

In an era marked by rising securitarian policies and contested human mobility, *Borders, Migrations, and Human Rights* offers a rigorous and interdisciplinary examination of the complex relationship between state sovereignty, migration, and fundamental rights. Edited by Maurizio Ambrosini, Marilisa D'Amico, and Emilia Perassi, this volume brings together leading scholars to analyze the resurgence of border enforcement as a central political priority, often at the expense of international legal obligations and human dignity.

Drawing from sociology, law, history, psychology, and literary studies, the book interrogates the evolving functions of borders—not only as physical demarcations but as sites of legal, political, and social contestation. Contributors explore topics such as the securitization of migration, the constitutional rights of migrants, EU border policies, the criminalization of solidarity, and the narratives of border-crossing in literature and cultural discourse. Through this multi-faceted lens, the volume reveals how contemporary border practices reshape democratic societies, challenge human rights principles, and expose the persistent tensions between national security and universal justice.

A product of the CRC “Migrations and Human Rights” initiative at the University of Milan, this book is essential reading for scholars, policymakers, and advocates engaged in the urgent debates on migration governance and human rights in the 21st century.

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€ 28,00

Ambrosini, D'Amico, Perassi (eds)

Borders, Migrations and Human Rights



**MAURIZIO AMBROSINI,
MARILISA D'AMICO,
EMILIA PERASSI (EDS)**

BORDERS, MIGRATIONS AND HUMAN RIGHTS



Maurizio Ambrosini,
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Emilia Perassi (eds)

Borders, Migrations and Human Rights

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Ledizioni LediPublishing
Via Boselli 10 – 20136 Milano – Italy
www.ledizioni.it
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Maurizio Ambrosini, Marilisa D'Amico, Emilia Perassi (eds) *Borders, Migrations and Human Rights*

First edition: March 2025

Print ISBN: 9791256003365

PDF Open Access ISBN: 9788855269025

Catalogue and reprints information:
www.ledizioni.it,
www.ledipublishing.com

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Introduction.

The return of borders: human rights in question

Maurizio Ambrosini, Marilisa D'Amico, Emilia Perassi

Contemporary political debate bears witness to the growth of a perhaps unexpected phenomenon: the return of a social demand for national borders protection and a political response to strengthen borders against unwanted human mobility as an almost absolute priority. Following the collapse of the Soviet empire and the rise of seemingly unlimited economic and financial globalisation, the end of the 20th century saw the raising of hasty predictions of national States decline along with their borders. Hard-fought advances in human rights and the controversial issue of humanitarian interference were heading in the same direction.

Although the demands for international migration restrictions had been a pressing topic for some time, the already visible signs of awakening national security concerns, like national sovereignty over sensitive matters such as entry migration regulations or granting citizenship resolutely supported by governments, the attacks of September 11, 2001 became an emblematic turning point. The new century has seen the raising of a security policy, enacted by national governments, and reflected by European institutions, to restore tighter control over borders and migratory movements, even at the cost of shirking international convention obligations and compromising their commitment to human rights protection.

The borders issue has a high priority for political institutions as it is the central argument of various anti-system political formations, sensitive to public opinion and the media, and a threat for those engaged in the defence of universal human rights, and interests also academia and scientific debate. The links between borders, migration and human rights are the subject of confrontations of diverse scientific disciplines that dialogue with society.

The present volume, which is the result of the CRC initiative "Migrations and Human Rights" at the University of Milan, is drawn from different disciplinary perspectives, and intends to propose a

multiple point of view debate on such a crucial issue for our contemporary time. In this introduction we provide some key interpretations to facilitate the reading of the following chapters, together with some hints on their main contents.

1. Securitarian fears and border reinforcement

The fears for the impact of migratory phenomena on internal security have a long history, including the contrast of anarchist infiltration in Italian emigration to the United States at the turn of the 19th and 20th centuries, or the recurring distrust of the political activism of diasporas across borders. As early as the 1990s, immigration had been increasingly treated as a border security issue, and since then has been associated with terrorism, one of the most extreme and emblematic expression of fear (Andersson 2016). While, until the 1970s, in north-central Europe immigration issues fell under the remit of ministries of labour and industry, later those issues were increasingly taken over by interior ministries (ibid.: 1060). Even at the level of EU institutions, what is now called DG HOME has been dealing with immigration since the 1990s.

There is no doubt, the attacks of 2001 and those in the following years on European soil had a profound influence in shaping immigration as a national security issue, placing the issue of unauthorised immigration in the foreground. To mention just one example, the time the Spanish Foreign Minister Josep Piqué declared that “the fight against illegal immigration is also strengthening the fight against terrorism” (cited in Adamson 2006: 195).

In recent years, notwithstanding the actual figures (Ambrosini 2020a), the arrivals from the sea (D’Amico, Cattaneo 2016) have been labelled as an emergency or a crisis of unseen proportions, contributing to reinforcing the view of immigration as a security issue, albeit giving rise to various combinations of a more defensive and a more humanitarian version of the issue. As far as Italy is concerned, although immigration has been essentially unchanged since roughly 2010, with refugees and asylum seekers accounting for no more than 5 percent of residents, and much lower figures, for example, than the number of foreign pupils in schools, it has been portrayed and perceived as an out-of-control situation. The victim image of an Italy left alone by a deaf and unconcerned Europe, despite an incidence of refugees in the resident population of about 3.5 per 1,000 inhabitants, compared to Sweden’s 25, Germany’s 14, and France’s 6, is a recurring and transversal topic of public debate. The fact that immigration in our country, as in the rest of Europe, is predominantly female (D’Amico 2020)

and European, from countries of Christian cultural tradition, doesn't change the common vision of the phenomenon.

National borders and the government's commitment to defend them are now a mainstream issue, so much that they have been called "the last major bulwark of unlimited national sovereignty" (Opeskin 2012: 551). Historically, modern states have claimed not only a legitimate monopoly on violence, but also a monopoly on legitimate forms of movement across borders through the introduction of passports and related red tape infrastructure (Torpey 1998). The logic behind this was the interest in maintaining control over their national borders in three respects: *internal sovereignty*, of which the ability to oversee borders is one of the salient manifestations, while the inability to monitor them is a trait of a falling state; *Westphalian autonomy*, that is the ability to regulate their own internal affairs without external interference, prompting governments to consider migration policies as an autonomy decision-making area; the *management of external connections* which justifies the importance of the tidy management of cross-border flows, including those of people (Adamson 2006).

2. Border defence in European policies

The external dimension of international agreements is, not as of today, a crucial point of policies to prevent unwanted migration (Lavenex 2006), including that of asylum seekers. The EU is playing a leading role along with national States, even at the cost of supporting governments with unclear democratic standards and paying a price in terms of credibility in protecting human rights and complying with international conventions on refugee reception. Boundary surveillance and the contrast to terrorist infiltration has given a powerful migration policies justification, despite little factual evidence of links between landings and terrorist attacks on European soil.

Through those cooperation agreements, the EU attempts to turn the border countries into buffer zones, granting funds, visa facilitation, support from agencies such as Frontex, training border guards, providing surveillance equipment, and sometimes even funding the construction of detention centres.

The binomial immigration-security applies also on the mobility architecture, as the development of the EU free internal labour market has been promoted in counterpoint with a selective closure to workers from abroad. The Schengen Agreement, established in 1990, immediately after the dissolution of the Soviet empire, is considered the cornerstone of this kind of policy. Later, the Tampere agreements (1999-2004) set three main goals: first, the management of migration flows, regarding border control and "illegal immigration" fight. Second, fair

treatment of non-EU nationals, with reference to admission procedures on EU territory and social integration. Third, partnerships with countries of origin, relating to the external dimension of migration policies. On its part, the Schengen Code of 2006 established common rules for people movement across borders, strengthening controls at the EU's external borders and virtually abolishing internal borders between the EU States.

While the goal of a common EU migration policy has been achieved only partially, for example in the development of anti-discrimination legislation, the attention of EU governments and institutions has been focused mainly on the border control security agenda. In this area, cooperation among member states has achieved substantial results, especially in the growing importance, high autonomy and substantial funds allocated to the Frontex agency. In brief, EU member States are not losing control over migration flows, as it is sometimes claimed, but are rapidly adapting to internal and external pressures, using a combination of new measures to control unwanted migration. At the same time, as we will see, the defence of borders is actually selective: closures to entry for some candidates are counterbalanced with openings, and even generous welcomes, to others, privileged by nationality, census, and professional skills. Borders do not function as walls in absolute terms, but rather as filters, within neo-liberal mobility regimes. Citizens of the Global North and elites in intermediate and developing countries enjoy greater mobility rights today than throughout the 20th century, while populations of the Global South are excluded (Faist 2013). The Covid-19 pandemic brought water to the mill of selective closures: while doors were opened to tourists and travellers with the desired features, the contagion prevention provided new arguments for the rejection of refugees, the imposition of quarantines and the exclusion of immigrants, with unclear or irregular residence permits, from care and services (Triandafyllidou 2020). But the Italian case provides a partial and controversial exception, having approved a specific regularisation measure, although a limited one, in relation to the pandemic and consequent labour needs (Ambrosini 2020b).

Another relevant aspect of policies based on the binomial immigration-security concerns the integration effort between *external* and *internal controls*. External controls concern border surveillance and related measures such as visa policies, readmission agreements, cooperation with transit countries and pressure on international carriers. On the other hand, internal controls are concerned with four areas: public services exclusion, such as social housing or non-emergency medical care; ID measures; detention and deportation of irregular immigrants, and labour market controls. Internal controls are generally of more difficult implementation as they affect common society's interests (such as economic activity), they can threaten fundamen-

tal rights (such as healthcare rights or international protection) and they require the cooperation of other stakeholders, such as local authorities, welfare services and professionals (Broeders and Engbersen 2007). In this field, however, governments of EU countries have taken various successful initiatives to exclude, expel, and discourage unauthorised immigrants, although a number of local governments have expressed a hospitality commitment, linking ideally to the U.S. “Sanctuary Cities” movement (Oomen et Al. 2021).

Despite these exceptions, the overall policy turns out, therefore, to be unbalanced in favour of security goals, with an emphasis on combating unwanted immigration, which in fact includes the arrival of asylum seekers. As governments and European institutions claim, the fight against smugglers prevents illegal immigration but, in fact, prevent as well the entry of people who would be eligible for one of several forms of international protection. If Portes (2020) speaks of the “end of compassion” relating to the U.S. policies under Trump, then also the EU has seen its humanitarian commitment becoming weak. The evidence of this tendency, after all, is in the von der Layen plan of September 2020, in which the term “return” occurs no less than 321 times in the 107 pages of the English version: an average of three recurrences per page.

In this regulatory framework there is a paradox. One of the reason, often claimed, for strengthening security immigration measures concerns the threat of “uncontrolled” migration flows. But, while flows of asylum seekers and other types of entry are subject to tight identification and control procedures, the least controlled migrations are actually those within the European Union. It was a clear political decision, although rewarded later by a consonant cultural representation, that immigrants from recently EU joined Eastern countries were recognised within a few years as European citizens, with full rights of movement in the EU space: a migration policy not declared as such.

The Brexit referendum made clear the paradox by precisely placing the control of intra-European immigration at the centre of the issue. British voters voted to return to their national authorities controls over migrations, and, at the same time, overturned the EU’s liberal orthodoxy on people internal mobility: citizens from the EU’s periphery were again considered as immigrants, their legal status was sharply distinguished from that of British citizens, their immigration applications were again dependent on the match with UK’s needs and their admission to the country was placed in competition with those applicants from other regions of the world.

Following the Russian invasion of Ukraine, a revision of the EU’s borders in a liberal direction is, however, currently taking place (spring 2022) with regard to Ukrainian refugees. An estimated six million people have escaped the invaded country, most of whom have been taken

in on EU territory. With Directive 55 of 2001, the EU promoted an exceptional reception regime for displaced expatriates, introducing three innovations that disarray the existing asylum architecture: first, the ability to freely cross borders and obtain a legal status valid for up to three years; second, the ability to circulate within the EU territory and choose the country in which to seek protection, contradicting the limits set by the Dublin Convention and the very idea of country quotas for refugee reception; and finally, unconditional access to the labour market, health, education, and social services.

The legal innovation was preceded and accompanied by spontaneous mobilisations for refugee reception, involving the associative world, local public institutions and many ordinary citizens: emotions proved to have an almost unstoppable force, causing a change in the regulatory framework and a rewriting of bureaucratic procedures (see on the topic Pratesi 2018).

However, several questions remain open: that of resilience over time, thinking, for example, of the rapid decay of much of the pro-refugee mobilisation in Germany in 2015; that of effective coordination and adequate finalisation of spontaneous initiatives; and that of implicit and explicit selectivity among different refugee flows, where the good reception of Ukrainians contrasts with persistent closures to those escaping from other wars. At present, openness toward Ukrainians has been presented by the EU as an exception that does not change the regulatory framework.

3. Welfare boundaries

To conclude, the issue of raising boundaries for national and local access to welfare measures deserves a specific attention.

A seemingly rational motivation in support of these limitations is linked to the competition for scarce welfare state resources, expressed by another popular slogan used in election campaigns: Italians first! The conjunction of welfare cuts that stretched waiting time for assistance and allocations for refugee reception with a lack of solidarity within the EU, has fueled the fire of popular xenophobia.

The real problem is that of deciding how much resources to devote to social spending, rather than to other government budgets: how much, for example, do armaments or foreign military missions, in which Italy is so extensively engaged, cost? Are all of them really useful? What are the benefits for Italians, especially poor Italians? What, for example, has the failed and costly Afghan adventure taught us? It is interesting that when complaining about cuts in social spending or the cost of receiving refugees no one asks these questions.

The next question is that of the boundaries of universalism in welfare policies (Ambrosini 2020a). At least for several decades, there has been a conviction in the EU that it is fair to devote resources to providing expensive medical care for example, for a multi-murderous mafia boss in prison, or for other categories, those who in times not so long ago or in other regions of the world would have been held responsible for their health problems and left on their own: drinkers, tobacco addicts, drug addicts, and extreme sports enthusiasts. All of this regardless of their social security and tax contributions.

This represents an important achievement of social policies, a sign of civilisation. But there is a problem as it seems legitimate to ask some questions: where are the boundaries between entitled to and excluded from entry to the country? Why do these individuals have a right and children who escaped from war in their own country would not? Is it fair that the only reason for inclusion is national citizenship, with the associated right to vote? The normative development that follows the war period establishes several universal human rights untied from the requirement of citizenship or norms of reciprocity between different countries. In Italy, instead, central and local administrations today prevent the effective enjoyment of these rights. Just think not only of asylum, but as well of the emblematic case of the right to worship for some religious minorities.

Politicians, above all, should recognise a well-established principle, rather than stoking voter anger: under the current regulatory system it is simply impossible to privilege Italians. EU citizens, long-term immigrants and, in many aspects, even immigrants with temporary work permits cannot be excluded from most social rights, except through forcing the system, forcing destined most often to encounter opposition from the judicial system. The recent Constitutional Court ruling (Dec. 2021) on newborn benefits (the so-called baby bonus) is the most recent demonstration.

Perhaps even more fragile is the status of asylum rights. One can probably imagine demolishing it, but at the price of a loss of international reputation, of which the long-term consequences would have to be assessed, as well as a deterioration of the founding values of the constitutional compact that, once set in motion, could have unpredictable consequences.

In this volume, the borders topic is analysed under different approaches. All the perspectives converge in restoring its nature - fragile and overbearing, contradictory and complex. Maurizio Ambrosini's sociological analysis focuses on the return of borders, symbols of an increasingly eroded and agitated national sovereignty. The normative frame in its incompleteness, limits and withdrawals is explored in the works of Marilisa D'Amico and Cecilia Siccardi, Bruno Nascimbene and Alessia De Pascale. The contribution of Claudia Storti and Filippo

Rossi focuses on borders invention in the historical evolution of law, while Daniela Milani and Alessandro Negri lead a critical analysis of the radicalisation processes of the borderlands that are the penitentiary institutions. The focus of Paolo Inghilleri and Tatiana Lorusso's study of transcultural psychology is the body as a boundary between the instances of the subject and those of his cultures, including in the analysis specific aspects they think are governing the trafficking of migrants from sub-Saharan Africa. The work of Lidia De Michelis and Claudia Gualtieri, who from a culturalist perspective investigate the functions of storytelling as a strategy of trespassing, target the complex border multidimensionality as a fluid and fluctuating space, constructed and simultaneously deconstructed by those who cross it. Emilia Perassi focuses on the observation of border evolution in Latin American literary and artistic practices by comparing narratives of historical and contemporary migrations. Elisa Fornalé and Laura Odasso reflect on the effects and consequences of the pandemic for the 'unconfined,' i.e., foreigners whose socio-economic and individual conditions have prevented them from complying with or fully falling within healthy norms. Taken together, the contributors want to conduct a wide-ranging analysis of the notion of boundary both as limit and as a surplus of meaning, in order to contribute, through the richness of perspectives of analysis, to the construction of a more equal society.

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“Can a Tale Become a Home?” *Storytelling, Hospitable Language and Border-Crossing**

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1. Introduction

“Can a tale become a home? [...] Can narratives build a place of belonging for those without a nation?” (Warner 2017: 150). These questions – which Marina Warner raises in an essay about the project *Stories in transit/Storie in transito*¹ – act as an inspiration for our essay, which aims to provide a close reading of Kurdish-Iranian writer and activist Behrouz Boochani’s autobiographical narrative *No Friend but the Mountains* (2018) and of Ali Smith’s novel *Spring* (2019) from the theoretical and methodological perspectives of Postcolonial Studies and Cultural Studies. In addition to the aesthetic qualities of the texts, these approaches investigate and valorise their pedagogical and political functions in terms of what the text *does* in order to transcend borders through creative language, challenge mainstream rhetoric, explore the dramatic potential of the story, and engage readers in the formation of new imaginaries. Our essay articulates this viewpoint through an engagement with the latest trends in critical border theory, a field that has become increasingly complex and nuanced in response to the dramatic re-emergence of the concept of the border. This resurgence has led to a parallel expansion and complication

* In line with the interdisciplinary and collaborative vocation of Cultural Studies and Postcolonial Studies, and following the praxis of collectives that many intellectuals – who are alert to social and cultural changes in postcolonial societies – are now embracing, this essay is the outcome of a long-shared reflection on borders and migration, and their articulation in multiple forms of storytelling. For academic reasons, we need to make explicit that the section on Behrouz Boochani was written by Claudia Gualtieri and the section on Ali Smith by Lidia De Michelis.

1 It is a collaborative project based in London and Palermo, which has built a meeting place and a space of cultural encounter for young refugees, writers and artists through artistic production and shared stories.

of the term itself, particularly in relation to the rising movements of people, which are frequently framed and understood in public discourse and mainstream narrative as ‘crises’ – a characterization that is both negative and deeply inappropriate

While most of the dominant discursive constructions and mainstream imaginaries of borders (especially in reactionary and populist political environments) strategically use a vocabulary of exclusion and rejection in order to foment polarised visions of non-reconcilable worldviews and separate life spaces, Boochani’s and Smith’s narratives strive to dismantle hate speech and to invent a fresh and reconstructed language of shared words and reconciliation that can traverse and open borders.

In different ways, these texts explore the themes of movement, exile, confinement, and violence – but also of liberation, humanity, sharing and healing – primarily through the transformative power of language. This metamorphosis allows their words to both announce and critique, creating imaginative possibilities. They recount life stories, and occasionally incorporate elements of magical realism that challenge and disrupt the strictures of consensus realism. This interplay generates interpretations that encourage reflection, foster critical awareness, and inspire both activism and creative imaginings.

