crisis" had just started. Given the arrival of many migrants, especially from Syria, the JP explains that police do not control them anymore because, if they do so, they would transform refugees into clandestine again, whom Italy should then take care of. The JP here, between the lines, says that police probably are enacting a strategy not to indict undocumented migrants, because the police prefer that newcomers pass through Italy to reach other countries. Instead, if the police stopped them and asked them about their documents, the undocumented migrants would have to remain in Italy due to the Dublin

agreement. This is very peculiar of immigration control mechanisms in Italy (and Southern Europe countries): informality.

It could be problematic for an undocumented migrant to be charged with such crimes, especially the crime of having disobeyed a removal order. In fact, it may become problematic when the migrant will try to regularize his or her legal status in Italy or elsewhere in Europe, or even because accumulation of disobeyed invitations to leave will make it more likely for the undocumented migrant to be detained in CIE. In other words, these kinds of measures are less afflictive than detention, but they still take part in the mechanism of control of undocumented migration, both for the indirect consequences of such measures and because they involve higher number of migrants in comparison to migrants undergoing pre-removal detention.

Given that these trials do not bring to detention in CIE and nobody pays the fines, how do the crimes of mobility and thus these trials contribute to the mechanisms of control over undocumented immigration? Crimes of mobility carry with them hints of perceived dangerousness. This is particularly true with regards to undocumented migrants charged with violation of order to leave rather than migrants charged with the crime of illegal entry and stay: justices of the peace believe that all undocumented migrants violating orders to leave are drug dealers, while the few women are sex workers. Therefore, if it is true that a specific search for dangerousness is operated through these crimes: it is true in the black law and in the discourses of the justices of the peace, but it is less true if one looks at the actual results. I will explore the fact that, most of all, crimes of mobility are a powerful means that police may use during territory control activity in order to control people, move them from one place to another, and reassure inhabitants calling police to intervene.

During an informal chat, one of the justices of the peace told me that the usefulness of these processes is not to be found in the courts but in the streets, because these legal norms enable police officers to stop and arrest undocumented migrants during territory control activity. Here the extract from ethnographic diary:

> *Il giudice mi dice "In fin dei conti per questo tipo di reati di cui ci occupiamo noi, non è la nostra sentenza che conta, non è l'ammenda che importa, perché, sì, dai una multa, ma tanto non serve a niente: gli imputati non ci sono, sono sempre contumaci, nemmeno lo sanno.*

Quello che serve in questi casi è l'intervento della polizia, è il fatto che la polizia intervenga e li sposti, sia per prostituzione che per uomini indigenti."

In this extract, the JP explains that trials in courts are useless, they operate just as a corollary to the principal activity, which is police patrolling the territory and having the possibility to intervene and eventually move undocumented migrants, especially sex workers (women migrants) and poor people (male migrants). Especially, when they are a disturbance to inhabitants (i.e. Italian citizens). Since crimes of mobility pertains the criminal law sphere they give the citizen the right to call the police, and she thinks this is very useful. In fact, violation of administrative law does not give one the same right to call the police. She explains that trials just make sense as a tool in the hands of the police to intervene during territory control activity. In other words, crimes of mobility would be nothing more than an easy-to-use tool for police patrolling the territory (cf. Aas, 2014, with regards to administrative procedures in managing criminal activities in Norway) against these that after all are "tutta gente con blocchi di alias e notizie di reato grossi così" (JP2). Coordination between the police and JPs represents an important topic to deal with when analyzing the role of crimes of mobility in the mechanisms of immigration control.

I noticed a certain degree of coordination between the justices of the peace and police during trials for immigration crimes more than validation hearings: the Justices of the peace convict the undocumented migrants charged by the police, meaning that they agree with the police most of the times. There are three possible explanations for this. First, JPs share with the police the same evaluation of dangerousness of undocumented immigration, thus the undocumented migrants that police select are those that JPs convict. Second, justices of the peace do not really check on the legality of police decisions but just reinforce police evaluation, and almost always convict those undocumented migrants the police have selected. Three, in pre-selecting undocumented migrants, police also take into account the possibility that the justice of the peace will convict or not the undocumented migrant that they have charged; therefore, police present just those undocumented migrants that they know JPs will convict. To a certain extent, all three explanations may be valid.

During ethnography, I got a sense that police officers are interested in knowing whether the migrants they arrested and charged will be convicted or not, and also informants agree on that. For example, when the police officers heard as witnesses during trials are city police

officers, usually they wait until decision is made and take notes on that. One justice of the peace says that they are just curious, maybe because this is something not very common for them (in fact, city police officers select undocumented migrants less frequently than other forces); or also because sometimes they come from small villages around Bologna and trials are something new for them. I offer another explanation: they want to know if their work was valued or not. They care about the fact that their work was not a waste of time and that justices of the peace acknowledge the importance, legality and maybe necessity of their decisions to charge. This is coherent with results of a previous research I conducted in Bologna about city police enforcing ID checks (Fabini, 2012). From interviews, there emerged that police officers were frustrated when one judge was not validating detention of arrested undocumented migrant or did not convict a migrant charged with either crimes of mobility. They say that "filling all those forms" required resources in terms of energy, people involved in the procedures, and time. According to them, the judge not validating their decision would equate to loss of resources that they might have employed differently.

Instead, I noticed that when officers of state police and the army are listened as witness, they usually do not stay until the end of trial. One informant explains that this does not mean that they are not interested in acknowledging results of trial; rather, they are sure that the undocumented migrant will be convicted.

This behavior suggests a sort of indirect influence between justices of the peace and police practices, that same influence that Bittner talked about and invited researchers to investigate (Bittner, 1970). At the end of the seven-month period of observation, I asked informants if they were aware of a sort of coordination between JPs and the police in Bologna:

Allora, non è che si deve collaborare, perché voglio dire: la funzione del giudicante è quella di giudicare le carte che ti danno, quindi non è che posso andare a dire guarda che io ti giudicherei in un modo se tu mi dessi la qual carta. Non esiste. Se l'ufficio è attento visto che in fin dei conti noi siamo sezioni piccoline si può arrivare a quello che vede, che è la nostra giurisprudenza, in questo senso. E penso che nella questura di Bologna ci siano dei funzionari un po' attenti anche su quello che decidiamo anche come quelli in procura. (JP2)

The JP says that an influence probably exists, which one cannot absolutely call coordination, because justices of the peace do their job and there is no room to directly say to the police

what cases they are supposed to present in order to have them validated or convicted. However, given that the office of Bologna's JP is a small one, it is not very difficult for the police to understand what the justices of the peace's orientation is, their "jurisprudence". She finally adds that both the police departments and the public prosecutor's office pay attention to Bologna's JP's jurisprudence and try to follow it.

Another justice of the peace claims that there is no collaboration between the police and the justices of the peace; however, when I said that in a previous research I had noticed that police officers used to describe themselves as discouraged when judges did not agree with their evaluation, she admitted that police officers "suffer a lot" when the JP does not validate their decision:

> Lo so, questo [il fatto di essere frustrati] è un atteggiamento che hanno tutte le forze della polizia. Però bisogna essere un po' attenti perché poi anche loro a volte fanno degli errori. E allora davanti a un errore formale oppure concettuale dell'atto finisce che non puoi convalidare.
>
> D: Questo la polizia municipale?
>
> R: No, anche la polizia di stato. Spesso quando vengono a testimoniare restano perché sono curiosi di vedere come finisce (…) No no loro soffrono molto di non vedere convalidato il loro arresto... (…) Però, ecco, una collaborazione vera e propria non c'è.

She says that the police should pay attention to the procedures, because even the police sometimes make mistakes, and when they make mistakes the JP cannot validate. It is interesting enough that the justice of the peace says that the JP "cannot" validate instead of "should not" validate before a mistake of police. This choice of terminology, indeed, suggests that even if she would like to validate she cannot do so if there is a mistake.

The following extract also reveals that the frustration of the police at not seeing convicted undocumented migrants is a well-known fact. In fact, when during interview with the JP I randomly suggested that police officers probably will be frustrated if justices of the peace do not convict indicted migrants, because the police will feel that they lost their time, the informant gets annoyed, almost angry. She replied:

Allora, io non condivido questa impostazione nella maniera più assoluta! Non la condivido perché: tu hai perso tempo?? Tu non hai perso tempo! Tu hai fatto il tuo lavoro. Il tuo lavoro ti impone di fare queste cose, punto. La tua valutazione si ferma lì! Cioè, non bisogna fare... Allora, o facciamo i forcaioli solo perché indossi una divisa - e così non può essere ovviamente - oppure hai fatto il tuo lavoro, punto. Io non ho mai tollerato quando si dice, e questi sono dalla parte degli avvocati, quando si dice che hanno trovato un cavillo per far passare il processo: è una parola che detesto già di per sé, e applicata al diritto ancora di più. Cioè, le regole vanno rispettate: allora, anche una questione formale, se dev'essere rispettata, dev'essere rispettata: non è un cavillo. Se tu non hai notificato all'imputato nel modo giusto non è un cavillo! E' la legge che ti dice che devo far così. (…) Non so, le leggi ci sono, i giudici sbagliano, ma un agente di PG (polizia giudiziaria) fa il suo lavoro. La frustrazione può essere, come dire, se sei stato a fare un'indagine per sei anni e poi, come dire, perché il cancelliere non ha mandato il fax il mattino è uscito di galera... ecco, ma non su queste cose!

In this extract the JP explains that police officers should not be frustrated if she does not convict someone they charged: police did not lose their time. Stopping people is their job, but the JPs' job is to check on the legality of police's decisions – even if controlling on police's work does not look like a very efficient strategy, at least in immigration crimes. The JP also interestingly says that she hates when the word "loopholes" is used by the police or prosecutor with regard to the strategy of one defendant who won the trial. She says that it is not a loophole that made her decision, but it is the law that establishes the rules, and they (both police and judges) have to comply with those rules. However, the way she is annoyed in expressing her not appreciation of such attitude makes us understand that such an attitude exists and it is widespread: police complain if JP do not agree with their decisions, and will try to maximize the possibility the undocumented migrants they stop and charge will be actually convicted. In one sense, thus, police try to operate in accordance with what the evaluations of JPs are. At the same time, the evaluation of JPs rests on the cases that police themselves present: JPs shape their ideas about migration based on their practical experience of migration, and their experience is informed by pre-selection already operated by the police. In this manner, the evaluation of police and justices of the peace tend to converge.

This paragraph, building on ethnography and in depth interviews, it pinpoints two main observations. First, trials are generally ineffective: at the end of the day, they do not facilitate the procedures to remove undocumented migrants. Second, it explores the hypothesis that

these trials are important in order to allow the police to carry out control on the territory. Furthermore, trials for crimes of mobility turn out to be a crucial site where to shape the concept of dangerousness that will then reverberate in validation hearings, when JPs have to make decision about the dangerousness of an undocumented migrant, as well as during territory control activity, when the police need to select *some* of the undocumented migrants they encounter when patrolling. This second observation also suggests the existence of some kind of coordination, or rather influence, between the police and justices of the peace at the local level.

INTERVIEWING THE JUSTICES OF THE PEACE

Who are the undocumented migrants charged with the crimes of mobility? Or differently said, who are the undocumented migrants living in Italy that risk undergoing the mechanisms of formal control, and why? I will first answer this question based on interviews with the JP, and then I will look at my sample of undocumented migrants stopped in Bologna in January-February 2013 in order to verify information from informants.

As already mentioned, when JPs acquit, they do so on the grounds of due reason for the art. 14 para 5, or minor nature of crime for article 10 *bis*.

In order to decide whether to convict or not the migrant indicted, the justice of the peace looks at the migrant's penal records, circumstances of stop, living conditions and discretionarily evaluate his or her dangerousness.

> *La pericolosità delle persone la rilevano dalle testimonianze del teste (la Polizia giudiziaria) che rilevano dove l'imputato si trovava, ovvero in che circostanza era stato fermato, se ci sono procedimenti penali, ecc.* (JP2)

For example, the circumstance of encounter, according to the following witness, is always a crime scene. And this may be revealed just from the notice of crime offered by police and already contained in the folder:

> Allora nella notizia di reato c'è l'informazione del perché questa persona sia stata fermata. Allora, raramente vengono fermati durante ordinari controlli. Di solito la gente viene fermata perché la polizia è stata chiamata al centro commerciale perché in atto un tentativo… , oppure la maggior parte sono nel centro storico di Bologna o altre zone del centro. Zone in cui è dedito un certo tipo di delinquenza di spaccio, ecco: Io poliziotto notavo un atteggiamento così poco adamantino, un atteggiamento un po' strano; il poliziotto lo osservava e allora questo si mette a correre e butta via un sacchettino, il poliziotto lo rincorre un altro poliziotto prende il sacchettino e scopre che dentro c'è la droga. Questo è un fatto ricorrente. Viene esaminata e dopo il soggetto viene processato da un lato per lo stupefacente, dall'altro viene denunciato a piede libero per noi. (JP2)

The JP explains that undocumented migrants stopped by the police and then charged with these crimes are rarely stopped during ordinary checks, they are always stopped for some reasons other than their illegal status: usually police is called to intervene, often at the mall for theft. Another typical situation is the migrant who is stopped in some sites in the city (the city center, for example) where drug dealing occurs. The JP explains that migrants are stopped because the police have noticed some suspicious behavior, and then migrants run and they throw a little package with drug: the undocumented migrant will undergo trial before ordinary judge for the drugs and before the justice of the peace because police also discovered he was illegally present in Italy.

It is however important to notice that the JP here describes the situation where the documented migrant stopped was actually indicted for the crime of dealing illegal drugs - he throws a package full of illegal drugs - and so he was charged with the crime of dealing illegal drug *and* disobeying a removal order. However, there is also the case, far more frequent based on case files analysis, when the police just suspect that the migrant is a drug dealer but they do not have any evidence to prove it, and they charge the migrant with article 10 *bis* or article 14 para. 5 *ter* or *quarter*. This is the case, for example, when the police encountered the migrant in a place known for drug dealing, or the migrant was acting suspiciously, or he was talking with well-known drug dealers. All these circumstance are hints for the police to suspect the undocumented migrant to be a drug dealer, but they do not have enough evidence to charge the migrant with such crime, or they just prefer not to spend their time on doing such an investigation. In cases alike, police have the possibility to charge the perceived dangerous undocumented migrant with one of the crimes of

mobility. Such result is also coherent with results of a previous research I conducted on ID checks by the city police of Bologna (Fabini, 2012): results revealed that undocumented migrants were more likely to be stopped if suspected of being drug dealers. However, they were suspected to be drug dealers as a consequence of the place where they were encountered, their nationality and their age. They were more likely to be stopped for an ID check also if they did not comply with police authority, or if they were taking for example part in some brawl, or if they did not pay the ticket on bus or the train. Italian police are not the only police to act in this manner: research shows that also police in Norway (Aas, 2014), or in UK (Weber and Pickering, 2011) use immigration law and removal procedure to deal with some other crimes without the obligation of investigation. The difference with crimes of mobility in Italy is, perhaps, that they do not lead to removal. At least, not directly.

When one undocumented migrant is stopped without any evidence of any other committed crimes, an useful element for the police to decide if the undocumented migrant stopped is dangerous or not is to look at his or her crime records and the fact whether he or she has provided any alias before. It seems that when one migrant has crime records, the possibilities of being charged with the crime and being convicted increase.

> l'inottemperanza proviene da persone che sono in Italia già da tanti anni, che non si vogliono regolarizzare, che spacciano perché la maggior parte degli articoli 14 lei vedrà che ci sono casellari grandi come … ci sono anche casistiche dove magari questa persona inottempera per la prima volta e non è un delinquente. Però sono veramente... (JP1)

In fact, criminal records as a reason for the undocumented migrants to be charged were a recurring explanation offered by all Justices of the peace: if there are criminal records, sometimes even far in time, it is likely that the migrant will be convicted. The discriminant between being considered dangerous or not often is in the criminal records.

According to all JPs, undocumented migrants charged with crime of illegal entry and stay qualitatively differ from undocumented migrants who disobey an order to leave: the former are not dangerous, differently from the latter. From following excerpts of interview, the criteria underpinning decisions emerge. First of all, migrants undergoing trials for 10 bis

or 14 co. 5 are qualitatively different people. In their discourses, usually people charged for 10 bis are not perceived as criminal, while the others are. The former often do not have any criminal record, while the latter have many. Justices of the peace believe that the two crimes pertain to two completely different situations: the former, the 10 bis, are just unlucky. The latter, the 14 para. 5, are using non-legal status and invisibility to avoid state control.

Quindi potrei dire che la violazione dell'ordine del questore [14 para. 5] potrei dire che in genere è gente che forse ormai bisognerebbe veramente espellerla, non so come dire. Lì ormai non c'è più niente da fare, non so come dire. Sono persone al terzo decreto di espulsione inottemperato e sono persone che proprio bisognerebbe mandar fuori (…) E' gente che dovrebbe essere portata via con l'aereo, non so come dire. Quindi in genere sono delinquenti incalliti, in genere eh! Poi (…) ci sono delle eccezioni ma in genere sono persone con degli afis[102] grandi così. Invece negli altri casi [10 *bis*] è più misto, perché magari c'è la persona che... magari cade nella sventura, persone che magari avevano iniziato a stare in Italia in una certa... poi che succede, perdono il lavoro? Ecco, tutta quella gente lì... (JP1)

Capiamo solo che i 10 bis, cioè soggiorno in Italia illegale, direi - adesso vado a spanne perché non riesco a ricordare - ma l'80 per cento non hanno nessun precedente, quindi è una dinamica completamente diversa. Vengono in Italia perché molte volte non riusciamo neanche a controllare perfettamente protezioni, non protezione, perché poi se non è nei dattiloscopici non ci viene detto dai dottori come facciamo a... però è una tipologia di reato completamente diversa, tanto che questa è una contravvenzione e quell'altro è un delitto e quindi sì, è gente che viene in Italia per cercare di sopravvivere, per sfuggire dalle guerre o perché è in passaggio in Italia per raggiungere altri posti. (…) Per il 14 è tutta un'altra storia, ahh... il 14 ne arrivano molti, veramente molti, (…) In questi casi è diverso, sono soggetti diversi, molto molti molti, adesso non saprei dire in quale percentuale, direi il 70 per cento, adesso non so cosa i miei colleghi, molti sono in carcere (…) e in questi casi non c'è molto da fare perché c'è una buona parte che ha tutti i reati sullo spaccio e detenzione degli stupefacenti, ci sono molti che hanno reati contro il patrimonio, rapine... E' un po' più complessa la questione. (JP4)

102 The document on disposal of justice of the peace to decide that show all police reports associated to on C.U.I.

Mah sì, sono tutti spacciatori loro [With regards to migrants charged with art. 14] … (JP2)

According to the justices of the peace, there is a qualitative difference between migrants charged with the crime of illegal entry and stay and the crime of disobey a removal order: the first ones are just unlucky, they say that generally they have been in Italy for a short time before encountering police. In the stories told by informants, the others usually are drug dealers, or some other kind of criminal, who encountered the police during criminal activity or anti-social activity. There is a clear line that divides people charged with article 10 *bis* and people charged with article 14 para. 5 *ter* or *quater*, to such an extent that the former are more often acquitted, the latter are almost always convicted.

Undocumented migrants charged with art. 14 para. 5 are acquitted in a small percentage of cases. The situation varies when it comes to the undocumented migrants charged with art. 10-bis: in this case, migrants are (almost) always acquitted because of three main reasons: 1) migrants charged with art. 10 *bis* usually do not have penal records; 2) the crime is perceived as less serious; 3) the crime is on the verge to be abrogated.

During an informal chat, one justice of the peace explains to me the rational underpinning his/her decision to convict or acquit. Importantly, the JP explains that albeit illegally present, if the undocumented migrant is not dangerous, he or she should not be convicted. The risk of convicting non dangerous undocumented migrant is in fact to create an administrative criminal law[103]. When the undocumented migrant is not dangerous, the JP should acquit him or her because of the minor nature of crime, under article 34 of penal

103 With this expression, the judge refers to when criminal law is used to just protect the violation of administrative law, which is something that would bring back Italian criminal law to the fascist era. From the interview with the informant: "Quindi io magistrato quando accerto nel momento in cui accerto la violazione di questa norma amministrativa del controllo non mi devo fermare a un vizio di costituzionalità della norma, ma devo valutare che in concreto la condotta si come completamente attuata lede il bene giuridico primario della norma, perché se non faccio così io introduco nel nostro ordinamento giuridico di fatto il così detto diritto penale amministrato , ossia il diritto penale amministrato che si caratterizza per la circolarità del bene giuridico. Il bene giuridico è qualcosa che è al di fuori della norma e la funzione del magistrato è sempre mitigare la norma nel rispetto del principio costituzionale. Se io affermo che la violazione della norma amministrativa di controllo è di per sé lesione del bene pubblico (?), praticamente io rientro in quella visione giuridica proprio della cultura giuridica italiana e anche germanica degli anni trentasette quaranta, in cui il magistrato aveva autonoma funzione di attuare le finalità proprie dello stato etico, ossia garantire la supremazia della razza e garantire la prosecuzione delle finalità che viene data della autorità centrale proprio"

code. Specifically, the minor nature of crime, which brings to acquittal, should be applied in some cases, even when the undocumented migrant is actually responsible for the crime of illegal entry and remain, but being irregular was not his choice:

> Quindi anche nel momento in cui io accerto che sì, lui ha commesso questa condotta non devo assolutamente... devo verificare che sì, lui ha messo in atto questa condotta, ma devo verificare se questa condotta lede l'oggettività politica primaria della sicurezza pubblica, della sicurezza nazionale. (…) Se io pur essendo destinatario di due tre ordini di espulsione e non ho adempiuto ho violato la norma amministrativa, per la quale c'è una sanzione. Punto. Io devo verificare se questo comportamento è stato commesso purtroppo da una persona che ha perso lavoro, non trova lavoro però io non ho precedenti penali, al dilà dei precedenti per identificazione. Non ho precedenti penali, sono stato fermato in attività dignitose. Io ho violato una norma amministrativa di controllo, ma non ho violato il bene giuridico primario a cui la norma amministrativa di controllo è finalizzata. Tolto questo elemento ecco la tenuità del fatto: il fatto c'è, ma è tenue.

The problem, the JP explains, is when the irregularity is used as a protection against control from public authority: if someone is trying to escape control and using invisibility to commit crimes, then he or she deserves a penal sanction. This is an idea of being undocumented that was also present in the evaluation of migrants undergoing validation in CIE: what they need to do when evaluating validation is to understand the undocumented migrant they are facing; if she or he is an undocumented migrant using invisibility to escape control.

Even the other JPs agree that one undocumented migrant may be acquitted due to the minor nature of the crime. However, they agree that because of the qualitative difference between migrants charged with the crime of illegal entry (generally non dangerous undocumented migrants) or the crime of violating an order to leave (usually dangerous undocumented migrants), article 34 may be more easily and frequently, if not almost exclusively, applied to migrants charged with article 10 *bis*. For migrants charged with article 14 para. 5, the JP may acknowledges due reason to remain despite order to leave. What circumstances are acknowledged as due reasons?

> Con il 14 però come dire applichiamo con quelle persone le regole previste se c'è il giustificato motivo: se ci sono ricongiungimenti familiari se hanno figli in Italia cerchiamo di applicare quello che è il codice però certamente è una tipologia diversa, poi ovviamente ci può incappare anche quello senza precedenti, allora in quel caso ripeto si può tenere conto di applicare il 34: se è senza precedenti, se si è trovato in una condizione particolare per cui non è potuto andare via, e comunque insomma cerchiamo di applicare la tenuità del fatto anche lì. (JP4)

The JP here explains that sometimes even undocumented migrants charged with article 14 take part in a different category from the one described by law; this is the case of migrants with family reunions or with kids being still minors. In these cases, JP tries to acknowledge that they are part of a different category from the undocumented migrants who usually violate the order to leave: they remained because they have due reason to do so, and therefore they are acquitted. Also asking for international protection may be due reason to remain, according to another informant:

> Ecco, il giustificato motivo, nelle ultime due udienze ho assolto molto per giustificati motivi, perché se tu mi fai una richiesta di asilo politico anche magari se hai qualche precedente penale e la fai dopo tanti anni in cui tu sei in Italia ma se tu vai in questura se tu ti presenti in questura e lì ti fanno l'espulsione con la violazione dell'ordine del questore io dico vabé, tu effettivamente, per quanto tu fossi... per quanto fosse un pretesto per rimanere in Italia ancora, comunque non mi toglie niente se io ti assolvo per giustificato motivo. Perché a te magari l'asilo politico effettivamente non te lo riconoscono però effettivamente il momento in cui tu vai in questura a presentarti per l'asilo politico, cioè in quel momento lì non posso non dire che tu non avevi un giustificato motivo per rimanere nel territorio nazionale, perché ti stai giocando questa carta qua, e io … ne ho tre l'altro giorno di assoluzioni per motivi analoghi: uno per asilo politico di sicuro, un altro per... non so, per rapporti familiari, o la pendenza di una regolarizzazione che ancora non si sa bene come va a finire. (JP1)

The JP here explains that due reason may be the request for international protection. In fact, sometimes it happens that undocumented migrants receive the order to leave or are charged with the violation of previous order to leave when they self-report themselves at the police headquarter to ask for international protection. In cases alike, the JP says to

acquit undocumented migrant because acknowledges that they have a due reason to remain, that is, to play the card of international protection. Other reasons may be family ties, or amnesty procedures in progress. On the contrary, the person who got criminal records cannot have a due reason to remain, but carrying on criminal activities:

> In quel caso lì quella persona ha dimostrato che con alias ecc. non solo non vuole lasciare il territorio nazionale, ma nel territorio nazionale delinque, io quella categoria di persone lì non ho grandi giustificazioni da dare.

The undocumented migrant with criminal records does not want to leave Italy in order to commit crimes. This is the shared idea on immigration and crime among the justices of the peace in Bologna.

Three main points emerge from interviews: crimes of mobility are considered crimes of status from the JPs; that is to say, they are crimes that solely certain categories of undocumented migrants may commit, not all of them. Second, according to the JPs, there is a real qualitative difference between undocumented migrants charged with the crime of illegal entry and remain and migrants charged with disobedience to a removal order. Third, JPs rarely acquit migrants charged with either crime. Actually, they more easily acquit migrants charged with illegal entry and stay than disobedience to invitation to leave.

THE ANALYSIS OF CASE FILES

The sample of cases analyzed covers a two-month period of time, January and February 2013.

Undocumented migrants charged with crimes under articles 10 *bis* or 14 para. 5 *ter* and *quater* are less than one might expected. Sample is N=47 (In two cases, data on stops were not available) over a period of two months.

TABLE 5.1. MIGRANTS STOPPED AND CHARGED IN BOLOGNA (JANUARY-FEBRUARY 2013)

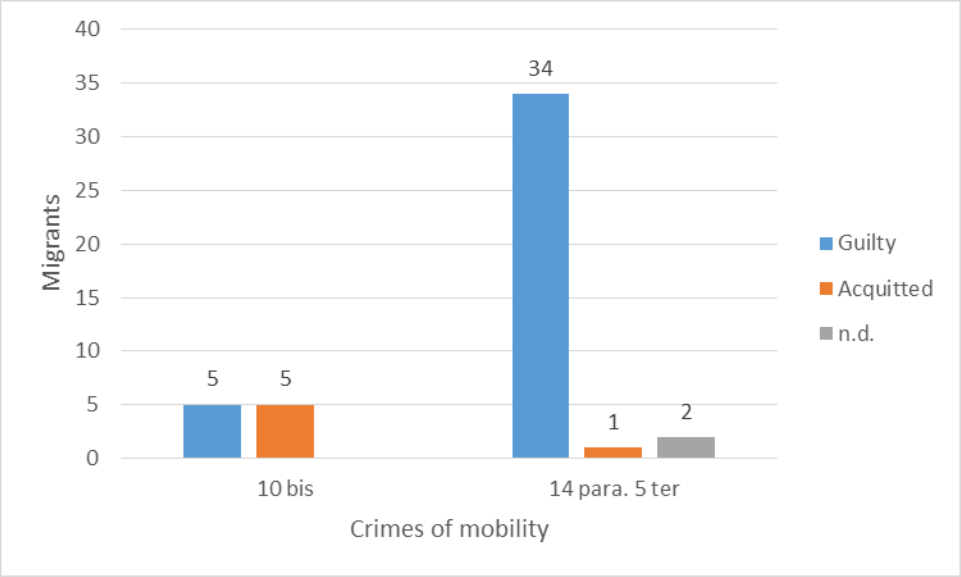
Nationality	10 bis	14 (5) ter	Grand Total
Morocco		12	12
Tunisia		9	9
Moldavia	2	3	5
Algeria		4	4
Nigeria	1	1	2
Pakistan	1	1	2
Syria	1	1	2
Ukraine	1	1	2
Albania		1	1
Argentina	1		1
Croatia	1		1
Egypt		1	1
Iran	1		1
Sri Lanka	1		1
Uruguay		1	1
n.d.		2	2
Grand Total	**10**	**37**	**47**

Source: original data

The majority of undocumented migrants charged in Bologna are Moroccans and Tunisians (they inform almost 50 per cent of total stops). Also, all Moroccan and Tunisian migrants are charged with violation under article 14 para. 5 *ter*, while none of them is charged with illegal entry (art. 10 *bis*). Among 47 undocumented migrants stopped, migrants charged with crime of illegal entry are 10. They are the minority of cases; however they are more than what one might have expected based on informants' stories.

Also, it emerges that it is not true that undocumented migrants charged with article 10 *bis* are always acquitted: instead, they are acquitted in 50 per cent of cases. At the same time, it appears clear that it is very hard that JP decides to acquit one undocumented migrant charged with violation of removal order: just one among 37 migrants charged with such crime was acquitted.

TABLE 5.2. MIGRANTS SENTENCED TO CRIMES OF MOBILITY IN BOLOGNA (JANUARY-FEBRUARY 2013)



Source: Original data

In general, with regards to both crimes, almost all migrants selected by police are convicted by the JPs: just 6 of them were acquitted. This data reveals that when it comes to crimes of mobility, police and justices of the peace agree on the evaluation of dangerousness towards migrants. It may be also interesting to notice that among the 6 migrants acquitted, 3 are women and 3 are men.

All migrants charged with crime of illegal entry and stay were acquitted due to the minor nature of crime in 3 cases, due to the fact that the crime is not existent, or because the fact is not a crime. Unfortunately, data on the only undocumented migrant charged to violation of order to leave and acquitted are not at disposal.

JPs justify the selection of migrants on behalf of police and the fact that they sentence them guilty in the far majority of times by: criminal record, alias, circumstance of encounters. These three elements are, indeed, interpreted as hints of dangerousness and thus they make it impossible for the JPs to apply article 34 to acquit one migrant charged with the crime of illegal entry and stay, that is acknowledging the minor nature of crime, or recognizing due reason for the undocumented migrant to remain despite invitation to leave. However, data from the small sample show that in practice the casual relations between alias, criminal records, and circumstance of encounter and the possibility that one migrant is convicted or acquitted is not straightforward.

First of all, one may have a look at the circumstances of encounter for undocumented migrants stopped in Bologna and charged with crimes of mobility:

TABLE 5.3. CIRCUMSTANCE OF ENCOUNTER BETWEEN UNDOCUMENTED MIGRANTS AND POLICE IN BOLOGNA (JANUARY-FEBRUARY 2013)

Encounter with police		Total
Police's initiative	Territory control	11
	Traffic control	2
	Crime scene	1
	Car accident	1
	Eviction	1
Police's initiative Total		**16**
Report to police	Brawl	2
	Disturbing behaviour	6
	Crime scene	8
Report to police Total		**16**
Investigation Total		**6**
No travel ticket	On train	3
	On bus	1
No travel ticket Total		**4**
Self-report Total		**2**
n.d.		3
Grand Total		**47**

Source: original data

Based on case files, in 3 cases it was not possible to determine circumstances of encounter, so that sample in N=44.

Migrants are stopped on police's initiative in 16 cases; among them, just one is an explicit crime scene. In 11 cases, however, the stop occurs during territory control and, based on the analysis of police report, stops always occurs because police have suspicion that migrant is hiding something, is trying to avoid control, acts suspiciously. However, in none of the 11 cases a proper crime scene is described: in 11 cases out of 44 (one fourth) no

crime is directly involved: it is just a suspicion deriving by the migrant trying to avoid police control. In 16 case, the police stopped migrant not on their own initiative, but rather because they act following someone's report: in 8 cases what is being reported is a crime, but in 6 cases it is just a disturbing or anti-social behavior (drunkenness, wandering in public area, shouting, etc.), and in 2 cases it is a brawl. In 6 cases, migrant is stopped as a consequence of an investigation carried out by police. So far, the stop is linked to crime in 15 cases. Finally, in 4 cases the cause of stop was lack of ticket in train or bus. In 2 cases, migrants are stopped when they went to the police headquarter on their own initiative in order to report a crime they had been victim of or because they need help.

Contrary to what the JP says, 11 migrants among the 47 from the sample have no alias, which means that they never provided fake identity. Furthermore, among these 11 without alias just 4 were eventually acquitted, while 7 were sentenced guilty anyway.

Instead, the causal relationship between crime records and conviction and, conversely, lack of crime records and acquaintance is not straightforward. In fact, when migrants are stopped as a consequence of someone reporting to the police some disturbing behavior, those migrants are selected both if they have crime records (4) and if they do not (1), but they are sentenced guilty just in the former cases. In general migrants who have crime records are convicted (just one, who is victim of other crime, is not). Yet, migrants who have no criminal records (11) are however sentenced guilty in 7 cases, and acquitted in just 4 cases. The decision to convict undocumented migrants who have criminal records may be explained by the circumstance of encounter.

For each migrant convicted, the motivation provided by the JP always sounds like: "there were criminal records or police notification", meaning that the migrant deserves punishment because he/she is dangerous. At the same time, justification for not convicting someone uses the same logic: "he or she does not have any criminal records", "she or he has committed a crime but in the far past".

What is not considered there, however, is that the *afis*[104] does not specify if the charge has been followed by conviction or not. Also, sometimes notifications from police, which also

104 Afis is the list of every police notice, charge, detention, or just identification connected to one specific C.U.I. (Unique Identification Code). In the Afis it is not specified when charge ends in conviction or not. So, it is not automatic that one can understand something clear about the "criminal career" of one undocumented migrant just looking at his or her afis.

are seriously taken into account during evaluation of dangerousness, are just identifications. Moreover, notifications of police say nothing about the actual criminal career of someone: they say something about how many times someone has been controlled by the police. Finally, as justice of the peace evaluation of dangerousness rests on evidence that is almost entirely produced by police activity; this means that police have huge power to criminalize someone saying that he or she is dangerous.

The police force that predominantly operates in immigration control is State police. Some useful data also came from ethnography at trials: according to police officers' witnesses, stops usually occur in Bolognina neighborhood, at the train station and in some parks.

Data collected are also useful to depict migrants indicted. 26 of the migrants for entire sample received a previous order to leave from the chief of police in Bologna, which means they remained in the territory even once they were ordered to leave. In a sample of N=42 (for 5 migrants it was not possible to determine), 25 do not have home address, while 17 do have it.

CONTROLLING FEMALE MIGRANTS

As mentioned above, women migrants selected by police in Bologna and charged for crimes of mobility are very few: just 5 among the 47 migrants of the sample are female. 3 of them were charged with the crime of illegal entry and remain; 2 were convicted and 1 acquitted. The others were charged for the crime of disobey removal order, 1 convicted and 1 acquitted. In total, 3 of them were acquitted and 2 were convicted.

Women migrants stopped were encountered in different situations[105]. One was stopped in a crime scene, and she was convicted; another one was stopped during traffic control by *carabinieri*: she was pregnant of 8 months, did not have alias but had criminal records for theft and brawl. She was from Morocco, she already had disobeyed an order to leave thus she was charged with article 14 para. 5 *ter* and she was convicted. Another woman was selected from *carabinieri* following someone's report: she was from Moldova and was a care-worker in lack of permission to stay: her employer reported to police on her illegal staying and *carabinieri* charged her with violation under article 10 *bis*. The JP acquitted

105 In one case it was not possible to determine circumstance of encounter

her (she did not have any criminal record and any order to leave) for the minor nature of crime. The third one was a woman from Croatia: she was encountered by the *carabinieri* during territory control activity in the act of operating a theft: she had been previously regular in the territory, and then she lost her residence permit and, according to the JP, started to commit crimes. Even if she was charged with article 10 *bis*, and she did not have alias, she was convicted because, according to the JP, "There is not minor nature of the crime, because the indicted migrant remained in the territory for a long time after having lost her residence permit and started committing crimes". Fourth woman was encountered by police during eviction: she previously had a residence permit and she lost that because her father was forbidding her to work or leave the house. She was charged with article 10 bis but then she was acquitted. The fifth woman was charged with disobey of removal order: she was from Uruguay, did not have any criminal records, or alias. She was encountered by police as she showed up in police's headquarter because she had lost her passport. The JP did not convict her for the minor nature of offence.

It is true that very few female migrants are charged with article 10 *bis* or article 14 para. 5. As one of the informants claims:

> Q: Di donne tra i denunciati per il 10 bis o 14 co. 5 non ce ne sono, praticamente.
>
> A: Sì, non ce ne sono molte, soprattutto il 14 co. 5. No, ma perché è proprio legato al tenore di vita! La donna, probabilmente… Ecco, diciamo che la donna è più vicina - quelle che sono irregolari- al mondo della prostituzione. E quindi... perché poi le badanti, poverette, in qualche maniera si sistemano: o fanno una vita molto ritirata... difficile [che capitino badanti denunciate]: io di badanti con il 10 bis me ne sono capitate pochissime. Essendo il reato molto vicino a un tenore di vita dedito comunque ad attività illegittime è chiaro che gli uomini socialmente sono più esposti a questo. Non so diventa un discorso lungo e complesso che coinvolge anche altre motivazioni
>
> Q: Mmm.. del tipo di come si vivono la città...
>
> A: Esatto! Però è vero che sono la maggioranza sono uomini, è difficile che capitino donne. (JP2)

In the extract above, the JP explains that crime of disobeying removal order is connected to economic status and living conditions. In her opinion, the crime of illegal entry and stay may be committed by undocumented migrants involved in criminal activities or antisocial behavior: "these are crimes for poor people and sex workers", she indeed said in the previous extract. This is the reason why, she says, care workers are never charged with such crime: Crime under article 10 *bis*, when it comes to women undocumented migrants, is used against a specific typology of undocumented migrants, those who are linked to sex work. She says that usually undocumented women are sex workers and the fact of being selected also depends on how they live the city, how often, when and where they cross the public space. The way they live the city is a major difference between sex workers and care workers indeed, the former pertaining to public space while the latter to private sphere.

Previous chapter shows that detention in CIE is used to fight sex work, not just by the police in Bologna but also, and mainly, in other cities of Northern Italy. Also with regards to the enforcement of crimes of mobility the rhetoric shared by the JPs says that women stopped are sex workers. However, in none of the five cases the women migrant selected was a sex worker. Another informant explains that it is possible that the strategy of control over sex work has changed lately, together with modifications in the nationality of sex workers operating in Bologna, or as a consequence for the fact that Romania is now part of EU and so sex workers, many of them Romanian, cannot be charged with article 10 *bis*.

> Prima forse il 10 bis veniva applicato alle prostitute, quando c'era la Romania che non era Europea, ecco allora lì forse potevi capire un po' di più il tipo di situazione. Adesso che Romania è Europa... non mi capita mai... ecco, anche il 726 che è il reato per la pubblica decenza capitano poco extra comunitari, africani, ecco (JP1)

> Per le "signorine", sì... non essendoci un reato contro la prostituzione mi permetto di dire che spesso viene usate il 726 per questo, e prima veniva usato il 10 se non erano comunitari (JP4).

In these significant extracts of interview, informants explain that police strategy to deal with sex work has changed when Romania entered in the EU and Romanian people became European citizens, therefore outside of the scope of immigration law and removal

procedures. In the previous years, police in Bologna used to use article 10 *bis* to fight sex work. They could use such a tool as long as sex workers - most of them from Romania or other Eastern European countries - were non-European citizens. On the contrary, when sex workers became European citizens, due to Romania entering the EU, police started using another tool to fight back sex work: article 726 of penal code, which literally punishes *l'offesa alla pubblica decenza*. In this interview the JP says that article 726 is used to fight back sex work given that a proper crime of prostitution does not exist in Italian penal code.

This is not isolate opinion, by the way. Also another informant explains that article 726 is used to fight sex work.

> Q: Invece ho visto che le donne ci sono per i 726
>
> A: Behhh, qualcuna. Sono prostitute quelle lì! Sono tutte prostitute…
>
> (*Però se uno ci fa caso non ci sono più le nigeriane, le nigeriane sono sparite, cioè noi non ne vediamo più...)*
>
> A: No, le Nigeriane sono sparite da un pezzo
>
> (*Da quando non c'è più il CIE. Mentre il 726…)*
>
> A: Ma perché anche lì è un discorso che dovresti fare con la questura che tiene più il polso della situazione. Ma, secondo me, siccome le donne in realtà sono più coinvolte nella prostituzione, a Bologna io ho la percezione che ci siano moltissime prostitute rumene
>
> (*Infatti si vedono più rumene...)*
>
> A: Infatti tutti i 726 che vengono processati per atti contrari che vengono dall'attività della prostituzione e quindi le signorine che vanno in giro senza vestiti oppure si mettono succinti atteggiamenti che richiamano l'attenzione, sono tutte rumene. Difficile che capiti una ucraina per dire, molto difficile.

The JP explains that all women charged with article 726 of Penal code are sex workers. And she also adds that these women are from Romania. Her colleague, intervening during the interview also adds that recently Nigerian women disappeared. Previously, you had Nigerian women working as sex workers and being stopped and charged, but now they

disappeared106. The interviewee gives a possible explanation for this that sex workers in Bologna are mainly from Romania. She also says that it is rare to see Ukrainian sex worker. Thus, she clearly links someone's nationality to someone's profile.

Interestingly, during an informal chat one of the justices of the peace told me that few years ago then she noticed that at certain point in time the *carabinieri* started to bring more and more charges of violation of article 726 against women migrants working as sex workers in Bologna's v*iali*, that are very central and trafficked streets surrounding the city center. She assumed that the increase in charges for 726 did not depend on increase of sex workers operating along the Viali, but rather on a change in the strategy operated by the *carabinieri* against sex work in those streets.

It is true that article 726 of penal code is not part of immigration law, however, it is clear that this crime is used by police to fight back sex work in Bologna. Police started to use this article instead of 10 bis when sex workers became European: or because Romania entered in EU, or as a consequence of a process of Romanian sex workers substituting for Nigerian sex workers. At the end of the day, even if article 726 is not part of immigration law, it is a part of mechanisms of formal control over immigration in Bologna. It shows that women migrants are often related to the figure of sex worker that, as such, need to be punished, at least moved, for sure controlled and made as invisible as possible, possibly detained in CIE if not even removed.

JUDGES AND POLICE'S RATIONALITIES: FRAMES OF DANGEROUSNESS

Data were collected in three different sites where mechanisms of formal control over internal borders take place: validation hearings, pre-removal detentions in CIE, and trials on immigration crimes (Articles 10-bis and 14 co.5 *-ter/quater*). Different methods for data collection were used depending on the different site: case files analysis on pre-removal detentions in Bologna's CIE (2011-2013) and on immigration crimes (January-February 2013), ethnography at public trials on immigration crimes, in-depth interviews with four justices of the peace and key-keepers, such as lawyers.

106 The interviews were conducted in the summer 2014.

A rhetoric of dangerousness drives police officers to arrest migrants and justices of the peace to validate detention or punishing them with fines. The analysis of case files reveals how police justify arrest: migrants may have records (not necessarily a sentence) of drug dealing or minor property crimes; he/she were 'behaving suspiciously' or did not show a collaborative attitude when arrested; he/she might have alias; he/she may have many invitations to leave; finally, a woman might be suspected of sex work. In other words, the police do not look for undocumented migrants and that's it. In reports, they always identify elements other than a lack of papers. 'Illegality' per se is under-enforced.

The logic of looking for dangerousness also appears in validation hearings and trials of immigration crimes (Article 10-bis) and disobeying a removal order (Article 14 co. 5 - ter/quater). During trials, on the one hand, prosecutors always mention it if the migrant has committed crimes, even if he/she is formally being judged for being illegally present in Italy rather than for his/her possible criminal career. On the other hand, justices of the peace always try to clarify the matter, usually directly asking about the person's background. One of the justices of the peace I observed often started trials by explicitly asking "Does this have crimes?" with "this" being the migrant.

This rhetoric of dangerousness transforms the condition of being undocumented from an imposed condition - a condition produced by restrictive immigration law indeed - into a deliberate choice. In this rhetoric, undocumented migrants who commit crimes *want* to be undocumented, to remain invisible from the law with no risk of punishment. Undocumented migrants before the justice of the peace become accountable for being undocumented. They become dangerous and deserve removal.

The category of dangerousness is, however, ambiguous and discretionary. Thanks to their low visibility, police officers generally have discretionary power during street-level activity to independently decide when an undocumented immigrant is to be considered dangerous.

Also, orientation of judges about convicting or acquitting indirectly influences police taking action. I consider important that attention is paid both on police practices and on judges' decision making process in order to deeply understand the operation of the selectivity process.

Discretion is at the base of the selectivity process enacted by the agencies of control and, according to the preliminary results of the research, the discretionary evaluation of dangerousness seems to be at the core of the decisions made both by police and judges. Indeed, the concept of dangerousness also permeates the very legal norms of Italian immigration law, as well as the judiciary decisions.

It is worth investigating the concept of dangerousness more closely, in order to understand its composition, its usage, and its effects. Furthermore, it is interesting to look at the relationship, the commonalities and differences between judges and police discretionary decisions, maybe pertaining to two diverse "decisional spheres", one (Judges') which mainly takes care of the legality of the system, the other one (police's) dealing with security issues and pre-emptive measures against "crime". Therefore, which is the concept of dangerousness shared by police and which is the one shared by judges? Do they correspond or differ?

A "rhetoric of dangerousness" drives police and JPs decisions. Dangerousness is a very core concept not just in police practices when maintaining order and patrolling territory, or for justices of the peace called to acquit or convict one undocumented migrant. The concept of dangerousness also clearly appears in the law, both in normative provisions of immigration law, and also in the decisions of the *Court of Cassation*. Apparently, the legislator clearly asks for looking for dangerousness and punishing for it. Furthermore, through dangerousness it is possible to identify six different categories, six different frames or recurring patterns in discourses of judges; six categories of migrants with different degrees of dangerousness. Being part of one category or the other determines the probability of being convicted, acquitted, or detained in Bologna's CIE. These categories are: the perfect laborer, the sex worker, the drug dealer, the care worker, the asylum seeker, and the family's member. Undocumented migrants are step by step identified with one of these categories, each of them having a pre-determined fate. And they reverberate also in the territory control activity, analysed in chapter six from the perspective of strategies of resistance enacted by migrants themselves.

What is interesting is that these categories are also identified through nationality and gender.

THE DRUG DEALER

The most frequent circumstance is that undocumented migrants undergoing validation hearing for detention in CIE or trial for violation of order to leave are recognized as taking part in the category of "the drug dealer". That immigration law is often used to act selectively against drug dealing has been confirmed by observation during trials, analysis of case files, and interviews with judges: in trials and hearings prosecutors always point out that the migrant has crimes on his record, and crimes are very frequently connected to drug dealing; during interviews and informal chats, the justices of the peace often mention to "the drug dealer" frame in order to explain their decision to validate. For the way immigration law is enforced in Bologna, one can say that the police and justices of the peace have created such category: they use this frame as primary classification to decide whether enforcing borders or not against an undocumented migrant living on the territory.

Variables of gender and nationality determine the probability that an undocumented migrant is considered as part of the category. In this reconstruction, drug dealers are always male. And they come from Morocco, Albania, or Tunisia. This means that when a young male from one of these countries appear before the JP, the JP, based on a few elements, identifies the migrant with the category. When migrants appear before courts, the JP has already formed an idea about their dangerousness, and it will be hard for defendants to undermine such idea – if they will ever at least try to do so. The mechanisms of trials and hearings themselves do not allow for that. Apparently, all men undocumented migrants from Tunisia, Morocco, Albania, selected by police, are considered dangerous drug dealers, unless someone may prove the contrary. They are usually charged with disobey to removal order, rather than illegal entry and stay, because they usually have previous orders to leave, which reinforces the strong belief shared by the JPs that undocumented migrants who want to commit crimes use illegality as protection against punishment and to remain in Italy.

It is important to notice that in the creation of such category of dangerousness, the category of "the drug dealer", there is a high level of agreement between the police and JPs: if the police select an undocumented migrant suspect for being drug dealer, JPs validate their decision. Therefore, such category becomes very powerful tool also in territory control: it affects the government of undocumented migrants also outside the formal judicial system.

THE PERFECT LABORER

On the opposite side of the drug dealer category is "the perfect laborer" category. The perfect laborer is that undocumented migrant who does not commit crimes albeit living illegally in Italy and so cannot be hired with a regular work contract – but he can work irregularly in the widespread Italian shadow economy. Therefore, he is not dangerous. Usually, the migrant identified as "perfect laborer" is considered as a poor migrant who lost his residence permit, or who was never able to get one. He was selected by the police just because unlucky but he was not supposed to: according to the police and the justices of the peace, immigration law is not made for perfect laborers, but mainly for drug dealers and sex workers. Perfect laborers are usually charged with the crime of illegal entry and stay, which is less serious than the crime of disobeying a removal order. In fact, it is hard that someone labeled as a perfect laborer had disobeyed a previous removal order; and even if he had done so, he would have had due reason for that. Perfect laborers are docile, and they deserve to regularize their legal status. For this reason, they should not to be punished, because punishment may compromise future possible regularization. The perfect laborer is not the typology of undocumented migrant who should be detained in CIE.

Perfect laborers are male (females with the same characteristics are usually categorized as care-workers). It is hard that someone coming from countries such as Nigeria, Tunisia, Morocco, Albania, and Moldavia is labeled a perfect laborer. Perfect laborers are more likely to come from Pakistan, India, and countries alike, rarely from South America. Police usually do not control workplace. Police in Bologna look for dangerous migrants, and selectively enforce immigration law. If selected, the perfect laborer is normally acquitted.

Also this category, as the category of the drug dealer, reverberates in territory control operated by police. As we shall see more in depth in the next chapter, the fact that an undocumented migrant is recognized as a perfect laborer usually brings the police to under-enforce internal borders: living in Italy without a residence permit but accepting to work underpaid in the shadow economy, waiting for an occasion to regularize his or her position, seems thus to be informally allowed. In other words, one may say that, differently than "the drug dealer" and his unacceptable "levels of illegality", the perfect laborer displays levels of illegality that are acceptable in the police and the JPs' eyes.

THE SEX WORKER

Women are the minority of migrants selected by police and undergoing validation hearings. They are almost absent among undocumented migrants charged with crimes of mobility.

According to the justices of the peace, undocumented women migrants are almost exclusively sex workers. The justices of the peace trace a clear line between sex workers and care-workers, mainly based on nationality: Nigerians are always sex-workers, Chinese are often sex-workers, East-Europeans may be sex workers or care workers, women from other nationalities usually are categorized as care-workers. The fact of working in the sex industry is not usually explicitly provided as information in the documents available in the folders: for example, that could be the case when police in their reports write that the undocumented migrant was arrested during an operation against prostitution. Since this does not occur frequently, most of the time the justice of the peace relies on information provided by the police officer who made the arrest, during hearings or in trials as witness.

Orientation against undocumented women migrants, even when categorized as sex worker, is not straightforward neither clear: discourses made by the JPs on how to deal with sex work may differ from actual practices that they eventually enact. Most importantly, justices of the peace and the police do not agree on how to deal with women migrants, as police arrest them but justices of the peace do not always validate their detention in CIE. At the same time, the majority of migrants who are subjected to longer period of detention are female. Ambiguities probably come from a twofold issue: sex work is not a crime, even if it has always being considered as a disturbing activity that should better operate in a subterranean field (Matza, 1964). Second, undocumented women migrants are often Nigerians, and they sometimes are categorized under the frame of "the asylum seeker" more than the "sex worker", and so their detention is not validated. Some nationalities are instead excluded from being identified in the category of "the sex worker", for example, Moroccan women, or more in general Muslim women.