No Friend but the Mountains and Omid Tofighian’s translation from Farsi into English elucidate how words transit and reach beyond the borders of Boochani’s imprisonment in Manus Island Regional Offshore Processing Centre in Papua New Guinea, managed by the Australian government. The accurate yet bare descriptions of the journey by sea, the detention centre, hunger, the interminable waiting and dehumanising procedures highlight and celebrate the power of words to contrast displacement by repopulating the place of isolation with imaginaries of hope, transformation, and recreation, such as mountains and poetry. In *Spring*, a twelve-year-old mixed-race girl named Florence exhibits an almost magical ability to evade and traverse the surveillance apparatus of a British immigration and removal centre, as well as overcome the even more challenging barriers of societal indifference. This is achieved through the compelling power of her words, imbued with honesty and meaning. As she leads the reader through a train journey that is reminiscent of the Underground Railroad from American slave and neo-slave narratives, the other characters ultimately find themselves experiencing a profound inner transformation. The two texts share a notable emphasis on the portrayal of identification and removal centres, emphasising the prolonged, de-humanising experience of waiting alongside the liberating nature of travel. This shared focus culminates in a celebration of language that seeks to challenge and counteract the current disorientation associated with post-truth narratives. Furthermore, it endeavours to infuse the divisive landscapes of exclusion with evocative natural images that embody freedom, movement and transformation, as exemplified by the clouds in *Spring* and the mountains

in *No Friend but the Mountains*. Theories of border and Border Studies have developed recently due to the increase of human movement, paralleled by the explosion of a rhetoric of crisis. Within this context, the category of “border” has achieved diverse nuances of meaning both in popular rhetoric and in critical studies. They are useful to introduce my cultural analysis of *No Friend but the Mountains*, which mainly focuses on the representational and pragmatic power of words, namely how the text acts both as testimony and as active agent of resistance and change. In addition to Henk Van Houtum’s pioneering work on border as a dispositif of control (cf. Van Houtum and Van Naerssen 2002), a strategy of ordering (cf. Van Houtum 2005; Van Houtum, Kramsch and Zierhofer 2005), and a transformative space of reinvention and emancipation (cf. Van Houtum 2021: 36), the complex and multi-layered concept of border has been observed by Nicholas De Genova and others as producing the criminalisation, marginalisation, and exploitation of migrants through forms of “border spectacle” (cf. De Genova 2016, 2021). It has also been examined by Sandro Mezzadra and Brett Neilson (2013, *passim*) in terms of “border as method,” which underlines its multifaceted function as being radically exclusive, as well as being a site for the elaboration of new positions of autonomy and resistance from below.

These perspectives, mainly centred on social relations and cultural practices, have been adopted in studies of the border as borderscape (cf. Appadurai 1996; Brambilla 2015a, 2015b) arguing for a multi-situated, multi-dimensional, interdisciplinary and integrated analysis of borders as fluid spaces. To the critical and analytical context of border aesthetics (cf. Schimanski 2019) and of the poetics of borders (cf. Schimanski and Wolfe 2007, 2017a, 2017b) pertain the methodology of examining the literary and artistic production “from the perspective of the border” (Schimanski 2019: 1). For this purpose, Roger Bromley’s literary and cultural argument that bordering may be a form of storytelling is particularly interesting in order to understand the emancipatory potential of *No Friend but the Mountains* and *Spring* (Bromley 2012: 346).

2. Behrouz Boochani’s *No Friend but the Mountains*²

The title *No Friend but the Mountains*³ exposes the dual aspect of the border: one that relates to affect and one that refers to space. From

2 This section is a slightly amended version of the essay “Words Beyond Borders: Behrouz Boochani’s *No Friend but the Mountains*” first published in Beck, M., C. Gualtieri, R. Pedretti, and C. Sandten, Eds., *Narrating Flight and Asylum*, Trier: Wissenschaftlicher Verlag, 2022, pp. 105-122. I wish to thank my co-editors and the publisher for permission to reprint.

3 The title of the book draws inspiration from a Kurdish saying that the Kurds have no friends but the mountains. I wish to thank Lucy Williams for point-

the former perspective, the border is abstract, personal and intimate. It underlines isolation and solitude, and the feelings that go along with the lack of amicable relations. From the latter viewpoint, the mountains as a natural geographical border are concrete, physical and territorial. It marks bodies and places by way of immobility, separation and distance. The chapter titles in the book follow a similar oscillation between the realistic plane of concreteness – namely, plain objects and facts – and the abstract level of feeling, also hinting at the transformation of concrete elements into moods or thoughts, as for example in “The Flowers Resembling Chamomile / Infection: Manus Prison Syndrome” and in “Chanting Crickets, Ceremonies of Cruelty / A Mythic Topography of Manus Prison”. Factual experience is transfigured into unrealistic, imaginative forms that reveal the coexistence of the perspectives announced above, as in the titles of the first chapter “Under Moonlight / The Colour of Anxiety,” and of the following one “Mountains and Waves / Chestnuts and Death / That River ... This Sea”. In order to establish a link between factual everyday life and memories, and break the unstable, elusive border that separates them through the intensity of imagination and the power of storytelling, the book title foregrounds the space of possibility afforded by the conjunction “but.” It alludes to a relationship that is made evident both by the memory of distant places (the mountains) and by the description of isolation in detention (no friend). The creative word – that also fleshes out the eyewitness’s testimony – allows for the possibility of connection by reviving memories and forging imaginaries; while the text – narrated, written and translated – is at once an act of complaint and accusation, of political rebellion and ethical provocation against an inhumane system.

For scholars and activists in Cultural Studies and Postcolonial Studies, reading *No Friend but the Mountains* in their capacity as public intellectuals entails responsibility and a challenge to address uncomfortable questions about the role of institutions and their norms. The effort to expand the field of doubt, think differently, and search for knowledge “without guarantee” is sustained, according to Lawrence Grossberg, by applying a conjunctural analysis based on radical contextualism and on the recognition of a problem-space that may help to identify the organic crisis and the war of positions in place (Grossberg 2018; 2019). For these intellectuals, being “wordly,” as Edward Said argued (1983), also involves the pedagogical obligation that Cultural Studies and Postcolonial Studies take on when investigating the ethical and political effects of texts. How does *No Friend but the Mountains* construct and dismantle borders? How can written words be liberat-

ing this out to me and for her reading of this chapter. Passages in poetry are in italics in the original text.

ing and how can they transform into a new language? My reading of Boochani’s narrative tries to answer these questions by following two paths, namely, on the one side, the creation of the border, of segregated space, of real and symbolic places of isolation and imprisonment, and, on the other side, a provocation calling for resistance and struggle, a breaking of the limits of confinement, the recovery of freedom by way of reclaiming voice and space for words, and the assertion of the human as active agent of change.

In the tradition of Cultural Studies and Postcolonial Studies, pedagogical work – inside and outside the academia – is a collective and collaborative endeavour that takes place in interdisciplinary conversations (cf. Gualtieri 2017). The erasure of disciplinary borders boosts individual proficiency and helps to achieve deeper knowledge, to forge those “better stories” that, in Lawrence Grossberg’s words (2018: 856), come from serious research, doubt and dialogue, and from the effort to think contextually and conjuncturally, beyond the limits of common sense, dominant power, immediate advantage and the preservation of privilege (cf. Hall 1987; Bennett 2015; Grossberg 2019; Gualtieri 2020b). Discussing the pedagogical aim of public history, Alix Green argues in favour of an “interconnected community of enquiry” (Green 2018: 56). For the purpose of this essay, this active community expands beyond disciplinary borders to include the praxis of everyday life, following Cultural Studies’ founding conviction that Raymond Williams formulated in the well-known definition of culture as “a whole way of life” (Williams 1989: 4).

Within this theoretical framework, a reflection on keywords becomes relevant as indicator of the social and cultural relations, tensions, and developments in place (Williams 1976; Bennett *et al.* 2005; Casas-Cortes *et al.* 2015). A recent study by the “collaborative project of collective writing” coordinated by Nicholas De Genova and Martina Tazzioli, titled *Minor Keywords of Political Theory* (2021), digs deeper into the emergence and spread of used and abused words in public discourse in order to articulate a theory aimed at rehabilitating the marginal and the excluded by employing a vocabulary of migration and citizenship:

Modern state power and sovereignty have come to be inextricably entangled with the fetishized figure of citizenship. This has inevitably served to marginalize and render “minor”, if not to silence altogether, the political quandaries of *non-citizenship* that tend to be embedded in questions of migration. [...] we seek to unsettle and disrupt the consensus around the selection of which keywords may be counted as vital for theorizing power, and to intervene in the politics of knowledge and theory governing the well-worn lexicon of politics, *from the critical standpoint of migration*. (De Genova, Tazzioli 2021: 4, emphasis added)

Such a perspective foregrounds two fundamental notions – namely, “white supremacy” and “racialisation” (De Genova, Tazzioli 2021: 5) – which provide the lens used in this chapter for reading and interpreting the keywords “detention”, “confinement”, “containment”, “deportation”, “refuge” and their cultural and social applications. These keywords are particularly relevant both in regard to the ways in which Boochani uses them in his narrative and in his thoughts about the role of literature, and with reference to their implications in journalistic discourse and the media in general, especially in Australia, where Boochani’s writing on his imprisonment was first disseminated.

A critical analysis of today’s migrants’ movement from a Cultural Studies perspective allows for a framing of the contemporary global order as a postcolonial condition (cf. Mezzadra 2008). These movements are, in fact, the result of European colonization, of its problematic and unresolved legacy, as well as the consequence of an invasive and lasting imperialism, which has produced hierarchies of power, structures of domination, and access to selective practices to assert one’s humanity. *No Friend but the Mountains* can be read as a postcolonial text with a dual meaning, which pertains both to its temporal location in the postcolonial condition and to its explicit political action of reconsidering Europe’s colonial past and fighting against the arrogance and violence of imperial power, especially in its commonly accepted devious forms and expressions that maintain and foster racist thinking and white supremacy as naturally justifiable positions (cf. Silverstein and Stevens 2021).

Contextual information may be relevant to a better understanding of Boochani’s complex text as broadly classifiable within the now popular genre of migration, flight and asylum writings. This would require a much wider and in-depth discussion, well beyond the necessarily selective perspective adopted in this essay. It is at one time autobiographical and fictional, documentary and imaginative, literary and political. It is a truthful document, a personal testimony and a collective achievement, in the form of shared experience, of a plurality of witnesses, and of a combination of efforts of co-creation. It details the dramatic flight which began in 2013 and took place mainly by sea. A victim of political persecution, Boochani fled Iran heading towards Australia, was obliged to stop in Indonesia and on Christmas Island, then forced to suffer exile – as he himself defines it – in Manus Island Regional Offshore Processing Centre in Papua New Guinea, instituted by the Australian national authority within the Operation Sovereign Borders policy as part of Pacific Solution II⁴. The first chapters describe two escape attempts by sea, which end with an invocation of hope:

4 <https://osb.homeaffairs.gov.au/>; https://www.aph.gov.au/parliamentary_business/committees/senate/former_committees/maritimeincident/report/c10;

"Oh God, do something, take us to a nice place. Kiss, kiss" (Boochani 2018: 119; emphasis in the original). The chronicle of Boochani's exile in Manus Centre begins in chapter six:

One month has passed since I was exiled to Manus. I am a piece of meat thrown into an unknown land; a prison of filth and heat. I dwell among a sea of people with faces stained and shaped by anger, faces scarred with hostility. Every week, one or two planes land in the island's wreck of an airport and throngs of people disembark. Hours later, they are tossed into the prison among the deafening ruckus of displaced people, like sheep to a slaughterhouse. (Boochani 2018: 121)

The text is made up of shameful and often absurd micro-stories, which, by the way, protect silence and respect the lack of words that tragedy enforces, as well as the right to anonymity. Only the names of those who became sadly known because they died in the Centres of Manus and Nauru Islands are mentioned. The narrative aims at conveying "truthful first-hand true experience [...] inspired by the logic of allegory, not reportage" (Boochani 2018: xv). While it reports and lays bare the network of bordering practices imposed by rules that often seem unjustified and incomprehensible because of their cruelty, Boochani's words preserve and respect the sensitive border of what is unspeakable, private, and nameless. They paradoxically restore and return dignity and humanity to people who, in a surreal narrative performance, are represented as animals and grotesque figures with symbolic nicknames, at times culturally influenced by the literature and tradition of Kurdish resistance. Among them, "Maysam The Whore" has the emblematic function of imagining and proposing desperate attempts to resist the system by way of masquerade. Mixing, confusing and interrogating common sense convictions, prejudicial standpoints, and superficial judgments which are normally uncritically accepted, is one of Boochani's favourite narrative strategies:

Once again, Maysam The Whore has become a mirror of the suffering in the prison. Covered by the theatrical mask of satire and comedy, the prisoners try to avoid facing up to the realities of overwhelming humiliation. There is no refuge no sanctuary available except faith in Maysam The Whore and his ludicrous mockery. This is possibly the simplest method for confronting humiliation. (Boochani 2018: 184)

The description may be interpreted as an example of "horrific surrealism," as Omid Tofghian defines it in the "Translator's Reflections": "Reality is fused with dreams and creative ways of re-imagining the

https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/pacificsolution; <http://www.refugeeaction.org.au/wp-content/uploads/2012/10/Pacific-Solution-II-fact-sheet.pdf>.

natural environment and horrific events and architecture. Reality is also presented as a form of free subconscious experience directed at multiple individuals, and including himself” (Tofighian 2018a: 367). Not only is the border between dream and reality, creative imagination and practices of horrible violence erased, but also the passage from the individual to the collective echoes and amplifies the resonance of personal experience, making it communal and shared:

Being so hungry, completely starving, one loses sight / My eyes are two violet orbs with swollen veins / My vision is opaque / I can see only black / I visualize my whole body as a skeleton / My being embodied as bone / A skeleton left wandering / Taking feeble steps / But I visualize a community / A community of people standing at the front of the queue / A community of flesh / A community of satisfied guts / A community the sight of which I can't digest / A community of people whose mouths are always open. (Boochani 2018: 199; emphasis in the original).⁵

While describing every person as isolated in the tragic privacy of their sorrow or in the caricatural representation of their ultimate reactions against the detention system, the narrative also opens up spaces for the collective, for the sharing and understanding that unite the prisoners in pain, in the common experience of imprisonment and dehumanization:

That night / The Cow / The Man With The Thick Moustache / The Father Of The Month-Old Child / Maysam The Whore / The Cunning Young Man / The Joker / And The Gentle Giant go to bed / Go to bed as they usually do / Go to bed with hungry stomachs / Go to their sweat-drenched beds / The crabs ... / The ants ... / The bats ... / The birds ... / And the officers ... / They all remain awake / The breeze rustles the leaves of that magnificent mango tree / The sound of the waves drifts in / The sound of the ocean reaches in / The sound creeps in from behind the jungle. (Boochani 2018: 242-243; emphasis in the original).

Narrated in Farsi by way of tweets, WhatsApp messages, e-mails, recordings, Facebook posts – and very seldom video-calls and phone-

5 In this excerpt, the emphasis is placed on a “community of flesh” that has become monstrous due to starvation and lack, where individuals, described as “skeleton[s] left to roam”, evoke the indigestible portrayal of a “community of people with mouths always open”. It is tempting to interpret this as an inversion of the trope that characterises migrants as zombies, which Hanif Kureishi (2014) described in an article in *The Guardian*: “He is an example of the undead, who will invade, colonise and contaminate, a figure we can never quite digest or vomit. [...] Resembling a zombie in a video game, he is impossible to kill or finally eliminate not only because he is already silent and dead, but also because there are waves of other similar immigrants just over the border coming right at you. [...] Now there seems to be general agreement that all this global movement could be a catastrophe, since these omnivorous figures will eat us alive. From this point of view, the immigrant is eternal: unless we act, he will forever be a source of contagion and horror”.

calls via a smuggled cell phone, as Boochani tells in some interviews (Boochani 2019, 2020a) –, *No Friend but the Mountains* was assembled, or rather re-membered, as it were, in 2017 and published in Omid Tofighian's English translation when Boochani was still detained in Manus Island (cf. Rae, Holman and Nethery 2018; Grasso 2019). In the "Translator's Tale: A Window to the Mountains", the translator's introduction to the English version of the work, Tofighian compares the complex journeys of the narrative word and his own translation to an on-going conversation, which is continuously altered by the unfolding temporalities of facts. They are the tragic events that daily happened in the Centre and, more generally, the fallout of the Australian policy of migration control (Tofighian 2018b: 380). Boochani builds an "archive in time" that complicates the structures of autobiographical writing and produces, instead, a historical record and a lucid testimony of specific events in progress (Whitlock 2018: 180). In its development, this archive also enacts a politics of accusation, struggle and resistance. The book is introduced as a collaborative work by multiple contributors: Janet Galbraith, Arnold Zable, Kirrily Jordan, Najem Weysi, Farhad Boochani, Toomas Askari, Moones Mansoubi, Sajad Kabgani and the publisher, Picador. They collaborate to make the narrative a plural endeavour and a shared construction (cf. Boochani 2020b; Zable 2019). In the numerous interviews and videos available on youtube, Boochani often uses the pronoun "we" so as to underline the prisoners' common experience of resistance in enduring the agony of incarceration, the conjoining of their rebellion and struggle in order to denounce the abuses of a system that induces surrender, the reiteration of its own inexplicable logic, and condemns its victims to subordination and dependence.

Despite the enormous variety of life contexts and conditions, "we" also includes by extension all the people who, in different ways, have helped, written, translated, manifested, established alliances, taken on the responsibility of raising awareness and disseminating information internationally. Boochani's "we" likewise comprises the indigenous peoples of the South Pacific islands, namely the inhabitants of Papua New Guinea, Aboriginal Australian and Torres Strait islanders, who also suffer conditions of subalternity and lack of recognition of their human and civil rights.

Returning to the notion of the border, the fundamental concept of this chapter, raising questions about the multiple factual, mental and affective borders enforced by detention, produces a discursive and cultural construction that gives literary form and potentially global circulation to a confined story. The text constructs a narrative of borders on different levels – virtual, autobiographical, collective, institutional, legal and affective – whose singularity, complex articulation and arbitrariness are put into sharp relief. What methodological and stylistic

techniques underpin the construction of borders in Boochani's text? Boochani's processes of storytelling, writing and translation have already been described as strategies of border crossing, and it has been anticipated how the story may be interpreted according to diverse narrative levels, which attest the impossibility of a univocal interpretation. A purely literary and aesthetic appraisal of *No Friend but the Mountains* might prioritise the evocative interplay of prose and poetry. On the one hand, poetry gives voice to the liberating effort of the creative imagination while also activating the healing effect of remembrance, as in the following passage on lost love:

I fell in love up on the hills where I was entranced by the fragrance of prickly artichokes / I fell in love on a spring day / I fell in love together with the scent of chamomile flowers / I flee in love as I sat on a throne made of stone from the mountains / I fell in love as I drowned in my hopes and dreams / I fell in love as I sank into the anxieties of youth / I fell in love as I directed my gaze towards the horizon / I fell in love as the horizon carried away the dignified glories of the migrating tribe – the tribe that was also carrying away their daughter / I fell in love as the tribe drifted past, wayfarers travelling through as I remained there in the midst of a village tucked away within forests of chestnuts / I fell in love as they journeyed away, slowly, step-by-step, towards a lost destination. (Boochani 2018: 267; emphasis in the original).

On the other hand, poetry intensifies the claustrophobic, unbearable and destructive connotations of unjust detention: “*Who was it who called for his mother from this remote prison? / Called for her from this island? / Called for her from this jungle? / Called for her on this night?*” (Boochani 2018: 349; emphasis in the original). And more:

A war waged with numbers / A numbers war / The frisking hands of the Paps / The imposing stares of the Australian officers / The prisoners trapped in a tunnel of tension / A huge feature of everyday life for the prisoners / Day to day ... / A monstrous part of life / This is what life has become, after all ... / This is one model constructed for human life / Killing time through manipulating and exploiting the body / The body left vulnerable / The body an object to be searched / Examined by the hands of others / The body susceptible to the gaze of others / A program for pissing all over life. (Boochani 2018: 306-307; emphasis in the original).

Boochani's writing unravels every detail of life in the Centre, paradoxically exposing them in both their everyday exemplarity and the dire exceptionality of a factuality which defies belief. Dreadful events – such as the violent suffocation of a rebellion in the Centre towards the end of the story – are presented alongside descriptions of intimate memories, transfigurations of tropical nature (seen as a pacifying force), as well as against the backcloth of the endlessly repetitive and destructive gestures of everyday life in detention. This bounded narra-

tive provides a dense and exhausting representation of the unhomely physical environment in which prisoners try to survive. However, the subversive power of storytelling strives to re-create language as a welcoming and protective home. It builds a safe place, a refuge, but it is also resistant and revolutionary and, heedless of borders, it insists on "occupying the landscape" for every "person who has a story" (Herd 2017: 1).

The reappropriation of voice may be analysed through a postcolonial lens in the wake of Adriana Cavarero's argument in *For More Than One Voice* (2005). There, the philosopher diverts her attention away from the content of communication and redirects it instead to the voice in order to assert the speaker's undisputable uniqueness and agency. In this way, the act of speaking is made political through an assumption of responsibility. Leaving aside philosophical implications, and prioritising the political function of voice, it is useful to consider Paul Kottman's comment, in his *Translator's Introduction* (2005: vii-xxv) to the English edition of Cavarero's text, which focuses on the speaking subject, and the risks and responsibilities that speaking entails.