However, when an undocumented migrant is identified with the category of sex worker, she will be probably detained or punished with a fine: sex work is perceived as dangerous, but maybe, it is dangerous because it should not be visible. Sex work pertains to the sphere of subterranean values, and there should remain. When undocumented migrants working in the sex industry become too visible, their levels of illegality becomes unacceptable. In

this way, also the category of "the sex worker" becomes very important for the territory control activity.

THE CARE-WORKER

Care-workers are almost exclusively women (even if in the reality, even undocumented men migrants may work as care workers). Undocumented migrants identified as taking part in the category of "the care worker" mainly come from Eastern Europe, South America and Asia.

According to the justices of the peace, care-workers should never arrive before courts, neither for validation hearings and detention in CIE, nor for criminal procedures. The JPs indeed say that care workers are almost never selected during territory control activity, and when they are they are acquitted because not dangerous at all. The Justices of the peace explain that usually the only care-workers arriving before courts for validation hearings were selected by the police in other cities but not Bologna. More than one informant stated that Bologna's police are very respectful of these ladies, indeed.

Evidence suggests that Italian immigration law was not made to act against care-workers. After all, they are needed in almost every Italian family, given the weak state care system. The category of undocumented women migrant working as care-workers is widely accepted in Italy (see Ambrosini, 2015), to such a point that paradoxically, it becomes awkward, seriously harsh, and probably unexpected when some police officer decides to enforce borders against an undocumented migrant operating as care-worker. And it seems also even more unjust if the JP validates detention or convicts the undocumented woman migrant to payment of a fine. For sure, according to the law, there should be no difference in enforcing borders against one woman migrant if she operates as sex-worker or care-worker. However, law in action together with discourses supporting it, say something different. They tell us about mechanisms of bordering subjects, of creating different subjects through border enforcement activities: all of them are undocumented migrants, but they are different subjects, carrying different degrees of dangerousness, and differently acceptable levels of illegality.

THE ASYLUM SEEKER AND THE FAMILY MEMBER

The categories of "the asylum seeker" and what might be called "the family member" are two residual categories, less frequently used than the above mentioned ones and, also, less

determinant in territory control activity: I have pointed them out, in fact, as frames that justices of the peace use to sometimes oppose police decision to detain an undocumented migrant that police selected but that they do not consider dangerous.

These are the most "lawful" categories, meaning that they are shaped around some norms listed in the immigration law, which prevent deportation in some cases: when there are documented and strong family ties; when there is a risk that human rights of the returnee would be violated in the country of origin.

They are residual categories also because they are not used very often by the justices of the peace. This is especially true for the category of "the family member": as shown in chapter four, family ties provide motivations for non-validation in a small number of cases, just 3 among 104. However, the existence alone of such frame suggests that family is recognized as an important element to the subject who may be differentially included in Italy.

"The asylum seeker" is the other residual category. It is residual even if it should not be. There is not much attention towards asylum seekers in Italy; it is not very easy for one migrant asking for international protection to have it granted. Moreover, migrants who ask for asylum once they have been caught by police and detained in CIE are considered more quick-witted than needing. However, this is a relevant category because it has less to do with dangerousness, and for example it could not be also used much towards possible drug dealers (for example, this category was not used to prevent pre-removal detention and possible deportation of Tunisians, even during the Arab spring), but it is used to prevent pre-removal detention and possible deportation of sex workers, when for example they are Nigerian women.

Therefore, these two categories albeit residual are worth to be considered because they explain some deviations from recurring patterns in the mechanisms of bordering subjects.

To summarize what reconstructed so far, these categories shed light on the criteria of perceived dangerousness which seems to guide police and judges' decisions in undocumented migration control. I hypothesize the existence of a rhetoric of dangerousness which could be summed up as it follows: if an undocumented migrant "does anything bad", he/she does not risk expulsion and not even detention. Such rhetoric permeates not just the discourses made by police and judges, but also strategies of resistance enacted by undocumented migrants: many migrants interviewed said that they are not afraid of the police because they do not really risk to be

expelled. It is also important to notice that perceived dangerousness also finds its legitimacy at the legal level, since many norms of Italian immigration law as well as the case law on detention and expulsion of undocumented migrants do ask the justices of the peace that they consider the dangerousness of undocumented migrants as a criteria when deciding whether to convict them or not even important during territory control activity.

My understanding is that immigration law is able to regulate documented immigrants, but it is not able to discipline undocumented ones. Police is the institution who deals with regulating the presence of undocumented migrants in the Italian territory.

My understanding is thus that the undocumented migrants is produced as a subject eventually suitable in the Italian shadow economy at the same time when internal borders are produced during internal border control. My interest is in looking at this production process. And, still, in my understanding, this production process is the effect of an interaction, where the migrants themselves play a role.

CHAPTER SIX

THE STRATEGIES OF RESISTANCE

INTRODUCTION

A main points of this research is that the mechanisms of internal borders control are not only made up of formal practices such as police controls towards undocumented migrants resulting in pre-removal detentions and possible removals (chapter 4), and/or fines as punishments for crimes of mobility (chapter 5). Mechanisms of internal borders control are also made up of informal controls, that is, controls enacted by the police that do not result in any arrest; this is the case, for example, of a police officer who encounters an undocumented migrant, stops him or her, asks some questions, may give some "advises", and finally lets the migrant go.

According to the present case study and the literature on the topic, these kinds of practices are very usual in immigration controls, but they often remained under-investigated in the criminological research on borders control. This for three main reasons: 1) Practices of informal control do not result in arrests, so they cannot be investigated in courts or through official data; 2) They are very hard to detect, as they occur in the grey area of police's discretionary power; therefore an official authorization from the police authority to conduct research in the field may be required (which is very hard to obtain); 3) Their importance in the mechanisms of borders control is underestimated. Usually, it is thought that borders are mainly enforced through removals. Should this be true in some cases and some contexts107, it seems to not be the case in Bologna. The migrants that I interviewed assert that they are not scared of police, that police are not a problem, that they do not run the risk of being deported if they do not do anything "bad", that the maximum risk an undocumented migrant may run into is to receive a "sheet of paper", that is, an order – always unattended - to leave the country in seven days. From the

107 Consider for example the story of that one Iranian citizen living in Sweden without authorization tells of her father who died for heart attack on her arms, because they could not call the ambulance to intervene to save him, as she was illegally living in Sweden and she would have been deported (Kohsaravi, 2011). Consider the many stories of migrants that are scared of being deported and live invisible lives.

official data analysed in chapter 4 and 5, such idea seems grounded in reality108.

If De Genova (2002) created the concept of deportability in order to name the vulnerability of undocumented migrants forced into a condition of existential precariousness, one should start reasoning around the concept of "undeportability" (Campesi, 2015a) with regards to undocumented migrants in Italy. Giuseppe Campesi (2015) conceives of "undeportability" with regards to undocumented migrants detained in the Italian immigration detention system. In fact, he explains, the CIE is the place where the sovereign power should reach its peak; on the contrary, resistance, enacted by undocumented migrants, is also at its maximum. When migrants are all together, their frustration and anger – also for the poor living conditions they find in Italian centers – provoke riots that have destroyed many CIEs from inside. Undocumented migrants detained in CIEs are a mass of people that is not easy to manage, and they oppose and nullify deportation. If it is true that a condition of "undeportability" characterizes undocumented migrants in Italian CIEs, I propose that undocumented migrants generally live in a condition of "undeportability".

It is important to make clear that the practices of informal control are not marginal in the mechanism of internal borders control; rather, they find a place at the very core of the mechanisms that discipline undocumented migrants. Immigration law creates the illegal status of undocumented migrants, by making legality an almost impossible status to achieve109 (Calavita, 1998). Undocumented migrants living inside national territories are many (@CLANDESTINO; Sassen, 1998), they exceed the resources at the disposal of the police to deal with them, such as the number of police officers, the number of beds in the Italian immigration detention system, and the funding to enforce removals. Therefore, selective non-enforcement of the immigration law in internal borders control is as effective as enforcement itself. Selective non-enforcement in fact conveys a message, that under certain conditions an undocumented migrant can stay. Differently said, a certain level of illegality of undocumented migrants is acceptable. In a sense, the performance of internal borders together with the possibility for an undocumented migrant to be allowed to cross them anyway, make up a

108 In fact, for example, just 4 out of 50 migrants encountered by the police in Bologna, in January-February 2013 and charged with the crime of illegal entry or disobeying to a removal order, were also detained in Bologna's CIE. And this seems valid for the Italian territory in general, where the number of orders to leave is very much higher than the number of enforced returns each year, between 2008 and 2014 (EUROSTAT).

109 Migrants may achieve legal status through very complex, sometimes illegal, and always creative and imaginative strategies in order to fulfill the requirements for papers.

powerful mechanism of control, through which a specific subject is being created and included.

Previous chapters have reconstructed the selectivity process, from territory control, to pre-removal detention and possible removal: Who is selected? Why? When? How? From the analysis it emerges that the decisions to select someone are grounded on a specific rhetoric of dangerousness, which a category is discretionarily made up with variables such as the nationality and gender of migrants. This chapter investigates what happens in all the other cases, when undocumented migrants encountered are let alone and are not even brought to the police headquarter for identification procedures: what is the dynamic of the interaction between migrants and the police? How much does the police control affect the life of undocumented migrants in Bologna, and how much is it disciplining? What kind of problems does the immigration law poses to migrants? What strategies of resistance are enacted by them?

In fact, giving prominence to mechanisms of informal control in the whole system of borders control has another often underestimated consequence. It entails that the mechanisms of control over undocumented immigration do not exclusively originate from practices and rationalities of police – and courts. A far richer complexity should be acknowledged to the mechanisms of control over undocumented migrants that, in part, result from the interaction between the police and undocumented migrants at the internal borders. In fact, mechanisms of control may result from a combination of practices and rationalities of control carried out by the police and justices of the peace *and* strategies of resistance by undocumented migrants. Both migrants and the police follow given rules of the game, which actually allows on the one hand undocumented migrants to remain in Italy even in lack of residence permit, and on the other the police to maintain t order despite a law impossible to enforce. The point to be stressed is that these rules are not imposed from the top down by one part (the police) towards the other (undocumented migrants). The rules of the game have most probably been shaped through continuous encounters and even conflicts between the two competitors. My hypothesis is that undocumented migrants living in Bologna enact some strategies of resistance that actively intervene in practices of control, as an actual limitation to the power of the police to enforce the law towards all undocumented migrants. Selective non-enforcement may be read as an answer to some of the strategies of resistance by undocumented migrants who want to continue living in Bologna.

In considering resistance, my departure point is again Foucault, according to whom, «where there is power, there is resistance» because resistance «is never in a position of exteriority in

relation to power» (2003: 125-6. My translation). Furthermore, power is not just state power, but concerns micro-mechanisms of power, and it is widespread. Resistance, for its part, may be intended not just as a counter action, but also as strategies of flight, invisibility, and illegality (Saitta, 2015). For example, in the present case study, undocumented migrants prevent possible deportation by: avoiding certain parts of the city, especially at night; not hanging out with unfamiliar people; not hanging out in a group; entering the shadow economy; buying fake work contracts to have the residence permits granted; always paying the ticket on trains and buses; learning to speak good Italian; sharing information about legal procedures through community journals (this is the case of the Chinese community in Bologna); always showing confidence before police, and respect for their authority; using irony in the interaction with police; providing the police with *aliases* when stopped for an ID check. Can these strategies be considered proper strategies of resistance? Or what would be alternative explanation for such behaviours displayed by migrants? Can one possibly claim that a disciplining mechanism is in operation through the interactions between the police and migrants?

Since immigration flows to Italy have always been represented as a security issue, immigrants have always been a police concern (Mosconi, 2007). The legal status of immigrants in Italy entirely depends on the police, from entry procedures110, to pre-removal detention and possible removal. The present chapter takes into account the interaction between undocumented migrants and the police during patrolling, and it especially looks at how police officers use their stop and search powers. At the end of the previous chapter, I identified six frames of dangerousness that police and justices of the peace use to categorize migrants and assert their dangerousness, depending on variables such as the nationality and gender. These same categories 111 reverberate in the patrolling and are revealing of the possibility that an undocumented migrant that is encountered will be conducted to the police headquarter or not.

110 In Italy the police administrate residence permits, differently from other countries where entrance procedures are managed by other administrative bodies, such as municipalities, or agencies ad hoc

111 These categories are: the drug dealer, the perfect labourer, the sex worker, the care worker, the asylum seeker, the family member. Among them, we said that three of them are particularly important for the way they reverberate in the patrolling: the perfect labourer, the drug dealer, and the sex worker. The care worker, the family member, and the asylum seekers are rarely selected. These last three are categories that mainly appear before court, when someone may be selected during patrolling by police as a drug dealer or sex worker, he or she is re-defined as family member, asylum seeker or care worker before courts. From courts, it appeared that sex workers are an important category that defines the "dangerousness" and the likeliness that a migrant will be selected. Unfortunately, I was not able to gather data on this by interviewing women migrants. I interviewed just two women, none of them being a sex worker. That sex workers resist and how they resist, it is a topic that I will develop in future research.

What will emerge from the present chapter is that, however, the fact that an undocumented migrant will be identified or not with one of the categories mentioned above also depends on the strategies of resistance enacted by the migrants themselves.

THE DRUG DEALER IN THE TERRITORY CONTROL

As argued in chapter one, police discretion may be expressed as a decision of action or inaction. The majority of the interactions between police and undocumented migrants do not result in any legal action; therefore, police actions neither break the law nor comply with it. It is more correct to say, the policing of undocumented migrants takes place in a space of non-legality defined by the law. More importantly, undocumented migrants and police are collocated in this *non-legal space* (Fabini, 2014).

Police officers continuously make decisions about when to enforce internal borders. In previous chapters, through case files analysis and interviews, it emerged that a rhetoric of *dangerousness* drives police officers in Bologna to arrest migrants. The case files reveal recurring patterns in police reports justifying the arrest of a migrant. The migrant may have a record (not necessarily a conviction) for drug dealing or minor property crimes; he/she may have been 'behaving suspiciously' or did not show a collaborative attitude when arrested; he/she might have aliases; he/she may have many invitations to leave; finally, a woman might be suspected of sex work. In other words, the police do not limit themselves to a finding that the migrant is undocumented. In reports, they always identify elements other than the lack of papers. This should not be interpreted as proof that all undocumented migrants are dangerous; but rather it shows a selective enforcement of internal borders based on the perceived dangerousness of undocumented migrants. 'Illegality' *per se* is under-enforced.

Looking at the interaction between the police and migrants during patrolling it is useful to understand how non-selectivity works, how the subject of the undocumented migrant is produced and included, and finally how the police built the frame of dangerousness, which may be the reason for arrest or may be used as a justification ex-post for it.

Migrants interviewed explain that they risk deportation only if they deal drug, or steal something, or do “something bad”; if they behave as it is expected from them, they can stay, even in lack of an official authorization to do so:

Qui sono molto permissivi con i clandestini (...) Si può passare facilmente, basta non incappare in problemi grossi e si può andare avanti anche per degli anni. Non ci sono quei controlli... sembra che vogliono farti vedere che ci sono. Magari per gli spacciatori e' diverso, ma per la gente che lavora e che cerca di lavorare è diverso: è abbastanza tranquillo.(H, Syria)

Perché va bene, anche non hai documenti? (...) non ha problemi, veramente. Ti ferma polizia? Vai quando vuoi se non hai niente.(SH, Morocco)

In the case of Bologna, based on interviews with migrants, the selective enforcement of internal borders mainly follows the involvement of undocumented migrants in the illegal economies of drug dealing.

Sono qui degli amici che stanno con me nella mia casa. Quasi alle 11, a mezzanotte, siamo scesi insieme. Abbiamo visto un'auto bellissima e abbiamo parlato dell'auto: "guarda quell'auto, bella, che costa anche..." Gli sbirri sono passati, ci vedono lì, si sono parlati, fanno il giro. Arrivano subito! Mi hanno bloccato nella gola e mi dicono "apri la bocca!"

Perché?

Pensano che sono spacciatore, non lo so.

Cioè, loro sono arrivati e ti hanno preso alla gola?

Mah, perché gli spacciatori mettono la droga nella bocca e quando vedono la polizia la ingoiano subito, per quello bloccano la gola. Oh, ma non sono spacciatore. Dicono: "documenti!" Non ho documenti, gli ho dato tutto il portafoglio: "non ce li ho, tieni cercate!" Hanno aperto tutto il portafoglio, hanno cercato tutto, ma non hanno trovato niente. Loro non chiedono nemmeno scusa.(SL, Morocco)

E comunque la polizia di Bologna mi fermano tante volte però non mi prendono. Mi dicono, hai i documenti? e io dico subito che non ce li ho.(...) Perché ci sono persone che dicono bugie, che dicono io ce li ho a casa, e io dico: "No, io sono clandestino"

E quando tu dicevi che non ce li avevi che facevano?

Ti controllano solo: vedono che tu non hai qualcosa nella tasca, che non hai qualcosa ti lasciano andare. Loro vogliono qualcuno che ha qualcosa, ma se tu non c'hai niente... (M, Morocco)

"They check your pockets, and if you don't have anything, they let you go": almost every time a police officer stops a migrant, the pattern is as follows: the police stop someone with more or less courtesy and ask for documents; If migrants do not have documents, police check their pockets, and if migrants have nothing "dangerous" there, they will probably let them go alone. The fact of having empty pockets is a recurring pattern in the stories told by migrants. The frame is always the same: if you do not have anything dangerous in your pockets, or if you did not do anything bad, you do not need to be scared and you can cross the city without problem:

L'altra cosa non hai problemi che stai qua quando chiede documenti non hai documenti, perché sono un ragazzo che non vai avanti, non c'è qualcosa che è pericoloso che io ce l'ho, no. Dentro le tue tasche tu non c'hai niente, c'è solo il cellulare dentro mia tasca, il portafoglio, apposto, non c'è niente che è pericoloso. Te l'ho detto io. Per questo, non c'è niente, quindi non hai paura (S, Egypt).

Thus, the importance to be clean, to not commit any crime and not to enter the drug trade is an important rule of the game in the interaction between undocumented migrants and the police in Bologna. This is also the recurring explanation provided by city police officers[112] interviewed

112 In the previous research on ID check in Bologna, conducted in 2010-2011, I interviewed only officers of the city police, not the state police nor the *carabinieri*. However, explanations provided by city police officers have been lately confirmed by results of the present research with regards to all police officers (based on case files analysis and migrants interviews) suggesting that in immigration control activity police officers may reason as the other police forces.

in a previous research on ID checks in Bologna (Fabini, 2012). Officers of the city police interviewed agreed that they start a control towards one migrant if there is any reason to suspect that he or she is a drug dealer:

> The discriminating element, concerning a normal check, and with regards to me, as long as one has done nothing wrong; I don't stop him/her. (...) Let's say, the check… at the end of the day, in general the check starts in the belief that the person might be in possession of illegal drugs… (Officer n. 11)

Police officers and undocumented migrants agree that undocumented migrants risk deportation only when they are connected to some kind of drug dealing.

Indeed, many of the interviewees confidently declared that police do not do anything against them – for instance, deporting them - as long as they do not commit any crimes. Someone even said that police *cannot* do anything against them if they did not do anything wrong. Allegedly, and contrary to what one might think, not all undocumented migrants are scared of police, not all of them are frightened of being deported, not all of them firmly believe that lack of resident documents prevents them from living, at least, a "quiet" life in Italy, for how much quiet a life without "the papers" can eventually be.

In other words, interviews reveal that undocumented migrants share the belief of being "undeportable" as long as they do not give the police any reasons for suspecting that they are dangerous. Migrants interviewed asserted many times that they are not scared of police, because they are good and that the police let them to go free even when they acknowledge that they lack the residence permit. For example, M is a 28 years old Moroccan man, who had been living in Bologna for five years when he was interviewed. M decided to immigrate to Italy because, firstly, he was looking for a job, and, secondly, he was curious and wishing to travel all around the world. M clarified the extent to which, even when he was irregularly present in Italy, he has never been scared of police. This is something he declared several times during our conversation:

Io fatto niente, mai. Io non ho avuto paura mai... non ho mai avuto paura di loro, capito? Perché lo so io che se non faccio niente non mi possono fare nulla. Basta che tu no vai a fare una cazzata, o vendi o fai qualcosa di brutto, da cui... conosco anche gente che aveva documenti e glieli hanno tirati indietro perché fanno cose comunque... sono loro che se la vanno a cercare! Ma io vado a lavoro se trovo lavoro, ho lavorato in nero e tutto. Mai pensato di andare a fare quelle cose lì. (M, Morocco)

M is not scared of being expelled despite the law. This does not mean that M does not care about being expelled and going back to Morocco. Indeed, it is extremely important to him to stay in Italy, because of his life plan: he emigrated because he was looking for a good job to improve his position back in Morocco; he was dreaming of traveling, and because of a desire of freedom. Thus, the fact that M does not seem to be scared of police can be explained with the fact that he has understood that police enforce internal borders solely following fixed patterns. He learnt the rituals, so that he can stay in Italy without the official permission as long as he accepts to follow the more important informal rules. He does not run the risk to be expelled, because he is «clean» and «they can see it in your face, that you are clean». M is not the only migrant to claim that he/she is not scared of police. I have explored their feeling towards police in each interview, and always received the same answer: police is not a problem as long as you behave properly, as long as you do not commit crimes. Undocumented migrants in Bologna generally told that they are not scared of police, because they understand which the «rules of the game» are and feel like they can avoid the deportation as long as they follow those rules, even if they are undocumented (cf. Young, 2014).

Interviewees do not exclude the possibility of being controlled by the police, and not even the possibility of receiving a removal order. However, they almost exclude the possibility to be kept in CIE and removed:

Se ti fermano senza documenti non ti danno l'espulsione ti danno il foglio di via. Prima era diverso. Prima se ti fermano, due anni fa tre anni fa ti fermavano ti davano l'espulsione. Adesso non fanno più l'espulsione, lo fanno nei casi un po' seri, quando ci sono dei casini. Non applicano la legge. La legge e' la stessa. (L, Morocco)

Migrants explain that since Bologna's CIE was shut down police control over undocumented migrants has softened, because the police do not have any place to keep possible removes while waiting for removal:

> *Ma adesso è più semplice, la legge è cambiata. Non c'è più posto per tenere in CIE. A volte il Cinese senza permesso di soggiorno non gli interessa più, magari alla polizia lascia un foglio di via in una mese, ma la polizia non controlla più. Una volta c'era obbligo di allontanamento, accompagnava all'aereo, in passato è successo tante volte, e la Cina deve pagare per il rimpatrio. Poi non più' l'espulsione, e sai perché'? Perché' cinese non mostra I loro documenti, e quindi non si può' certificare da dove viene, e quindi dopo un periodo al CIE ma non può' mantenere sempre perché' costa I soldi e quindi lascia. Però clandestinità' adesso non è più' come una volta, adesso è più' libero. (L, China)*

And even when, in very limited number of cases, the police decide to keep a migrant in administrative detention in CIE[113], there is always the possibility to "hinder the deportation machine" (Campesi, 2015a) by not providing the police with real identity.

Furthermore, receiving a removal order does not appear as a big deal:

> *Sì sì, ti fermano: documenti, fai "io non ce li ho i documenti", ti portano alla caserma, ti fanno le impronte, ti lasciano (con tono di cantilena, a mo di descrivere una cosa ripetitiva, successa più volte) (Z, Morocco)*

Even if an undocumented migrant is stopped and, instead of being let alone, he or she receives an order to leave in seven days nothing serious happens. Undocumented migrants share a common idea of their "undeportability", and feel safe to go around the city if they know that they did not break any informal rules:

113 Another Italian CIE, different from Bologna's. This may happen in serious cases.

Giro Bologna, io vado dappertutto, perché io non ho paura di nessuno perché io faccio le cose buone. Io dove voglio andare vado.(B, Senegal)

Tre volte, tre volte che ha fatto impronte. Ma fa niente, perché solo per te lo fanno. L'importante è che ti conosce, se non hai documenti vai qua vai là vai per strada, non è problemi. Apposto. Non hai problemi, se non c'è qualcosa che è pericoloso non hai problemi. Vai impronte vai avvocato, Vai impronte vai avvocato. Non è un problema, veramente. (S, Egypt)

As S says in the above excerpt: it is just enough for you to get a lawyer. Asking for help from a lawyer when fingerprinted is a usual practice to resist removal, migrants show to be familiar with that. This is also true for those migrants who cannot easily afford to pay for a lawyer. They prefer to make this investment, perhaps asking money to their families back home if they cannot pay, or asking economic help from a friend, or using their savings.114 Asking for help from a lawyer seems to be part of the ritual as well: each actor (the migrant, the police officer, the lawyer, the justice of the peace) plays his/her own role in the "spectacle of borders" (De Genova, 2013), each of them being aware of the other's role and its effect.

Interviewees state that the undocumented migrants who are drug dealers should not have the same possibility of asking for help from a lawyer:

Se qualcuno vende qualcosa è meglio che vai in galera per me, non hai problemi.

Ah, che vai in galera?

Vai in galera, perché non va bene così che vendi qualcosa, non voglio che vai avvocato, no. Vai in galera perché hai fatto una cosa brutta! (Sh, Morocco)

114 Actually, migrants recur to lawyers very often, not just to avoid the risk of deportation, but also for other little things, such as asking for information at the immigration office and so on. The problem is that there is no way to get information, except having a lawyer. It suffices that you do not know Italian very well and you need a lawyer.

In this extract she says that he does not want that someone who "is selling something" to ask for help from a lawyer. He wants someone who is selling something to go to jail. She shares this complaint of Italian police control people, but this is what the police are supposed to do: they ask you questions such as what you do with your life; they want to know how you gain the money to live. This is their job; it is good if they do so. Migrants show themselves as being very respectful of police work, and disrespectful of people entering a criminal career. Many of them require from the police that they control the migrants who are involved in drugs dealing, who are also considered dangerous by migrants themselves. Even a lawyers agrees that if an undocumented migrant is stopped with any drugs in his/her pockets it is better to comply with the order to leave in seven days and go back to his/her country of origin:

> *Avvocato ha detto: voglio sapere se ti ha fermato per hashish, che hai venduto qualcosa o solo ti ha fermato in strada. Anche avvocato vuole sapere se la polizia ti ha fermato per qualcosa brutta o ti ha fermato in strada solo per caso. Mi ha fermato per hashish o qualcosa, meglio che vai in Marocco in cinque giorni. (Sh Morocco)*

Some lawyers I talked to during ethnography used to name undocumented migrants stopped and ordered to leave that had a long list of crimes on their records as "dead men walking": they are the undocumented migrants who cannot be saved by any kind of defensive strategy. So, the police, migrants and even lawyers share the knowledge that undocumented migrants risk deportation when they are stopped with drug or as a consequence of crime.