In a number of interviews, Boochani declares that during the first years of his imprisonment he did not speak at all, out of fear that his life might be in danger. He also mentions how, later on, storytelling became a tool for expressing and articulating personal stories similar to his own. The avowed objective of the book is to challenge the system and uncover its underlying power structure by adopting new and revealing words, which are summoned to countermand narratives that contribute to creating an a-critical common sense in the service of upholding and maintaining positions of privilege and power. Boochani explains that he had abandoned journalism because, in his view, it could no longer contrast and defeat the system. Instead, he turned to creative writing because, as he claims, "literature is a free language, literature can challenge the system" (Boochani 2020a; Gallien 2018; Bromley 2017).

New words are needed to forge a renewed language of resistance, struggle, hope and awareness. Boochani's narrative accurately constructs everyday life in the Centre: the endless queues for food, for the toilet, for the telephone and the pseudo-medical examination; the desperate search for moments of solitude away from the constant inquisitive control of the guards; the filth of toilets and cells; the difficulty of being always in fear of survival. In this detailed record an explicit political subtext is revealed which attests to the existence of a system of dominance that Boochani defines as a "kyriarchal system" (Boochani 2018: 124). He coins the term in Farsi and elaborates the

English form together with Tofghian using the Greek “κυριαρχία”.⁶ The interpretation of kyriarchy adopted in *No Friend but the Mountains* is the one theorised in the nineties by feminist theologian Elisabeth Schüssler Fiorenza, for whom “kyriarchia” refers to a set of intersectional power structures interacting with each other with the shared objective of imposing subalternity and oppression. These “interlocking structures of domination” (Schüssler Fiorenza 1992: 8) exploit the forces that are present in the historical contingency and within the network of relationships in which they have to operate. According to Schüssler Fiorenza, these structures of domination are not necessarily expressions of privilege, but operate in any context, social condition or personal situation. Their “intersectionality” complicates and amplifies the mortifying and enslaving effect of the structures of domination in powerful and unpredictable ways, in both personal and collective life experiences. Subordination is internalised and institutionalised, absorbed into the system in order to maintain the status quo, and the dynamics of complicity that sustain the structures of power are subtle, complex, opportunistic, often insidious and incomprehensible.

In Boochani’s narrative, the violent and aggressive actions of coordinated powers, which are imposed on asylum seekers and refugees through forms of detention, are described in words quite different from the ones preferred by mainstream public discourse and journalistic and media rhetoric. The Regional Offshore Centre is called “Manus Prison” and relies on a “power structure” based on “detention” and “systematic torture” that exploits asylum seekers, who are indeed “exiles”, “prisoners”, “hostages, and “modern slaves”. Naming and defining with appropriate words make the aims of the system evident. Kyriarchy, systematic torture and oppression cooperate in order to force surrender, destroy the prisoners’ humanity and replicate the mechanism of violence and torture that ensures the stability of power. A consolidated colonial logic is reproduced in *No Friend but the Mountains*, which, moment by moment, shows the process of dehumanisation of the prisoners.

Some key elements make the working of the kyriarchal system that governs the camp explicit. One of its most appalling forms is the management of time as an instrument of torture. Waiting dominates life in the camp and extends beyond its border to indicate an indefinite time of detention. In the “Australian detention industry,” as Boochani calls it, the politics of waiting reproduces itself without solution nor interruptions (Boochani 2020a). Thus, waiting for medical treatment is prolonged in the spirals of bureaucracy, perpetuating for those who are sick their coexistence with the apprehension and factual danger of

6 From the Greek κύριος, *kyrios*, “boss”, and ἀρχή, *archè*, “authority”, “dominion”.

death in a state of endless anxiety (cf. Bathia and Bruce-Jones 2021; McNevin and Missbach 2018). The politics of waiting is enforced through strategies of obsessive micro-control aimed at preserving the unchangeable repetition of rules, like for example, maintaining order in the queue. Standing in line for food to appease a perennial, unsatisfiable and destructive hunger – made unbearable by the possibility that any rule may be arbitrarily changed, turned upside down, or even broken by the guards with no logic reason or explanation, just to implement superior orders – is a daily practice of torture that prolongs the agony of hunger, causes rivalry among the prisoners, and generates loneliness and chaos. I argue that it becomes apparent how oppression also feeds on voluntary contributions to the methods of subjugation that sustain the circle of violence on which the system is based and thrives.

Structures of oppression multiply and mutually reinforce each other, Omid Tofghian argues in “Introducing Manus Prison Theory” (2020), in which he updates Boochani’s reflection and his own on the political project, that *No Friend but the Mountains* was initiated, in order to investigate how the detention industry at large works in Australia. The project aims at identifying other interacting forms of violence and oppression within the system of control which has been implemented over the last decades, and at exposing the colonial matrix of these enduring and pervasive practices and their institutionalisation in Australian national strategies of government (cf. Giannacopoulos and Loughnan 2020). Bringing the investigation to date is necessary in order to tackle a recent – thorny but urgent – issue in theoretical reflection and in political praxis regarding the institutional response to people’s movement and the ways in which it may be managed in terms of recognition of human and civil rights. In addition, while considering the right to refuge in its spatial and judicial dimensions, in *Minor Keywords of Political Theory*, the authors call for a consideration of mobile infrastructures of refuge that are put into practice by informal networks of solidarity that offer concrete alternatives to structures of segregation (cf. De Genova and Tazzioli 2021: 49-59). Evidently, people on the move adapt and change their behaviours and strategies to counter the regimes of border control on a daily basis, thus embodying the “autonomy of migration” that De Genova defends as the propelling and unstoppable driver of human mobility. He considers this force to be a constitutive existential condition of human freedom (cf. De Genova 2021; De Genova, Garelli and Tazzioli 2018). On the contrary, detention, deportation and confinement – in their capacity as manifestations of sovereignty in the institutionalised regime of control – act in order to prevent and negate any possibility of refuge.

Recent Border Studies within the framework of Cultural Studies and Postcolonial Studies have critically explored the link between deten-

tion and citizenship. By questioning the theoretical concept and the practical implementation of detention, in *Detention, Deportation, and Waiting* (2016) Nicholas De Genova formulates a theory that conforms to culturalist and postcolonial paradigms: “I want only to suggest that rather than trying to *show* you something, I will offer various ways by which we might attempt to see things differently” (De Genova 2016: 1; emphasis in the original). A postcolonial perspective precisely requires that a different angle of observation be applied to European colonialism, its effects and consequences in the present. In a recent series of lectures at the University of Oxford, titled *Oxford and Empire: Forced Migration and Colonial Legacies* (2021), Meera Sabaratnam underlined that the colonial worldview is still rooted, effective and visible in the ways in which politics of migration management and border control are devised. An inevitable decolonisation, long desired and pursued in Postcolonial Studies, seems to be necessary in conjunction with a critical, honest and acute rethinking of European colonialism – as a composite system of interacting practices of conquest, occupation, settlement and exploitation – and of imperialism as the mental infrastructure that continues to result in politics based on racist presuppositions of white superiority (Gualtieri 2015, 2018, 2019).

Colonialism, citizenship and right recognition may be observed from the perspective of sovereignty, as Coddington *et al.* argue in *Embodied Possibilities, Sovereign Geographies, and Island Detention*, in conversation with Hannah Arendt’s claim in *The Origins of Totalitarianism* (1951). The right to the acknowledgment of rights, Arendt maintains, involves a condition of belonging to a nation state, a citizenship status that is not accessible for people without, or deprived of, a national affiliation. On the basis of their field research, Coddington *et al.* propose that the right to have rights be considered, instead, “as an embodied possibility” (2012: 3), not a hostage to national sovereignty, but an opportunity to open up new forms of political space.

From a judicial viewpoint, debates on citizenship rights, administrative detention and asylum procedures are outside the scope of this chapter and cannot be cursorily summarised. However, an interesting and revealing relationship may be established between some aspects of *No Friend but the Mountains* and *La malapena. Sulla crisi della giustizia al tempo dei centri di trattenimento degli stranieri* [On the Crisis of Justice in Detention Centres] (2020) by Maurizio Veglio, a lawyer expert in migration law in Italy. In form and style, *La Malapena* is both an autobiographical testimony and a document containing judicial investigations, mainly regarding the *Centro di permanenza per il rimpatrio “Brunelleschi”* [Centre for detention and repatriation “Brunelleschi”] of Turin. In overt conversation with Boochani’s book, Veglio’s text offers a thoughtful and disillusioned analysis of the distortions of the Italian system of administrative detention, corroborated by case stud-

ies. *La Malapena* exposes the disturbing similarity between the strategies of power and dehumanisation used in detention centres across different countries. Veglio describes the weapon of “waiting,” the difficulty in accessing medical care, the segregated management of space, the lack of human respect, the contradictions and absurdities that systematically reproduce chaos in order to fully destabilise the *trattenuti* [the people held in⁷]: “The world inside the Centre combines ferocity with casualty” (Veglio 2020: 91 my translation; cf. Esposito *et al.* 2019a; Esposito *et al.* 2019b).

But it is not only the system in force in the *Centri per il rimpatrio* in Italy that Veglio accuses, he also openly criticises the regulations and laws governing administrative detention. If, as he writes, the world of law is the “elective terrain for the scope of measuring the power of language” (Veglio 2020: 74), in Italy, the jurisprudence assigns to inadequate institutions – equipped with inefficient and contradictory legal instruments – the task of managing the lives of foreigners who are illegalised and made undesired, facilitating the preservation of a hostile, discriminatory and fundamentally racist environment. “Abolishing detention is reasonable,” Veglio asserts, thus raising the difficult question of the (il)legitimacy of detention in its various forms and applications (Veglio 2020: 95; cf. *Extraterritorial Killings* 2021).

This relevant question concerns the future of the societies that are crossed, influenced and changed by the movement of people, which will have to confront and experience new forms of coexistence. In this perspective, the recent work of Italian philosopher Roberto Esposito proposes a theoretical approach focused on “*immunitas*” and “*communitas*,” which he has further developed by taking advantage of the reflections generated by the spread of Covid-19. The pandemic has exacerbated the tensions between practices of control favouring immunity as a mode of life protection, and the community that, while treasuring security and safety, still cannot renounce the interactions and relationships of social life (cf. Gualtieri 2020a). It is the duty of those who advocate democracy – which preserves conflict as its constitutive element – to safeguard the balance between these two seemingly opposed, but actually complementary drives. In the book titled *Istituzione* [institution], Roberto Esposito reconsiders European philosophical thought precisely by focusing on the role of institutions. He shows how, in the history of Western societies, what was “instituted” has become predominant over the very agency entailed by the act of “instituting”. The stability of the “instituted”, namely of institutions, has determined precise forms of intervention on people’s lives. Esposito, instead, puts forward the notion of an “instituting thought”

7 Italian legal rhetoric does not call people in detention centres “prisoners” but literally people “held in”, in Italian *trattenuti*.

that shifts the emphasis from the “instituted order to the instituting praxis” (Esposito 2021: 160; my translation). In this light, “social subjects do not precede the instituting, but take shape and develop within it” (cf. *ibid.*: 161).

In this line of thinking, *No Friend but the Mountains* exposes the crisis of contemporary institutions in charge of governing people’s lives. It may be necessary to reconsider the human condition also in terms of the transformation and redefinition of rights, which include citizenship and the wider field of human rights. The stark contradiction that Boochani’s book unveils is that, while the judicial system concerning migration proclaims its defence of the possibility of a safe and dignified life, procedural applications often produce different, if not opposite outcomes. In order to face this apparent contradiction, Esposito’s instituting perspective may be useful to rethink the ways in which societies construct and operate their judicial systems. With a special focus on European societal structures, Esposito argues for a process that may reinterpret the role of institutions and formulate hypothetical solutions for societies to come, “provided that institutions be able to address life in affirmative ways. The need of instituting life [Esposito claims] comes to the foreground, in the dual meaning of revitalizing institutions and restoring life to those instituting traits that push life beyond its mere biological substance” (*ibid.*: 162).

3. *Ali Smith’s Spring*

By further exploring the contiguity of ‘tales of the real’, ‘life stories’ and ‘fictional stories’ outlined in the introduction, the essay will now address the contact zone of conceptualization and the imaginary. In this context, the prescriptive public narratives that emphasise the utility and necessity of borders frequently enter into a conflictual relationship with the mobile, porous, and expansive interpretations of borders as ‘thresholds’ – liminal spaces which serve as sites of opportunity and transformation, and materialise through the ethical and aesthetic engagements of artistic creation and literary expression, as well as through various forms of testimony and “militant research” (Casas-Cortez et al. 2015: 62).

Viewed through a postcolonial lens and in relation to globalization and detrimental economic policies that foster precariousness and indebtedness, our research aims to critically assess narratives of (im) mobility and migration, and the stories that underpin the consolidation of a hostile environment, and the ongoing processes of re-bordering, particularly in the context of the United Kingdom following Brexit, where the externalization of borders has recently transitioned into the domain of implementable policies. Our approach prioritises

militant theoretical frameworks that emerge from an interdisciplinary practice "without guarantees" (Hall 1986). Among the main theoretical frameworks we engage with – some of which have been already mentioned in the introduction – are Étienne Balibar's assertion (2002) that borders are no longer confined to the periphery but are strategically reproduced at the core of national space and discourse, as well as Nicholas De Genova's analysis of the 'spectacle of the border' and criminalization of migrants. Additionally, the concept of 'border as method' articulated by Sandro Mezzadra and Brett Neilson (2013) serves as a primary reference point. In their eponymous publication, the authors investigate the dual and often contradictory nature of borders, highlighting their roles as both exclusive and inclusive entities, according to changing agendas. Through the lens of 'differential inclusion', their work articulates how borders play a crucial role in shaping the world through political, economic, territorial, and symbolic practices that aim to naturalise and entrench new strategies and systems of domination. Concurrently, the study underscores that border spaces are also generative of subjectivities and imaginaries of autonomy and resistance, drawing inspiration from the (re)-emerging notion of the common (Hardt, Negri 2009), which has consistently challenged policies of separation and confinement.

Moving beyond the analytical frameworks previously discussed, and setting aside considerations from geopolitics and human geography, which transcend the scope of the current analysis, this second section of the essay will mainly concentrate on the aspects of Border Studies that emphasise discursive and symbolic dimensions, as well as the complexities and challenges of representation.

Narrativity plays a critical role in shaping, reinforcing, and orienting the construction of public discourse about national borders – as well as enhancing the visual, symbolic, and performative aspects of communication related to ideological, material, virtual, and bureaucratic boundaries. These boundaries are often created to uphold exclusive interpretations of 'sovereignty' and specific political agendas. Thus, recognising this role is essential for any current examination of borders and the terminology employed to express and operationalise them.

The evolving conceptualization of borders has transitioned from being perceived merely as lines or barriers, and subsequently as instruments of demarcation, separation, and "purification" (Van Houtum, Van Naerssen 2002: 126) of a bounded space and its associated imagined community. This redefinition towards viewing borders as a process – characterised as both a "normative idea" and an "active verb", primarily understood as "b/ordering" (Van Houtum 2005a: 3) – is largely attributed to what Van Houtum identifies as "the postmodern turn in social sciences" (2005b: 674). The pioneering efforts of the Dutch scholar and the Nijmegen Centre for Border Research, un-

der his direction, have been crucial in developing new critical frameworks within Border Studies. Their studies have effectively combined a comprehensive spatial and geopolitical perspective with the conceptualization of borders as social practices characterised by differentiation and dynamic coercion. This approach has brought to light the critical elements of affective and relational fluidity, which not only facilitate the establishment and reinforcement of ideals concerning closed spaces and cohesive communities but also help to create the conditions for the collaborative reimagining of borders as arenas for “(trans)formative” and emancipatory interactions, as articulated by Van Houtum (2021: 36).

Characterised by a productive interdisciplinarity, this processual theoretical framework seeks to bring back a sense of concreteness and dynamism to the post-structuralist drift, which, by focusing predominantly on the narratological aspects of the discursive and symbolic representation of borders, has nearly established a “bordering script” as noted by Van Houtum (2005b: 676). This script risks overshadowing both the tangible constraints and the potential for evolution that borders inherently possess.

The early 2000s marked a significant state of equilibrium, facilitated by an enhanced dialogue between the more traditional disciplines associated with Border Studies and perspectives that emphasise the transformative power of cultural practices and interactions. The notion of borderscape, which is now widely recognised and has been reinterpreted across various border theories, alongside the analytical framework of Border Aesthetics illustrates this development and is particularly well-suited for application in literary and artistic contexts. For a comprehensive examination of the borderscape concept and its intellectual lineage stemming from Arjun Appadurai’s work (1996), one should refer to Chiara Brambilla’s insightful article “Exploring the Critical Potential of the Borderscapes Concept” (2015a), as well as to its Italian synthesis, “Il confine come borderscape” (Brambilla 2015b; our translation). The concept of borderscape serves as a versatile instrument for conducting “a critical interrogation at different levels of analysis” (ibid.: 6; our translation). It allows for a “multi-sited” examination of the intricate and multidimensional aspects of the border, which is viewed as “a non-static but fluid and fluctuating space, constituted and crossed by a plurality of bodies, discourses, practices and relations that reveal continuous definitions and recompositions of the divisions between inside and outside, citizen and foreigner, host and guest” (ibid.: 5; our translation).

This description resonates strongly with the porous and transgressive understanding of time and space – and their relationship with language and narrative structure – characteristic of a strikingly meta-modernist and intertextual novel such as *Spring*. Its narrative space

may be likened to a real borderscape intricately interwoven with words, where the dynamic scenario thrives on the tension between instances of conformity and closure, as well as broader imaginings of transitivity and hope. In this context, the interpretative frameworks provided by the 'aesthetics of borders' prove particularly valuable. Originating in the 1980s from the Chicana literary tradition, the concept of border aesthetics emerged through the reflections of writers, intellectuals, and artists on establishing an aesthetic framework to narrate the experiences associated with the Mexico-United States border. As Johan Schimanski (2019: 1) notes, this perspective has evolved significantly during the second decade of the 2000s, expanding into "a wider concept and academic field [...] addressing not only cultural production related to geopolitical borders across the world, but also the aesthetic or sensual dimension of borders of all kinds and all scales, and the borders involved in all aesthetic processes". This framework signifies a progression from the earlier notion of 'border poetics' (Schimanski, Wolfe 2007), which provided a methodological approach specifically designed for analyzing literary and artistic works "from the perspective of the border" (Schimanski 2019: 1). Within the expansive interdisciplinary field of Border Aesthetics, recently augmented by the concept of 'border texturing' inspired by decolonial thought, a range of compelling research questions emerge, regarding the interpretation and critical examination of border stories: "What borders do we find in narrative, rhetoric, imagery, genre, translation, transculturation, framing, etc.? Is the framing and grounding of the modern work of art intimately connected with crossing the borders between private and public spheres? How do the ways in which narrative and images present borders differ?" (ibid.: 2).

Prior to exploring the elements that render *Spring* a narrative of and from the border, it is essential to examine how, from a Cultural Studies and literary perspective, the border itself can be understood as 'story'. According to postcolonialist scholar Roger Bromley, "Bordering is, indeed, storying: narrating the national imaginary in the face of globalization. [...] So the border is a narrative, a fable in space and a story of, and in, time. When the displaced challenge, threaten, claim, unsettle, counter-narrate, then the border moves inward/inside and becomes an imaginary" (2012: 346). Similarly, Schimanski emphasises that the act of crossing borders – regardless of their nature – constitutes a narrative in itself (2015: 99), wherein the transition from the known to the unknown is marked by "elements of figurality, fiction, the fantastic, deception, illusion, and the imaginary" (ibid.: 98).

Spring is the third installment in a quadrilogy known as the *Seasonal Quartet*, a series penned by the Scottish writer Ali Smith – who is also a visual artist and a prominent advocate for refugee rights and LGBTQ+ issues, and has long been based in Cambridge – with a view to confront the

psychology and discursiveness of Brexit, seen as a divisive and corrupting event. This understanding is brought out also in the title of Anthony Cartwright's evocative novel, *The Cut* (2017), where Brexit is depicted as a complex interplay of cultural, economic, social identity, and class issues. Throughout Smith's body of work, and particularly within the *Quartet* ("an extraordinary meta-novel [...] lighting us a path out of the nightmarish now" [Preston 2019]) –, the exploration of boundaries – whether territorial, ideological, discursive, identity-based, regarding sexual orientation, or literary genre – is a recurring theme, often presented at a figurative level, with the intent of transcending these confines. In this context, *Spring* presents specific points of interest: although the narrative prominently revolves around themes associated with, and perspectives *from* the border, yet it actually features only one actual frontier, the internalised and open border between England and Scotland. This border, while not overtly demarcated, remains a source of conflict in the memory and the historical consciousness of the region and its people. It is the crossing of this pervasive and imperceptible border that leads Florence, heading north to find her mother who has escaped from a detention center, to grasp and express Smith's most explicit message about the utopian potential of borders, articulated through language that highlights the fluid and relational aspects of the borderscape:

What if, the girl says. Instead of saying, this border divides these places. We said, this border unites these places. This border holds together these two really interesting different places. What if we declared border crossings places where, listen, when you crossed them, you yourself became doubly possible (S: 196; emphasis in the original).⁸

In this excerpt, Smith underscores the significant rupture brought about by Brexit, which has led Scotland –largely supportive of remaining in the European Union – to find itself, against its wishes, 'crossed' by a border imposed by external forces. This situation has effectively re-semanticised the Anglo-Scottish border, positioning the Caledonian region as a site of diversity and intersection, in stark contrast to the hostile environment policies of the Westminster government. As noted by Arianna Introna (2020: 19-21), it is particularly telling that the central events of this narrative unfold on the iconic grounds of the Battle of Culloden (1746), where the Jacobite forces faced their ultimate defeat by English troops. The experience of the tourists witnessing the reenactment of these battles, reminiscent of a postmodern stage, is further complicated by the irruption of hired security guards in the service of private contractors. This intrusion – which draws attention to one of the more troubling elements of the

⁸ In citations, page references to *Spring* will be preceded by the abbreviation S.

British immigration system – severs the embrace of Florence and her mother, drawing them apart again and ultimately denying the narrative a simplistic or unrealistic happy ending.

In this way, and, even more, by choosing a Scottish setting for the protagonists' encounter with the covert support network of illegalised immigrants and people fleeing detention centres, Smith not only critiques the brutality of the current British immigration framework but also dramatises the 'border struggles' that Critical Border Studies identify as pivotal in shaping new understandings of relationality and coexistence.

In the narrative the framework of Brexit and the concurrent theme of the border, also underpin reflections on the birth of the Irish Free State in 1922, as seen through the character of Paddy, an Irish screenwriter whose passing is lamented at the novel's outset. Her memory, along with her civic and humanistic ideals, provides insight into the processes of mourning and renewal experienced by Richard Lease, another central character and a long-time friend of Paddy's who directed many of her works. "A brand new union. A brand new border. A brand new iteration of ancient Irish civil unrest", Richard contemplates. "Don't tell me this isn't relevant all over again in its brand new same old way" (S: 41-42).

Another avenue for exploring the semantic challenges associated with borders is through the thematization of immigration and removal centres, emblematic non-places that illustrate the relocation of the border from the margin to the centre, as articulated by Balibar. The architecture of these facilities, as represented in *Spring*, is entirely functional to serve the spectacle of state power and its role in safeguarding citizen prerogatives. In contrast, the lived experiences of immigrant detainees – and, by extension, of the custodial staff – are relegated to a space characterised by the obscene, the unrepresented, and the unrepresentable, necessitating a state of invisibility and silence to prevent any challenge to the prevailing public narrative of the nation. "Detention as spectacle", as noted by Cetta Mainwaring and Stephanie J. Silverman, "is a process of politicised and purposeful revelation and concealment", aimed at making "hypervisible" "a sense of an irregular immigration crisis, the logics of punishment and securitization, and a social distance between imprisoned detainees and citizens legally resident outside the gates" (2017: 31).

This perspective is reflected also in the fourth main character of the novel, Brittany (Brit) Hall, a young English woman filled with bitterness and disappointment. Confronted with the realities of austerity and instability, she was obliged to forgo her university education and personal dreams to work as a custody officer for a private contractor at a local detention centre. Captive herself to a 'hostile' political environment, Brit describes the facility as "a kind of underworld [...].

Place of the living dead" [S: 132]). She encapsulates her predicament in a sort of syncopated bureaucratese that, in an ironic juxtaposition to the bucolic names of the detention centres, reduces her identity to a mere acronym, starkly illuminating her self-destructive and resigned choice to remain wilfully oblivious and unseeing: "I'm a DCO at one of the IRCs employed by the private security firm SA4A who on behalf of the HO run the Spring, the Field, the Worth, the Valley, the Oak, the Berry, the Garland, the Grove, the Meander, the Wood and one or two others too, she said" (ibid.).⁹

The young woman stands as a 'de-conscientised' and defeated emblem of the nation's discourse – a reality reflected in her name and her ironic moniker 'Britannia'. She manifests signs of indifference and cynicism, products of her desensitization to institutional cruelty, hate speech, and a lack of civic engagement and individual accountability. This state of being persists until Brit is confronted by Florence, who approaches her with an urgency that brooks no denial, intent on facilitating her own escape by orchestrating a reassuring tableau featuring a teenager in a school outfit accompanied by an adult in uniform.

It is only upon the conclusion of a journey embarked upon with little awareness of its purpose or motivations, that Brit will finally grasp that Florence – whose name is associated with spring, nature's reawakening and life-affirming energy through references to Botticelli – is the same wondrous girl who, during a visit to the detention centre, was rumored to have magically navigated the barriers of that quintessentially restricted, closed space. She was reported to have reached the director's office unimpeded, persuading him to ensure the sanitation of the toilets and improved overall conditions of the facility. As will be revealed in a subsequent scene, Florence raises pressing ethical questions which the official finds hard even to grasp. Her word choice and expressions mark yet another crossing of boundaries, specifically those between the imaginative language of narrative and invention and the urgent, pragmatic language of advocacy.

Brit's reaction to her colleagues' accounts which are later substantiated by surveillance footage showing a fluidity of movement ("She just walked around, like she was meant to be there. Nobody stopped her" [S: 136]), is one of sheer disbelief. This incredulity is intensified by the hegemonic construction of borders (and confinement) as closed and insurmountable spaces characterised by an omnipresent surveillance, as underscored by the frequent use of the term "checked".

9 DCO (Detective Custody Officer); IRC (Immigration Removal Centres); HO (Home Office). SA4A, the acronym of the private security company in Spring, recalls G4S, one of the most important immigration contractors in the United Kingdom.

Nobody can, at this centre, or any centre. Just walk in. Not possible full stop. Here – and this isn't the tightest security place – you've got to be searched, checked, photographed, checked, assigned the visitor lanyard, checked, scanned, checked again, then security gates, doors, fences, doors, three more checks then wing recep final check. Word went round that this kid had also walked in – and out – at four other IRCs. Lies, Brit said. Fake news (ibid.).

Florence's journey through the station's turnstiles and past the controllers is as natural and inevitable as it is for her to pass without a ticket, in stark contrast to the experiences of Brit and the other travelers who face scrutiny. Her almost supernatural ability to traverse borders invites a parallel with the experience of the black doors, the ominous doors, which open unexpectedly, facilitating a fantastical teleportation for those who must flee their homeland, in Mohsin Hamid's novel *Exit West* (2017). By circumventing the clichéd and often victimising narrative of the 'migrant's journey',¹⁰ Hamid creates a liberating and powerful vision in which mobility is experienced and embraced not only as a shared human right, but also an irresistible catalyst for change that fosters a world "where 'being with' supersedes notions of origin or national belonging" (Knudsen, Rahbek 2021: 442).

This depiction of an extraordinary adolescent encapsulates elements characteristic of the expressive techniques of magical realism, such as the trickster and the abiku, while also reflecting mythological characteristics reminiscent of a psychopomp, as seen in the character Odell from Rupert Thomson's 2005 novel, *Divided Kingdom*. This narrative, set against the backdrop of Tony Blair's project of devolution and reimagining of British national identity, addressing the complexities of borders and the act of crossing them. According to Ali Smith, the character of Florence is rooted in the figure of Marina from Shakespeare's *Pericles, Prince of Tyre*. Marina, a resilient and virtuous daughter presumed dead and later rediscovered, narrates stories that emphasise truth, healing, and reconciliation. However, she represents merely one of the numerous intertextual allusions within *Spring*, which, particularly in its segments focused on eco-climatic justice, also draws parallels with Greta Thunberg, a contemporary 'magical' teenager figure who has dared to challenge those in power.

10 Marina Warner (2017: 154) draws attention to how an excessive emphasis on the journey and the moment of arrival – on the "epic odysseys" typical of the 'migrant narrative', foregrounds deprivation and suffering, establishing a demoralising and pathetic analogy with the genre of the 'slave narrative'. For an examination of Mohsin Hamid's treatment of the same theme, see De Michelis (2022).

It is noteworthy that the mention of Thunberg and the concern for climate change articulated by Florence, as well as in one of the anthropomorphised interludes in the novel, bring to mind the concept of “Ecology”. This term is the first of six keywords identified by Schimanski and Wolfe in their conclusion of *Border Aesthetics*, which is organised like a glossary (the additional keywords are “Imaginary”, “Invisibility”, “Palimpsest”, “Sovereignty”, and “Waiting” (2017: 147). The interpretative framework established by these keywords seems particularly adept, with only slight distinctions, at guiding the reader through the complex borderscape of *Spring’s* textual and affective geography.

If invisibility serves as a foundational element of the narrative – manifested through both the powers of the imagination and the invisibilization of the unwanted stranger (S: 192-193) –, then the spatial-temporal structure of the narrative evokes, albeit in a more fluid manner, the concept of the palimpsest. In the same way, the debate surrounding sovereignty and feelings of sovereign nostalgia permeates the entire space of the novel, while the motif of waiting is particularly pronounced in the segments set within the immigration and removal centre. This theme is central to Smith’s writing and to her activism advocating for the abolition of indefinite detention in the British immigration system. As a detainee poignantly says to Brit, “I’ve done three years in here for the crime of being a migrant” [S: 159], while the heterodiegetic omniscient narrator reflects on the uncertainty of indefinite detention, noting how “being stuck in here in indefinite detention [...] means no way of knowing when you’ll be out of here or if you ever will, and if you are, how long it’ll be before you’re right back in again” (S: 166).

In this context, the character of Florence, described by a reviewer as “the young girl who tells the whole truth and opens every door, whose magic is unspectacular, yet ever-present” (Woollen 2019), serves as a powerful emblem of healing and empathetic understanding.

This quality becomes particularly apparent when she becomes aware of Richard’s intention to end his life by stepping in front of a train, as he now perceives himself as a man “without a story” (S: 11). In a pivotal moment, she saves him with a simple yet powerful remark: “I really need you not to do that» (S: 112; emphasis added). The attention and “need” that Florence expresses towards Richard, and indeed towards all lives, draw him back into a realm of relationships and proximity. More importantly, her empathy assigns him a new role and a place of belonging within her own narrative, transforming it into a welcoming and boundless space for the telling and sharing of stories. This transformation ultimately enables him to rediscover his creative inspiration as a director, channeling it into efforts that combat the UK immigration hostile environment through the production of docu-

mentaries and interviews that highlight the northbound trail and the support network which, in the novel, serve as a British counterpart to the American 'underground railroad'.

Florence's influence and charm are primarily manifested through the captivating 'magic' of a word that is incessantly in search of a deeper significance and a substantial connection to truth, whether it be factual, poetic, emotional, or rational. Although by the end of the novel there is a suggestion – immediately challenged yet firmly situated within the 'discourse of reality' – that Florence might have resorted to hypnosis, the true enchantment that empowers the girl to unlock every door and awaken awareness resides in her illocutionary power, and empathetic approach. These strengths allow her to delve into the depths of people's souls, prompting them to confront their vulnerabilities and desires, ultimately reconnecting them with their own humanity, which has been momentarily sidelined in a context that is both opaque and desensitising. Ultimately, it is Brit who encapsulates Florence's significance, describing her as "someone or something out of a legend or a story, the kind of story that on the one hand isn't really about real life but on the other is the only way you ever really understand anything about real life. She makes people behave like they should, or like they live in a different better world" (S: 314; emphasis added).¹¹ This statement not only underscores the indispensable ethical and socially integrative roles of the storyteller but also highlights Smith's frequently articulated conviction that narratives and the novel are the most appropriate, if not the exclusive, avenues for accessing 'truth' and sharing it with the audience, thereby inviting and engaging them into a shared imaginary of transition and transformation. In this context, one cannot overlook the welcoming sentiments expressed by Smith, who is a patron of the initiative "Refugee Tales – Walking in Solidarity with Refugees, Asylum Seekers and Detainees" (De Michelis 2019a; 2019b),¹² as she greets visitors to the project's website:

11 In a previous episode, Brit articulated the captivating and infectious nature of Florence's storytelling, as well as its ability "to create worlds": "It's like being in a fairy tale herself. [...] It feels a little dangerous, to be so close to a fairy tale. [...] Is she magic? Or in need of magic? Is she jealous? Is she enchanted? Is she lost in the wood, young and foolish and about to learn a lesson? Is she the guardian of something really precious?" (S: 201).

12 Drawing inspiration from Chaucer's *Canterbury Tales*, this project aims to raise public awareness about the indefinite detention practices within the British immigration system and to campaign for its abolition. By combining storytelling with the empathetic potential of solidarity walks, the initiative seeks to create a space for listening and to foster a language of sharing and inclusion for individuals who have undergone the ordeal of administrative incarceration.

The telling of stories is an act of profound hospitality. It always has been: story is an ancient form of generosity, an ancient form that will tell us everything we need to know about the contemporary world. Story has always been a welcoming-in, is always one way or another a hospitable meeting of the needs of others, and a porous artform where sympathy and empathy are only the beginning of things. The individual selves we all are meet and transform in the telling into something open and communal. [...] We will tell it like it is, and we will work towards the better imagined¹³.

The transformative and enchanting role of Florence, whose surname Smith, although adopted for anonymity, clearly hints at the author's own, is particularly evident in her connection with Brit. The young custody officer symbolises the prevailing psychological climate in the immediate aftermath of Brexit, while simultaneously embodying the disgraceful indifference and injustices inherent in the British immigration system. The reference to the band Florence and the Machine, whose most notable album is called, not by chance, *High as Hope* (2018), underscores this connection. By the conclusion of their journey, Florence – the harbinger of hope – shares her insights with Brit, who in a previous exchange had identified with The Machine.

Brittany, we are humanizing the machine [...].

We are? Brit says.

Yes, Florence says. I can't do it without you. Nobody can.

[...] The machine only works because on the one hand humans make it work and on the other hand humans let it work. Yes? Agreed? (S: 309-310)

The "humanizing programme" proposed by Florence, and similarly embraced by Ali Smith, is fundamentally rooted in storytelling. Therefore, it is not surprising that *Spring* begins with a powerful intertextual inversion of the cynical opening from Dickens's *Hard Times* ("Now, what I want is, Facts. [...]. Facts alone are wanted in life" [1998: 3]). This inversion compels readers to engage with a more insidious form of border – a near literal wall – sustained by the language of hatred and polarization that pervades both contemporary public discourse and social media in these post-truth times:

Now what **we don't want is Facts**. What we want is / bewilderment. What we want is repetition. What / we want is repetition. What we want is people in / power saying the truth is not the truth. / [...] We want the people we call / foreign to feel foreign we need to make it clear they / can't have rights unless we say so. What we want is / outrageous distraction distraction. [...] / what we need is / people feeling be-

13 <https://www.refugeetales.org/about>.

ing left behind disenfranchised what we need / is people feeling. What we need is panic. We / want subconscious panic we want conscious panic / too. We need emotion we want righteousness. / We want anger. We need all that patriotic stuff (S: 3-4; bold in the original).

The association between the legitimization of emotional expression and the concept of 'authenticity', as encouraged by contemporary populist discourse, and a diminishing sense of accountability regarding language which is fundamental to engagement with truth and the defining characteristics of humanity, is also forcefully underscored: "We need words to mean what we / say they mean. We need to deny what we're saying / while we're saying it. We need it not to matter what / what words mean" (S: 5). As the novel approaches its conclusion, it becomes increasingly clear that these reflections – reminiscent of a stream of consciousness revisited through the lens of the hyper-fragmented and often inconsequential language of social media – are encapsulated in *The Book of Hot Air*, a collection of notes and life guidance that Florence cherishes almost as a talisman and, following her arrest, will end up in the hands of Brit. In examining the notebook, which features a multitude of excerpts that significantly correspond with sections of the novel, it she who underscores the 'wall' function of the textual simulations of twitter's hate speech in *Spring*. This observation culminates in a single and cohesive sentence that advocates for both the transformative power of storytelling and the disruptive, educational enchantment of fairy tales: "There's a paragraph written like a wall, of the obscene kinds of twitter language. Then there's a really good story, like a fairy story, about a girl who refuses to dance herself to death even though a villageful of people and millions of people online want her to" (S: 199-200).

A multitude of similar interludes – which, like the twitter one, are non-narrative in nature and feature implicit subject positions – serve to both interrupt and enhance the rhythm of memory reconstruction and the provocatively non-linear development of the plot. Retrospectively, these interludes appear to stem from the shared nurturing ground of the notebook, which acts as the connective tissue in *Spring*'s quest for linguistic, imaginative, and ethical renewal. Within the novel's expansive vision of planetary interconnection and interdependence, encompassing multiple temporalities, these interludes grant a voice to anthropomorphised entities – such as spring itself, the cyclical nature of seasons, elements of the natural world, weather phenomena, artistic endeavours, and the digital realm – yet notably exclude human characters. Of particular significance is the discourse that, in a Levinasian sense, is conveyed through the voice of the 'face of the other'. This voice serves as a conduit for the countless anonymous and silenced individuals, which it describes as "non-people,

at a border" [S: 126], depicted in the misleading and racially charged election poster *Breaking Point*, released by Nigel Farage in the lead-up to the Brexit referendum. "My face", it says, "is all about you. My face trodden in mud. My face bloated by sea. What my face means is *not your face*" (ibid.; emphasis added). The temptation to interpret the wall of non-truth that confronts readers at the outset of the novel as a border – or, more accurately, a threshold – serving as an entry point into the transformative yet intimidating space of an unknown imaginary, resonates with the insights of Schimanski and Wolfe in their concluding remarks in *Border Aesthetics*, where they address the nature of medial borders, the borders that characterise the diverse media, through which artistic expression is conveyed: "the borders between things and the representations of things" (2017: 151). In their discussion of literary works, the authors emphasise that, in addition to having a defined beginning and end, these texts also exhibit "textual thresholds and transitions between sections, styles, and narrative modes, presenting a perceptual and interpretative boundary for the reader" (ibid.: 164). Furthermore, medial borders "can be crossed or transgressed, they open up into diffuse and folded in-betweens, and they can be used in an aesthetic b/ordering and borderscaping¹⁴ process" (ibid.). This notion aligns seamlessly with the spatial and narrative framework of *Spring*, where the multiplicity of artistic expressions, alongside the diverse content and form of the interludes, disrupts the continuity of the primary storyline. This narrative is continuously hijacked by stream of consciousness techniques, the dismemberment and reconstitution of memory, as well as the invocation of intertextual connections. Consequently, readers are consistently prompted to navigate through different subjectivities, relationships, and imaginative landscape, fostering a repeated inclination to engage with the consciousness journey that the narrative invites.

Addressing Alice Elkins' inquiry about the significance of borders in her conceptualization and literary work, Smith replies by restating the previously discussed notion of the border as a liminal area between "two different really interesting places", suggested by Florence in the context of traversing the Anglo-Scottish border:

I love crossing them. I like the magic line they draw between different places, which then become a threshold to new places, possibilities, multiplicities. The way human beings are using borders right now, all across the world, as if their purpose is a kind of prison architecture, is heinous, deeply dishonorable, self-defeating [...]. (Elkins 2019)

14 Here, the term borderscaping is interpreted in accordance with Strüver's interpretation: "shaping the border not on the ground, but in people's minds. The borderscape – shaped though representations of all kinds – implies borderscaping as practices through which the imagined border is established and experienced as real" (2005: 170).

Unlike the rigid "prison architecture" envisioned by the state, this fluid, multi-perspective, and transitional understanding of borders invites an immediate comparison with the different roles that Smith, in an interview with Claire Armitstead, ascribes to the discourses of post-truth and ideological manipulation, which stand in opposition to the commitment to contextual fidelity and the inherent tension towards affective and poetic truth, which are hallmarks of storytelling and narrative expression. Politics, Smith further elaborates, is the space where, in stark contrast to the generosity, reciprocity, and acceptance of shared stories, "our stories meet other stories or *block other stories*; and where people decide *that other stories can't be heard because my story is more important than your story*" (Armitstead 2019; emphasis added). The potential of literature and storytelling to foster a vision of "the better imagined", as highlighted on the Refugee Tales website, fundamentally relies on the construction of the narrative imagination and the bond which it establishes with the reader, as constitutive elements of a "magic community" (Ely 2019: 192). The narratives produced within this community – marked by their hospitable, transgressive, ethical, and relational qualities, and a profound respect for the the power of language and its capacity to create worlds (and, consequently, to effect change in the real world) – represent a potent means to reveal and counteract the pervasive falsehoods disseminated by modern media: "A lie's not true. A fiction also knows it's not true, but the difference between a lie and a fiction is this: a lie goes out of its way to subvert truth" (Smith 2017). The use of fragments in literature often functions to emancipate narratives from the constraints of linear and homogenising spatial-temporal organization, thereby enhancing the associative capabilities of creative expression and its potential to conjure novel scenarios in a manner devoid of certainties, or, in the language of Cultural Studies, "without guarantees". Conversely, in another interview, Smith identifies a causal link between the fragmentation and dissonance prevalent in contemporary public and media discourse and a calculated intention to obfuscate and mislead, stemming from a system designed to erode people's contextual awareness. Rather than establishing an inclusive referential framework that cultivates cohesion and coherence, public discourse in the era of social media tends to disseminate a deceptive construction of reality, "which right now is being flung at us in broken pieces by people acutely aware that language is a powerful tool and keen to make us feel what they need us to feel, make us useful to them and their power structures" (Penguin.co.uk 2019). Smith further argues that this endeavor is significantly hindered by a fragmentation and degradation of language, which insensitively contributes to the erosion of the "dimensionality and connectivity" (ibid.) inherent in both language and thought.