Accordingly, if undocumented migrants who are not involved in any illegal activities say that they are not scared, the others are. Here, an extract of MA's interview where he explains exactly when it is dangerous to meet a police officer:

> *The only really troublesome thing is when you spent some time in jail, at least once. Well, if you did it, you are fucked up. (M, Senegal)*

MA explains that, once you have served a sentence in jail, then the risk of being deported as a consequence of lack of papers is so much more serious: it is not even a risk anymore, but rather

it is a fact. The police represent a danger for an undocumented migrant just when they decide that he/she is dangerous). The same opinion is shared by M,

> *Perché anche il fatto che tu vendi sempre, hai paura. (...) Ti prendono in ogni momento, hai sempre paura, sempre. Non dormi mai.*
>
> Ma, dici, se fumi?
>
> *Se lo vendi! Se lo vendi hai capito?*
>
> Mmm... Invece se non la vendi riesci ad essere più tranquillo?
>
> *Certo, come no! Mentre quello che vende non sta mai tranquillo, sempre sta attento, sempre ha paura. (...) E allora non hai una vita, capito, anche se guadagni soldi. Non vivi bene. Meglio che non vendi niente, stai tranquillo. Se hai 5 euro compra una birra e vai; vai là e bevila, tranquillissimo. Altrimenti difficile, capito? Difficilissimo. (M, Morocco)*

M explains that if you sell drugs, you are scared. Furthermore, you are so scared that you need drugs to survive and control that fear. Migrants who do not sell drugs strongly condemn those who sell drugs, and they condemn even more harshly those migrants who sell drugs and make use of them. In fact, they say, when one who is in the drug dealing business is also an addict: he will remain poor because he will sell the drug just to be able to buy more drug, he will not improve his own condition, and will always be scared.

In general, it seems that interviewees disregard the structural conditions of deprivation usually behind the choice of selling drugs, as if they never experienced such constrictions. Given structural conditions of deprivation, dealing drugs may be read as a form of adaptation. Yet, entering the market of drug dealing may also be read as a form of resistance in itself. In fact, informal or illegal economies have been conceptualized as a form of resistance, principally because they are a way to escape state control, but also to emancipate your self from a plurality of powers (Saitta, 2013). Undocumented - but also documented - migrants who are in the market of drug dealing have refused to occupy a subordinate position as underpaid and exploitable irregular workers within the receiving society; in a sense the figure of the drug dealer may be read as the "Innovator" conceptualized by Merton (1938), who innovates the structurally defined means to achieve culturally defined goals.

Some clarity is needed over the figure of the drug dealer. Sometimes, dealing drugs becomes a way to make up wages, not necessarily the only income-generating-activity that an undocumented migrant is involved in. Dealing drug may be a peripheral activity alongside the principal working activity; probably an irregular, precarious and underpaid job that is not enough to provide for what is perceived as a worthy life, or differently said, to achieve the goals that are culturally defined. A quite common story is that an undocumented migrant starts dealing drug after Italian buyers ask him for drugs several times. As A (Senegal) explains: "they ask you if you have something to sell, and at the end you start selling it" (same stories in: Melossi, 2000; Sbraccia, 2007)[115]. Another common story is that a migrant starts dealing drugs out of need. This is the case of L (Senegal) who arrived in Italy when he was 17, mainly for curiosity. His father was a diplomat, so he had travelled quite a lot before arriving in Italy. He had been working for ten years in a factory in Modena before he lost his job and his residence permit. He explains that he would rather not to deal drugs if he had choice, but he has a son and a wife, and he needs to provide for them. He is angry and very upset when he says that,

They have built me up, they force me to do bad things. I didn't want to (L, Senegal)

In this statement, "They" are the law, political actors, and the fact of having lost his residence permit. Another common trajectory to such illegal economy is when an undocumented migrant does not have any friends or relatives who may help him or her in the initial time of the migratory project, or if the friend who is helping works as a drug dealer and soon will start asking him or her to do the same. Entering illegal economies may also be an alternative to the informal economy, when state control tightens up and makes it impossible for undocumented migrants to keep on working in that sector. M from Senegal, started dealing drugs as a last resort. Before then, he used to make up his wages by working as street vendor in the Southern Italy in the summer. He worked as a street vendor for three years, until police control against peddling became more and more pervasive and frequent, thus turning peddling into a too dangerous

115 Even the documentary "Life in the city" from 2009 tells the story of an undocumented migrant in Bologna who decides to start such activity because he had no other chance and confronted several times with Italian buyers who were making the association Senegalese-drug dealer. The film-maker is a Senegalese migrant who also experienced a period of time as an undocumented migrant in Bologna.

activity. It became impossible to run this activity in the informal economies, and so M. started dealing with drugs116. The paradox is that being a street vendor can be more difficult and stressful than being a drug dealer; in fact, if you are a street vendor, you need to make yourself visible for possible clients and in doing so you are making yourself visible also for police officers. Hence, you will be subjected to controls maybe more easily than if you are a drug dealer. If you are a drug dealer, you need to be invisible, because also your clients need to be invisible while buying. In general, the illegal economy of dealing drugs may be intended as a *subterranean economy*, which is accepted as long as it is invisible and limits itself to the margins of societies and cities.

The illegal economy of drug dealing is widespread and requires that police manage it through the "rules of disorder" (Palidda, 2000) rather than with the attempt to establish an impossible order. In other words, this is an illegal market that the police can hardly defeat, but that will be more probably required to manage and control. Police engages in continuous control, but sometimes also turns a blind eye on illegal activities. Migrants, on their part, sometimes escape control and sometimes defy it. And so, police and migrants, through continuous encounters, negotiation and even clashes, will create some sites where drug dealing will be tolerated - so called "risk zones" - alongside all the other sites where it will be not. For example, risk zones are some "corners" in a Bologna neighborhood; the neighborhood in Bologna with the highest percentage of migrant residents, which is also the neighborhood where I conducted the majority of interviews. These are corners where drug dealing is actively and manifestly practiced by migrants[117], where police sometimes intervene but most of the times do not, where such illegal activity is clearly tolerated and needs to be managed and to be restrained within certain boundaries.

Police officers in Bologna seem generally not to operate in order to enforce the immigration law, but rather they seem to use the immigration law as a resource for the purpose of controlling

116 He told me that when you are a street vendor, it is more convenient if you are an undocumented migrant: in fact, if you are an undocumented migrant the police only give you an order to live, without any serious consequence. Street vendor is not a dangerous category. They are checked, but for the purpose of moving them from places where they are not supposed to stay. Instead, if you are a documented migrant, the police will give you a fine for peddling. That you should better pay, because you have your residence permit and you do not want to risk losing it, for example on occasion of its renewal.

117 This does not mean that Italians are not involved in such illegal economies also as sellers, not just buyers. However, Italians usually operate in private spaces, not in public, where they would be more exposed to the control of police. These are parallel criminal circles (Sbraccia, 2007)

drugs dealing, following the principle of the "restricted relevance of culpability" (Bittner, 1967): it is easier for a police officer to prove that an undocumented migrant suspected to deal illicit drugs is irregularly present in the territory, than to prove that he/she is a drug dealer. However, as we saw, for their part migrants did not appeared surprised from the discretionary use of power displayed by police officers; rather, they seem to be aware of how discretion operates and enabled to take advantage of it.

The category of dangerousness is, however, ambiguous and discretionary. Thanks to their low visibility, police officers generally have discretionary power during street-level activity to independently decide when an undocumented immigrant is to be considered dangerous. We started to see that there are some rules of the game regulating interactions and determining which undocumented migrants will be able to remain in the territory. Some of these rules regulate accessibility to the public space for migrants. And migrants are very much aware of this:

> *A quell'epoca quando non avevo documenti vado in giro. Una cosa che ricordavo appena sono arrivato I miei amici mi dicevano (ride) "guarda, quel posto lì, non vai a quel posto lì" Perché? Perché mi dicevano lo frequentano solo spacciatori, lo frequentano solo e potrebbe essere che sei al rischio di andare via. Quindi ci sono delle zone qua a Bologna che ti dicono no, non vai lì, non vai lì. Io Bologna l'ho girata, anche senza documenti tranquillamente, perché? Perché io non faccio niente non avevo paura di niente. Quindi girato tranquillamente, quando ti fermano tranquillo, ce li hai I documenti? Non ce li ho, ti portano impronte foto, a volte mi fanno dormire anche mi portano anche una pizza a volte (ride)(Z, Morocco)*

Bologna has certain spaces that both migrants and city police officers call 'risk zones'. Risk zones are sites where drug dealing is said to occur, and police more frequently patrol them (see also Beckett and Herbert, 2011). Police associate the migrants who frequent risk zones with drug dealers, and therefore consider them as dangerous, stop them more often and more frequently take them to police headquarters. The category of 'drug dealer' is a powerful tool to manage migration not just during trials and validation hearings, but during territory control. However, on the one hand, the category of drug dealer is also made up by the police, during the territory control activity, based on some elements, such as: the place where the migrant was

encountered, his nationality and gender, the time when he was encountered, his attitude (Fabini, 2012). As one city police officer that I interviewed in previous research told me, also "the prejudice has become a tool of work" (Fabini, 2014); that is, prejudice helps the police officer to understand who to select, based on an "empirical sociology" which mirrors a prejudiced reality. On the other hand, the category of the drug dealer is also used as a tool for the control of the territory, to move people when they are "out of place". However, there is an ambiguity to risk zones: migrants are aware they are running a risk by going there, but they also know that a zone is likely to become at risk when they start hanging out there. The first thing that migrants learn from the members of their national community is where are the places in the city where it is better not to go. The interviewees often said that this was the first thing they have been told. Many of them follow the suggestion, but many others transgress these rules and defy the mechanisms of power and the police by freely crossing the public space; on the strength of their experience that the police are not a big issue for them, and that they are not their target. By their power to 'create' new risk zones and by not shunning public spaces, migrants create resistance: they force the police to negotiate the conditions of illegal stay.

In the management of undocumented migration in Italy, and particularly in Bologna, police discretionarily use their stop and search powers in order to distinguish between "dangerous" undocumented migrants to be detained in CIEs and eventually expelled, and "not dangerous" undocumented migrants to be let go free. Giving a removal order is in between the two, as receiving one removal order is not a big deal and with the help of a lawyer, the migrant ordered to leave will be perhaps able to get the order deleted by the justice of peace.[118] However, based on the interviews with the justices of peace, the fact that an undocumented migrant accumulates many orders to leave becomes a hint of dangerousness. In implementing migration law, police enact a selection process among migrants that is becoming more severe and that is based on police discretionary evaluation of migrants' dangerousness. In the study case under analysis, a fundamental rule of the game for undocumented migrants in order to remain in Italy, even irregularly, is to remain "clean" and not enter the illegal trade of drugs dealing.

118 This should be investigated through the analysis of how many migrants appeal against a removal order and win the lawsuit. Yet, the importance of getting a lawyer when migrants receive an order to leave is an element that emerged from in-depth interviews, and I did not have enough time to additionally verify this result through quantitative data on the appeals against removal orders.

The point to be made is, as shown in first chapter, that police has limited resources and a troublesome mandate; that is, that they are able to achieve order maintenance rather than law enforcement (van Maanen, 1978; Bayley, 1994; Palidda, 2000). The paradox here is that the institution accountable for the enforcement of immigration law is an institution mainly committed with order maintenance, under-enforcement or non-enforcement at all. The various analyses of mechanisms of control over undocumented migrants just relying on the "" of the law, should instead deal with an important finding in the sociology of police: in police, practices of control law is no more than a resource among others in order to answer some urgent and practical needs of territory control activity, to such a point that when law enforcement eventually occurs it is however driven by motivations different from the law's. Even when a police decision results in the trial of an undocumented immigrant, a "restricted relevance of culpability" (Bittner 1969) permeates police decisions. According to Bittner, law always enables police to find a legal justification *ex post* for their practices, to such an extent that police appear to comply with law even when they do not.

Given their limited resources and troublesome mandate, the police cannot arbitrarily impose all the rules and, just as undocumented migrants, they will probably be more inclined towards negotiating with their counterpart to reach an acceptable disorder rather than trying to establish an impossible order (Palidda, 2000). For instance, they would rather turn a blind eye on a situation that is not completely lawful, nor is it totally out of control. This is to say, even if it is true that migrants are not free to do whatever they want, neither are the police. Because of limited resources, police officers do not have the actual power to impose all the rules of the game. To a certain extent, they are compelled to frame their practices of control "in accordance" with the strategies of resistance of migrants. Against a law impossible to implement and the reality of undocumented migrants being present in Italy, the only possible scenario is that the controller and controlled agree on a way for both of them to co-exist in the same territory.

THE PERFECT LABOURER IN TERRITORY CONTROL

The category of the perfect labourer operates in an opposite way to the category of the drug dealer, but it is equally important in the mechanism of internal borders control. If the drug dealer is the one to be selected (or, differently said, if the drug dealer is the category made up to justify ex-post the arrest of an undocumented migrant), is the category that exhibits the selective

enforcement in immigration control, then the category of the perfect labourer is the one that exhibits selective non-enforcement.

Migrants interviewed display the same confidence about the fact of not being stopped if one is an undocumented migrant with an irregular job as a lot the fact of being stopped if one is an undocumented migrant who did "something bad". Many migrants interviewed talk about being stopped while going to work, or being asked about their job when stopped. Some of them speak of police saying: "you are a good boy, you go". As a matter of fact, many of the migrants interviewed tell of episodes when they were stopped and let go given the evidence that they had a job.

> *Ho visto una bella ragazza che passava e ho detto "ciao bella", e allora i carabinieri mi hanno fermato. Ero in motorino senza patente, assicurazione e documento. Mi hanno fermato e hanno chiesto il documento, io ho detto che non ce l'ho e allora mi hanno chiesto "perché non ce l'hai e vai in giro in motorino?" E io ho detto: "devo lavorare". E allora i carabinieri hanno chiesto: "e dove lavori?" Volevano sapere indirizzo e tutto. Gliel'ho detto. "E dov'è la consegna?" Gli ho fatto vedere consegna, indirizzo e tutto e: "ah, va bene". Poi hanno chiesto: "motorino rubato?" e io "No no!" Hanno controllato con il numero di telaio, sai, hanno guardato sulla macchinetta... E allora hanno chiesto: "cosa facciamo?" E io "Questo qui e' il mio motorino ma io devo lavorare, ho un altro motorino a casa che ha tutto, tutto, tutto, ma non lo posso usare per tre mesi. Io non posso dirvi cosa fare, voi dovete fare il vostro lavoro". I carabinieri si sono guardati tra di loro e hanno detto "vai! Ma non girare con il motorino, se ti beccano ancora non ti va bene come con noi". E allora io ho portato la consegna, sono tornato in pizzeria e ho detto non posso lavorare più, e ho smesso di lavorare finché non ho avuto l'altro motorino. (S, Egypt)*

> *Mi ha fermato mi ha detto buongiorno subito gli ho detto come stai ha detto bene e subito mi ha lasciato, mi ha fatto domanda per vedere se io ok, non hai fatto... io lavoro, così, non hai problema. Un'altra volta stessa cosa. Un'altra volta ha cercato nello zaino, e io dentro avevo la pompa che serve per la mia bici, le chiavi per la ruota. Già aperto, c'ha guardato dentro, c'era la camera ad aria, ha trovato la pompa e questo. E ha detto tu sei un ragazzo bravo. Io già ho parlato dei pezzi della bici. Io lavoro con la bici, ho detto io no bugie, ho detto tutti i pezzi della bici, sapevo. Io no bugie. Ho fatto ho detto tutti i pezzi della bici. Ha detto alla*

polizia tutti i pezzi della bici, per dire alla polizia che lavora con la bici e che non dice bugie. (S, Morocco)

It appears clear that the police do not always enforce immigration law, meaning that police often let undocumented migrants go free, depending on certain arbitrary evaluations. Police informally allow undocumented immigrants to stay in Italy, even without residence documents, as long as they are irregular workers and do not cause any sort of trouble. Police officers stop undocumented immigrants and ask them whether they have jobs or not, turning a blind eye to an immigrant's illegality if he/she is an irregular worker. What should be highlighted is that whenever they decide to let an undocumented migrant go free, police break the formal legal rules and introduce some other informal rules. Concerning undocumented migrants, the most important rule is not that undocumented migrants have to leave the Country, but rather that undocumented migrants need to remain "clean", meaning not to commit any crime, in order to be informally allowed by the police to stay.

Whenever police decide not to expel undocumented immigrants who have irregular jobs, they send a message that undocumented immigrants are allowed to stay as long as they follow the more important rules of the game and enter the informal labour market.

Many migrants interviewed tell how easy it is to live in Italy without document:

Puoi andare in giro in città', la polizia non fa niente... per quello in Italia e' molto più' facile vivere in Italia che in altri posti, perché qua I controlli sono pochissimi! Se uno si può' trovare benissimo un lavoretto da niente per andare avanti e vivere in casa con altri e andare cosi. Io non so se lo vedi, anche se fermano qualcuno per strada e lo identificano non gli fanno niente insomma, al massimo...

Quindi non si sente spesso di gente che finisce in CIE.

Raramente, devo aver commesso una cosa abbastanza grave, ma senno qua non fanno niente. (...)

Quindi si può' vivere anche senza permesso di soggiorno?

Sì sì, con difficoltà, però si va avanti anche per degli anni anche 4 5 7 anni. (H, Syria)

For example, an interviewee argues that even if it is easier to find a job in France than in Italy, in France the risk of being deported is real and is high, even if one has a job. On the contrary, in Italy you do not really risk deportation, but it is more difficult to find a job. And this is mainly true given the economic crisis that started in 2008.

This selective non-enforcement of the law in favour of undocumented migrants employed in the informal economy, reminds one of the police that controls and distinguishes among laborious and dangerous classes at the origin of modern liberal state (Campesi, 2003), which I presented in chapter one. Looking at the management of undocumented migrants today, when undocumented migrants perceived as dangerous are detained while those who work are let go , it seems that police, according to Chambliss (1964), continues manage vagrants and idle through a creative enforcement of vagrant law. This is also what is perceived by one of the interviewees:

> *Per quello la polizia controlla gli stranieri: vogliono che fai un lavoro in Italia, un lavoro serio, centrato, bravo, pagato qualcosa, bravo, che anche se non hai il documento non è un problema. Polizia brava qua in Italia. Non hai (fatto niente di) brutto? Bravo. Voglio sapere che tu stai qua, che fai qua, se qua non lavori, che fai, che mangi dove dormi? Dove compri le cose? Se uno non ha il documento, no ha lavoro, dove compra qualcosa se non ha il lavoro. Polizia vuole sapere dove lavoro! E io ho detto bene, perché io già tante volte io mai bugia, ci ho già parlato serio ha detto: perché non c'è casa, non c'è lavoro, non c'è documenti. Quattro anni o più o meno dove prendi quei soldi? So anche non c'è mamma, non c'è padre, la polizia vuole sapere dove prendi quei soldi . La polizia vuole sapere, non è un problema. Vuole sapere quello che fai. Se polizia serio non è un problema. (S, Morocco)*

It is important to clarify that the police let the undocumented migrants who work to go free. They do so because the perfect labourer is a disciplined, non-troublesome subject. The police have to make a choice given the limited resources, in time and money. Obviously, working conditions in the informal economies for undocumented migrants are very bad and scarcely profitable. Occasional and precarious jobs, exploitation and non-payment at all are common conditions. Yet, working allows undocumented migrants to remain and keep themselves safe

from the risk of deportation, at least in Bologna.

Actually, this is not just true for the local context that I studied through this research: several examples of undocumented migrants that police let go because they are workers can be found in Italian sociological research. This is the case, for example, of a bricklayer from Albania who used to always keep with him all his money, earned from his job as bricklayer. Once, he was stopped by the police in the park where he used to meet up with friends (all of them Albanians). Found with all that money, he was immediately suspected for drug dealing. He had to show his hands ruined due to his job as a bricklayer in order to prove to the police that he was working (Sbraccia, 2011). The police believed this evidence and although in the first moment they had categorized him as a drug dealer (Albanian, in a group of young men, in a park, with a lot of money), they changed their category to that of perfect labourer. Building on this episode, Alvise Sbraccia explains that "the procedures to ascertain [dangerousness] reveal the importance of the informal dimension"(2011:139) in the interaction between migrants and the police. Sbraccia says that what prevails in the police decision to enforce the law or not, is not the law but the common sense. Sbraccia explains that, the decision not to enforce the law toward the Albanian bricklayer without permission to stay has strengthened the legitimacy for him to occupy the public space.

However, even when the undocumented migrants encountered are released, one cannot evaluate under the importance of undocumented migrant experiencing the uncomfortable feeling of being stopped. In fact, migrants tell that they experience the embarrassment of being stopped when this happens. Though without proper legal consequences, being stopped creates a stigma. Many migrants also experience anger, or they are upset from experiencing something that they live as discrimination.

> *Dice che una volta lo hanno fermato dieci volte in una settimana. E tutti e tre mi dicono che è brutto quando ti fermano per strada, è brutto perché ti vergogni, perché non lo possono fare. Perché tu non fai niente e loro ti fermano (...) Ti fermano e ti chiedono i documenti sempre, e il fatto che lo fanno sempre, ti fa impazzire, ti fa diventare una persona brutta, arrabbiata. E' stress. (Informal chat with Senegalese people).*

Per esempio, se io vendo tu non mi trovi addosso la roba, quindi che fai? Mi vieni a controllare ... io sono venuto a prendere un po' d'aria, mi fai vergognare così. Però tutta questa gente a controllare devi dirmi perché. poi non hanno trovato niente. (M, Morocco)

Se volete mandare qualcuno nel suo paese, mandalo. Mandalo senza trattarlo in un modo che non è gentile che da un modo che fa arrabbiare. Ma volete fare così, farlo arrabbiare, per fargli fare delle cose brutte? Se volete così...*(Sl, Morocco)*

In the interaction between police and migrants, even when the encounter ends up with no legal consequences (meaning that the migrants does not receive an order to leave nor is brought to a CIE), the police are performing internal borders in any case. A border is performed in the very moment when police stop a migrant to be sure that the migrant follows the informal rules. The border, invisible before then, becomes visible afterwards. What happens here is a process of inclusion: when the police stops an undocumented migrant and allows him or her to keep living inside the country, even without the official authorization, police are producing a subject. The subject is not an excluded undocumented migrant, but an undocumented migrant "differentially included" (Mezzadra and Neilson, 2013); an undocumented migrant whose presence within the country will be additionally legitimized by the selective non-enforcement of immigration law, as it was for the Albanian bricklayer interviewed by Sbraccia (2011). The police intervene either to ascertain that the undocumented migrant is following the rules of the game, or to force him or her to follow those rules.

It is worth referring to Althusser's concept of *interpellation*, in the way Didier Fassin (2013) talks about it. The famous scene proposed by Althusser is the imaginary one of the police who calls a passer-by saying "you there!" if the passer-by identifies himself with the "you", the passer-by becomes a subject. He has agreed with the terms of domination. According to Althusser, the State transforms individuals into subjects, when individuals identify will the label of the state through interpellation. So, this is what happens when police perform internal borders and produce the subject through non-selective enforcement: migrants identify themselves with the undocumented migrant who is allowed to remain and who finds a place, even subordinated, within the receiving society. They become that subject. However, this is not a one-way process, because migrants participate in the construction of those informal rules that allow them to

remain in the territory. As interviews show, they are not surprised from the discretionary use of power displayed by police, they know what to expect according to what they do. For their presence, for going in places where they are supposed not to go, migrants force the police to accept their illegality and give them no other choice than managing it. Police and migrants display "complementary and antagonistic roles" (Salter in Johnson et al., 2011) in the way they perform the border. Migrants enact various strategies of resistance, just being there.

In order to evaluate the importance of migrants as active agents in the process of *bordering subjects*, I welcome the use that Fassin proposes of the concept of interpellation combining it with the analyses of Foucault (see also Saitta, 2015). Fassin explains that the interpellation operates along two opposite directions: from top down, when undocumented migrants accept the domination of police and become subject to their power; and in the opposite direction, from the bottom up, when migrants become subjectivities, that is, they make up their own identity, the label that was appointed to them. According to Fassin, "the political subject is the product of the dialectic relation between subject and subjectivity, a relation through which each one is appointed a social position that he or she could accept or reject" (Fassin, 2011: 34. My translation). Saitta (2015) builds on this and defines what happens in the context of the subject opposing a resistance to the interpellation. He says that there are two of possible reactions from the subjects who are being interpellated: the flight, aimed at avoiding the police; or a strategic interaction, aimed at controlling emotions and avoiding suspicion from the police. The flight, Saitta says, can be mainly found as a tactic from marginal people: this is shown, for example, in the ethnography of Arabs escaping police controls in Parisian *banlieu*, by Fassin (2013), or in the ethnography by Goffman (2014) of Afro-Americans escaping police in Philadelphia. Both Arabs in the *banlieuu* and Afro-Americans identify themselves with a subject that may be the target of police control, and they resist by escaping, avoiding control. Therefore, they identify themselves with the subject who is being interpelled but, at the same time, they resist domination. On the contrary, the strategic interaction consists in a strategy of resistance by acting as if one has nothing to hide. Saitta claims that "in urban multicultural contexts, as the flight is more common for marginal people, the strategic interaction is common for nationals" (Saitta, 2015: 38). Moreover, he says, in some contexts, the strategic resistance or the flight becomes almost a *habitus* built on practice, that is, in the repetition and the rituals.