This perspective is particularly effective for elucidating the modes of self-realization and dissemination – chiefly discursive and linguistic

– characteristic of post-truth culture. In his insightful political-philosophical examination, Ignas Kalpokas describes this culture as “*co-created fiction* in which the distinction between truth and falsehood has become irrelevant, the latter being replaced by *affective investment in aspirational narratives*” (2019: 9; emphasis added). Kalpokas further develops a compelling analogy – albeit based on irreconcilable premises – between post-truth and fiction: “in post-truth, political (and other) narratives simply exist without a strict relationship to an underlying reality – or, rather, they simply construct a parallel reality of their own. Such narratives exist in a way similar to works of fiction that are presented as viable alternatives to the lived environment” (ibid.: 13).

According to Kalpokas, the phenomenon of post-truth thrives on stories and myths that numb both historical awareness and the ethical consciousness of individuals. These narratives serve as “escapist fictions that allow people to suddenly feel good about themselves and the world in which they live” (Ibid.: 16). In contrast to literary narratives, which, as noted by Brit, enhance the qualities and personal growth of individuals, or make them feel “like they live in a different better world” (S: 314), post-truth fictions seek to cultivate a passive and polarised public opinion. This is achieved through the mechanisms of illusion and complacency, presenting fables of division and confinement that only the medium of narrative fiction can effectively lay bare and interpret.

In her inspiring Goldsmiths’ Prize Lecture of September 2017, titled “The Novel in the Age of Trump – When Politics is Built on Fictions, It’s Fiction That Can Help Us Get to Truth”, Smith particularly celebrates the novel as a literary form that is inherently anchored “in time and in its own time”, and emphasises the way it is “fringed with the possibility of transformation, since every story leads back to another possible story” (Smith 2017; my translation). This transformation is facilitated by imagined worlds “that give us back the world” through a generous form of enchantment – or, sometimes, a process of re-enchantment –, which serves as a call to hope and creativity, inviting readers to engage actively and become ‘co-authors’, thus embodying “the opposite of excluded” (ibid.).

In a manner reminiscent of Marina Warner’s inquiry posed at the outset of this essay – “[c]an a tale become a home?” –, Ali Smith also underscores the exceptional ability of fiction to serve as both a medium and a space for hospitality and engagement, and how, in an era marked by a disconnection from our shared humanity and a selective, conditional acknowledgment of human rights, “the novel is one of our homes” (ibid.). Echoing Schimanski and Wolfe (2017), another insightful passage from the Goldsmiths’ Prize Lecture – which illustrates the concept of the novel’s medial border as a wall that initially seems insurmountable, but then is revealed to serve as a threshold – seems

particularly apt to conclude this reflection. Readers are said to experience the opening pages of a novel "as if hitting a brick wall", yet, this barrier soon transforms into a magical portal that can be traversed with a simple dance step: "once you've committed, that's you climbing over or knocking a door or a window through, and pretty soon you'll be waltzing through walls, and so on" (ibid.).

Within this context, it is not surprising that Smith's oeuvre, similar to a significant body of recent fiction that explores themes of diversity, inequality, and migration, reflect a movement away from consensus realism. This shift favours a renewed engagement with innovative forms of magical realism, which offer profound opportunities for both revelation and subversion and are characterised by their celebration of the imaginative process as a source of healing creativity and the capacity of storytelling to create and share alternative worlds, illuminating them with hope. Unlike the post-truth narrative, magical realism does not lead to escapist fantasies or simplistic solutions. In *Spring*, this is evidenced by the fact that it is Brit who eventually alerts the private security personnel, thereby halting Florence's journey and her reunion with her mother. In spite of her seeming fascination with the 'magical' girl, the young custody officer almost instinctively opts to adhere to the established immigration rules and protect her own job.

The process of change is inherently challenging and demands active involvement in an expansive and collective 'dance'. Yet, the border defined and brought to life by the stories of the magical girl – and her gift of a language that reconnects to 'truth' and acknowledges and welcomes diverse narratives – continue to resonate in the emotional landscape of the readers. This boundary serves as a space of transition and encounter, a dimension where, in the words of Chiara Brambilla (2020: 15), the border can be perceived as a "space of political creativity, as a space in which it may also be possible to cultivate what Appadurai (2013) has called a 'politics of hope' – that is to say a politics of possibilities to come", rooted in a constructive engagement with practical strategies for reimagining the world.

In this regard, Smith's fictional narratives and Boochani's life story challenge us to traverse additional thresholds. These thresholds, made possible through narrative's potential to transform itself into a welcoming place, a 'home' – whether through storytelling or personal testimony – aid those who have finally 'arrived' in moving beyond the limbo of conditional hospitality and the haunting memories of exile, so as to venture into the borderscapes of individual aspirations, propelled by a factual impetus towards the future and hope. A fitting encapsulation of this journey can be found in the concluding lines of *Spring*, a season emblematic of rebirth and renewal: "you can't not hear it, the buzz of the engine, the new life already at work in it, time's factory" (S: 336).

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The protection of migrants' constitutional rights at the border

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1. Background: the first CRC "Migration and Human Rights" initiative

The conference "Borders, Migrations, Human Rights," held on 3rd July, 2020, represents the first scientific initiative promoted by the Coordinated Research Centre "Migrations and Human Rights" of the University of Milan.

The Research Centre, which I have the honor of coordinating, was established in January 2020 with the aim of promoting cross-cutting and synergistic coordination among research groups working in the fields of law, sociology, science, linguistic, literary and historical studies related to the topic of migration and human rights.

The CRC was founded thanks to the fundamental contribution of six departments of the University of Milan, the Department of Italian and Supranational Public Law (Prof. Marilisa D'Amico, Prof. Vittorio Angiolini, Prof. Claudia Storti, Prof. Bruno Nascimbene, Prof. Alessia Di Pascale), the Department of Cultural and Environmental Heritage (Prof. Paolo Inghilleri), that of Languages, Literatures, Cultures and Mediations (Prof. Emilia Perassi), that of Social and Political Sciences (Prof. Maurizio Ambrosini), that of Biomedical Sciences for Health (Prof. Cristina Cattaneo) and the Cesare Beccaria Department (Prof.

Daniela Milani). In addition, the Centre can boast the participation of prominent external *partners* representing the world of associations and professions coordinated within the *Advisory Board* by Prof. Bruno Nascimbene, a pioneer of foreigners' law in Italy.

The variety of souls in the Centre makes it possible to address the main issues pertaining to the migration phenomenon from different angles and through an indispensable interdisciplinary approach.

By way of example, the Centre's lines of research include national and supranational protection of migrants' rights, multiculturalism and integration, discrimination and inequality, language and hate crimes, the right to asylum, foreign labour, human trafficking, the right to healthcare, social rights, migration narratives, and the representation of trauma. Thanks to the idea of Prof. Maurizio Ambrosini, a leading and distinguished expert on the sociology of migration, the proponents decided to dedicate the Centre's first scientific initiative to the emblematic theme of "Borders."

This choice immediately seemed consistent with the spirit of the CRC. It is, in fact, a theme that allows for reflection on the deepest and most topical questions posed by migration, such as the perennial "clash" between the freedom to migrate and the borders of states; the need to identify a balance between the rights of incoming migrants and border control measures, to guard public security; the guarantee of the right to asylum; and the universal protection of rights "beyond" the borders of states.

Such a topic, moreover, not only lends itself to, but must necessarily be approached from an interdisciplinary perspective in order to be able to fully grasp its various facets while at the same time proposing concrete perspectives that consider the complexity of the phenomenon.

Standing firm on the inescapability of the interdisciplinary approach, this contribution aims to address the issue of migrants' rights at the border from the perspective of constitutional law.

Among observers, it is undeniable that the topic of borders has been addressed more by scholars of international and European Union law. Valuing the international framework, it is believed that the contribution of the constitutionalist is crucial in an area, such as the one under consideration, in which constitutional principles provide very strong forms of protection. One need only think of Article 10(3) of the Constitution, which provides a far broader guarantee to those seeking asylum than the forms of protection enshrined in international and European Union law. These pages are intended to go over, first, the constitutional principles regarding the human rights of migrants at the border, focusing as much on the rights of incoming migrants as on the constitutional requirement for border control and public safety.

Secondly, two very critical aspects will be highlighted that pertain to the system of regulatory sources of border control, which is not always respectful of the principle of legality, as well as the difficulties of migrants' access to justice.

These critical aspects seem to point to a lowering of fundamental rights guarantees at state borders.

The fact that borders are in danger of becoming a "free zone" for the protection of the constitutional rights of incoming migrants seems to be further highlighted by three emblematic cases that will be described in this article: the proliferation of *de facto* forms of freedom at the borders, such as *hotspots* and quarantine ships; procedures aimed at identifying "irregular" migrants or those seeking protection; and the violation of human rights due to outsourced border controls, such as Libyan assembly camps.

2. *Constitutional rights of migrants and borders*

In order to analyse the constitutional perspective on the human rights of migrants at the border, it is appropriate to focus attention first on Article 10 of the Constitution, which contextually regulates relations with the international order (first paragraph), the legal status of the foreigner (second paragraph) and the constitutional right of asylum (third paragraph).

At the time of the Constituent Assembly, despite the unimportance of the phenomenon of migration to Italy, the first and second paragraphs of Article 10 were considered of fundamental importance in the drafting of the Constitution, as they allowed Italy to join the international community, which at the time was very attentive to the issue of the protection of human rights and the rights of refugees, given the horrors of totalitarianism and World War II (Hon. Togliatti, I Subcommittee, Dec. 3, 1946; Hon. La Pira, Constituent Assembly, afternoon session, March 11, 1947). In other words, the aforementioned constitutional norms embody one of the main achievements of modern constitutionalism, the so-called universal protection of rights, unlimited by state borders and independent of citizenship.

More precisely, the so-called universal protection, according to the reading made of it by the Constitutional Court, is deduced from the combined provisions of Articles 2 and 10 Const: the universal character pertains to those rights that the Constitution proclaims inviolable (Art. 2 Const.) and that are due to individuals "not as participants in a given political community, but as human beings"¹ (C. cost. sent. no.

1 In the jurisprudence of the Constitutional Court, the right to personal freedom (Const. C. sent. no. 105/2001), the right to life (Const. C. sent. no.

105/2001) (Piccione 2001 1697). The Constituents also placed attention to the protection of human rights “beyond” the borders of the state during the work of the Constituent Assembly, which concerned the freedom of emigration of Italian citizens abroad (Articles 35 and 16 Const.). The freedom to emigrate represented a crucial issue for turning the page from the fascist era, as “those who remember the serious wounds brought to the right to emigrate, for militarist, nationalist or racist reasons, will want to recognise the need that tomorrow the right of man to the full expansion of his personality and thus the right to participate in the life of the community of peoples be preserved from other dangers” (Hon. Domenidò, Constituent Assembly, afternoon session, May 8, 1947)².

The provision that most reflects the universalist spirit of the Constitution is Article 10(3), which guarantees the right to asylum in the “territory of the Republic.”

A very broad conception of asylum emerges from the work of the Constituent Assembly. Indeed, it seems that the Constituents, many of whom had themselves been political asylum seekers, agreed on the deeper meaning to be given to the right of asylum, as a right among “the highest and most sacred” (Hon. Cavallari, Constituent Assembly, afternoon session, March 27, 1947), as a symbol of “a new world of freedom and peace” (Hon. Tonello, Constituent Assembly, morning session, April 11, 1947), as a “most noble affirmation of human solidarity” (Hon. Mastrojanni, Constituent Assembly, March 5, 1947).

Here, it is important to point out that the Constituents conceived of the right in Article 10, Paragraph 3, Const. as a right aimed at enabling those who are prevented from exercising the democratic freedoms enshrined in the Constitution to cross borders in order to enjoy constitutional asylum in the “territory of the Republic.”

There were those in the Assembly who harshly criticised the breadth of the guarantee provided by Article 10, Paragraph 3, Const. because, almost prophetically, they believed that “tomorrow thousands of political refugees from other countries could knock on our doors, and we would be forced to give them asylum without any restrictions, when restrictions could also be advised by economic reasons” (Hon. Nobile, Constituent Assembly, morning session, April 11, 1947).

54/1979), as well as the minimum core of social rights as an inviolable sphere of human dignity (Const. C. sent. no. 432/2005) have been recognised as such.

2 The words of Hon. Domenidò were taken up by the Constitutional Court with the aim of noting the breadth of the constitutional protection agreed upon to the freedom of emigration in the text of Sentence No. 269 of 1986, which declared the constitutional illegitimacy of Art. 5 of Law No. 1278 of July 24, 1930 (Adoption of new penal norms on emigration), which punished propaganda aimed at stimulating the emigration of Italian citizens abroad.

Despite these minority views, it is undeniable that the final version of the constitutional provision, by offering protection within the “territory of the Republic,” presupposes the border entry of the applicant for protection.

This conception of the right of asylum, as a right aimed at allowing those who meet the requirements to enter the territory of the state, has also been confirmed by the jurisprudence of legitimacy. Starting in the mid-1990s, the Court of Cassation has, in fact, defined asylum as “a perfect subjective right to obtain asylum which is substantiated, in the absence of an implementing law, in the right to enter the territory of the State” (Cass., sec. un., sent. no. 4674/1997) or more precisely in the right of the foreigner to “access the territory of the State in order to be admitted to the procedure of examination of the application for recognition” (Cass., sec. I, sent. no. 25028/2005)³.

Also in light of this jurisprudential orientation, the most attentive doctrine has identified entry into the territory of the state as the minimum necessary content of the constitutional right of asylum, which would *as a matter of course* entitle all foreigners who find themselves in the situation of impediment to the democratic freedoms enshrined in the Constitution, regardless of whether the latter is established (Benvenuti 2007: 174)⁴.

Thus, the right of entry just described constitutes the element that allows the position of protection holders and asylum seekers to be distinguished from all other foreigners who present themselves at the border (Panzera 2020: 125).

This difference has been highlighted in the constitutional jurisprudence, according to which “the foreigner does not, as a rule, have an

3 It is also known that as of 2012, the jurisprudence of legitimacy has come to affirm that the right of asylum “is fully implemented and regulated through the provision of the final situations provided for in the three institutions constituted by refugee status, subsidiary protection and the right to the issuance of a humanitarian permit, by the exhaustive legislation set forth in Legislative Decree No. 251 of November 19, 2007, adopted in implementation of Council Directive 2004/83/EC of April 29, 2004, and referred to in Legislative Decree No. 286 of July 25, 1998, Art. 5, paragraph 6” (see Cass, sec. VI, ord. no. 10686/2012; Cass., ord. no. 16362/2016; Cass., ord. no. 28015/2017; most recently Cass., sent. no. 4455/2018).

4 This reading is confirmed by the jurisprudence of the Court of Cassation, according to which “the preceptive character and the consequent immediate operativeness of the constitutional provision are to be traced to the fact that it, although in one part it requires implementing legislative provisions, outlines with sufficient clarity and precision the case in point that gives rise to the right of asylum for the foreigner, identifying in the impediment to the exercise of democratic freedoms the cause of justification of the right and indicating the effectiveness as a criterion for ascertaining the situation assumed” cf. Cass. civ, Sec. Un, Judgment Dec. 12, 1996, No. 04674.

acquired right to enter and stay in other states; he can enter and stay there only by obtaining certain authorisations [...] by submitting to those obligations which the legal system of the host state imposes on him for the purpose of the proper conduct of civil life" (C. cost sent. 244/1974) (Cassese 1969: 573; Bonetti 1994 :2372).

According to the Court, the right of entry not only differentiates the status of the foreigner from the citizen (Nicotra Guerrera 1995; D'Amico 2020), but of the foreigner from the applicant for protection. In fact, in Sentence No. 5 of 2004, the Constitutional Court stated that "although in the tendential indivisibility of fundamental rights," the entry and stay of foreigners in the country are regulated differently "even at the constitutional level (Art. 10, paragraph 3, Const.), depending on whether they are asylum seekers or refugees, or so-called "economic migrants."⁵ .

It is necessary to point out that the right of entry of applicants for international protection represents an additional guarantee, which differentiates the protection offered by the Constitution from that provided by supranational systems. Neither from the international nor from the European legal system can be inferred an automatic right of entry into the territory of the state, being regulated, with different intensity depending on the system, only the prohibition of refoulement of holders of protection or foreigners who risk suffering, due to the return to the country of origin, inhuman and degrading treatment⁶. This feature of supranational sources, coupled with the absence of a law implementing Article 10(3) of the Constitution, has contributed to a situation of uncertainty at the borders, where a series of procedures left to the wide discretion of border authorities, aimed at identifying "irregular immigrants to be rejected" and those who instead have the right to remain on Italian territory because they are "protection seekers," have developed, as will be discussed, mainly as a matter of practice. Having arrived at the border, then, migrants and

5 Thus, the Constitutional Court has also embraced the disputed division between economic migrants and protection seekers.

6 More specifically, the Geneva Convention exclusively protects those already entitled to refugee status from refoulement (Art. 33 Geneva Conv.); the European Convention on Human Rights and the European Union system broaden the scope of the prohibition against refoulement to all foreigners who risk, by returning to their country of origin, being subjected to inhuman and degrading treatment (Art. 3 ECHR; Art. 19 Nice Charter). Moreover, the Edu Court excludes that an automatic right of entry into the territory of the state follows from the application for protection see Edu Court, *Saadi v. United Kingdom* (13229/03), 29 Jan. 2008. Otherwise, the domestic system, in addition to providing for the absolute prohibition of expulsion in the same cases provided for by supranational and European legislation (Art. 19 Legislative Decree No. 286 of 1998), to which we will return in the following paragraphs, guarantees the right of entry into the territory of the State (Art. 10, paragraph 3, Const.).

those seeking protection are confronted with a whole series of measures set in place to guard another principle of constitutional rank, which cannot fail to be explored in depth: the inescapable duty of the state to control its borders.

3. *The constitutional requirement for border control*

As for the need for border control, since there is no explicit reference in the 1948 Constitution, it is appropriate to draw attention to Constitutional jurisprudence.

More precisely, the Court began to deal with the issue at hand with the introduction of the first regulatory instruments aimed at regulating migration flows to Italy in the late 1980s (Bascherini 2007: 161; D'Orazio 1992: 86)⁷.

It is in this context that the need for border control begins to emerge in the jurisprudence of the Constitutional Court (Passaglia, Romboli 2003: 16), enshrined as a constitutional "value" and as an "inescapable task of the state."

Such an inescapable task is closely related to ensuring compliance with "rules established in the function of an orderly migratory flow and adequate reception" that are "placed in defence of the national community and, at the same time, in protection of those who have observed them and who could receive harm from the tolerance of illegal situations" (C. const. sent. no. 353/1997) (Algotino 1998: 1481).

This requirement, which has been affirmed with increasing frequency by constitutional jurisprudence, was made explicit in the Constitution following Constitutional Law No. 3 of 18th October, 2001, which included the subjects of asylum (subpara. a), immigration (subpara. b) and border control (subpara. q) among the exclusive powers of the state⁸.

From that point forward, numerous rulings have reaffirmed the multiple values related to border protection, identifying them as "defence of the national community," "orderly management of migra-

7 Regarding the entry of foreigners into the territory of the state, the regulations of the TULPS, Royal Decree No. 1848/1926 later transfused into Royal Decree No. 773/1931, remained in force for a long time. Moreover, the first regulations aimed at regulating border entry were introduced in the 1980s. One thinks of the so-called Fosco law, l. no. 943/1986 "Regulations on the placement and treatment of non-EU immigrant workers and against illegal immigration," which, while mainly focused on labour regulation, also provided, in Art. 12, for the immediate repatriation of "workers who immigrated illegally to Italy."

8 The exclusive competence of the state in these matters has been reaffirmed by the jurisprudence of the Constitutional Court see *ex multis* sentt. nos. 61/2011, 269/2010 and 194/2019.

tion flows," "security," "public health," "public order," "constraints of an international nature," and "national immigration policy," but also *political* assessments "pertaining to the socio-economic 'sustainability' of the phenomenon" (C. Const. Sent. Nos. 148/2008, 206/2006 and 62/1994).

Two elements of interest seem to emerge from the copious constitutional jurisprudence on the subject.

(a) First, the Court not only affirms the "constitutional" need for border control, but also makes clear that it is linked to compliance with "constraints of an international nature." In other words, since Italy's accession to the Schengen Convention in 1990 and following the progressive communitarisation of the subjects of immigration and border control, the state's task of guarding its borders is not exclusively aimed at the "defence of the national collectivity," but also at the creation of an area of freedom of movement, of "shared" sovereignty (Cassese 2016:84; Balibar 2003: 1) with the other states of the European Union, by virtue of Article 11 Const.

In fact, the Court affirms that "legal control of immigration undoubtedly falls to the State," not only "to safeguard values of constitutional rank," but also "for the fulfillment of international obligations" (C. const. sent. no. 250/2010) (Bailo 2010: 2504; Di Cagno 2010: 687; La Rosa 2011:1406; Palermo 2010: 815; Manes 2012;). In fact, the Constitutional Court had already come to similar conclusions years earlier, declaring inadmissible the abrogative referendum having as its object the entire Consolidated Text on Immigration precisely because "the Treaties ensure full freedom in the crossing of the internal borders of the Union and, conversely, require effective controls at the external borders, also in order to prevent and combat crime [...] so that it appears evident that the matter of the entry and residence of non-EU citizens could not remain unregulated and, above all, lacking adequate instruments to fulfill the obligations imposed by the Treaties" (C. const. sent. no. 31/2000).

(b) Second, the legislature, in regulating border controls, consistent with European and international obligations, is required to make a proper balancing act between the values at stake: "national security," on the one hand, and "the reasons of human solidarity," on the other (Const. C. Sent. No. 353/1997)⁹.

First, in order to identify the "proper balance," the regulation of border control and migration flows must comply with the canon of reasonableness, as repeatedly reiterated by constitutional jurisprudence. This means that the means used by the legislature to ensure at the borders "the orderly management of migratory flows" must be

⁹ Principle affirmed in numerous judgments *ex multis* C. const. sent. no. 250/2010.

proportionate - in the words of the Court - “instrumental” to the “protection in an advanced form of the complex of ‘final’ public goods, of certain constitutional importance, susceptible to being compromised by uncontrolled immigration phenomena” (C. cost. sent. no. 186/2020¹⁰) (Canzian 2021, Siccardi 2021: 346).

Moreover, again with the aim of identifying the correct balance between the different values at stake, the Court, adopting a “substantive” approach, clarifies that the requirements related to border control, while of certain constitutional value, cannot compromise the inviolable rights pertaining “to individuals not as participants in a given political community, but as human beings” (C. cost. sent. no. 105/2001). It is the Court itself that includes personal freedom among these rights, but the catalogue of rights pertaining to individuals as “human beings” could be much broader, also including the right to life (C. const. sent. no. 54/1979) and the right to defence (C. const. sent. no. 222/2004) (Grosso 2004:97).

It follows, therefore, that this minimum core of rights “proper to the human person” must be guaranteed to everyone even at the borders, regardless of the legal position of the foreigner, regular or irregular.

This, of course, does not mean that the legislature may not, because of the public interests underlying border control, adopt instruments limiting constitutional freedoms.

In order to react to illegal entry, the legislature may in fact legitimately introduce instruments limiting the individual rights of foreigners, but this must be done in compliance with the guarantees enshrined in the Constitution, such as the reservation of law and the reservation of jurisdiction, without affecting the minimum fundamental core that is due to all regardless of *status* (Siccardi 2021: 242).

4. *The sources of border control instruments*

The regulatory system aimed at regulating the management of migrants arriving at the state’s external borders is characterised by a complex web of regulatory sources.

First of all, the subject under consideration is heavily influenced by international law and the law of the European Union, which is responsible for border control, asylum and immigration (Title V TFEU). In particular, not only the rules just reviewed on EU external border

10 In ruling No. 186 of 2020, the Constitutional Court ruled the unconstitutionality of Article 13 of the first Security Decree, the ban on civil registration to which we will return in the next chapter, precisely because of the inherent irrationality of the rule in question, which was in fact incapable of fulfilling the overall objective of the decree law, namely “to increase the level of public safety.”

control come to the fore, but also those of the Common European Asylum System¹¹, as well as those aimed at regulating returns¹².

Second, at the domestic level, rules to implement European obligations are contained in sources of different rank.

Primary sources include extensive use of emergency decrees. This practice has been widely criticised in the doctrine, based on the belief that a structural phenomenon such as immigration can no longer be considered an emergency (D'Amico 2018). On the contrary, the continuous succession of law decrees on the subject would lead to the paradoxical consequence of a regulatory "stabilisation" of the perennial immigration emergency (Biondi Dal Monte 2011; Penasa 2017). A response to these theses can be found in the recent Constitutional Court ruling No. 186 of 2020, concerning a provision of Decree Law No. 113 of 2018, which, precisely in relation to the parameters of Article 77, affirmed that "while it is true that the subject norm and related norms do not address a new emergency, it is also true that the persistence of a problem can concretize the reasons for urgency" and that, "given the conditions, the government program can well be implemented even by means of urgent decrees" (Serges 2021: 321).

Moreover, the subject of border control is characterised by a strong discretionary power of the Ministry of the Interior. This results in the extensive use of circulars, which, although they should in abstract

11 The Common European Asylum System (CEAS) rests on four directives: the so-called *Qualification Directive*, dir. 2011/95/EU of the European Parliament and of the Council of 13 Dec. 2011, on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform *status* for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast); the so-called *Procedures Directive*, dir. 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection *status*; the so-called *Reception Directive*, dir. 2013/33/EU of the European Parliament and of the Council of 26 June, 2013, laying down standards for the reception of applicants for international protection (recast); Council Directive 2001/55/EC of 20 July, 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving and bearing the consequences of receiving displaced persons. In addition, the CEAS is complemented by the following regulations: the so-called *Dublin III Regulation*, Reg. (EU) No. 604/2013, which establishes the criteria and mechanisms for determining the Member State responsible for examining an application for international protection, lodged in one of the Member States by a third-country national or a stateless person (recast); the so-called *Eurodac Regulation*, Reg. (EU) No. 603/2013, which establishes Eurodac for the comparison of fingerprints for the effective application of the regulation.

12 See in particular dir. 2008/115/EC of the European Parliament and of the Council of 16 December, 2008, on common standards and procedures in Member States for returning illegally staying third-country nationals.

address only the internal organs of the public administration, seem to be capable of producing external legal effects (Cassese 2006: 860). As will be seen, ministerial circulars establishing *hotspots* seem to present such characteristics (D'Amico 2018; Gjergj 2013).

Thus, the introduction of new instruments of control takes place outside of ordinary legislative procedures, following a pattern often used in this matter: at first, the introduction of such instruments through practices or administrative acts (e.g., *hotspots*, port closure policies analysed in the previous chapter) takes place in the silence of the law; only at a later stage is the "new" instrument of border and immigration control regulated in normative sources of primary rank (Siccardi 2022). This was the case in relation to the establishment of *hotspots*, later codified at the hands of the so-called Minniti-Orlando decree in Art. 10 *ter* Legislative Decree No. 286 of 1998; this was the case for port closure policies later codified by the *Security bis decree* in Art. 11, paragraph 1 *ter*, Legislative Decree No. 286 of 1998.

These modes of operation are clearly problematic with respect to the constitutional principles of legality and legal certainty, and violate the Constitution's guarantees placed on the matter, first and foremost the reservation of the law in Article 10, paragraphs 2-3, Const (D'Amico 2020). As will be discussed, the extensive use of administrative practices and circulars hinders the right to effective judicial protection of migrants' rights.

5. *The difficult judicial protection of migrants' rights at the border*

The risk to human rights at the border is also demonstrated by the fact that it does not always seem to be possible to guarantee incoming migrants the right to effective judicial protection, as enshrined in Article 13 ECHR, Article 47 of the EU Charter of Fundamental Rights, and Article 24 of our Constitution (Catalano Perlo, 2020).

In order to analyse the issue at hand, it is deemed appropriate to focus mainly on migrations arriving at Italian borders by sea, which are emblematic in terms of difficulties in accessing justice (Siccardi 2020).

The obstacles that could preclude access to justice for migrants who want to reach our shores are many and varied.

(a) First, at sea it is not always easy to identify the existence of jurisdiction and consequently the remedies available. From this point of view, it is worth noting that the Edu Court, despite qualifying its jurisdiction as purely territorial (De Sena 2002)¹³, has extended the

13 The territorial conception of jurisdiction was affirmed in C. Edu (G. C.), *Bankovic et al. v. Belgium* (52207/99), Dec. 12, 2001.

extraterritorial application of the Convention precisely in reference to a case concerning the refoulement of migrants to Libya.

In *Hirsi v. Italy*, the Strasbourg Court held that it had jurisdiction over events that took place on the high seas, outside the borders of the state, because they “took place entirely on board ships of the Italian armed forces, whose crew was composed exclusively of national servicemen,” and therefore “from the time they boarded the ships of the Italian armed forces and until they were handed over to the Libyan authorities, the applicants found themselves under the continuous and exclusive control, both *de jure* and *de facto*, of the Italian authorities” (C. Edu, *Hirsi v. Italy*, 2012)¹⁴ (Milanovic 2011). However, it is necessary to note that in the current Mediterranean rescue landscape, it is not always the state authorities of an ECHR contracting state (in the *Hirsi* case, these were Italian Navy vessels) that exercise control over migrants, as they may - following the Italian-Libyan *Memorandum of Understanding* - also be intercepted by Libyan Coast Guard vessels and returned to Libya by the latter. In such a case, as will be better explained in the following pages, a protection gap could occur, impeding the full jurisdiction of the European Court of Human Rights, with dramatic consequences for the migrants’ right to judicial protection.

(b) Second, an obstacle to the right to an effective remedy may be the difficult practical situation of people on board a ship. Indeed, in such a situation the difficulties of providing/receiving accurate information about domestic remedies, in languages likely unfamiliar to the recipients, as well as of getting in touch with an advocate are easily imaginable (Siccardi 2021:168). Appeals from migrants rejected at sea, or forced aboard vessels waiting to enter an Italian port, have become increasingly frequent in recent years, thanks to the support of NGOs, which, after rescuing shipwrecked migrants, are able to engage legal counsel in order to activate domestic remedies. In any case, where adequate information about available judicial remedies is not provided on the boat prior to refoulement, migrants are, in fact, deprived “of any avenue of redress that would have enabled the claimants to submit grievances based on Articles 3 of the ECHR and 4 of Protocol 4 to a competent authority and to obtain a careful and rigorous review of their claims before the removal measure is implemented” (C. Edu, *Hirsi v. Italy*, 2012).

¹⁴ The Edu Court has also sanctioned the extra-territorial application of jurisdiction in other cases, such as C. EDU (G.C.), *Al-Skeini and Others v. the United Kingdom* (Rec. No. 55721/07), 7 July, 2011. In particular, the doctrine is used to subdivide two models of extraterritorial jurisdiction: the spatial model, where the state exercises effective control over a territorial area outside its borders, such as territorial occupation; and the personal model, where the state exercises effective control over individuals (this is the case in *Hirsi v. Italy* judgment).

(c) Third, it is necessary to consider the fact that the situations that characterize migration by sea often require “urgent” judicial protection, and the courts are seized on an interlocutory basis. In these cases, the urgency of protecting rights in the concrete case induces the court to prefer immediate protection, without questioning in depth a possible doubt of constitutionality, which would bring the matter before the Constitutional Court, the only court capable of ensuring *erga omnes* protection of constitutional rights. This situation has, for example, occurred in the face of the rule, Article 11, paragraph 1 ter, Legislative Decree No. 286 of 1998, concerning the prohibition of disembarkation in port, introduced by the security *bis* decree, in relation to which the TAR have opted for an interpretation in accordance with the Conventions of international law of the sea, authorizing the entry of ships into port, without raising a question of constitutionality (TAR Lazio, Sec. I ter, Pres. D. No. 5479/2019 of 14.08.2019) (Siccardi 2021: 192). Finally, the fact that border control procedures are predominantly left to the practice and discretion of border authorities could preclude or hinder access to justice (Siccardi 2020).

This situation occurred in the first phase of the port closure policies promoted by the Italian government starting in 2018. At that time, the port closure was announced through a tweet (#chiudiamoporti) on the social pages of the Minister of the Interior, in the absence of the adoption of any administrative measure. One cannot fail to point out how this situation has precluded or, at least, delayed the path of administrative justice. In fact, the TARs were first seized following the adoption of the measure prohibiting entry into territorial waters, as codified only later, in 2019, by the Security Decree *bis*, Decree Law No. 53 of 2019 (converted with Law No. 77 of 2019)¹⁵.

The system of regulatory sources of border controls, analysed in the previous section, as well as the difficulties of access to justice just described adversely affect numerous constitutional rights of foreigners presenting themselves at the border.

Here we have chosen to illustrate three emblematic cases, which further demonstrate how borders are now in danger of representing a “free zone” for the protection of constitutional rights: the proliferation of “de facto” forms of deprivation of personal liberty; procedures preceding the application for international protection aimed at

15 It should be recalled, in fact, that on the very day that the Security *bis* decree came into force, the Ministry of the Interior, in agreement with the other competent ministers, adopted the measure prohibiting the Sea Watch ship from entering territorial waters; a prohibition promptly challenged by the association by means of an “application for the adoption of interim and provisional measures” (so-called *ante causam* measure) pursuant to Article 61 c.p.a cf. Precautionary Decree *ante causam* TAR Lazio, no. 04038/2019.

identifying irregular migrants and protection seekers; and outsourced border controls, with particular attention to the camps in Libya.

6. The “de facto” deprivation of personal freedom

Among the instruments of border control, additional forms of detention, so-called entry detention, such as detention for identification purposes, to verify the identity of the foreigner present at the border, have been introduced in recent years at the hands of the various decrees of law on the subject¹⁶ (Valentini 2018:81).

In addition to these legally regulated forms of deprivation of liberty, it is necessary to note how, at the borders, measures of “de facto” deprivation of personal freedom have proliferated today (Savino 2015: 50).

This expression refers to forms of physical coercion of migrants who present themselves at the border, which are not governed by normative sources of primary rank, are not ordered by reasoned order of the judicial authority, nor validated by the latter. All this is in blatant conflict with the reservation of law and the reservation of jurisdiction in Article 13 of the Const (D’Amico 2018, Benvenuti 2015).

(a) The first border control measure, which has resulted in a form of deprivation of personal freedom, is the use of so-called *hotspots* (Masera 2017; Leone 2017; Penasa 2017: 410; Benvenuti 2018).

The first reference to *hotspots* appeared in the 2015 European Agenda for Migration, a communication adopted by the Commission “in order to respond to the need for swift and decisive action in the face of the human tragedy unfolding across the Mediterranean”¹⁷ and were then established in domestic law at the hands of a series of circulars issued by the Ministry of the Interior¹⁸. In these acts, it was not

16 In particular, we refer to two “incoming” detention measures at the border: a) the detention in the detention centres for return (CPR) prepared under Article 10b, paragraph 3, Legislative Decree No. 286 of 1998, in case of repeated refusal of the migrant to submit to photo-dactyloscopic surveys; b) the detention of asylum seekers in crisis points, introduced in Article 6 Legislative Decree No. 142 of 2015 by the first Security Decree.

17 European Commission, Brussels, 13.5.2015, COM (2015) 240 *final*, Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, European Agenda on Migration

18 Regarding Ministry of the Interior circulars, see Ministry of the Interior, Road Map, 28 September, 2015; Ministry of the Interior, *Standard Operating Procedures of the Department of Civil Liberties and Immigration of the Ministry of the Interior*, September 2015; Ministry of the Interior, *Circular addressed to prefects and police forces, 10 October, 2015*.

even clear whether *hotspots* were to be considered physical places or merely a method to be applied to procedures for the initial reception of incoming migrants.

The dual nature of *hotspots*, as a method and as physical places, was confirmed by Decree Law No. 13 of 2017, converted by Law No. 47 of 2017, the so-called Minniti-Orlando Decree, which referred for the first time to so-called crisis points as places. More precisely, Art. 10 of Legislative Decree No. 286 of 1998 stipulates that migrants, after disembarkation, must be taken “to special crisis points set up within the facilities referred to in Decree-Law No. 451 of October 30, 1995, converted, with amendments, by Law No. 563 of December 29, 1995, and the facilities referred to in Article 9 of Legislative Decree No. 142 of August 18, 2015.” The aforementioned Article 10*b*, therefore, identifies the facilities established by the so-called Puglia Law¹⁹, in order to cope with the Albanian migration emergency in the 1990s, as the “places” where *hotspots* were to be set up.

Although the same rule specifies that foreigners are taken to *hotspots* exclusively for relief and first aid needs, these centres appear to constitute forms of *de facto* deprivation of personal freedom.

Useful guidance in this regard can, however, be gleaned from ministerial circulars as well as *hotspot* regulations.

From the Ministry's 2015 Circular on *Standard Operating Procedures*, it is first inferred that in *hotspots*, the use of public force coordinated by the “Questore as the holder of the direction, responsibility and coordination, at the technical operational level, of public order and security services” is legitimised.

In addition, regarding the possibility of leaving the *hotspot*, the circular specifies that “unless exceptional influxes occur that require different initiatives to be taken, the person may leave the *hotspot* only after being photo-tagged, in accordance with the provisions of current regulations, if all security checks in the databases, national and international, of police within the hotspots have been completed.”²⁰ .

19 See dl. 30 Oct. 1995, No. 451, converted into l. 29 Dec. 1995, No. 563 “Urgent provisions for the further employment of Armed Forces personnel in maritime border control activities in the Puglia region.” The so-called Puglia law, while adopted to address humanitarian needs, had the stated objective of controlling the maritime border through the use of military forces “for needs related to the phenomenon of illegal immigration in the same provinces.” In addition, the law established by the Ministry of the Interior “three centres located along the maritime border of the Apulian coast for the needs of first assistance to groups of foreigners deprived of any means of livelihood, awaiting identification or deportation.”

20 Ministry of the Interior, *Standard Operating Procedures of the Department of Civil Liberties and Immigration of the Ministry of the Interior*, September 2015.

That the ban on removal from crisis points persists until the end of the recruitment procedures is also demonstrated by the provisions of the internal regulations of the Lampedusa, Trapani-Milo, Pozzallo and Messina facilities, which were made public thanks to the request for access to records promoted by the Association for Legal Studies on Immigration (Asgi). According to these internal regulations, migrants are allowed to leave the facility during daylight hours only “at the conclusion of photo-tagging operations and with prior authorisation from the police” (Ferrari, Gennari 2020). The use of force and the ban on removal constitute useful indices, pursuant to the principles expressed by the Jurisprudence of the Edu Court (C. cost. sent. no. *Khlaifia and others v. Italy*) (Bonetti 2017) and the jurisprudence of the Constitutional Court (C. cost. sent. no. 105 of 2001), to qualify a measure as limiting personal freedom.

b) Second, other forms of “de facto” deprivation of liberty have occurred with specific reference to migration by sea, as a result of so-called port closure policies. Again, even in the absence of primary legislation on the subject (at least in the first phase of these policies) and in the absence of decisions by the judicial authority, the so-called “port closure”, which is the responsibility of the Minister of the Interior, has resulted in the keeping of migrants on board a ship, for more or less prolonged periods and in a situation of great danger and precariousness. The preclusion of the ship’s entry into port, whether through the minister’s failure to respond to the *place-of-safety* requests (e.g., *Diciotti Case* and *Gregoretti Case*)²¹ or through the adoption of the inter-ministerial order prohibiting entry into port (e.g., *Open Arms Case*), as regulated by the Security Decree *bis*, resulted in the deprivation of the personal liberty of the people on the ship (Siccardi 2020). This consideration is evidenced by the well-known *Diciotti*, *Gregoretti* and *Open Arms* cases, which resulted in requests for authorisation to proceed by the Catania and Palermo Ministers’ Courts for the crime of kidnapping against the Minister of the Interior²².

21 In summary, the first cases of “port closures” seemed to be characterised by some common elements that delineated the mode, desired by the Ministry of the Interior, of managing rescue operations and the disembarkation of migrants rescued at sea. First, the “port closure” was not determined by the adoption of any formal act by either the Ministry of Transport or the Ministry of the Interior, which merely announced it via its *social* profiles.

Second, these cases are characterised by the repeated silence of the Department of Civil Liberties and Immigration in the face of *place-of-safety* (POS) requests and the subsequent failure to indicate the port at which disembarkation should take place.