Differently from what Saitta (2015) observed, in my case study undocumented migrants do not escape flight, they do not necessarily do whatever is they can to avoid police control. They

know that they will be an easy target for police check, because of their appearance that makes them easily identifiable as non-Italian; and they also know that they will run a higher risk of being stopped if they go in some zones of the city – even if the risk does not prevent them from going there anyway. However, they also know that, once stopped, they will have their chances to negotiate with police the conditions of their staying in the city. In fact, it even seems that those undocumented migrants who have accepted to follow the informal rules of the game do not identify themselves as police target at all. They know that they will probably be stopped; but they also know that probably nothing serious – such as deportation - will happen to them. Undocumented migrants in my case study enact a strategic interaction at the internal borders.

THE STRATEGIC INTERACTION AT THE INTERNAL BORDER: NEGOTIATING ILLEGALITY

Police want to know the names of migrants stopped, in order to check their crime records in the database in real time.

> *Loro (la polizia) fanno controllo. Non ho niente, non ho neanche un foto con loro che sono stato in un posto che non posso stare, o che ho fatto una schifezza, ho fatto uno spaccio, o una rapina quella roba li. Io non ho mai fatto questa cosa. Quindi quando loro mettono il mio nome nel computer non trovano niente, quindi mi lasciano andare. (S, Egypt)*

On the one hand, many migrants say that they give the police their real name, because they know that they do not have any crime records and that, based on this, the police will release them even if they do not have any residence permit. In this way, police enacts both disciplinary control on the individual and governmental control over the migrants as a population. It is obvious that the police posits the link migrant-possible criminal, and they verify on that.

On the other hand, providing the police with one's real names is a risk, because it makes it easier for the police to deport them. In fact, one of the biggest obstacles to deportation is the uncertain identity of the returnees. If migrants provide the police with their real name, the police will be enabled to potentially enact deportation; yet, if they do not, they will probably bring migrants to the police headquarter anyway, in order to get the migrants' fingerprints and verify if any

crime records may be associated with their fingerprints, or to register the migrants' fingerprints. Undocumented migrants hide their identity as a strategy of resistance, by neither providing any ID, nor his or her real name. This strategy changes, depending on the national community of the migrant or on personal experience.

M (Morocco) tells that it is important to go around the city without documents and hide one's real identity. He tells the story of when the police stopped him with two other friends, the three of them without residence permit. He was not scared because he did not have his ID with him; unlike the other two; therefore he could not be deported, unlike from the other two. The three of them were brought to the police headquarter. However, differently from what they expected, his two friends were released just after two hours "because police knew their identity", while he was kept in custody at the police station the entire night. Even if M could not have been deported, he experienced the night in custody as unexpected and criminalizing. M tells this story to present a time when a practice of resistance that he enacted did not work as expected. In general, undocumented migrants want to avoid deportation, but they also consider being kept in custody for an entire night as a defeat. They usually talk about that as a traumatic and unexpected experience; as a punishment in itself. In fact, many undocumented migrants prefer not to hide their identity, in order not to risk being kept in custody. For example, Sd (Morocco) and S (Egypt) always show their ID to the police, to avoid police station, which is experienced with discomfort and also as a loss of time; even as a loss of one working day. Again, they show to be confident that they are "undeportable".

This strategy varies depending on national communities. Chinese people, for example, prefer to hide their ID when stopped, even though they are not stopped very often:

> *Una volta c'era obbligo di allontanamento, accompagnava all'aereo, in passato è successo tante volte, e la Cina deve pagare per il rimpatrio. Poi non più' l'espulsione, e sai perché'? Perché' cinese non mostra I loro documenti, e quindi non si può' certificare da dove viene. E quindi dopo un periodo al CIE, ma non può' mantenere sempre perché' costa I soldi e quindi lascia. Però clandestinità' adesso non è più' come una volta, adesso è più' libero. (China)*

Providing aliases is a clear strategy of resistance. Yet, before courts it becomes a hint of criminal activities. A hint of an undocumented migrants' will to remain invisible and keep on with their criminal activities hidden in the shadow of the law. This may be a strategy of resistance even for that migrant who has crime on his or her record and wants to avoid the risk of deportation,

which is stronger in this case.

However, the fact that the undocumented migrant is invisible to the law is nothing but a legal assumption. In fact, in the patrolling, migrants suffer from over visibility instead invisibility. Migrants and especially undocumented migrants are extremely visible to the police. This is well expressed by Mo, in just one sentence:

> *Io non sono nascosto! Siete voi che mi fate nascondere! Ma io sono così evidente! (he laughs) (M. Morocco)*

In the interaction with the police officer at the internal border, in the moment when border agents and border crossers perform borders, migrants play an active role in the process that produces them as subjects not completely included, nor totally excluded. As the undocumented migrants who identify themselves as police target – i.e. migrants who are in the illegal economy of drug dealing – enact a form of resistance similar to the Arabs of Fassin's (2013) ethnography or Goffman's (2014) Afro-Americans, that is, they try to avoid confrontation with police at all; so do those migrants who do not ultimately identify as police targets – i.e. undocumented migrants who follow the informal rules enact other tactics of resistance. They do so by opposing a process of subjectivation to the process of subjection. They resist the *interpellation* that sees them as possible subjects to be deported by demonstrating that they are part of the category of undocumented migrants informally allowed to stay. There is something very similar to a ritual in the interaction between police and undocumented migrants, as the police stop migrants based on their physical appearance, not necessarily in order to enact sovereign power, but in order to verify in which among the frames of dangerousness the migrants take part. Police show that they have the authority to stop, that they actually have the power to create borders wherever and whenever they think it is convenient. Migrants however resist that power. Importantly, they display emotions that are hints of their not complete subjection to the power of police.

According to Saitta (2015), emotions play a fundamental role in the resistance of everyday life, either as detectors of a conflict in progress, or as a thrust of resistance. When they find themselves "caught" in an internal border and enact strategic interaction, migrants show that they do not identify themselves with subjects excluded or who are to be excluded. They may

be ashamed (if you stop me people look at me as if I was different, and you make me feel uncomfortable...), angry (I hate when you stop me!), surprised (so, why are you stopping *me*??), or very calm (if you stop me it means that you also stop the *dangerous others.* This is your job, I am fine with it, and I know nothing serious will happen to *me*); but these emotions do not imply that the person is accepting some kind of blame or in fact think less of themselves.

Sometimes undocumented migrants even feel safer if police controls them, because that is the police's work:

> *A me sta bene che la polizia controlli, che chieda. Ti chiedono dove vai, cosa fai, ecc ecc. E' il loro lavoro". (Sl. Morocco)*

> *Se la persona non è bene prende qualcosa e va via, non frega niente. Quando le persone fa cose brutte, prende le persone e non frega niente. Quello è lavoro di loro. Quello è il lavoro di polizia di prendere persone brutte. (A, Pakistan)*

Feeling safer if police control you while you are an undocumented migrant is a paradox, and at the same time is a powerful hint of you confidently believing that you are undeportable, even if undocumented, and that you are not the target of police.

In general, during interaction with police, undocumented migrants play their ace cards and resist. Therefore, one may act the role of being calm, self-confident. They know that if they hide, they would give reasons for the police to suspect them (in fact, may police reports say that the migrant was apprehended because he/she was hiding, or turned when encountered by the police). So, being calm and collaborative, showing respect for police work, it is the strategy chosen by L:

> *Ci hanno fermato anche una settimana fa, ma e' stato un controllo normale, io adesso ho capito come funziona. "I documenti, dobbiamo fare un controllo", io non avevo nessun documento e dicevo se volete vengo con voi, spiegavo quello che facevo, e l'altro era un diplomatico del*

Marocco, aveva il suo documento. Dopo hanno chiesto scusa e siamo andati via. No, per queste cose non ci sono problemi.

Una volte io uscivo da Bata, loro mi hanno fermato, due carabinieri. E io chiedo, ma cosa ho fatto, ho rubato qualcosa, c'è stata una segnalazione contro di me? Io dicevo per me non c'è problema, io non ce li ho (I documenti) e posso venire con voi, non c'è nessun problema.

L. shows the normality of being without documents and does not oppose the authority of police. Some migrants, instead, say that they pretend to be respectful and self-confident, even if they get angry, not to risk deportation or even worst:

Loro mi dicono che sembra proprio che ce l'hanno con loro. E poi devi stare calmo, devi stare tranquillo, non puoi ribellarti, perché poi rischi che ti mettono dentro un'ospedale psichiatrico, che ti dicono che hai dei problemi psichiatrici e ti fanno le punture, come è successo ad un loro amico, grosso, che adesso no può nemmeno più muovere le braccia.(informal chat with Senegalese migrants)

Another strategy of resistance is to avoid police check; yet, the strategy is not to hide, but to behave properly, as a conformist. This is the case of an interviewee who chooses not to drink and always dress up properly.

Io qua due anni mai la polizia fermato mai fatto casino, io qualche volta a ballare fino alle 5 di mattina, perché io no bevo mai ubriaco non fumo, mai litigato, vestito bene sempre fatte le cose giusto. (B, Senegal)

An undocumented migrant may otherwise decide to negotiate using wit and making jokes. Interestingly, the negotiation of the norm is a very peculiar aspect of "Italian culture" (Melossi, 2002), and one may argues that such behavior displayed by some migrants may be the result of

a successful process of socialization of the migrant into the receiving society. M (Morocco) gives several examples of episodes when police let him go, even having found he was irregularly staying in Italy after he made some jokes. Here is one of those stories:

> *Quella volta che ero a via Matteotti, io sto salendo a Piazza dell'Unità con la bicicletta e loro stanno venendo su. io mi sono fermato al semaforo (...) E loro hanno attraversato al semaforo perché sono (?) Si è avvicinati e ho detto "Ehi, c'è qualche problema?" Io gli ho detto così. Ha detto: "Hai i documenti?" E io: "no". E loro: "quello è il problema!" (ride mentre racconta) e poi hanno accelerato e sono andati. Gli è piaciuta proprio la battuta, ha accelerato e niente, non mi ha fermato niente. E' andato ha detto ciao. (M, Morocco)*

In this excerpt, M was stopped by police while riding his bike, and even if he was undocumented at the moment, he was the first to ask to police whether they had any problems with him, reproducing an "upside down version" of a situation he had lived several times before then. He claims that he often makes jokes and uses the means of irony when facing police: «you need to be strong», he explains; and he is not scared. Another story - , which I found quite funny - happened once that M eventually gained his residence permit, but the story shows that he was socialized very well in the Italian society:

> *una volta stavo tornando da Roma con il treno, mi sono fermato a Firenze: si e fermato il treno per 20 minuti là. E sono sceso a fumare una sigaretta. E' venuta la polizia: Biglietto? Io ho detto "ma che ci fai con il biglietto?" Ha detto "documenti?" Ho detto "No". Poi ha chiesto di nuovo il biglietto e io ho detto "non te lo do", e lui "Perché?" Ho detto: non sei mica un controllore. Lui mi guarda e mi dice: Ma scusa, ma io voglio il biglietto del treno. Non voglio documenti non voglio niente, anche se sei clandestino no mi interessa niente, voglio solo il biglietto. Io sono fatto così: ho preso la carta d'identità, ho preso il permesso, glieli ho dati: ecco la carta d'identità, ecco il permesso. Il biglietto non te lo do. Ha detto perché? Gli ho detto "Io perché sono ricco. Sono ricco, volevo andare sul treno perché non ho tempo e voglio pagare la multa dentro con 80 euro, che te ne frega a te?". Lui si è messo a ridere, te lo giuro (ride). Io ho detto: "io non ho mai pagato il biglietto, te lo giuro, sono ricco! Che ci devo fare la fila per pagare un biglietto di 15 euro? Io voglio pagare la multa! Se vuoi il permesso te lo do, è il*

tuo lavoro, te lo do. Ma anche controllare il biglietto.... Non gliel'ho dato! Te lo giuro, gli ho detto io voglio prendere la multa, non ho tempo da perdere a fare il biglietto, io volevo pagare la multa. Cosa te ne frega a te se io non ho soldi per pagare la multa (ride). E lui voleva il biglietto... Io sempre, sempre ho preso il contrario con la polizia, sempre sempre. (M, Morocco)

Two of the migrants interviewed also told me of the interesting emotion that they feel when police stop them and let them go, eventually *suggesting* them to "get lost" or to "go home". Telling undocumented migrants stopped and released to "get lost" is a recurring pattern in the stories told by interviewees.

Migrants usually do not react against this. Rather, they read this as a normal and acceptable reaction from a good police officer who lets them go even if unauthorized to remain. However two of them tell me that they do not really understand why police tell them to "get lost" and that they do not comply with the suggestion. S finds that this behavior from the police is funny (even if he never laughs in front of police), and when the police officer tell him to go home he pretends to obey, but he does not:

Pero' mi dicono sempre "vai a casa" (ride). Si, non posso stare sulla strada? NO no, vai a casa. Io me ne vado, ma non vado a casa (ride molto).(S, Egypt)

During our conversation, while still laughing remembering all the occasions when police told him to go home, he asks me: "but why? Why should I go home? Cannot I go around the city? Should I stay home?" I have been asking myself the same questions and I propose that the suggestion to go home that police give to migrants should be interpreted as evidence that police accept and acknowledge the presence of undocumented migrants in the city, but they prefer that undocumented migrants live in the *subterranean* spaces of society (Matza, 1964). Undocumented migrants are accepted, but should be as invisible as possible. s. Even if negotiation is a widespread practice and, at this point, a well established mechanism, managing illegality still is an unspoken mechanism of informal control, which from a legal perspective could even be considered as illegal.

If S finds it funny, another interviewee gets angry instead when the police do not arrest him but tell him to go home:

> *Quando ero clandestino giravo sempre senza documenti. A Bologna non rompono molto le scatole. Tranne una volta che mi hanno trovato a Piazza Maggiore, e mi ha fermato lui e mi ha detto "avete i documenti". Io con un altro, che ha i documenti mentre io no. Lui mi ha detto "ce li hai i documenti?" Io ho detto "no". E ha detto allora vai via da qui. Io ho detto "no", te lo giuro. "E perché mi dici che devo andare via?" E lui mi ha detto "devi andare via!" "Io sono seduto al mio posto. Portami con te, ma da qua non vado". Non sono andato, te lo giuro non sono andato. Però mi sono stancato proprio a 4 anni senza documenti. Proprio mi sono stancato, e allora faccio al contrario proprio, ma che cazzo! Tu mi controlli e mi dici vai via da qui? Ma che sono una merda che mi dici vai da qui? Chi sei tu?*

We easily see in this conversation the contours of a strategy of resistance pushed even further than the simple right to stay (Sciurba, 2009). If in the negotiation, both the borders agents agreed on that M can remain in the city even if he does not have residence permit, then they disagree on another level. The process of subjection enacted by police acknowledges the possibility that M exists as an undocumented migrant, but he should be invisible. The process of subjectivation that M opposes to the police officer is not just that he exists as an undocumented migrant and as such he has the right to stay, but also that he has the right to be visible. He is visible, he exists, and he does not have any residence permit because of the law, so the police has to deal with it. This interaction at the internal border suggests not only that M is undeportable, but also that he has been incorporated silently, as an undocumented migrant, into the receiving society.

Even more paradoxically, one may notice that for newcomers the period of detention in CIE - that in at least half of cases ends up with the undocumented migrant released in the territory with an obviously unattended order to leave – becomes a school of life. Z tells that he arrived by sea, and that Crotone's CIE, in Southern Italy[119], has been his first experience of Italy. While being detained there, he learnt everything about Italy:

119 It frequently happens that in CIEs in Southern Italy migrants detained are migrants who immigrated surreptitiously by sea. They are detained for a short period and then released in the territory.

Perché io quando ho 55 giorni al CIE, ho saputo lì le cose. Quei 55 giorni ho conosciuto tutte le cose da spacciatori, brave persone, che raccontano la loro vera storia come emigrati, come sentono qua, trovano uno e parlano seriamente, sinceramente e ti dicono quello che sentono dentro. Quindi io quel periodo lì ho conosciuto tutto. (Z, Morocco)

In CIE, the place where the power to exclude should reach its limit, undocumented migrants are socialized to "Italian culture"; they learn from other migrants about how to behave, what is acceptable and what is not, what are the "subterranean values" there, what is risky and dangerous for migrants, how to negotiate conditions of staying illegally. They are socialized to the practices of resistance in the everyday life.

ILLEGALITY UNDER COVER

Migrants enact strategies of resistance not only when they interact with the police and negotiate the conditions of their "illegal" staying, but also when they try preventing such negotiation by achieving a residence permit. In fact, even though it may not be risky to live in Italy without a residence permit, undocumented migrants report stressful situations, or lament that they cannot rent an apartment, buy a car, and live a more easy and quite life without a residence permit. Yet, achieving a legal status is always an illegal enterprise for migrants in Italy. In fact, a work contract is needed to gain a residence permit, but it is very difficult to find a job, especially since 2008, when the economic crisis started in Italy (see chapter 2). And it is even more difficult that an employer accepts to hire an undocumented migrant and deals with the bureaucracy to regularize his or her position. Therefore, what usually happens is that migrants buy fake work contracts, through which they can ask for a residence permit or for its renewal.

The migrants interviewed, when asked about how they gained their residence permit, often repeated statements such as: "I found a work contract", "my brother bought a work contract for me", and so on. Interviewees were very surprised that I could not immediately understand what they meant – which is an evidence that these procedures are of common knowledge for them: migrants who want to regularize their legal status buy a work contract (of a job they will never do) in order to show it at the immigration office as a proof of their working activity, necessary condition to have access to a residence permit or its renewal.

Per 3 anni ho fatto il giro a Vignola per trovare un negozio, un lavoro, qualsiasi lavoro. Ma non c'è niente...

Ma allora come hai fatto a rinnovare il permesso di soggiorno?

Con il contratto di lavoro

Ma era finto?

Eh, mi compro un contratto di lavoro! Ma tutti gli stranieri che vivono qua fanno la stessa cosa.

Ma quanto vi costa?

E il governo sanno così, sanno questa cosa. Sanno bene che le genti non lavorano. Che comprano I contratti di lavoro per rinnovare I suoi documenti. Ma il governo quello che gli frega sono I soldi. E vero?

Eh...

E allora? Se la gente non trovano lavoro comprano il contratto di lavoro (Sl, Morocco)

Sl explains that in the 5 years that he has been living in Bologna, he never worked. But he immigrated in Italy legally, in 2008, with a residence permit for working reasons, and he renewed it once; at the time of the interview he had been undocumented for one year and half. It took me awhile to understand that when he said that he renewed his residence permit with a work contract, he meant that he bought a work contract. Economic conditions in Italy complicated the possibility for a migrant to find a job in the legal economies. Many of the interviewees arrived at the beginning of economic crisis and, contrary to their expectations, it was hard to find a job, as it was the case for S (Morocco),

"Per quello che tenta che è arrivato. Io arrivato qua ha trovato, io è arrivato qua proprio non c'è lavoro, come lavoro non ho trovato niente. Dura la vita qua, non c'è lavoro, per quello"

Migrants buy working contracts from friends, acquaintances, or mediators. H (Syria) has got Italian citizenship and he is the owner of a pizzeria. He confirms that many migrants ask him to formally hire them, or even offer to pay him for having a work contract.

Nell'ambito dell'immigrazione, un clandestino per avere un permesso prende un contratto, di solito paga; paga i contributi per avere un permesso che poi gli serve per trovare un altro lavoro. Pakistani, Indiani, marocchini. Vengono qua anche a me a chiedere, per favore mi fai un contratto pagando... questo e' l'unico modo, non c'è un altro modo..(...) Non ci sono aziende che assumono per regolarizzare... magari che ne sono alcune ma sono pochissime.(H, Syria)

In fact, migrants do not just buy work contracts: they may ask a friend to hire them pro forma. This is also a possibility depending on the social capital of each migrant. It is common to ask to some other migrants to be hired, and maybe working for free for them, and then even paying for the taxes that should be on the employer:

Quindi lavorava in pizzeria, ha sentito per sanatoria 2012, parla con un egiziano, ha lavorato quasi gratis per fare richiesta documenti. Dopo 3 mesi ha iniziato a dirmi che c'erano i contributi da pagare, ma io lavoravo gratis e dovevo anche pagare i contributi? Alla fine sono riuscito a pagare 1100 euro di contributi poi il resto l'ha pagato lui. (S, Egypt)

However, S could be considered lucky, because when migrants have to ask a mediator to find a working contract for them, they pay even more. For example, Z (Morocco) paid 5000 euros to a mediator in order to participate in an amnesty.

Ahhh... sei tornato nel 2009 e hai fatto con quella sanatoria badanti...?

Mh, sì sì, quella! Sono ritornato qua ho fatto la richiesta... quindi con quella ce l'ho fatta. Mi hanno fatto pagare, non so, ho pagato 5mila euro.

5mila euro?? Ma a chi? A chi ti ha fatto il contratto?

Un mediatore tutto fare... (Z, Morocco)

Buying fake work contracts may be considered a practice of resistance: resisting an illegal status through illegalities. The migrant acts again as the innovator, the subject who innovates the

means to reach culturally defined goals. The more the power tightens up on migrants' bodies, the more migrants will look for ways to resist, and they will counter act against that power and will force it to the negotiation.

However, it often happens that migrants trying to buy a working-contract incur in frauds. For instance, S (Egypt) made a payment of 1500 euros for being hired as a care-worker by an Italian employer on occasion of an Italian amnesty for care-workers, in 2009. He was helped by a mediator, from Egypt as well. After waiting for one year and half, he understood that the employer had hired 15 people, while he could only hire one; therefore, he lost his money. In similar ways, S (Morocco) was a victim of fraud. But he lost much more money: he paid 4000 euros, and then he paid 4000 more to hire a lawyer who could help him (but he did not succeeded). M (Morocco) explains that frauds happen often:

> *Per fare la domanda devi pagare 4mila. Ovvio che il datore di lavoro te lo fa gratis se lo conosci, ma se non lo conosci devi prendere un mediatore che ti fa conoscere qualcuno che ti da il contratto, allora devi dargli 4 mila*
>
> 4 mila euro?
>
> *Certo, proprio per esempio, è così! C'è questo prima quando...lo compra, lo devi comprare per avere documenti*
>
> Comprare il contratto di lavoro?
>
> *Sì, lui ti fa il contratto, il mediatore prende i soldi lui. Eh... così gira la ruota. Alla fine trovi anche che il datore di lavoro non esiste, che è solo una fregatura, e... tutto truccato non ti danno niente. Poi l'avvocato, gli dai 4, come hai dato 4 prima, e non ti fa un cazzo. E rimani clandestino e hai perso 8mila. Così ci sono tante persone. Ci sono persone che sono arrivate a 20 mila, ti giuro , 20 mila! (M, Morocco)*

An additional paradox is that migrants who will regularize their legal status thanks to fake work contracts, will be documented migrants looking for a real job. It may happen that they will find no regular job, thus they will be left to accept entering the informal economies even being documented migrants. As a consequence, documented migrants sometimes are regular workers, sometimes irregular. In the latter case, they are exploitable by the employer exactly as if they were undocumented.

The exploitation of documented and undocumented migrants as cheap and docile labour force in the Italian labour market is a point that deserves further analysis. In fact, as some interviewees noticed, and similarly to what Calavita argued (2005), even documented migrants are exploitable as cheap and docile labour force, because they cannot quit their jobs, as their residence permits depend on them. Accordingly, Z and M (Morocco) talk of documented migrants as new-slaves in the contemporary word:

> *Comunque se ce l'hai i documenti è come se non ce l'hai, perché tanto se tu perde lavoro e... non c'hai niente, sei sempre clandestino. Anche adesso se ce l'ho il permesso di soggiorno io mi considero di essere un clandestino perché se io perdo questo lavoro di nuovo sto... pure comunque anche perché mi sento come... cioè, io non lo faccio, ma ci sono delle persone che diventano schiavo moderno che cerca di stare non so come spiegarlo di fare il possibile per non perdere quel lavoro (Z, Morocco)*

> *Perchè mi dai un pezzo di carta che scade ogni due anni legato al lavoro? Tu mi hai portato al lavoro qua per vivere per sempre, se io vivo qua devo vivere bene come un italiano. Che c'entra il permesso? Mi dai un pezzo valido per sempre? Io lavoro capito? Non mi dai un pezzo che non è valido? Io alle volte mi costringo a lavorare e non chiedo soldi perché ho paura che mi scade quel permesso di soggiorno. E allora divento come uno schiavo, hai capito? Ho paura di tutto, capito? Come se tu mi rendi uno schiavo al datore di lavoro, capito? Lui mi può girarmi come un anello tra le sue mani, come voleva proprio, perchè sa che quando mi scade il permesso se mi da sei euro io le accetto, perchè non posso dire voglio otto: mi caccia via rimango senza lavoro e poi succede che divento un clandestino di nuovo.(M, Morocco)*

It is possible for undocumented migrants to live and work in Italy even without a residence permit, because they can easily enter the informal labour market, but they are forced to accept bad working conditions:

> *Si, puoi stare a lavorare... cioè', diciamo che prendo quello che mi vogliono dare e si', si può' stare. Il problema e' che io voglio tornare a vedere la mia famiglia, e' questo qui il problema. Si perché' anche loro che mi mancano e io che manca a loro. Devo tornare per loro, qui posso stare senza documenti, facevo tutto quello che volevo, facevo tutto, guidavo la macchina, guidavo il motorino, posso prendere dei lavori anche in nero, posso fare di tutto... pero' viglio stare ancora più' in regola. Voglio fare una partita IVA, voglio fare un artigiano e prendermi dei lavori sotto il mio nome, voglio sistemare un po le cosa, voglio sposare, voglio*

fare le cose come gli altri artigiani. Il documento mi blocca un po' in tutto, ma se io voglio guadagnare, non guadagnare tanto, guadagnare poco. Il guadagno c'è. In questo momento c'è' perché lavoro faccio un bel lavoro, ho fatto conoscenza otto anni sempre a Bologna proprio prima città in Italia che sono venuto qua, ho tutte conoscenze qui a Bologna, pero' voglio andare più avanti, voglio stare più' tranquillo. Ma prima cosa voglio tornare in Egitto, ma poi non voglio stare, voglio tornare qui. (S, Egypt)

A documented migrant with a lawful legal status, a fake work contract, and employed as an irregular worker will, however, formally appear as complying with the immigration law. According to the law, in fact, he or she is a documented migrant entitled thus to live in the country. It is often said that, the fact of having a residence permit makes of him or her a migrant included, a new member of the receiving society, in contrast with the undocumented migrant, a "bordered subject" (Aas, 2014) who will be excluded, instead. Yet, what is the actual effect of inclusion resulting from the legality of a documented migrant with a fake work contract and an irregular job? What is the value of this legality? Can one really talk about a category of the documented migrant, as opposed to a category of the undocumented migrant, as if they reveal something about mechanisms of exclusion or inclusion in given local contexts? I will try to answer these question at the end of the chapter.

It is interesting that the primary reason that migrants interviewed address when they tell about their wish to have a residence permit is the desire to go back home for a while, hopefully on vacation, in order to meet up with relatives that they do not have seen for years.

Quindi il permesso di soggiorno cerchi di avercelo più che altro per andare a casa, perché finché non hai il permesso di soggiorno no puoi uscire dall'Italia... (H, Syria)

Speriamo che prende i documenti.

Così puoi fare le cose?

Speriamo perché poi vai a vacanza a Marocco. (S, Morocco)

Però in giro quando parli con persone che non hanno documenti che il loro sogno, il primo sogno è quello di avere documenti

perché ti fa stare più tranquillo?

Ti fa stare tranquillo, poi anche perché vogliono visitare le loro famiglie... ci sono delle persone qui da 4 5 anni... (Z, Morocco)

It may be counterintuitive, but external borders are porous for undocumented migrants just if crossed on the way in, while they become rigid in the way out. Migrants want to have a residence permit to go meet up with their families *and* to live a more quiet life (Melossi, 2000), because lack of residence documents prevents migrants from the possibility of having access to several services and activities, and it makes their life less simple in many different ways. Without a residence permit they cannot buy a car, rent an apartment, or get married. Staying in Italy without residence documents is informally allowed, though stressful. The feeling of being trapped inside has a big emotional impact. Being continuously stopped by police[120] is hard to stand, even if the identity check may be without consequences. And loosing legal status after having legally spent some time in the Country is much harder. Undocumented migrants spend their days negotiating the condition of their "illegal" staying and looking for their way to "legality", often reached through illegal means. Some cannot sleep, someone else's hair is turning white, some cannot even talk about this, and some become alcoholics, or lose weight. Here there is a clarifying excerpt:

MA. Sometimes it is the whole system which destroy you, so that you slide down without being aware of that, because you only think about certain things, that is, job, the papers, accommodation, I mean… (…) Some friends of mine were ruined because of drugs. They had had residence permit, but as they lost their jobs, they ended up with their papers picked up. And after twenty years, ten years, they became illegal migrants once again, and they cannot come back in Italy. Some of them, they throw themselves into drugs, some others became alcoholics, I mean…do you get it? It is the system to be heavy, mostly for us. (…) Italian system is nowadays destroying all the migrants living here (M, Senegal)

M describes the situation of someone who has lost his/her residence document after having been a documented migrant. It is a really painful situation for undocumented migrants, and M is probably right asserting that «Italian system is nowadays destroying all the migrants living

120 According to a research conducted in Emilia-Romagna region by Dario Melossi (2000), foreigners are stopped on foot ten times more frequently than Italians.

here». One may argue that undeportability has a price: if a state cannot comply with factual removal – and even if this is true for every country, even U.S. where what counts is the threat of deportations (De Genova 2002) - what you do is strengthen internal barriers to a normal life for undocumented migrants, depriving them of all possible means to meet their needs (cf. Engbersen, 2009). However, undocumented migrants will oppose illegalities to overcome difficulties.

RESISTING THE CRIMINAL LABEL

Against a backdrop of immigration laws that in all countries of the ”Global North” are being shaped as specific “enemy penologies” that criminalize illegality in itself, undocumented migrants interviewed refuse to identify themselves with the category of the criminal. They reject the label of criminal, and this is the ultimate strategy of resistance on which all the other strategies depend:

> *Quando siamo arrivati nel tribunale, mi sono seduto sul giudizio mi hanno messo le manette, e io ho detto “ma scusa, ma toglimi le manette, non sono un criminale, siamo nel tribunale, basta!” (M, Morocco)*

> *Ma quando sono entrata (nel CIE di Ponte Galeria) ci sono rimasta più male, perché c'erano le sbarre dappertutto e ho detto ma questo e' più un centro di accoglienza o e' un carcere? Perché io non capisco perché tu mi devi chiudere dentro una camera con un lucchetto, scusa? E non me chiama nemmeno con il mio nome ma con un numero...(G, Cuba)*

M gets angry because he claims that he is not a criminal and there is no need for shackles. G (Cuba) is upset by acknowledging that the CIE looks like a prison for migrants. The refusal of the label also emerges from many other stories gathered, such as the story of S (Egypt) who with great disappointment tells of the first time the police kept him at the police station for the entire night. He whispered that it was the first time in his entire life that he entered a place like that (read police station), both in Italy and in Egypt.

In general, interviewees get surprised when I ask them if they have ever been stopped by the police and if they have ever been in trouble with them; they specify that they are not criminals, so police do not stop them. Also those undocumented migrants who entered the illegal economies – on the form of a proper criminal career, or in the form of a way to make up their wages – continuously clarify that their choice had been a forced choice given the circumstances. In general, interviewees say that migrants do not arrive in Italy with criminal intentions, despite of widespread rhetoric among both police officers and political actors declaring this.

The attempt of immigration laws to criminalize the pure "illegality" of undocumented migrants, results in a failed labelling process where the label was unsuccessfully appointed on them. The majority of undocumented migrants, in fact, do not identify with the label of criminal and they resist in "spaces of non-existence" (Coutin, 2000) generated by "the contradiction between undocumented migrants' physical and social presence and their official negation as "illegals"" (De Genova, 2002: 427). Caught in these spaces of non-existence, undocumented migrants negotiate the levels of an acceptable illegality.

The police play an important role in the fact that undocumented migrants do not identify themselves with the label of the criminal, despite the law. As shown by the interviews, the police make it very clear that undocumented migrants do not risk deportation as a pure consequence of their illegality, that is, if they did not commit any crimes or showed themselves as not respective of authority. According to the present case study, looking for "dangerousness" seems to be the logic behind internal borders enforcement in Bologna; but one may suspect that this is also the case in other local contexts in Italy. The episode told by G (Cuba) is emblematic in this respect: she was arrested by the police in Rome; two police officers escorted her to Rome's CIE to keep her in custody until a validation hearing would have taken place before a justice of the peace; in the way to the CIE, G was so scared and panicked that the police stopped the car and explained her that nothing should happen to her, that the immigration law was not conceived for people like her:

> *C'era questo ragazzo che guidava la macchina e mi dice: senti, tu devi stare tranquilla perché, primo, sei cubana. Lui mi inizia a raccontare e mi dice, "ma senti, io qua ho visto tanta gente che hanno deportato. A te è difficile che ti deportino perché Cuba chiede una gran somma di soldi per una deportazione. Casomai che tu qua non avrà fatto un omicidio, o ha ammazzato*

qualcuno, o ti avranno rintracciato per droga, niente del genere. Tu sei qua solo perché sei clandestina. Comunque la cosa non e' cosi' che ti buttano su un aereo e ti rimandano indietro a Cuba". (G, Cuba)

If the label of criminal was not successfully appointed on the undocumented migrant, despite the law, this is also because, as we saw, the police themselves do not label undocumented migrants as criminal *per se*. They control them, all them, also enacting a sort of racial-profiling as they stop people as a consequence of their physical appearance. However, also compelled by the strategies of resistance enacted by migrants, the police enforce internal borders by distinguishing between dangerous and non-dangerous migrants among undocumented migrants. What is interesting, therefore, is the very gap between the label that the law, dominant discourses, and public opinion appoint on the bodies of undocumented migrants, but that the police do not appoint on migrants and that undocumented migrants themselves do not assume as such; in that very gap one may see the space where an unspoken mechanisms of inclusion takes place.

Concerning migration in Italy, there is not a straightforward linkage between legal status, rights and possibility of staying: residence permits do not create a complete right of staying, as well as the lack of resident permits does not completely create exclusion. Police practices in the management of undocumented migration are also to be taken into account. It seems that police allow migrants to be illegally present within the Italian territory as long as they accept to enter the informal labour market and to follow certain "rules of the game". Law sets certain boundaries between documented migrants and undocumented ones, and police re-locate those same boundaries, pointing out some other conditions for staying that do not correspond to the legal ones.

From the present case study it emerges that it does not make much sense to distinguish between undocumented and documented migrants, and the reason is not solely in the circularity of a lawful legal status for migrants in Italy - circularity that was told by L (Senegal), who lost his residence permit after having worked in the factory for ten years, or Z (Morocco) who finally became documented with the help of a mediator after four years as undocumented. The ambiguity in distinguishing between documented and undocumented migrants is to be found in the blurring of boundaries between legality and illegality in the figure of a documented migrant whose lawful legal status is based on a fake work contract and who is exploited as an irregular

worker in the informal economies. Once this is under the spotlight, it become also difficult to clearly make the association undocumented migrants-exclusion and documented migrant-inclusion. Paradoxically, indeed, undocumented migrants may be more included than documented migrants. The former continuously negotiate their staying, they learn informal rules from the practice of resistance in everyday life. They learn the social norms of the receiving society. In a sense, undocumented migrants find themselves in a space of legal liminality (Menjı́var, 2006).

I have doubts about the sociological relevance of distinguishing between legal and illegal migrant, on its potential to describe a reality and capture it. Under the spotlight of a sociological analysis of lawful legal status, the legality becomes a legal artefact as much as illegality. Therefore, taking the legality or illegality of documented or undocumented migrants as a point of departure to understand the mechanisms of inclusion and exclusion in operation in a given local context, for example looking at the construction of documented migrants in terms of membership, does not make much sense in sociological terms. Such analysis may tell something about the discursive construction of membership, and the construction of an "Us" together with a "Them" (Anderson, 2013; see also Behdad, 1998). But the subject who is being produced in the interaction between borders agents and borders crossers is an astute subject, socialized in a context where informality and the negotiation of rules – in Italy and Southern Europe in general - is a kind of rule. One may argue that the mechanisms of informal control in each local context produce the undocumented migrant as a subject modelled after its own likeness.

THE REFUGEES CRISIS AND ITS IMPACT ON THE MECHANISMS OF INTERNAL BORDERS CONTROL

Furthermore, one may consider that the more difficult it becomes for migrants to immigrate, the more they will resist once arrived, in order not to see their migratory project failing. H (Syria) explains that in the last three-odd years immigrating has become such a difficult and expensive enterprise that migrants who arrive want to remain at least two or three years to pay off the costs of the journey, and they will remain even if they do not live a good life at all:

> *Ovviamente non c'è la possibilità di andare a casa, di avere una abitazione decente, ovviamente perché hai lavoro sottopagato e sfruttato, perché' devi accettare quello che c'è' per andare*

avanti. Perchè arrivare già qua è un'impresa. Perché' se uno già' arriva qua e dopo due tre anni torna indietro, cioè' lui ha perso un investimento perché' venire in Italia costa, si fanno dei sacrifici per arrivare qua e rimanere, costa, quindi arrivi qua e tieni quello che prendi (H, Syria)

Even if living conditions become horrible, undocumented migrants remain. As Foucault (1982) noticed, wherever there is power, also there is resistance. If power tightens up, so does resistance. Even the contrary is true: if resistance becomes stronger, so does power.

This is also becoming urgently evident with the refugees crisis. States build walls, but migrants keep on immigrating, changing routes, crossing those walls, building up self-managed camps (with the help of local activists and humanitarian organizations), such as the ones in Calais (France) or in Ventimiglia (Italy). Here, migrants wait for an occasion to cross the border and reach the countries in Northern Europe, where it is easier that asylum is granted, or where their relatives live. As H declares, in time of crisis "a*rrivare qua e' un successo della vita già in se'".*

Did the refugees' crisis affect somehow the interaction between migrants and the police? Did it change the rules of the game between border crossers and border agents? For what it concerns the mechanisms of inclusion observed in Bologna, the migrants who I interviewed in June-September 2015 - in the middle of the arrivals from Syria - told that police controls were less frequent than before.

Adesso che sono arrivati tanti immigrati fanno più fatica a controllare tutta la situazione a controllare quello che succede (A, Senegal)

Even if new migratory routes started in order to arrive to Europe recently, crossing its Eastern external borders, or even the Northern borders, these new routes never replaced the more traditional routes that reach Europe through its Southern borders. Italy, Spain, Greece are places of transit for the great majority of asylum seekers, especially from Syria, Afghanistan, Libya, whose aim is to reach Sweden121, or the UK, where asylum is more easily granted. Bologna is

121 A beautiful documentary titled "Io sto con la Sposa" by Gabriele Del Grande, Italian film-maker, is a must-see documentary that tells the story of the attempt of five Syrian refugees stuck in Italy to reach Sweden to ask

an important junction for transports in Italy. Many refugees arriving in Italy and released from structures go by Bologna. They stop by a few days, the minimum time they need to re-organize and continue the trip toward Northern Europe. Because of this, and because Bologna's CIE operates now as a hub, that is, the centre where the asylum seekers saved in the sea through the operation Mare Nostrum arrived to be then sorted into the many centres in the territory, many refugees have been crossing Bologna during the crisis.

According to the interviewees, their stories and this understandings of the situation, given the number of refugees just crossing the city, police usually close an eye on migrants. They did not want to stop refugees and ask them for their document. In fact, if they stop refugees, then refugees have to ask for asylum in Italy as the first European country where they arrived (this was still true at the time of interviews). In this sense, we should also take into account the ruling of one of the justices of the peace who, interviewed in the summer 2014 (immigration flows through Italy were already enormously increased), said:

> *Adesso non arrivano più i clandestini, arrivano i profughi. Arrivati i profughi non fanno più controlli perché altrimenti diventano tutti clandestini... (Piazza)*

In the attempt to avoid that newcomers ask for asylum in Italy, police softened control on the entire population of migrants living in Bologna. This is an aspect of the mechanisms of control in the time of refugees' crisis, and afterwards, that will require deeper analysis in future research. It suffices to point it out that, again, the arrival of newcomers strengthened the power of resistance of all migrants and confirms again that the "space of non-existence" (Coutin, 2000) is the space where we should think and analyze the mechanisms of borders control and the production of the new subjects in the globalization.

for asylum there, where possibilities that it will be granted are higher. They will be helped by a group of Italian activists that will decide to fake a wedding parade to avoid any check on behalf of police.

CONCLUSIONS

In Italy, the complex web of law, discourse, negotiations, police regulation, judicial supervision, and migrant strategies of resistance result in a system of control in which the population of undocumented migrants is simultaneously criminalised, informally allowed to stay, and tolerated (even welcomed) in the shadow economy. We saw that border control occurs at the internal border rather than external. There are fewer undocumented migrants who are removed than those who are ordered to leave – and orders to leave remain unattended. The results suggest that policies governing undocumented migrants are much more complex than simple removal procedures.

The research has described the mechanisms of internal borders control in the specific local context of Bologna. The local level has been privileged as a site of observation, because it is at this level that national, transnational, and global dynamics take place, producing effects in their encounter with local forces (Darian-Smith 2013). It is also at this level that such dynamics become observable.

Three main sites have been identified as spaces where internal borders operate in the context of this study: (1) validation hearings leading to possible pre-removal detentions; (2) trials concerning crimes of mobility; and (3) the interaction between police and migrants in the control of territory. The three site were selected as sites where one could observe the processes of negotiation among border agents and border crossers to establish what the acceptable levels of illegality are for undocumented migrants to be allowed to stay informally. Drawing on the notion of "differential inclusion" (Mezzadra and Neilson 2013) of marginal subjects in receiving contexts instead of their exclusion, the analysis focused not just on the selective enforcement of borders, but also on selective non-enforcement, both equally important in the mechanisms of internal border control. Throughout the empirical chapters, I have identified the reasoning behind the incidents of validation and non-validation, convictions or acquittal for crimes of mobility, and arrest or non-arrest of undocumented migrants by police in control of territory.

In all sites of borders performance, "dangerousness" appears as the basic principle driving selection. However, dangerousness is an ambiguous concept, and the dangerousness of migrant should be better seen as a construction, primarily by the police during the interaction with

migrants at the street-level, and then confirmed by justices of the peace during trials for crimes of mobility and validation hearings. Through the analysis of data, together with interviews, it is possible to identify six different frames in the discourse of judges corresponding to six different categories of migrants to which different degrees of dangerousness are assessed. Being part of one category or the other determines the probability of being convicted, acquitted, or detained in Bologna's CIE. The perfect laborer, the sex worker, the drug dealer, the care worker, the asylum seekers, and family member, are these six categories, identified, first of all, through nationality and gender. Undocumented migrants are thus identified with one of these six categories, each of which may determine outcomes in individual cases (of validation or non-validation, arrest or non-arrest, etc.).

With regards to the enforcement of borders during validation hearings, the basic idea shared by the justices of the peace in Bologna is that the CIE is not needed for all undocumented migrants, especially not for those undocumented migrants who are not identified as dangerous, including care workers, perfect laborers, and family members. On the contrary, it is needed for dangerous undocumented migrants: sex workers and drug dealers are to be punished. The category of asylum seekers seems to be in-between, perhaps really needing, and perhaps just shrewd. Neither dangerous nor *not* dangerous. Thus, a Nigerian woman who is generally identified with the category of sex worker will have to persuade the justice of the peace that she identifies as asylum seeker. A Tunisian man, usually identified with the category of drug dealer will have to prove that he is a perfect laborer or a family member.

Validation hearings and trials on crimes of mobility become the sites where the concept of dangerousness of migrant is expressed, contested, or confirmed. These categories of dangerousness reverberate in the control of territory and in the procedures utilized by the police at the street-level. Therefore, we see the police enforcing borders against the drug dealer, while letting the undocumented migrant identified with the category of the perfect labourer go free. The latter are not held in detention.

In the understanding of the operation of internal borders control, I privilege the sphere of interactions between police and migrants in control of territory among the three. In fact, if only a small percentage of undocumented migrants encountered by the police end up in pre-removal detention, or receives an order to leave; many more are let go free. And it could not have been any different: think about the number of undocumented migrants in Italy, and compare it with the number of yearly removals and orders to leave. Even the role of trials on crimes of mobility

takes on a new importance if considered in connection with control of territory by police. Their role in the enforcement of internal borders, in fact, is not immediately self-evident, as conviction for crimes of mobility does not lead to removal, but to a fine which most are not equipped to pay... To be sure, fines are useful for the symbolic construction of undocumented migrants as dangerous *others,* and thus for the government to show itself as active against undocumented immigration, which have always been a hot topic in electoral politics. However, considered in connection with the control of territory, crimes of mobility should also be acknowledged as providing the police with tools additional to administrative law in order to have a deeper control over a territory and a population, and especially in order to *move* migrants when they are deemed out of place.

The fact that the great majority of undocumented migrants are not held in detention or are ordered to leave, but not removed, is an empirical insight on the mechanisms of control. Although it may appear obvious, I argue that such empirical fact is not taken adequately into account from a theoretical perspective to re-conceptualize the functioning of mechanisms of borders control, especially in a contemporaneity characterized by a high degree of mobility, porous borders, and harsher and harsher immigration laws, which do nothing but produce increasing illegality. If we take seriously the above mentioned empirical fact, we realize the extent of its consequences both theoretically and empirically. From a theoretical point of view, the role of selective non-enforcement for the management of undocumented migrants may be emphasized so that mechanisms of borders control may be read through the logic of subordinated inclusion, not exclusion; from an empirical point of view, it means to shift attention of qualitative research towards an otherwise under-investigated field, to the undocumented migrant who arrives and remains without official permission, and their interaction with the agencies of internal border control.

In other words, what is here investigated, are the mechanisms for discipline of the undocumented migrant without removal. The performance of border resulting in non-enforcement at all is thus intended as a crucial step for the process of production of a disciplined subject.

The main hypothesis is that at the local level the production of borders works as a provisional admission policy to include undocumented migrants, though in a subordinated position. Migrants have an active role in the processes of building the subject, and they enact some strategies of resistance, thus of subjectivation, as opposed to the practices of subjection enacted

by the police. Undocumented migrants and the police create a sort of ritual in the performance of borders the rules of which are quite clear to both of them. According to Saitta, this is a peculiar kind of ritual, which the subject learn about through the interaction with the public power. Saitta talks about the possibility of "resisting following someone else's will (Saitta, 2015: 38). The interaction between undocumented migrants and the police in Bologna is a ritual that follow certain rules of the game, that is, the police are confronted with the fact of widespread illegality that they have to deal with. They have an impossible mandate of enforcing the law, and therefore agree with their counterpart on some rules that facilitate both in managing illegality.

Importantly, undocumented migrants who cross the internal border and are allowed to remain will be released in a condition of liminal legality (Menjivar, 2006), still undocumented - and as such will experience all issues linked to an unlawful legal status, such as the impossibility to gain a regular job, to rent a house, have a bank account, rent an apartment, etc. - but informally allowed to remain. After crossing the internal border, undocumented migrants will go back to their "legal nonexistence" (Coutin 2000), though empowered by a successful negotiation with the agencies of internal border control.

In this sense, internal borders are primarily intended as *processes* rather than physical spaces, resulting in the production of an undocumented migrant as the new subject silently included, in a condition of "legal non-existence" and "undeportability". These are the processes of *bordering subjects* in local contexts.

The case study of Bologna shows how undocumented migrants are disciplined, differentially included, compelled to work irregularly, and to comply with authority. The study identifies which characteristics an undocumented migrant should display to be informally allowed to remain. The crimmigration model speaks of excluding people, and this is true of one part of the mechanisms of internal border control in Bologna. Removals occur, and they are painful. But these mechanisms do not just exclude; they also distinguish by creating mobile borders. The police have the power to perform these mobile borders, whenever and wherever necessary. And while performing borders, police are making what may appear as a provisional admittance policy of subjects the law has not recognized (yet) as existing subjects.

Let me suggest a parallelism between the logic of neutralization apparently behind incarceration in the contemporaneity, as opposed to the logic of discipline in the carceral system, and the logic to exclude as opposed to the logic to include in the mechanisms of border control. While

what one should mean by “neutralization” is self-evident, it is worth exploring the concept of discipline connected to the role of prisons. I will build on Melossi's argument that prisons discipline populations not in the sense of rehabilitation and subsequent re-inclusion, but rather they disciplines a group of people, a “class” to accept to be subaltern (Melossi 2008). In order to support his own argument, Melossi explains that incarceration rates cannot be exhibited as proof of prison actually neutralizing an entire group of people, an entire “class”. In fact, even high numbers of people incarcerated are still limited compared to the numbers of people that should be neutralized through incarceration. That data should suffice to say that neutralization can be hardly considered the actual function of prison. It is more plausible that the function of prison is to discipline to be subaltern. However, it is undeniable that the idea of possible neutralization is seriously driving the carceral systems in certain social organizations (as “mass incarceration” and the permanent construction of new prisons in the last forty-odd years suggests for the United States (Melossi 2008)). I would like to suggest a comparison between the logic of neutralization underpinning carceral systems and the logic to exclude underpinning immigration control regime. Just as the carceral system incarcerate just a minimal amount of those people that it is supposed to neutralize, so too the immigration control regime succeed in removing just a minimal number of all people that it is supposed to exclude. Again, it is undeniable that immigration control policies in some nation-states are driven by the idea of possible exclusion through removal. However, I might suggest that as marginal population, those who are not incarcerated are managed by police. The police even manage undocumented migrants remaining in the territory. Through sub-ordinated inclusion that works under the guise of exclusion, one is essential to the other.

The theoretical bet is that, behind the spectacle of borders and the scene of exclusion, the control of undocumented migration is played out as a mechanism of inclusion through the performance of the internal borders; it is in the interaction and negotiation that the subject is produced. For example, in Bologna we saw how the category of the drug dealer and the perfect labourer are constructed in the interaction and that the police tend to enforce the borders towards the former, while under-enforcing them towards the latter. The fact that police manage illegality rather than enforcing removals, using selective non-enforcement of immigration laws as effectively as enforcement itself has a consequence: the undocumented migrant is informally allowed to live in the country as a disciplined subject, an irregular exploitable worker in the shadow economy, non-troublesome, respectful of authority. The police still have the function of controlling and

disciplining dangerous classes. Migrants still are those "people on the move" who are disciplined to labour through punishment.

Dangerousness is used as a justification for selective enforcement of borders in Bologna. However, as seen, dangerousness is an ambiguous concept. It is constructed during control of territory, through the negotiation between undocumented migrants and the police: dangerous migrants may be those who have committed crimes, who have received police notices, and those who have used aliases, or those found with a small quantities of drugs (not considering that entering the illegal economies may be the only choice for undocumented migrants who cannot find a regular job, rent an apartment, etc.). Dangerous migrants may also be those who are "out of place", i.e. risk zone; disrespectful of police authority; those who do not pay bus/train fares. In managing undocumented migrants, the police do not establish an impossible order, but rather they follow the rule of disorder and negotiate acceptable levels of illegality with migrants.

And if this is true for Bologna, we may hypothesize that this is also true in other local contexts where undocumented migrants are present, and where police have to manage illegality in place. One may hypothesize that police still use "dangerousness" as a concept in their patrolling, but dangerousness may be differently conceptualized in diverse local contexts, mirroring the specific social environment where the police operate. We may imagine mechanisms of subordinate inclusion, under cover of exclusion. Inclusion and exclusion are constructed at the local level following specific rituals, established through interaction and negotiation in context.

The presence of irregular migrants in the countries of the "Global North" is already a fact, but is becoming more and more urgent issue due to the ongoing refugee crisis and arrival of migrants at rates not seen previously. Impossible to remove and hardly welcome, this group of people will be included and excluded through what one might call the *shadows of mechanisms of control*--the interaction and negotiation between border crossers and border agents, and the construction of acceptable levels of illegality and invisibility for the newcomers. The final outcome will depend on the encounter between the processes of subjection and subjectivation.