Third, the omission of the SOP was for the stated purpose of inducing countries in neighboring SAR areas and/or other European countries to take responsibility for receiving migrants.

22 Trib. Ministri Catania, on the *Diciotti* case and the *Gregoretti case*; see also Trib. Ministri Palermo on the *Open Arms* case. In the *Gregoretti* and *Diciotti cases*,

More precisely, the records of the Ministers' Courts state that the conduct carried out by the Minister of the Interior resulted in "the forcible stay of the migrants on board the naval unit, resulting in the unlawful deprivation of their personal freedom for a legally appreciable period of time and outside the cases permitted by law," integrating the crime of kidnapping under Article 605 of the Criminal Code. Authorisation to proceed was then granted by the Senate of the Republic for the facts surrounding the *Gregoretti* and *Open Arms* ship cases and denied, however, for the *Diciotti* case (Ciancio 2019). Regardless of the outcome of the individual cases²³, the cases just described highlight how at the borders of the state, measures limiting personal freedom not infrequently intervene that are not always respectful of constitutional guarantees.

c) Third, due to the spread of the Covid 19 *virus*, another measure was introduced that results in a "de facto" deprivation of personal freedom at the borders: quarantine ships.

In the very early stages of the health emergency, Civil Protection Ordinance No. 1287 of 12 April, 2020, was adopted to clarify the procedures "for the assistance and health surveillance of migrants rescued at sea or arrived on national territory."²⁴ To carry out these procedures, the ordinance identified the Italian Red Cross as "the implementing party of the emergency activities" and authorised the use of "in accordance with the protocols shared with the Ministry of Health, vessels for the performance of the period of health surveillance."

the facts giving rise to the judgment are very similar, as the operations were conducted by Navy ships in Maltese SAR waters, where, on 16/08/2018, the *Diciotti* ship rescued 190 shipwrecked people and on 26/07/2019, the *Gregoretti* ship rescued 135 people. Requests for SOPs, forwarded to the MMCR in Rome, went unheeded. Otherwise, the NGO *Open Arms* ship was the recipient of an interministerial order prohibiting it from entering territorial waters, as regulated by Art. 11, paragraph 1b, Legislative Decree No. 286 of 1998.

23 See Report of the Committee on Elections and Parliamentary Immunities on the request for authorisation to proceed to trial under Article 96 Const. against Sen. Matteo Salvini in his capacity as Minister pro tempore on the *Diciotti* case, communicated to the Presidency on 21/02/2019; Report of the Committee on Elections and Parliamentary Immunities on the request for authorization to proceed to trial under Article 96 Const. against Sen. Matteo Salvini in his capacity as Minister pro tempore on the *Gregoretti* case, communicated to the Presidency on 2/11/2020.

24 See Department Head Decree No. 1287 of 12 April, 2020. Appointment of the implementing entity for emergency activities related to the assistance and health surveillance of migrants rescued at sea or arrived in the national territory as a result of autonomous landings in the context of the emergency related to the health risk associated with the outbreak of diseases resulting from transmissible viral agents of 12 April, 2020; published on the civil protection website www.protezionecivile.gov.it/amministrazione-trasparente/provvedimenti/-/content-view/view/1250434.

This measure was strongly criticised by the world of associationism, which denounced the total lack of transparency regarding the conditions of the quarantine ships, the services offered by the Red Cross to migrants in isolation, as well as criticised the substantial situation of arbitrary deprivation of personal freedom of people confined and controlled on a boat.

In fact, looking at the “content” of the measures, quarantine on board ships could be traced back to one of the “other restrictions on personal freedom,” referred to in Article 13 Const. as involving “physical subjection to the power of others and which is a sure indication of the measure’s relevance to the sphere of personal freedom” (C. const. sent. no. 105/2001).

This view seems to be shared by some doctrine, which holds that quarantine represents “a form of deprivation of personal liberty: a form of detention, as the language and logic of Article 5 ECHR confirms” (Gatta 2020). Among the forms of deprivation of liberty that may be regulated by law, Article 5(1)(e) ECHR provides for “the regular detention of a person liable to propagate a contagious disease, an alienated person, an alcoholic, a drug addict or a vagrant.”

If one agrees with the thesis just illustrated, any arrival of migrants by sea, subjected to quarantine or conducted in *hotspots*, should naturally be regulated “in cases” and “in ways” by a primary source, as well as ordered by reasoned action by the judicial authority or, in exceptional cases, validated within 48 hours by the judge.

It cannot be hidden, however, how very onerous and complex it would be to imagine, for every arrival of migrant by sea to be quarantined and conducted in *hotspots*, the authorisation or validation of the judicial authority, even by preparing very streamlined and digital measures of judicial review.

For this reason, the solution would have to be to make the measures just described (such as *hotspots* and quarantine vessels) truly consistent with the welfare and health-protection purposes that, at least on paper, they are intended to serve. To this end, it would be necessary to eliminate the features - such as the ban on removal and the use of force - that result in “that mortification of human dignity which occurs in every instance of physical subjection to the power of others and which is a sure indication of the measure’s relevance to the sphere of personal freedom” (C. cost. sent. no. 105 of 2001).

7. Practices preceding the submission of an application for international protection

Another example of the lowering of the level of human rights protection at the border is the procedures preceding the submission of an

application for international protection, aimed at identifying those protection seekers who have the right to remain in the territory and those who, on the other hand, should be rejected.

The application for protection is a fundamental milestone for guaranteeing the minimum necessary content of the right set forth in Article 10, paragraph 3, Const. by enshrining the right of international protection applicants to enter and remain in the territory of the state (Siccardi 2021).

In fact, from the moment of submission of the application for protection, which under European law can be submitted today only at the state border, foreigners are considered "protection seekers," and will consequently have access to the procedure for recognition of international protection, as well as to the measures of the reception system (Famiglietti 2021).

The regulation of this essential moment, regulated at the European level (*Procedures Directive* No. 32/2013) and at the national level (*Procedures Decree* Legislative Decree No. 25/2008 and *Reception Decree* Legislative Decree No. 142/2015), aims first of all to limit the administrative discretion of the border police, establishing that the latter's competence is limited to the receipt of the application (Art. 3 Legislative Decree No. 25/2008, Art. 6 *Procedures Directive* 32/2013).

More specifically, from the regulatory framework just outlined, it is possible to infer some basic principles in this regard.

First, for the purposes of the right to remain in the territory of the State, pending the outcome of the procedure for the recognition of the application for international protection, the mere manifestation of willingness (or conclusive behaviour) to apply for protection is sufficient, without any formalisation. In fact, the relevant legislation provides a very broad definition of "application for protection": in fact, Art. 2(1)(b) defines "application for international protection" as "a request for protection addressed to a Member State by a third-country national or a stateless person who *can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request a different kind of protection not covered by the scope of Directive 2011/95/EU and which can be applied for by separate application.*"

Second, consistent with the principle of *nonrefoulement*, the only "authorities competent to examine applications for international protection are the territorial commissions for the recognition of international protection" (Art. 3 Legislative Decree No. 25/2008). This means that the police and the Questura must limit themselves to receiving the application for protection and at a later stage to verbalising it (Famiglietti 2021: 109), without in any way investigating the underlying reasons, on which - on the contrary - the territorial commissions are solely competent (Art. 3 and 26 Legislative Decree No. 25/2008).

Third, a necessary corollary to the filing of an application for international protection is the migrants' right to information regarding their rights and relevant regulations, which is matched by an obligation to provide information by the relevant border authorities. In this regard, Article 6 of dir. 2013/32/EU requires member states to ensure that "authorities responsible for receiving applications for international protection such as police, border guards [...] have the relevant information and that their personnel receive the necessary level of training appropriate to their duties and responsibilities and instructions to inform applicants where and how applications for international protection can be forwarded."²⁵

The principles outlined above are challenged by the practice carried out at the borders under the *hotspot* method, which is aimed at "screening" irregular migrants and asylum seekers at a time prior to the receipt of the application for protection and verbalisation, as governed by the regulatory sources just analysed²⁶.

In fact, the first activities, preparatory to the submission of the application for international protection, take place as early as the moment of disembarkation or immediately after entry into the *hotspots* through the completion of a series of so-called "pre-identification" procedures, provided for in the 2015 *Road Map* of the Ministry of the Interior.

Immediately after disembarkation and health *screening*, migrants undergo a series of interviews conducted by immigration officials.

These interviews are not only aimed at collecting generalities or nationality information, but also aim, even at this stage, to investigate the migrant's motivations for reaching the Italian border.

This information is then collected by the border authority in the so-called "news sheet." While "official" versions of the news sheet are not available, versions published by associations and the "Parliamentary Commission of Inquiry into the Reception, Identification and Deportation System and the Conditions of Treatment of Migrants" show how in this form the person's generalities are collected, as well as reasons pertaining to migration, by pigeonholing them into "asylum request" or "*job search*".

As is always evident from the operational sequence indicated in the Ministry of Interior's *Road Map*, upon completion of the pre-identification and news sheet completion procedures, all persons will be pho-

25 The *Security I Decree* added the following sentence to the rule: "The police office shall inform the applicant that if coming from a country designated as a safe country of origin under Article 2-bis, the application may be rejected under Article 9, paragraph 2-bis."

26 This was expressed in the minority report of the Parliamentary Commission of Inquiry into the Reception System, 2016.

to-tagged and registered as CAT 2 (irregular entry) or CAT 1 (asylum seekers and amenable to relocation).

According to the minority report of the 2016 Parliamentary Commission of Inquiry into the Reception System, the activities just described are said to be aimed at an initial “classification of migrants,” relying “essentially on interviews conducted at the time of disembarkation by police officers at the place of disembarkation itself or within the *hotspot* centres,” thus at a time when people are in a particular state of vulnerability.

That this is an “entry selection” procedure is put in black and white by the European Border and Coast Guard Regulation, which, in Article 40, identifies among the tasks of the European Migration Management Teams “assistance in the selection (*screening*) of third-country nationals arriving at external borders, including the identification and registration of such nationals and the collection of information from them (*debriefing*).”²⁷ .

However, this first informal selection, regulated in detail only by practice and ministerial circulars, has major consequences on the rights of migrants, concluding, on the one hand, for those classified as protection seekers, with the formalisation and verbalisation of the application at the Police Headquarters (through the so-called C3 form) and the initiation of the procedure for the examination of the application for international protection and reception measures; on the other hand, through the rejection of foreigners deemed irregular, even if only on the basis of the news sheet.

Such a method seems far removed from the principle established by the Procedures Directive, as well as by Article 3 of Legislative Decree No. 28 of 2005, according to which border authorities should limit themselves to gathering the mere intention of the applicant, without the need for any formalities. These rules, as seen, are placed directly to guarantee the principle of *nonrefoulement*, which is in fact circumvented by the pre-identification and selection procedures for incoming migrants described.

Recently, the Supreme Court, fully grasping the problematic nature of the practice of the news sheet in relation to migrants' rights, affirmed that “of no relevance is the fact (erroneously valorised by the judge of merit) that *the foreigner subject to refoulement* signed the news sheet, moreover without the guarantee of the sure presence of a qualified interpreter with whom he would have declared that he did not want to apply for protection,” since the declaration had already been made by the foreigner (Cass, II sez. civ. ord. Sept. 1, 2020, no. 18189 and Cass, II sez. civ., ord. Sept. 3, 2020, no. 18322).

27 EU Reg. No. 2016/1624, as later amended by EU Reg. 2019/1896.

Moreover, it should be pointed out that the practice of pre-identification and the news sheet discharges the obligation to be informed provided for in Article 10 Legislative Decree No. 25 of 2008, which must be fulfilled according to the aforementioned provision “at the time of submission of the application to the police office.” However, if, as seen, the informal activities of “selection” of migrants are carried out as early as disembarkation, the right of migrants to be informed under the law risks becoming useless²⁸.

The practices described so far, implemented according to the *hot-spot* method, are therefore at odds with constitutional principles and in particular with the constitutional right to asylum under Article 10, paragraph 3, Const. They appear to represent a “filter” of entry even against those who have the intention, or have manifested the will, to apply for asylum (but not yet formalised) at the hands of procedures not regulated by law and left to the discretion of the border police, in violation of the absolute reservation of the law provided by the constitutional norm, which aims to avoid abuses of administrative authority in the recognition of a fundamental right.

8. “Outsourced” border controls and human rights: the case of Libyan camps

In order to stop illegal entry, the European Union and the Italian government have signed a series of agreements with some Migrant Transit Countries, which are deeply problematic in terms of protecting the human rights of migrants²⁹.

Here, it is appropriate to focus exclusively on the *Memorandum*, signed in 2017 and tacitly extended in 2020, between the Italian

28 According to the Ministry of Interior’s Circular on Standard Operating Procedures at the time of disembarkation, an information leaflet on international protection is distributed to migrants. It is unclear, however, in how many and what languages such documentation is written and whether interpreters and cultural mediators are always present at the time of disembarkation.

29 We refer, for example, to the EU-Turkey Declaration (in this regard see European Commission, Recommendation for a Voluntary Humanitarian Admission Program managed with Turkey, 15.12.2015, C/2015/9490). With respect to agreements signed by the Italian government, see the Memorandum of Understanding on Cooperation in the Field of Development, Combating Illegal Immigration, Trafficking in Human Beings, Smuggling and Strengthening Border Security between the State of Libya and the Republic of Italy, signed in Rome in 2017 and tacitly renewed in 2020 published at www.governo.it/sites/governo.it/files/Libia.pdf, as well as the ‘Agreement on Cooperation in Defence Matters between the Government of the Republic of Italy and the Government of the Republic of Niger of 2017, published at www.asgi.it/approfondimenti-speciali/niger-italia-armi-immigrazione.

government and the Libyan government, with the stated purpose of countering illegal immigration and human trafficking between the two countries.

To achieve this goal, the *Memorandum* commits the Italian state to providing financial, technical and military support to the Libyan authorities in carrying out a range of activities to stem migration flows. These activities include the control of land borders to the south of Libya, the adjustment of reception centres “for illegal migrants,” and the training of the centres’ staff “so that they can contribute to the identification of the most appropriate methods to deal with the phenomenon of illegal migration and human trafficking.”

The *Memorandum* raises serious issues with respect to the concerns highlighted in this contribution pertaining to (a) the unsuitability of the legal source used; (b) the violation of migrants’ human rights; and (c) the undermining of migrants’ right to judicial protection.

(a) With respect to the first concern, the problematic nature of these agreements has been highlighted in the doctrine by several authors with reference to Article 80 of the Constitution, which, as is well known, requires ratification by Parliament of international treaties of a “political nature” (Olivito 2020; Algostino 2017)³⁰.

(b) With respect to the impact on migrants’ human rights, the concerns to be highlighted are multiple.

First of all, the fact that Italy essentially “contracts out”, through technical and financial support, certain border control activities to third countries in order to anticipate rejections to distant territories significantly affects the minimum content of the right to asylum, pursuant to Article 10, Paragraph 3 of the Constitution, by precluding entry into the territory of the state.

In fact, the measures of the *Memorandum* act equally on irregular migrants and potential protection seekers, without conducting any individual examination of the situation of the recipients of the measures. This effect is demonstrated by the fact that the stated purpose of the Italy-Libya *Memorandum* is to curb illegal migration, without taking into consideration the possible presence of protection seekers. The prohibition of *non-refoulement* is thus circumvented by indiscriminately defining the recipients of the measures as “illegal migrants.”

30 The lack of parliamentary ratification of the Italy-Libya Memorandum was brought to the attention of the Constitutional Court by a number of parliamentarians who, believing their prerogatives were violated, raised a conflict of attribution, which was declared inadmissible due to the lack of legitimacy of the individual parliamentarian to raise said conflict. See C. const. ord. of July 4, 2018, no. 163.

Moreover, through such agreements, Italy leaves to Libyan authorities activities that have a strong impact on fundamental rights, such as receiving - or rather detaining - migrants in camps.

Regarding respect for human rights in such centres, the *Memorandum* merely states that “the Italian side undertakes to meet the health care needs of illegal migrants, for the treatment of serious communicable and chronic diseases,” without saying anything about guarantees of fundamental rights and due respect for people’s dignity.

This situation is before the eyes of international institutions that repeatedly denounce it as the violation of human rights.

The Secretary General’s 15 January, 2020 report to the UN Security Council deplors how thousands of people are detained in Libyan centres controlled by armed groups and subjected to torture³¹.

In addition, Council of Europe Human Rights Commissioner Dunja Mijatovic called for the suspension of the Italy-Libya *Memorandum* in light of the “multitude of evidence of serious violations” that requires “a thorough analysis of the risks of violations of the human rights of migrants and asylum seekers that could result from cooperation with Libyan authorities.”³²

This situation drastically worsened during the pandemic due to the material impossibility of ensuring adequate spacing in the centres, which became “even more hostile to refugees and migrants seeking a better life.” Not only that, migrants “are now even unfairly accused, for deeply racist and xenophobic reasons, of spreading the pandemic by Covid-19.”³³

In addition to *reports* from international and nongovernmental organisations, an important source of knowledge about conditions in Libyan centres is the decisions of Italian judges. Judges, in fact, have become aware of conditions in Libyan centres as part of proceedings, both criminal against alleged human traffickers and civil as a result of claims for damages on account of unlawful refoulement.

Particularly worth mentioning is the 2017 judgment of the Milan Court of Assizes (Milan Court of Assizes, 10 October, 2017, filed 1 December, 2017), which, in the criminal case against a Somali nation-

31 See Report of the Secretary-General, United Nations Support Mission in Libya, Distr.: General, 15 January, 2020.

32 See the 13 February, 2020 letter sent by the Council of Europe Commissioner for Human Rights to the Italian government requesting the suspension of the Italy-Libya agreements. The letter and the Italian government’s response can be found at www.coe.int/en/web/commissioner/-/commissioner-urges-italy-to-suspend-co-operation-activities-with-libyan-coast-guard-and-introduce-human-rights-safeguards-in-future-migration-co-opera

33 Thus Diana Eltahawy, deputy director of Amnesty in the statement posted on the Association’s website (www.amnesty.it/tra-la-vita-e-la-morte-il-circolozioso-di-crudelta-nei-confronti-di-rifugiati-e-migranti-in-libia).

al, reveals the inhumane conditions in Libyan camps and the violence to which trafficked migrants are subjected.

The ruling details the situation in two camps, Bani Walis and Sabrata, where migrants are stripped of their documents and cell phones. As some report, it is not possible to leave the centres because “only two categories of people leave the centre: the dead or those who have paid the money for the journey.” Migrants are, in fact, forced to pay substantial sums (\$7,000) to be transferred from the camps to the coast, for boarding to Italy. Those who do not pay the sums quickly are tortured, beaten, subjected to forced labour, or killed.

The judgment just cited, through a detailed description of the violence taking place in the camps, dramatically highlights how the Italy-Libya *Memorandum* contributes to terrible human rights violations.

(c) Third, the Italy-Libya *Memorandum* could further exacerbate the difficulties of migrants' access to justice. Through the signing of the *Memorandum*, the Italian side pledged “to provide technical and technological support to the Libyan bodies in charge of the fight against illegal immigration, and which are represented by the Border and Coast Guard of the Ministry of Defence, and the relevant bodies and departments at the Ministry of Interior.”

These actions are aimed at supporting so-called *pull back* policies, urging the Libyan Coast Guard not to allow migrants to reach Italian territorial waters, leading them back to the camps.

The resumption of activities by the Libyan Coast Guard may have consequences with respect to the existence of the jurisdiction of the European Court of Human Rights.

In fact, one of the many controversial episodes involving, close to the Libyan SAR zone, the timely intervention in rescue operations of both the Libyan Coast Guard and an NGO vessel is the subject of an appeal before the Edu Court (*SS. H and others v. Italy*³⁴) (Fazzini 2020: 120). Specifically, the facts that will be the subject of the judgment concern a shipwreck that occurred off the Libyan coast, in which over one hundred people lost their lives and the forty survivors were returned to Libya, despite the fact that the NGO *Sea Watch* was also involved in the rescue operations.

The Edu Court will have to untangle the crucial knot regarding jurisdiction. Indeed, in this case, and in relation to episodes of migrant *pull backs* by the Libyan Coast Guard in general, it will be difficult to argue that there is *de jure* and *de facto* control over persons by a contracting state such as to justify extra-territorial application of the convention, as in *Hirsi v. Italy*.

34 Appeal to the Edu Court, on the case of S.S. and Others v. Italy, rec. no. 21660/18.

The agreements with Libya, in addition to resulting in the dramatic human rights violations described, risk having the effect of precluding migrants' access to judicial protection and, therefore, the ability to contest the violation of their rights.