Now I want to take the reasoning a step further. In fact, the results of the research tell us that the borders that are enforced in the case of dangerous migrants must be handled with care. To quote Howard Becker in "The tricks of trade" (Becker, 1998), the ability of the researcher is that of telling a simple story with a complex reality as a starting point. I have told a story, but I wouldn't want that story to exclude others. What is excluded from my story is the exceptions, which often are not visible in what has been described. But there are exceptions, and they are

those migrants whose detentions in a CIE, in theory destined only for the "dangerous," were validated upon women whose bag was stolen on the train, care-workers charged by their own employers, men without a criminal record. These exceptions exist despite the dominant frame. They coexist with the "hegemonic" narrative expressed by all the actors who take part in the performance of borders – migrants, judges, and the police – without putting its authenticity in doubt. This narration tells us that only dangerous migrants risk expulsion.

In this research I tried to simultaneously analyze rhetoric and practices to be able to challenge that which immediately seemed to me as a "rhetoric of dangerousness". To understand how much truth there was in the affirmation that only the dangerous are selected, affirmation that many interviewed migrants agreed with, wasn't easy. By investigating in the various sites where borders are enforced, I was however able to evaluate the ambiguity of the very concept of dangerousness and the way in which it is constructed. To evaluate the way in which "dangerousness" has certainly the value of a rhetoric, of a justification, offered and demanded by the actors, all the actors, to justify (judges and police) and on the other hand to deal with (migrants) the selective mechanisms of controls.

In fact even if only considered as rhetoric, in the explicative frame of the selection of the irregular migrant to be removed, dangerousness has a certain weight. It is a disciplinary mechanism for the irregular migrant who will know that he/she has to expect the price of discipline to be able to remain, even if he/she does not have regular residency papers. At the same time, that same disciplinary mechanism will offer to the migrants margins to be able to put into act strategies of resistance that will allow him/her, in interactions with the police, to negotiate the conditions of his/her own remaining, or, as we have said on other occasions over the course of this research, to negotiate the levels of an acceptable illegality. The power of negotiation of the migrants is in the seeking to obtain recognition from the policemen of himself as a person not belonging to the dangerous category mentioned above. A game in which, even in the understood asymmetry of power, the migrant still has a role to play. A performance of borders that in fact takes place in a space limited by a law that imposes on both sides an impossible legality (for the migrant in the form of residency papers, for the police in the form of borders to enforce always no matter what) in respect to which the two parts find, through encounters and even clashes, rules of the game on which to base the rituals of the borders.

Lastly we want to add yet another small piece to our reasoning open: let us consider the case in which the borders were really enforced only towards the undocumented and dangerous

migrants. What is the point of having an immigration law that is used against the criminal migrant, when there is already a statute that should serve precisely this function, to punish all those members of a given society that commit crimes and that deters all the others from committing them with the threat of a sentence? In this sense, the threat of expulsion against the criminal migrant would have exactly the same power of deterrence as the threats of reclusion in criminal law, with the difference that the first would be directed only at migrants while the second would be directed both at migrants and at natives. In this sense then immigration long would put itself, as has already been noticed and analyzed in detail, as a "special law of the alien" (Caputo, 2006), simply parallel to criminal law, but with few guarantees. A criminal law handled more by the police, except in the case of the more or less ample influence of the judge in the confirmation of the arrest, who would have at his own disposition even a correctional institution parallel to the prison. What is then the sense of having a parallel criminal law?

Immigration law in the manner in which it is implemented in the case of study, together with the possibility of remaining without residency permit, creates situations of deprivation and marginality of the subjects that may stay. In the interaction new marginalized and included subjects are created. Subjects that may remain but cannot rent a house, open a bank account, get married or have a work contract (if not by buying one), and are thus subjects that are exploited in the market of irregular labour. But all this has already been revealed in the read literature. In particular by Calavita (2005), as we have observed on multiple occasions, which we have demonstrated how both regular and irregular find themselves in a condition of labour blackmail on the part of their residency papers. That which seems to us necessary to point out, is that it is exactly the contemporary presence yet non-enforcement of immigration law that makes possible the production of the "undocumented migrants" as a subject included in a subordinate manner to the job market. It is the law that with its very existence produces illegality, to then silently allow that very “illegality” to remain and find a place within the economic structure of the receiving societies.

REFERENCES

AA. VV. (2004) *Il servizio di polizia per una società multiculturale. Un manuale per la polizia di stato.* Ministero degli Interni.

AA. VV. (2009) *Oltre le ordinanze. I sindaci e la sicurezza urbana*. II ed., Progetto Cittalia fondazione anci ricerche.

AA.VV. (2009), *Police et minorités visibles: les contrôles d'identité à Pari*s, New York: Open Society Institute.

Aas Franko K (2011) 'Crimmigrant' Bodies and Bona Fide Travelers: Surveillance, Citizenship and Global Governance. *Theoretical Criminology* 15(3): 331-346.

Aas Franko K (2013) The Ordered and the Bordered Society: Migration Control, Citizenship, and the Northern Penal state. In: Franko Aas K and Bosworth M (eds) *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press, pp. 21-39.

Aas Franko K and Bosworth M (2013) *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press.

Agamben G. (1995) *Homo sacer. Il potere sovrano e la nuda vita*. Torino: Einaudi.

Agamben G. (2003) *Stato di eccezione: Homo sacer 2*. Torino: Bollati Boringhieri.

Aliverti A (2012) Making People Criminal: The Role of the Criminal Law in Immigration Enforcement. *Theoretical Criminology* 16(4): 417: 434.

Aliverti, Ana (2013) Crimes of mobility: criminal law and the regulation of immigration. Routledge studies in criminal justice, borders and citizenship. Abingdon, Oxon: Routledge. ISBN 9780415820905

Ambrosini M (2015) Irregular but Tolerated: Unauthorized Immigration, Elderly Care Recipients, and Invisible Welfare. *Migration Studies* 3(2): 199-216.

Amoore, L. (2006). Biometric borders: governing mobilities in the war on terror. Political Geography, 25(3), 336-351.

Anderson B (1983) Imagined communities. Reflections on the origin and spread of nationalism *London and New York: Verso*.

Anderson B (2013) *Us and Them? The dangerous politics of immigration control*. Oxford: Oxford University Press.

Balibar É. (1993) *Le frontiere della democrazia*. Roma: Manifestolibri.

Balibar É. (2001) *La paura delle masse: filosofia e politica prima e dopo Marx*. Milano: Mimesis.

Balibar É (2002) The Borders of Europe. In: *Politics and the Other Scene*. New York: Verso, pp. 87-103.

Banakar R and Travers M (2002) Introduction. In: Banakar R and Traver M (eds) *An Introduction to Law and Social Theory*. Oxford-Portland Oregon: Hart Publishing , pp. 1-7.

Baratta A. (1999) *Il paradigma del genere dalla questione criminale alla questione umana*. Padova: Edizioni Sapere.

Baratta A. (2001), Diritto alla sicurezza o sicurezza dei diritti?. In: Palma A (a cura di) *La bilancia e la misura. Giustizia, sicurezza, riforme*. Fascicolo monografico speciale di "*Democrazia e Diritto*", 6, Milano: Franco Angeli.

Barker V (2013) Democracy and Deportation: Why Membership Matters Most. In: Franko Aas K and Bosworth M (eds) *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press, pp. 237-256.

Basso P. (a cura di) (2010) *Razzismo di stato. Stati Uniti, Europa, Italia*. Milano: Franco Angeli.

Bauman Z (1998) *Globalization: The Human Consequences*. Cambridge and Oxford: Polity Press.

Bauman Z. (2000) *La solitudine del cittadino globale*. Milano: Feltrinelli.

Bayley D (1994) *Police for the future*. New York: OUP.

Beckett K and Steve Herbert (2011) *Banished: The New Social ConFranko Aas K and Bosworth M (eds) The Borders of Punishment: Migration, Citizenship, and Social Exclusion. Oxford: Oxford University Press, pp. 21-39.trol in Urban America*. New York: Oxford University Press.

Behdad A (1998) INS and outs: producing delinquency at the border. Aztlàn 23(1): 103-13

Bertaccini D. (2009) *La Politica di Polizia*. Bologna: Bononia University Press.

Bertin F, Fontanari E and Gennari L (2013) At the limen. The implementation of the Return Directive in Italy, Cyprus and Spain.

Bigo D (2002) Security and Immigration: Toward a Critique of the Government of Unease. Alternatives: Global, Local, Political (27): 63-92.

Bigo D (2006) Security, Exception, Ban and Surveillance. In: Lyon D (eds) *Theorizing Surveillance: The Panopticon and Beyond*. Cullompton: Willan Publishing, pp.46–68.

Bittner E (1967) The Police on Skid-row: A Study of Peace Keeping. *American Sociological Review* (32): 699-714.

Bittner E (1970) *The Functions of the Police in Modern Society: A Review of Background Factors, Current Practices, and Possible Role Models*. Rockville, MD: National Institute of Mental Health.

Bittner E (1980) *The function of the Police in Modern Society: A Review of Background Factors, Current practices and Possible Role Models*. Cambridge: Oelgeschlager Gunn & Hain Publishers.

Bosworth M (2012) Subjectivity and Identity in Detention: Punishment and Society in a Global Age. *Theoretical Criminology* 16(2): 123-140.

Bosworth M (2013) Can Immigration Detention Centres Be Legitimate? Understanding Confinement in a Global World. In: Franko Aas K and Bosworth M (eds) *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press, pp. 149-165.

Bosworth M (2008) Border Control and the Limits of the Sovereign State. *Social & Legal Studies* 17(2): 199-215.

Bottoms A and Wiles P (1996) Crime and Policing in a Changing Social Context. In: Saulsbury W, Mott J and Newburn T (eds) *Themes in Contemporary Policing, Police Foundation*. London: Policy Studies Institute.

Bowling B (2013) The Borders of Punishment: Towards a Criminology of Mobility. In: Franko Aas K and Bosworth M (eds) *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press, pp. 291-306.

Bowling B and Weber L (2011) Stop and Search in Global Context: An OveFranko Aas K and Bosworth M (eds) *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press, pp. 21-39.rview. *Policing and Society* 21(4): 480–488.

Bricola F. (1975a) *Politica criminale e politica penale dell'ordine pubblico*, «La questione criminale», 1, pp. 221-88.

Bricola F. (1975b) *Forme di tutela "ante-delictum" e profile costituzional della prevenzione*. In: *Le misure di prevenzione. Atti del convegno di Studi "Enrico De Nicola".* Milano: Giuffré.

Brodeur JP et Monjardet D (2003) *Connaître la police. Grandes textes de la recherche anglo-saxonne*. Paris: IHESI.

Brodgen M (1977) A Police Authority: a Denial of Conflict. *Sociological Review* 25: 325–49.

Brodgen M (1981) All Police Is Conning Bastards': Policing and the Problem of Consent. In: Fine B, Hunt A, McBarnet H and Moorhouse B (eds) *Law, State and Society*. London: Croom Helm, pp. 202–228.

Brodgen M (1982) *The Police: Autonomy and Consent*, London and New York: Academic Press.

Broeders D and Engbersen G (2007) The Fight Against Illegal Migration. Identification Policies and Immigrants' Counterstrategies. *American Behavioral Scientist*, 50(12): 1592-1609.

Brooks LW (1993) Police Discretionary Behaviour: A Study of Style. In: Dunham RG and G. P. Alpert GP (eds) *Critical Issues in Policing: Contemporary Readings*. Illinois Waveland: Prospect Heights, pp. 140–64.

Brossoit A (2007). Zone d'attente, centre de retention, et "libertes policiers". Le retour des camps? Sangatte, Lampedusa, Guantanamo... Ed. Le Cour Grandmaison Olivier,Lhuilier Gilles,Valluy Jérôme. Paris: Autrement

Cain M (1971) *On the Beat: Interactions and Relations in Rural and Urban Police Forces,* In S Cohen (a cura di) *Images of Deviance*, Penguin, Harmondsworth, pp.62–97.

Bowling B and Sheptycki J (2012) Global Policing London: Sage

Bowling B (2010) Policing the Caribbean: transnational security cooperation in practice Oxford: Oxford University Press

Cain M (1973) *Society and the Policeman's Role*. London: Routledge.

Cain M (1977) An Ironical Departure: The Dilemma of Contemporary Policing. In: Jones K (ed. by) *Yearbook of Social Policy in Britain*. London: Routledge.

Cain M (1979) Trends in the Sociology of Police Work. *International Journal of Sociology of Law* 7: 143–67.

Calavita K (1998) Immigration, law, and marginalization in a global economy: notes from Spain. Law and Society Review 32(3): 529-66

Calavita K (2005) *Immigrant at the Margins: Law, Race, and ExcluFranko Aas K and Bosworth M (eds) The Borders of Punishment: Migration, Citizenship, and Social Exclusion. Oxford: Oxford University Press, pp. 21-39.sion in Southern Europe*. Cambridge: Cambridge University Press.

Campesi G. (2003) *Il controllo delle nuove classi pericolose. Sotto-sistema penale di polizia ed immigrati*, «Dei Delitti E Delle Pene», 20, pp. 146-243.

Campesi G. (2007) *Archeologia del "neoliberismo penale". Appunti sulla nascita di un nuovo paradigma criminologico*, «Studi sulla questione criminale», II, n.3, pp.17-39.

Campesi G. (2009) *Genealogia della pubblica sicurezza. Teoria e storia del moderno dispositivo poliziesco*. Verona: Ombrecorte.

Campesi G (2010) Neoliberal and Neoconservative Discourse on Crime and Punishment. *Onati Journal of Emergent Socio-Legal Studies*, 3(1): 33-52.

Campesi G. (2011) *La detenzione amministrativa degli stranieri in Italia: storia, diritto, politica***,** «Democrazia e diritto», vol. 3-4, pp. 177-225.

Campesi G. (2012a) *Migrazioni sicurezza confini nella teoria penale contemporanea*, «Studi sulla questione criminale» VII(2), pp. 7-30.

Campesi G. (2012b) *Le libertà degli stranieri. La detenzione amministrativa nel diritto internazionale e dell'Unione europea*, «Politica del diritto», 43, 2-3, pp. 333-392.

Campesi G. (2013) *La detenzione amministrativa degli stranieri: Storia, diritto, politica*. Roma: Carrocci Editore.

Campesi G (2014) Governare il futuro. Materiali per una sociologia giuridica del rischio, in "Sociologia del diritto", XLI, 2, 2014, pp. 35-62.

Campesi G (2015a) Hindering the deportation machine. An ethnography of power and resistance in immigration detention, in "Punishment and Society", XVII, 4, 2015, pp. 427-453.

Campesi G (2015b) Polizia della frontiera. Frontex e la produzione dello spazio europeo. DeriveApprodi: Roma

Campesi G. e Donadio P. (2015) Rapporto sui provvedimenti di convalida e proroga del trattenimento emessi dal Giudice di Pace di Bari. Report for the Osservatorio della giurisprudenza del giudice di pace in materia di immigrazione.

Caputo A (2000) *Interrogativi sul neo-schiavismo*, «Questione Giustizia», 5, pp. 835-45.

Caputo A (2003) *Prime applicazioni delle norme penali della legge Bossi-Fini*, «*Questione Giustizia*», 1.

Caputo A (2004), *Immigrazione, diritto penale e sicurezza*, «Questione giustizia», 2-3, pp. 359-379.

Caputo A (2006) *Introduzione: verso un diritto penale del nemico?*, «Questione Giustizia», 4, pp. 623-649.

Caputo A. (2007a) *Irregolari, criminali, nemici, note sul "diritto speciale" dei migranti*, «Questione Giustizia», II, n°.1, pp. 45-64.

Caputo A. (2007b) *L'emergenza sicurezza: appunti su sicuritarismo e politiche del diritto*, «Questione Giustizia», 6, pp. 1098-1118.

Caputo A. e Fidelbo G. (2012), *Reati in materia di immigrazione e di stupefacenti*, Torino: Giappichelli.

Caritas/Migrantes (2012) *Dossier statistico immigrazione 2012, 22° rapporto*. Roma: Idos.

Cashmore E and McLaughlin E (1991) *Out of order? Policing black people*, London: Routledge.

Castel R. (2003) *L'insicurezza sociale. Che cosa significa essere protetti?*. Torino: Einaudi.

Chambliss W (1964), A Sociological Analysis of the Law of VagrancFranko Aas K and Bosworth M (eds) *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press, pp. 21-39.y. *Social Problems* 12(1):67-77.

Chambliss W (1984) The Law Of Vagrancy. In: Chambliss WJ (ed. by) *Criminal Law in Action*. New York: John Wiley & Sons.

Chatterton M (1976) Police in Social Control. In: King J (ed. by), *Control Without Custody, Cropwood papers, n.7*. Cambridge: Institute of Criminology, pp.224-57.

Chatterton M (1979) The Supervision of Patrol Work under the Fixed Points System. In: Holdaway S (ed. by) *The British Police*. London: Arnold.

Cheliotis L (2013) Introduction: Immigration Detention around Europe. *European Journal of Criminology* : 690-691.

Christopher GAB and Jary D (1991) Introduction: Coming to Terms with Anthony Giddens. In: Christopher GAB and Jary D (ed. by) *Giddens' Theory of Structuration: A Critical Appreciation.* London and New York: Routledge, pp.1-31.

Colombo A and Sciortino G (2004) Italian Immigration: the Origins, Nature and Evolution of Italy's Migratory Systems. *Journal of Modern Italian Studies* 9(1): 49–70.

Colombo A. (2012) *Fuori controllo? Miti e realtà dell'immigrazione in Italia*. Bologna: Il Mulino.

Colombo A (2013) Foreigners and immigrants in Italy's Penal and Administrative Detention Systems. *European Journal of Criminology* 10(6): *746-759.*

Comack E and Balfour G (2004) *The Power to Criminalize. Violence, Inequality and the Law*. Nova Scotia: Fernwood

Comaroff J and Comaroff J (forthcoming) Thinking through crime, and policing: Knowledge, Sovereignty, and Social Order in Late Modern Times. Book project presented at the Center for the study of law and society, UC Berkeley, September 2015

Cornelius WA, Martin PL and Hollifield JF (1994) Controlling Immigration: A Global Perspective. Stanford: Stanford University Press.

Cornelli R. (2008) *Paura e ordine nella modernità*. Milano: Giuffré.

Coutin S B (2000) Legalizing Moves: Salvadoran Immigrants' Struggles for U.S. Residency. Ann Arbor: University of Micchigan Press.

Crocitti S (2013) Immigration, Crime, and Criminalization in Italy. In: Bucerius S and Tonry M (eds) *The Oxford Handbook of Ethnicity, Crime, and Immigration*. OxFranko Aas K and Bosworth M (eds) *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press, pp. 21-39.ford: Oxford University Press.

Crowther C (2000) *Policing Urban Poverty*, Basingstoke, UK: Palgrave Macmillan.

Dal Lago A. (1999) *Non-persone: l'esclusione dei migranti in una società globale.* Milano: Feltrinelli.

Dalla Porta D. e Reiter H. (2004) *Polizia e protesta. L'ordine pubblico dalla liberazione ai «no global»,* Bologna: Il Mulino.

Darian-Smith E (2013) *Laws and Societies in Global Contexts: Contemporary Approaches.* New York: Cambridge University Press.

Dauveregne C (2003) Making People Illegal. In: Fitzpatrick P and Tuitt P. *Critical Beings. Law, Nation and the Global Subject.* Burlingtone VT: Ashgate

Dauvergne C (2008) *Making People Illegal: What Globalization means for Migration and Law*. Cambridge: Cambridge University Press.

Davis A. (2009) *Aboliamo le carceri? Contro il carcere, la discriminazione, la violenza del capitale.* Roma: Minimum fax.

Davis KC (1969) *Discretionary Justice: A Preliminary Inquiry*. Baton Rouge: LSU Press.

Degenhardt T (2015) Crime, justice and the legitimacy of military power in the international sphere. Punishment and Society. 17, 2, p. 139-162

De Genova N (2002). Migrant "illegality" and deportability in everyday life. *Annual review of anthropology* 31: 419-447.

De Genova N (2004) The Legal Production of Migrant/Mexican 'illegality'. *Latino Studies* 2(2): 160-185.

De Genova N (2013) Spectacles of Migrant 'Illegality': the Scene of Exclusion, the Obscene of Inclusion. *Ethnic and Racial Studies* 36(7): 1180-1198.

De Genova N et al. (2014) New Keywords: Migration and borders. *Cultural Studies* 29(1): 55-87.

De Giorgi A. (2002) *Il governo dell'eccedenza. Postfordismo e controllo della moltitudine*. Verona: Ombrecorte.

De Giorgi A (2006) *Re-thinking the Political Economy of Punishment*. Aldershot: Ashgate.

De Giorgi A (2010) Immigration control, post-Fordism, and less eligibility A materialist critique of the criminalization of immigration across Europe. *Punishment & society* 12(2): 147-167.

Di Martino A et al (2013) The criminalization of irregular immigration: law and practice in Italy. Pisa : Pisa university press.

Dixon D (1997) *Law in Policing: Legal Regulation and Police Practices*. Oxford: Oxford University Press.

Donini M. (2006) *Il diritto penale di fronte al nemico*, «Cassazione Penale», 2, pp. 694-735.

Donini M. e Papa M. (2007) *Diritto penale del nemico: un dibattito internazionale*. Milano: Giuffrè.

Durkheim E (1893) The Division of Labour in society. New York: free Press.

Engbersen G and Broeders D (2009) The State versus the Alien: Immigration Control and Strategies of Irregular immigrants.*West European Politics* 32(5): 867-885.

Ericson R V (2007) *Crime in an Insecure World*. Cambridge: Polity.

European Migration Network/Italian National Contact Point (2005) *Irregular migration in Italy. Italian contribution to the second European Pilot study*. Roma: Edizioni Idos

European Migration Network/Ministero dell'Interno (2012) *Canali migratori. Visti e flussi irregolari.* Quarto Rapporto. Roma: Edizioni Idos.

Fabini G (2014) The illegal immigration law: A regime of law, discourses, and police practices, in «AmeriQuests», 11(2) in Amaya-Castro JM and Schotel B Illegality Regimes: Mapping the Law of Irregular Migration. http://www.ameriquests.org/index.php/ameriquests/issue/view/198/showToc

Fabini G. (2012) "Buongiorno, documenti". Police identity checks in Italy: stories from migrants and local Police officers. In: Bell E (ed.) *No Borders. Immigration and the Politics of Fear*, Chambery: Chambery University Press.

Fabini G. (2011) *Migranti e polizia: tra diritto penale del nemico e regole del disordine*, Master tesis in Political Sciences, University of Bologna, A.A. 2009/2010, published in "L'altro Diritto", http://www.altrodiritto.unifi.it/ricerche/migranti/fabini/ ISSN 1827-0565

Fassin D (2011) Policing Borders, Producing Boundaries. The Governmentality of Immigration in Dark Times· Annual Review of Anthropology, 40: 213-226

Fassin D (2013) Enforcing Order: An Ethnography of Urban Policing. Didier Fassin. Polity Press.

Feeley M (1976) The concept of laws in social science: A critique and notes on an expanded view. *Law and Society Review* 10(4): 497-523.

Ferrajoli L. (1989) *Diritto e ragione: teoria del garantismo penale*. Roma: Laterza.

Ferrajoli L. (2004) *La libertà nell'era del liberalismo*, «Questione giustizia», 2-3, pp. 333-344.

Ferrajoli L. (2006) *Il «diritto penale del nemico» e la dissoluzione del diritto penale*, «Questione Giustizia», 4, pp. 797-812.

FERRAJOLI (2009), *La criminalizzazione degli immigrati (note a margine della legge n. 94/2009,* in Questione giustizia, 5.

Ferraris V (2008). *L'obbligata illegalità: l'impervio cammino verso un permesso di soggiorno*. «Studi sulla questione criminale», 3(3): 25.

Ferraris V. (2012) *Immigrazione e criminalità*. Roma: Carrocci.

Finotelli C and Sciortino G (2009) The importance of being southern: The making of policies of immigration control in Italy. *European Journal of Migration and Law* 11(2): 119–38.

Fischer N (2013) The Detention of Foreigners in France: Between Discretionary Control and the Rule of Law. *European Journal of Criminology* 10(6): *692-708.*

Foucault M (1977) *Discipline and Punish.* New York: Pantheon Books.

Foucault M (1982) The subject and power. *Critical inquiry* 8(4)777-795.

Foucault M. (1988) *La volontà di sapere*. Milano: Feltrinelli.

Foucault M (2003), *Society Must Be Defended* (London, Penguin Books,

Foucault M (2009) *Security, Territory, Population: Lectures at the Collège de France 1977--1978* Hampshire: Palgrave Macmillan.

Foucault M (2008), *The Birth of Biopolitics.* Hampshire: Palgrave Macmillan,

Franko Aas K and Bosworth M (eds) *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press.

Franko K (2014). Bordered penality: Precarious membership and abnormal justice. *Punishment & Society*. *16*(5): 520-541

Galligan DJ (1992) The Nature and Function of Policies within Discretionary Power. In: Galligan DJ (ed.) *Administrative Law.* Aldershot: Dartmouth.

Gamberini A. e Orlandi R. (2007) *Delitto politico e diritto penale del nemico.* Bologna: Monduzzi Editore.

Garland D (1990) *Punishment and Modern Society*. Chicago: University of Chicago Press.

Garland D (1996) The limits of the Sovereign State: Strategies of Crime Control in Contemporary Society. *British Journal of Criminology* XXXVI (4): 445-471.

Garland D (2001) *The Culture of Control: Crime and Social Order in Contemporary Society.* Chicago: University Chicago Press.

Giddens A (1984) Structuration Theory, Empirical Research And Social Critique. In: Giddens A *The constitution of Society. Outline of the Theory of Structuration.* Cambridge: Polity Press.

Giddens A (1991) Structuration Theory: Past, Present and Future. In: Christopher G. A. Bryant and Jary D (ed. by) *Giddens' Theory of Structuration: A Critical Appreciation*, London and New York: Routledge, pp. 201-221.

Giglioli P. e Dal Lago A. (1983) *Etnometodologia.* Bologna: Il Mulino.

Ginsborg P. (2006) *Storia d'Italia dal dopoguerra a oggi*. Torino: Einaudi.

Goldsmith AJ (2000) An impotent conceit: Law, Culture and the regulation of Police Violence. In: Coday T, James S, Miller S and O'Keefe M *Violence and Police culture.* Melbourne University Publish, pp. 109-139.

Goldring L and Landolt P (2013) *Producing and Negotiating Non-Citizenship: Precarious Legal Ttatus in Canada*. Toronto: Toronto University Press.

Goldstein H (1996 [1960]) Police Discretion: The Ideal versus the Real. In: Reiner R (ed.) *Policing* Vol.2. Aldershot: Dartmouth.

Goffman A (2014) *On the Run. Fugitive Life in an American City.* Chicago: University of Chicago Press.

Goffman E (1963) *Stigma*. Englewood Cliffs, NJ: Prentice-Hall.

González-Enríquez C and Triandafyllidou A (2009) Introduction: Comparing the New Hosts of Southern Europe. *A European Journal of Migration and Law* (11): 109-118.

Gregory J. and Lees S. (1999) *Policing Sexual Assault.* London: Routledge.

Guia MJ, van der Woude M and van der Leun J (eds.) (2012) *Social Control and Justice: Crimmigration in the Age of Fear*. Eleven international publishing.

Hall S et al. (1978) *Policing the Crisis: Mugging, the State, and Law and Order.* London: Mcmillian.

Harcourt BE (2007) *Against Prediction. Profiling, Policing, and Punishing in an Actuarial Age.* Chicago: University of Chicago Press.

Heidensohn F (1992) *Women in control? The Role of Women in Law Enforcement.* Oxford: Oxford University Press.

Heidensohn F (1994) We Can Handle It Out Here: Women Police Officers in Britain and the USA and the Policing of Public Order. *Policing and Society* (4): 293-303.

Holdaway S (1977) Changes in Urban Policing. *British Journal of Sociology* (28):119-37

Holdway S (1983) *Inside the British Police.* Oxford: Blackwell.

Holdway S (1991) *Recruiting a Multi-ethnic police force.* London: HMSO.

Holdway S (1996) *The Racialisation of British Police.* Oxford: Blackwell.

Hunt J, Manning PK (1996) The Social Context of Police Lying. In: Inciardi JA (ed) *Examining the Justice Process: a reader.* Fort Worth: Harcourt Brace College Publishers.

Huysmans J (2000) The European Union and the Securitization of Migration. *Journal of Common Market Studies* XXXVIII(5): 751-77.

Huysmans J (2006) *The Politics of Insecurity. Fear, Migration and Asylum in EU*. London: Routledge.

Jakobs G and Cancio Melia M (2005) *Derecho penal del enemigo.* Buenos Aires: Hammurabi.

Jefferson T e Grimshaw R (1984*) Controlling the constable.* London: Muller.

Johnson C. et al. (2011) Interventions on rethinking the border in border studies. Political Geography 30 (2011) 61-69

Johnston L (1998) Policing communities of Risk. In: Francis P, Davies P and Jupp V (eds) *Policing Futures.* London: Macmillan.

Joppke C (2003) Commentary. In: Cornelius AW, Tsuda T, Martin PL et al. *Controlling Immigration: A global Perspective*, Stanford, pp. 381-6.

Kapur R (2003) The "Other" Side of Globalization: The Legal Regulation of Cross-Border Movements. *Canadian Woman Studies* 22 (3-4).

Kaufman E (2013) Hubs and Spokes: The transformation of the British prison. In: Aas K F and Bosworth M (eds) *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press, pp. 166-182.

KAUFMAN Emma (2013). Hubs and Spokes: The transformation of the British prison, in Franko Aas K and Bosworth M (eds) *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press

Khosravi S (2011) An Ethnography of Migrant 'Illegality' in Sweden: Included yet Excepted? *Journal of International Political Theory* 6(1): 95-116.

Krasmann S (2007) The Enemy on the Border: Critique of a Programme in Favour of a Preventive State. *Punishment and Society* (9): 301-318.

Lambert JR (1969) The police can choose. *New Society* (14): 364-430.

Lambert JR (1970) *Crime, police and race relations.* Oxford: Oxford University Press.

Le Cour Grandmaison O, Lhuillier G, Valluy J (eds) (2007) *Le retour des camps? Sangatte, Lampedusa, Guantanamo...* . Paris: Autrement.

Lee JA (1981) Some Structural Aspects of Police Deviance in Relations with Minority Groups. In: Shearing CD *Organizational Police Deviance*: *Its Structure and Control.* London: Butterworths.

Lipsky M (1980) *Street-Level Bureaucracy: Dilemmas of the Individual in Public Service*. Russell Sage Foundation.

Lustgarten L (1986) *The Governance of Police*. London: Sweet and Maxwell.

Manning PK (1977) *Police Work*. Cambridge, Mass.: MIT Press.

Manning PK (1979) The social control of police work. In: Simon Holdaway (eds) *The British Police.* London:Arnold.

Manning PK (2005) The police: Mandate, Strategies, and Appearance. In: Tim Newburn (eds) *Policing. Key readings.* Cullompton: Willan Publishing, pp. 191-214.

Manning PK and Van Maanen J (1978) *Policing: a View from the Street*. Santa Monica, Calif: Goodyear Publishing.

Maroukis, Thanos (2012): Update report Greece: The number of irregular migrants in Greece at the end of 2010 and 2011, Database on Irregular Migration, Update report http://irregular-migration.net/

Martin C (1996) The Impact of Equal Opportunities Policies on the Day-to-Day Experiences of Women Police Constables. *British Journal of Criminology*, n.36, 510-28

Marx K (1867 [1967]) *Capital. Volume I.* New York: International Publishers.

Matza D (1964) Delinquency and Drift. New York: Jhon Wiley

Matza D (1969) Becoming Deviant. Englewood Cliffs, NJ: Prentice-Hall.

Mazza C. (2013) *La prigione degli stranieri. I centri di identificazione e di espulsione*. Roma: Ediesse.

Mazza O. Viganò F. (2009), a cura di, *Il "pacchetto sicurezza" 2009 (Commento al d.l. 23 febbraio 2009, n.11 conv. In legge 23 aprile 2009, n.38 e alla legge 15 luglio 2009, n.94)*, Giappichelli editore, Torino

Mclaughlin E and Karim M (1996) Times change: New Formations and Representations of Police Accountability. In: Critcher C and Waddington PAJ (eds) *Publishing Public order*. Avebury: Aldershot.

Melossi D (2015) Crime, punishment and migration. Sage: London.

Melossi D (2013a) People on the move: from the countryside to the factory/prison. In: Franko Aas K and Bosworth M (eds) *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press, pp. 21-39.

Melossi D (2013b) Punishment and migration between Europe and the USA: A transnational "Less Eligibility"? In: Simon J and Sparks R (eds) The Routledge handbook of European criminology. London and New York: Routledge, 499-513

Melossi D (2010) "soliti noti". Etnografia e ricerca qualitativa, III, 3: 449-58.

Melossi D. (2008a) *Controlling Crime, Controlling Society: Thinking about Crime in Europe and America*. Cambridge: Polity Press.

Melossi D. (2008b) *Il giurista, il sociologo e la "criminalizzazione" dei migranti: che cosa significa "etichettamento" oggi?*, «Studi sulla Questione criminale», III, n.3, pp.9-24.

Melossi D. (2007) *La criminalizzazione dei migranti: un'introduzione*, «Studi sulla questione criminale», II, n.1, 20 pp. 7-12.

Melossi D (2003) In a Peaceful Life: Migration and the Crime of Modernity in Europe/Italy. *Punishment & Society* 5(4): 371-397.

Melossi D. (2002) *Stato, controllo sociale, devianza*. Milano: Paravia Bruno Mondatori.

Melossi D. (2000) *Multiculturalismo e sicurezza in Emilia-Romagna: Seconda parte.* «Quaderno n°.21 del Progetto 'Città Sicure» (Regione Emilia-Romagna: Bologna).

Melossi D. e Pavarini M. (1979) *Carcere e fabbrica: alle origini del sistema penitenziario*. Bologna: Il Mulino.

Menjívar C (2006) Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States in American Journal of Sociology, 111(4), 999–1037Melossi D and Pavarini M (1981[1977])

Merton R K (1938) Social structure and anomie. American sociological review. 3: 672-682

Mezzadra S (2007) Confini, migrazioni, cittadinanza. In: *Diritto di fuga. Migrazioni, cittadinanza, globalizzazione*. Verona: Ombre Corte, pp. 103-13.

Mezzadra S and Neilson B (2013) *Border as Method, or, the Multiplication of Labor*. Durham: Duke University Press.

Mezzadra S. (2006) *Diritto di fuga: migrazioni, cittadinanza, globalizzazione*. Verona: Ombre corte.

Moccia S. (1995) *La perenne emergenza. Tendenze autoritarie nel sistema penale.* Napoli: ESI.

Morgan R and Newburn T (1997) *The Future of Policing*. Oxford: Clarendon Press.

Mosconi G. (1986) *La norma il senso il controllo*. Milano: Franco Angeli.

Mosconi G. e Padovan D. (2005) *La fabbrica dei delinquenti. Processo penale e meccanismi sociali di costruzione del condannato.* Torino: L'Harmattan Italia srl.

Nelken D (1981) Gap Problem in the Sociology of Law: A Theoretical Review. *Windsor Yearbook of Access to Justice* 1: 35.

Neocleous M (2000) *The Fabrication of Social Order: a Critical Theory of Police Power*. London: Pluto Press.

Newburn T and Reiner R (2007) Policing and the Police. In Maguire M, Morgan R and Reiner R *The Oxford handbook of criminology*. Oxford: Oxford University Press, pp. 910-952.

Nussbaum M. (2002) G*iustizia sociale e dignità umana: da individui a persone*. Bologna: il Mulino.

Palidda S. (2000) *Polizia postmoderna: etnografia del nuovo controllo sociale*. Milano: Feltrinelli.

Palidda S (2009) Insertion, Integration and Rejection of Immigration in Italy. In: Guild E, Groenendijk K and Carrera S (eds) *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*. Surrey: Ashgate Publishing, Ltd, pp. 357-72.

Palidda S (2011) *Racial Criminalization of Migrants in the 21st Century*. Surrey: Ashgate.

Palidda S. (1999) *Polizia e immigrati: un'analisi etnografica*, «Rassegna italiana di sociologia, a», XXXX, n.1.

Palidda S. (a cura di) (2009) *Razzismo democratico. La persecuzione degli stranieri in Europa*. Milano: Agenzia X.

Palidda S. (2010) Revolution in Police Affairs. In: Dal Lago A and Palidda S (eds) *Conflict, Security and Reshaping of Society: The Civilisation of War*. London: Routledge.

Pastore F. (1998) Migrazioni internazionali e ordinamento giuridico, in VIOLANTE, *Storia d'Italia, Annali 14, Legge, Diritto, Giustizia*. Torino: Einaudi: 1075.

Pavarini M (1975) *Il socialmente pericoloso nell'attività di prevenzione*, «Rivista italiana di diritto e procedura penale».

Pavarini M. (2006) Criminalità e pena nella società multiculturale. In: Bernardi A (ads) *Multiculturalismo, diritti umani e pena*. Milano: Giuffré.

Pelissero M. (2007) *Logiche di esclusione e di inclusione nella politica criminale sull'immigrazione,* «Questione Giustizia», n.4, pp. 684-705.

Pepino L. (2001) *Sicurezza, microcriminalità e immigrazione (il pensiero unico alla prova dei fatti e dei giudici...),* «Questione Giustizia», n.1, pp.1-16.

Pepino L., *Meccanismi di esclusione e diritto penale del nemico,* (Pisa, 1° marzo 2008) in http://www.europeanrights.eu/getFile.php?name=public/commenti/liviopepino.pdf

PETRINI D. (1997), *Il sistema di prevenzione personale tra controllo sociale ed emarginazione*, in Annali della Storia d'Italia, Einaudi, 892

Philips, David. "Three «moral entrepreneurs» and the creation of a «criminal class» in England, c. 1790s-1840s." *Crime, histoire & sociétés/Crime, history & societies* (2003): 79-107.

Piasecka A. e Saitta P. (2006) *The hidden Normative Process behind the Construction of European Migration Policies,* «Sociologia del Diritto», 3, pp. 75-97.

Pickering S J and Weber L (2006), Borders, Mobility and Technologies of Control, Springer, Dordrecht The Netherlands.

Pires T.M. (2008) *La riforma penale fascista italiana: un modello internazionale,* «Studi sulla questione criminale», III, n.1, pp.73-105.

Pitch T. (2004) *I diritti fondamentali: differenze culturali, disuguaglianze sociali, differenza sessuale*. Torino: Giappichelli Editore.

Pitch T. (2006) *La società della prevenzione*. Roma: Carrocci.

Poletti C. (2007) *La polizia fra controllo e consenso: etnografia della polizia di prossimità*. PhD thesis in Urban and Local European Studies, University of Milano-Bicocca/ Doctorat en Science politique spécialisation Sociologie politique et politiques publiques, Institut d'etudes politiques de Paris, thesis defended in July, 2nd.

Pratt A (2005) *Securing Borders: Detention and Deportation in Canada*. Vancouver: UBC Press.

Pulitanò D. (2006) *Lo sfaldamento del sistema penale e l'ottica amico-nemico,* «Questione Giustizia», n.4, pp.740-760.

PUNCH Maurice (1979*b*), *The secret social service*, in Simon Holdaway (a cura di), The British Police, London: Arnold

PUNCH Maurice (1979*c*) *Policing the Inner City: a Study of Amsterdam's Warmoesstraat*. Archon Books, 1979.

Punch M (1985) *Conduct Unbecoming: The Social Construction of Police Deviance and Control*. London: Tavistock.

Quassoli F (2013) Clandestino: Institutional Practices and Discourse Devices for the Control and Exclusion of Migrants in Contemporary Italy. *The Journal of Language and Politics* 12(2): 203–225.

Quassoli F. e Chiodi M. (2000) *Rappresentazioni sociali e pratiche organizzative di polizia e magistratura,* «Quaderno n.21 di città sicure», pp117-293.

Quassoli F. (2002) Il sapere dei magistrati : un approccio etnografico allo studio delle pratiche giudiziarie. In: Dal Lago A. e De Biasi R. (a cura di) *Un certo sguardo. Introduzione all'etnografia sociale*. Roma-Bari: Editori Laterza, pp. 196-217.

Re L. (2006) *Carcere e globalizzazione : il boom penitenziario negli Stati Uniti e in Europa*. *Roma:* GFL Editori Laterza.

Reiner R (1993) Police Accountability: Principles, Patterns, and Practices. In: Reiner R and Spencer S (eds) *Accountability Policing: Effectiveness, Empowerment, and Equity*. London: Institute for Public Policy Research, pp. 107-137

Reiner R., *Policing*, vol. I e II, Dartmouth, 1996.

Reiner R (2000) *The politics of the Police*. Oxford: Oxford University Press.

Reiner R (1978*a*) The Police, Class and Politics. *Marxism Today* 22:69-80.

Reiner R (1978*b*) The Police in the Class Structure. *British Journal of law and Society* 5:166-84.

Reiner R (1992) Policing a Postmodern Society. *Modern Law Review* 55:761-81.

Reiner Robert (1996), *Policing. Cops, Crime and Control*, vol.1, Dartmouth Publ

Reiner R (2000a) Police Research. In: King R and Wincup E *Doing Research on Crime and Justice*. Oxford: Oxford University Press.

Reiner R (2000*b*) *The Politics of the Police*. Oxford: Oxford University Press.

Reiss AJ (1971) *The Police and the Public*. New Haven, CT: Yale University Press.

Reyneri E (2004) Immigrants in a Segmented and often Undeclared Labour Market. *Journal of Modern Italian Studies* 9(1): 71–93.

Rigo E. (2007) *Europa di confine. Trasformazioni della cittadinanza nell'Europa allargata*. Roma: Meltemi.

Rock PE (1973) *Deviant Behaviour*. London: Hutchinson.

Rusche G and Kirchheimer O (1939) *Punishment and Social Structure*. New York: Columbia University Press.

Sacks H. (1983) *Come la polizia valuta la moralità delle persone basandosi sul loro aspetto*. In: Giglioli PP e Dal Lago A (a cura di) *Etnometodologia*. Bologna: Il Mulino.

Saitta P (2013) Informali. Stato, élite e marginali alle prese con l'irregolarità. Un'introduzione critica, "Etnografia e ricerca qualitativa", 6, 1, pp. 5-12.

Saitta P (2015) Resistenze. Pratiche e margini del conflitto nel quotidiano, Ombre Corte, Verona.

Santalucia G (2006), *Processo, ordine pubblico, sicurezza*, in «Questione Giustizia», 4, pp. 761-781.

Sassen S (1998), *Globalization and Its Discontents: Essays on the New Mobility of People and Money*. New York: New Press.

Sassen S (1999) Guests and Aliens. New York: New Press.

Sassen S (2008), Neither Global nor National: Novel Assemblages of Territory, Authority and Rights, *Ethics & Global Politics Vol. 1* No. 1-2, 2008.

Sassen S (2010) The global inside the national. A research agenda for sociology. *Sociopedia.Isa* 1: 3-10.

Savio G (2011) *La nuova disciplina delle espulsioni conseguente al recepimento della direttiva rimpatri*, «Diritto, immigrazione e cittadinanza», 3.

Savio G (2012a) *Legge Bossi-Fini: il de prufundis per I reati di inottemperanza all'ordine di allontanamento del questore*, «Studium-Juris», 13-23.

Savio G. (a cura di) (2012b) *Codice dell'immigrazione. Il D.Lgs. 286/1998 commentato articolo per articolo con giurisprudenza*. Santarcangelo di Romagna: Maggioli Editore.

Savio G. (2014) *La detenzione amministrativa amministrativa degli stranieri: da misura eccezionale a strumento di (inefficace) controllo ordinario dell'immigrazione illegale e di mortificazione delle garanzie fondamentali*, (unpublished).

Sayad A (1999). The suffering of the immigrant. Cambridge: Polity Press.

Sbraccia A. (2007) *Migranti tra mobilità e carcere. Storie di vita e processi di criminalizzazione*. Milano: FrancoAngeli.

Sbraccia A (2011) *La localizzazione dell'insicurezza: osservazioni critiche sulle articolazioni del paradigma securitario*. In: Giupponi T (a cura di) «Politiche della sicurezza e autonomie locali. Annali di diritto costituzionale» III(4): 135-143.

Sbriccoli M (1998) Caratteri originari e tratti permanenti del sistema penale italiano (1860-1990). In: Violante L (a cura di) *Storia d'Italia. Annali, 14: Legge Diritto Giustizia*. Torino: Einaudi.

Schmitt C. (1994) *Le categorie del politico: saggi di teoria politica*. Bologna: Il Mulino.

Sciurba A (2009) *Campi di forza. Percorsi confinati di migranti in Europa*. Verona: Ombre corte.

Scraton P (1985) *The State of the Police*. London: Pluto.

Selmini R e Albertazzi G (2010*) La polizia locale dell'Emilia Romagna: sviluppo e prospettive*, *Quaderno* n°.36 di città sicure.

Selmini R (2010) *Cosa fa la polizia municipale e come cambia la sua identità,* in R. Selmini, G. Albertazzi (a cura di), *La polizia locale dell'Emilia Romagna: sviluppo e prospettive,* Quaderno n.36 di città sicure, Bologna 2010, pp.85-134.

Sheptycki J W E (1995) Transnational Policing and the Makings of a Postmodern State, *British Journal of Criminology* 35: 613-35.

Sheptycki J W E (1997), Insecurity, Risk Suppression and Segregation: some Reflections on Policing in the Transnational Age, *Theoretical Criminology* 1: 303-14.

Simon J and Sparks R (2012) *The SAGE Handbook of Punishment and Society*. London: Sage.

Simon J (2007) *Governing through Crime: How the War on Crime transformed American Democracy and Created a Culture of Fear.* Oxford: Oxford University Press.

Skolnick JH (1966) *Justice without Trial: Law Enforcement in Democratic Society*. New York; London; Sydney: John Wiley & Sons.

Stumpf JP (2006) The Crimmigration Crisis: Immigrants, Crime, and Sovereign power. *American University Law Review* 56: 367.

Stumpf J (2013) The Process is the Punishment in Crimmigration Law. In: Franko Aas K and Bosworth M (eds) *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Oxford: Oxford University Press, pp. 58-75.

Sudnow D (1983), Reati normali: aspetti sociologici del codice penale nella difesa d'ufficio. In: Giglioli PP, Dal Lago A (a cura di), *Etnometodologia,* Bologna: Il Mulino.

Ugelvik S and Ugelvik T (2013) Immigration Control in Ultima Thule: Detention and Exclusion, Norwegian Style. *European Journal of Criminology* 10(6): 709-724.

Van der Leun J (2003) *Looking for Loopholes. Processes of Incorporation of Illegal Immigrants in the Netherlands*. Amsterdam: Amsterdam University Press.

Van der Leun J (2006), Excluding Illegal Migrants in The Netherlands: Between National Policies and Local Implementation, *West European Politics*, 29, 2: 310-326.

Van Maanen J (1978*)* The Asshole. In: Van Maanan J and Manning P (eds), *Policing: a View from the Streets*, New York: Random House, p. 302-28.

Varsanyi M W (2010) *Taking Local Control: Immigration Policy Activism in U.S. Cities and States.* Standford: Standford University Press.

Vogel, Dita (2015): Update report Germany: Estimatednumber of irregular foreign residents in Germany (2014), Database on Irregular Migration, Update report, http://irregular-migration.net/

Vogel D (2012): Update report Germany: Estimate number of irregular foreign residents in Germany (2010), Database on Irregular Migration, Update report, http://irregular-migration.net/

Wacquant L (1999) Suitable Enemies. *Punishment and Society* 1.2: 215-222.

Wacquant L. (2004) *Punire i poveri. Il nuovo governo dell'insicurezza sociale*. Roma: DeriveApprodi.

Wacquant L (2009) *Punishing the Poor: The Neoliberal Government of Social Insecurity*. Durham: Duke University Press.

Waddington PAJ (1993) *Calling the Police: The Interpretation of, and Response to, Calls for Assistance from the Public,* Aldershot, Hants, England: Avebury.

Waddington PAJ (1999a) *Policing Citizens: Police, Power and the State*. London: Routledge.

Waddington PAJ (1999b). *Policing Citizens. Authority and Rights*. London: UCL Press.

Waever O (1993), Societal Security: the Concept. In: Weaver O, Buzan B, Kelstrup and Lemaitre P (eds) *Identity, Migration and the New Security Agenda in Europe*. New York: St. Martin's Press, pp. 1-40.

Walklate S (1992) Jack and Jill join up at Sun Hill: Public Images of Public Officers. *Policing and Society* 2: 219-32.

Walklate S (1996) Equal opportunities and the Future of Policing. In: Leishman F, Loveday B and Savage S (eds) *Core Issues in Policing*, London: Longman.

Weber l and landman t (2000) deciding to detain. The organisational context for decisions to detain asylum seekers at UK ports

Weber, L. (2015) Rethinking Border Control For A Globalizing World: A Preferred Future, Routledge, Abingdon Oxon UK.

Weber, Leanne, Deciphering Deportation Practices Across the Global North (2014). in Pickering, S and Ham, J (Eds) Handbook on Crime and International Migration, Abingdon, Routledge, 2014; Criminal Justice, Borders and Citizenship Research Paper No. 2553723. Available at SSRN: http://ssrn.com/abstract=2553723

Weber L (2013), Policing Non-Citizens, Routledge, Abingdon UK.

Weber L and Bowling B (2013), Stop and Search: Police and Power in Global Context, Routledge, Abingdon, Oxon, UK.

Weber L and Pickering S (2011) Globalization and Borders: Death at the Global Frontier, Palgrave Macmillan, UK.

Weber, L., Bowling, B., 2008, Valiant beggars and global vagabonds: Select, eject, immobilize, *Theoretical Criminology [P]*, vol 12, issue 3, SAGE Publications Ltd, United Kingdom, pp. 355-375.

Weber L and Bowling B (2011) Introduction: Stop and Search in Global Context. *Policing and Society* 21, 4: 353–356.

Weber L and Gelsthorpe L (2000) *Deciding to Detain. How Decisions to Detain Asylum Seekers are Made at Ports of Entry.* Cambridge: Institute of Criminology: University of Cambridge Press.

Weber L and Pickering S (2011) *Globalization and Borders: Death at the Global Frontier*. Basingstoke, UK: Palgrave Macmillan.

Weber L and Pickering S (2011) *Globalization and Borders: Death at the Global Frontier*. Basingstoke, UK: Palgrave Macmillan.

Weber L and Landman T (2002), *Deciding to Detain. The Organizational Context for Decisions to Detain Asylum Seekers at UK Ports.* Colchester, Essex, UK: University of Essex: Human Right Centre.

Westeley WA (1971), *Violence and the Police: A Sociological Study of Law, Custom and Morality*. Cambridge, Mass.: The MIT Press.

Wilson JQ (1975) *Thinking about Crime*, New York: Vintage.

Wonders N A (2006) Global flows, semi-permeable borders and new channels of inequality. In: Pickering S and Weber L (eds) *Borders, mobility and technologies of control*, Dordrecht: Springer, pp. 63-86.

Wonders, N. A. (2006). Global flows, semi-permeable borders and new channels of inequality: border crossers and border performativity. In S. Pickering, & L. Weber (Eds.),Borders, mobility and technologies of control. Dordrecht:Springer

Wonders N A (2008) Globalization, Border Reconstruction Projects, and Transnational Crime. *Social Justice* 34(2): 33-16.

Young J (1986) The Failure of Criminology: the Need for a Radical Realism. In: Matthews R and Young J (eds) *Confronting Crime*. London: Sage.

Young J (1988), Radical Criminology in Britain. *British Journal of Criminology,* 28: 289-313.

Young J (1997) Left Realism Criminology. In: Maguire M, Morgan R and Reiner R (eds) *The Oxford Handbook of Criminology*. Oxford University Press.

Young J (2003) To these Wet and Windy Shores: Recent Immigration Policy in the UK. *Punishment & Society* 5(4): 449–462.

Young K M (2014) Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight. *Law & Society Review* 48: 499.

Zaffaroni ER (2006) *El enemigo en el derecho penal*, Buenos Aires: Ediar.

Zedner L (2007) Pre-crime and post-criminology?. *Theoretical Criminology*, 11(2): 261-79.

Ziglio C. (2000) *Etnografia delle professioni: Il caso della Polizia di Stato.* Roma: Armando editore: Roma.

Zinola M. (2003), *Ripensare la polizia*. Genova: Fratelli Frilli.