Such a consequence would be contrary to the repeatedly expressed views of the Edu Court, which, while recognising the difficulties faced by states located on the EU's external border due to immigration by sea, does not allow free zones to the protection of conventional rights.

9. Two concluding reflections

These pages were intended to illustrate the critical issues that arise in relation to the protection of migrants' human rights at the borders of states.

In the face of the issues posed, which are complex and difficult to solve, we intend to develop two concluding reflections, according to two different perspectives: a) the first reflection is on constitutional law; b) the second is on the role of the CRC "Migration and Human Rights."

In order to prevent borders from becoming "a free zone" for the protection of human rights, it is imperative to restore strength to our constitutional principles along two lines.

First, constitutional jurisprudence requires that an appropriate balance be struck between the "inescapable task of the State to guard the borders" and the human rights of migrants, reminding us that "however many public interests are involved in the matter of immigration, and however serious the problems of security and public order associated with uncontrolled migration flows may be perceived to be, the rights that the Constitution proclaims as inviolable and to which individuals are entitled not as participants in a given political community, but as human beings, cannot be affected in the least" (C. const. sent. no. 105 of 2001).

Second, there is an urgent need to re-establish a situation of legality and legal certainty, putting an end to "the disruption of the system of sources, demonstrated by the overuse of traditional normative instruments in favour of a massive use of secondary and/or atypical sources, as well as the undermining of constitutional guarantees to protect the rights of the person, proper to the rule of law" (D'Amico 2018). Proper use of the relevant normative sources would doubtless be an important starting point for ensuring a minimum guarantee of constitutional rights at the border.

In the face of such violations, which emerged clearly in the other papers at the 3 July, 2020 conference, it is appropriate to reflect in con-

clusion on the role of the University and the Migration and Human Rights CRC.

Surely the Centre should continue to propose scientific initiatives of this kind, not only because they provide an important opportunity for scientific study and comparison, but also because they provide the theoretical framework useful for proposing concrete projects and solutions.

On the topic of migration, research projects, educational and third mission initiatives proliferate in the University. The importance of this line of research is confirmed by the fact that, at the European and national levels, funding dedicated to the theme of reception and migration has increased exponentially in recent years. Consider that within the European *Horizon 2020* programme there are four specific calls on the theme of migration: *inclusive and innovative practices for the integration of recently arrived migrants in local communities; mapping and overcoming integration challenges for migrant children; narratives on migration and its impact: past and present; sustainable practices for the integration of newly arrived migrants into societies*³⁵.

In addition, the University, within the CRUI framework, has promoted important initiatives that can help mitigate human rights violations against migrants. I refer, for example, to the Unimi Inclusive project, the *Scholar at Risk* network, and the University Corridors³⁶, promoted also thanks to the work of the members of the University's Integration and Reception Table³⁷.

More precisely, thanks to these projects, the University, in collaboration with UNHCR and other associations, has put in place University hosting projects for refugee students. Through these programmes, therefore, some students have been allowed to "cross" borders in order to be guaranteed the right to study and the right to asylum.

The CRC must continue on this path, deepening the scientific, national and international debate, as well as proposing, at the same time, concrete projects and solutions, as a safeguard for constitutional rights.

35 See the migration calls of the European Horizon programme <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/topic-details/migration-04-2020>.

36 These initiatives were the subject of the oral presentation at the 3 July, 2020 conference given by Prof. Di Pascale.

37 The Table was promoted together with the Vice Chancellor for Internationalisation, Antonella Baldi, with the aim of bringing together all the expertise in the University that deals with the issue of migration, in order to devise concrete proposals with particular reference to the issue of foreign students and the reception of refugee students.

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Borders, migration, reception: a challenge for democratic societies

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In times of economic globalisation, there is a reassertion of borders against entry, not of foreigners in general, but of undesirable foreigners, as they are perceived and classified as poor (Ambrosini 2020): border guarding is one of the residual symbols of an increasingly eroded and circumvented national sovereignty (Opeskin 2012).

In this context, borders have multiplied and scattered, becoming more complex and sophisticated (Agier 2014). Their surveillance has become the subject of ad hoc international agreements, entailing the establishment of new dedicated agencies, the deployment of armed forces, the adoption of increasingly advanced technologies, and, of course, almost uncontrolled rising costs.

Along with the resources provided by control technologies, various governments have also not hesitated to resort to the age-old technique of walls, understood as physical barriers of various kinds. National borders, in their various expressions, have regained a centrality that appeared to be declining, if not lost.

1. The return of the borders

International migration has now, for several decades, become a priority issue on the political agendas of governments and supranational institutions such as the EU. Even before the 2001 terrorist attacks in the United States, and in the following years in some European cities, such as London and Madrid, the link between national security, border surveillance and immigration control rose to the strategic level. After the September 11 attacks, this instance triggered the largest reorganisation of the U.S. government since the passage of the National Security Act of 1947, that is, since the beginning of the Cold War (Adamson 2006).

The migration-security nexus has raised ontological fears about the threat posed by immigrants, and especially unauthorised immigration, to the social order, collective identity, and cultural homogeneity of national societies. The clash of civilisations scenario theorised by Huntington, although denied in words by policymakers, has in fact been fuelled through the stereotypes embedded in the increased controls on new admissions and documents required of immigration applicants (Faist 2002). That is, severely screening applications, requiring complex admissions procedures, and providing subsequent document checks for various types of activities and access to services, embeds a message of mistrust and separation toward foreigners defined as immigrants.

As the southern border of the United States emblematically shows, peaceful workers of Hispanic origin have paid the bill, with increased restrictions and massive deportations, for attacks with which they had no connection. Terrorism has provided a powerful justification for the erection of more bristly and impenetrable barriers between developed countries and the poor component of humanity. It is an example of what Faist (2002) again called meta-politics: fears based on real data acquire disproportionate significance, catalyzing social anxieties and fears. Through meta-politics, the cultural dimension grows in importance, becoming the marker of the insurmountable difference between “us” and “them.”

It thus appears to be an objective of great symbolic resonance for governments to communicate the certainty of keeping state borders under control (Anderson 2008), to avoid incurring crises of confidence on the part of citizens, who demand to be protected against flows feared as uncontrollable, or infiltration by potential terrorists, agents, or recruiters¹.

One could quip: less able to regulate economic processes, namely the relocation of businesses and jobs abroad, governments have heightened their surveillance of border crossings by unwanted foreigners in order to regain legitimacy in the eyes of citizen-voters. At the same time, challenged by terrorist attacks, they strengthen border policing as visible proof of their ability to protect citizens and their security. Often, immediately after attacks, governments announced border closures and increased controls at airports, as if the threat came from outside, in the manner of armed invasions in the past: in this

1 The fact that terrorists generally hold regular visas or entry permits, are long-settled residents or even citizens, does not shift the terms of the problem: in order to communicate a reassuring message to public opinion, of activating all the tools at their disposal to prevent dangerous infiltration, governments tend to tighten border controls toward all potential migrants from the South, including those arriving from countries not “at risk.”

way they tried to communicate to citizens that they were guarding their security. At the same time, however, they identified the threat with those who intended to enter the country, especially if they came from the South and lacked the required permits.

The literature on the subject has emphasised in this regard the proliferation and complexification of borders (Balibar 2012); their “de-naturalisation” through the increasing endowment of technological instrumentation for the identification of travellers and surveillance of crossing points (Dijstelbloem, Broeders 2015), but also the use of the age-old technique of walls, which make visible the opposition between citizens and unwanted foreigners, between civilised and barbarian, between legitimate residents and disenfranchised outsiders; their evolution toward remote and virtual forms of control (Tsianos, Karakayali 2010).

But today’s borders are not only nationally manned. Their control evolves in three directions: *upward, downward, and outward* (Guiraudon, Lahav 2000). *Upward*, due to the devolution of surveillance tasks to supranational institutions, such as the Frontex system in the EU.

The gradual increase in Frontex’s operational mandate and related budget is a typical example of the almost unstoppable growth in demand for security and border control. The massive deployment of public resources in this direction is rooted in the perception of an invasion at the gates, a global North under siege, and a rising wave of out-of-control migration. It is not surprising, then, that Frontex’s budget has multiplied in the span of a few years, from 6.3 million euros in 2005 to 333 million in 2019, to 1.1 billion this year [2021], to 1.9 billion in 2025: an endowment unparalleled in the history of EU agencies². It should be recalled that it was a Frontex document leaked to the press, and followed by some statements by director Fabrice Leggeri, that triggered the campaign to criminalize NGOs engaged in sea rescues. In recent months, however, in early 2021, Frontex and Leggeri ended up under investigation: somewhat belatedly, the EU seems to have realised that Frontex, equipped with helicopters, drones, and naval units, was collaborating in illegal refoulements in the Eastern Mediterranean and apparently also in Bosnia, endangering the safety of the people involved. Certainly, the agency has never been equipped with the 40 human rights monitors it was supposed to employ under its own regulations. To add a note of malpractice to an opaque budget, expenses for parties and events at the agency’s expense of 2.1 million euros over five years have emerged. Almost counter-evidence of the power acquired by a body that no one controlled, such was the political importance attached to its functions. Now OLAF, the EU’s anti-fraud office, is investigating.

2 “The Sun-24 Hours,” January 21, 2021.

In the past few years, moreover, a regulatory innovation of great symbolic and political significance has come into force in the European Union: the shift from border control delegated to individual states, now especially those located on the Union's external borders, to shared surveillance entrusted to a European border guard. The remote Bulgarian-Turkish border, almost a modern-day desert of the Tartars, has been given the dubious honour of holding the inauguration of this ambiguous innovation.

As this example shows, progress in a cooperative direction is unilateral, geared toward greater control of entry. Governments increase security cooperation, agree to better guard borders, and help each other keep out most of those seeking entry. Meanwhile, however, the common European policy on refugee reception fails to get off the ground, blocked by the open or creeping opposition of most governments.

The new asylum plan presented in September 2021 by EU Commission President Ursula von der Leyen also suffers from this logic. The term "returns" recurs no less than 88 times, far more than terms such as reception, integration, protection. The gulf between security policies and reception policies could not be more strident. The EU agreed to seal borders, not to make them permeable to the protection of human rights.

Downwardly, border control then sees increasing involvement of local authorities: in several countries, at the request of national governments, who ask urban officials for more control over who circulates in their territory or requests to receive certain services. Often these requests generate a dialectic. In Western countries, cities have, in several cases, taken a more inclusive stance than national authorities: in the United States, and then in other countries, a movement of "sanctuary cities" has developed that refuses to cooperate in the crackdown on unauthorised immigration and the exclusion of immigrants without appropriate documents from accessing local welfare services (Bauder 2017). These cities have formed transnational networks and coordinations with the aim of influencing national and international policies in the direction of broadening reception possibilities. The local level can then actively interact with superordinate levels, seeking to export its point of view (Oomen 2020).

In other cases, however, as in Italy and the southern United States, various local authorities volunteer, so to speak, to tighten migration policies, introducing additional bans, controls, and selective filters to access certain services or benefits, even in controversy with national governments. Here the interaction with superordinate levels is of the opposite sign: local constraints on the establishment of places of worship for minority religions imported by immigrants affect a constitutionally guaranteed right such as religious freedom; or local refusal to accept asylum seekers hinders the implementation of universal hu-

man rights recognised by international conventions. Boundaries then expand *outward* through the empowerment of private actors, such as airlines, security agencies or employers: whether when embarking on international travel, crossing the threshold of institutional or corporate offices, or in accessing a workplace, private actors are called upon to carry out tasks to verify the identity of individuals, the authenticity of documents, and their validity for the purposes of the activities they wish to perform. Two processes are encountered here. The first is the development of *forms of remote control*, which works in two senses: it can be carried out in places far removed from the territorial boundaries of the states that organise it, and it involves a multiplicity of actors, beyond the formal apparatus of states. The second process concerns the development of forms of *internal control*, after entry into the territory (Newman 2006). In both cases, in addition to civil servants, a large corps of “sheriff’s aides” are engaged for the purpose: authorities in countries of origin and transit, surveillance agencies, travel agents, transporters, hotel staff, employers, and local social services. All are urged to discover in the most hidden folds of society undocumented foreigners, to deter asylum seekers, to prevent unauthorized sojourners from coming out into the open (Guiraudon 2003: 191).

However, we must add a fourth important development, which mainly concerns asylum seekers: national and EU authorities have engineered policies of *outsourcing border control* by engaging third-country governments in border surveillance. This is an operation that succeeds most effectively when it comes to targeting the movement of people in transit, who are thus not citizens of the countries concerned: targeting their own citizens would have unpleasant implications for the governments involved, however authoritarian. Such are the agreements with Turkey, Morocco, Tunisia, Niger and, of course, Libya, in whose case the significant variant of funding not only governments but also militias and local powers has been introduced: the same ones, as far as is known, that previously profited from the transit of migrants. In this way, EU governments at least formally safeguard their image of respect for human rights by delegating to authorities in outside countries the dirty work of repressing human mobility, including that of asylum seekers.

The political importance attached to border surveillance has also fueled a massive growth in investment in the sector, fostering a lobby of manufacturers of surveillance (radar systems, drones, infrared controls, “smart” barriers) and identification technologies (body scanners, systems for taking, storing and exchanging biometric data), a redeployment of military apparatus and means in new tasks of surveillance and patrolling land borders and territorial waters, and an increase in the personnel of the various agencies and armed border-protection corps. It is thus an industry that feeds on a growing demand

for security: the perception of an invasion at the gates, of a global North under siege, of a rising wave of out-of-control migration.

The *migration business* that has arisen in response to border closures thus in turn generates a rich and powerful *industry of border control* itself (Andersson 2016). In the United States, the number of Border Guard agents has increased several times, even before the Trump presidency, to 20,000 personnel: it is the largest armed force in the country after the army, and the border with Mexico is the most controlled in the world between two countries at peace with each other. In real terms, the Border Guard budget increased 13-fold from 1970 to 2010 (Massey, Durand, Pren 2015), thus, well before Trump's rise to power, which emphatically exacerbated the trend.

Italy, on the other hand, according to an ActionAid survey³, has spent more than 1 billion euros since 2015 to stop immigration across the Mediterranean. The largest slice (684 million) went to finance surveillance apparatus: law enforcement, and also naval assets, drones, planes, and technology. 210 million went to Libya, between the government in Tripoli and local militias, nearly 100 million went to Niger, in order to operationalise agreements on blocking transit (Di Pasquale, Solmone, Tronchin 2021).

These states and their apparatuses have been entrusted with the task of stopping asylum seekers in transit before they enter EU territory, where they could apply for international protection. It matters little how they are treated and under what conditions they are detained. At the same time, humanitarian reception has become increasingly voluntary and therefore optional.

What is in danger of being destroyed on the ground, however, is not just solidarity with refugees, but the sense and spirit of the European project. As Seyla Benhabib argues, democracies need borders. But these borders must be porous, lest they contradict essential values of democracies themselves: "the merits of liberal democracies lie not in the power to close their borders, but in their ability to listen to the demands of those who, for whatever reason, knock on their doors" (Benhabib 2005: 223).

2. A current case: the Balkan border

An exemplary case of *outsourcing* of border control involves, in the winter of 2020-2021, the situation of refugees stranded in Bosnia, on the borders of the Union, and reduced to living out of shelter, in the woods or in makeshift shelters, after a fire destroyed the Lipa camp set up with EU funds. They number about 3,000 people - mostly migrants

3 The Big Wall, accessed 20 March, 2021.

from Afghanistan, Pakistan and Bangladesh. Many of them were turned away by the EU in hasty and, according to what is emerging, probably illegal procedures. Italy itself is involved. Refugee rejections have been ordered from Trieste to Slovenia, which then transfers them to Croatia, which in turn sends them back to Bosnia, from which they had managed to filter in. In fact, between the beginning of the year and mid-November 2020, Italian authorities sent 1,240 people back to Slovenia (420% more than in 2019: Altreconomia data, retrieved from ISPI), who were then pushed back in a chain to the Bosnian border. These are the so-called “active readmissions” carried out by border police in Trieste and Gorizia, which the government had to admit at the end of 2020. As in a kind of dramatic game of Goose, refugees are sent back to the starting box. Those involved among them call it “the game”: it is the roulette of attempts to reach the EU’s internal countries, very often on foot, in the hope that promises of human rights protection will shield them as well.

However, not much room for optimism is left in the Black Book of Rejections, a 1,500-page report published in November 2020 by the Border Violence Monitoring Network, the result of four years of work, in which 892 testimonies were collected and the experiences of 12,654 victims of human rights violations along the Balkan route were documented⁴. Croatia is the most critical point in a story of substantial indifference that has long played out on the EU’s borders. There, migrants are systematically beaten, robbed, and driven back across the border to Bosnia. Between January and November 2020 alone, the Danish Refugee Council recorded 15,672 rejections from Croatia, classifying 60 percent of them as “violent”⁵.

EU institutions accuse Bosnian authorities of failing to prepare suitable solutions for receiving refugees, despite receiving funding from Brussels. For the troubled Balkan country, 16,000 admissions in one year soon became unmanageable. The proven strategy of *outsourcing* reception and humanitarian protection obligations successfully implemented by the EU (from its own perspective) on other transit routes is no longer working. This time, however, at the Bosnian border, economic subsidies were not enough to oil the machine of an albeit precarious reception: local populations staged protests and blocked attempts to prepare alternative solutions to remedy the closure of the Lipa camp. In other words, they mimicked the demonstrations of hostility toward refugees that also occurred in Italy. In Bosnia, local communities burdened by poverty, unemployment, and emigration

4 <https://www.borderviolence.eu/launch-event-the-black-book-of-push-backs/>.

5 <https://drc.ngo/it-matters/current-affairs/2020/11/drc-supports-european-union-push-for-border-accountability/>.

of young people have felt called upon by distant and much wealthier outside powers to take on the task of welcoming people more unfortunate and needy than themselves. The fact that these communities are not obliged to draw from their own funds the resources for reception, but on the contrary receive aid, was not enough to convince them.

The externalisation of protection obligations requires not only funding and political pressure, but also local communities willing to tolerate, for better or worse, the settlement of refugees who will not leave any time soon, and will demand access to health care, education, and the labour market. Viewed from the perspective of the Bosnian crisis, it is almost a miracle that for years in Lebanon, Jordan, and Turkey, local populations have adapted to living with far greater numbers of refugees than those received in Europe, both in absolute numbers and as a percentage: 134 per 1,000 population in Lebanon, 69 in Jordan, 43 in Turkey, compared with 25 for Sweden, 14 for Germany, and 3.4 for Italy (UNHCR 2020).

So, the blaming of the Bosnian authorities actually hides disappointment at the loophole that has opened in a hitherto successful passing of the buck, and which is now undermining the EU's strategy: keeping its hands clean, exhibiting formal respect for human rights, but in reality delegating to others both the reception and possibly the embarrassing (and even violent) practices of detaining refugees. Another blow to the EU's credibility comes from the methods adopted by the Croatian police, and probably also by self-organised local militias: charges so far denied, but confirmed by NGOs, courageous journalists, and victims interviewed and photographed with the marks on their bodies of the violence they suffered.

3. *Boundary selectivity*

As we have already noted, boundaries are not impenetrable for everyone. They can be defined as "regulatory filters of mobility" (Ribas-Mateos 2015: 159), so that border management is configured as "selective and targeted" (Rumford 2006: 164). Indeed, major developed countries have enacted selective mobility policies. Glick Schiller and Salazar speak of "mobility regimes" (2013): nation-states favour the mobility of some while prohibiting or restricting the mobility of others. The concept implies a reference to political regulation (*governmentality*) and inequality in the allocation of the right to move across borders. Politically regulated mobility thus becomes a contested terrain in which the order imposed from above is continually challenged and eroded by the practices of those who should be excluded from it.

One can more accurately speak of *stratification of the right to mobility*: for businessmen, managers, professionals, scientists, and artists,

mobility is welcome and encouraged, even to the point of translating into *brain drain* policies that deplete the human capital of the Global South; for tourists, especially if they are wealthy, and within certain limits for students, mobility is appreciated and favoured, as long as it does not translate into irregular stays and illegal work; for spouses and children of citizens or legal residents, it is cautiously tolerated and relatively permitted, albeit with increasing limitations and restrictions (Ambrosini 2019); for low-skilled workers, it is sometimes allowed in seasonal form, but often ruled out altogether, especially if it gives rise to permanent settlement. This last important trend contrasts with the fact that many economic systems, including our own, draw extensively on the unregistered labour of immigrants without valid residence permits.

If, therefore, one can speak of a *mobility turn* in today's social sciences (Urry 2000), this view must, however, always be tempered with an awareness of social inequalities (Faist 2013): when it comes to highly skilled workers, one speaks of "mobility" and urges it; in the case of low-skilled workers, on the other hand, one adopts the term "immigration" and tries to block it. Thus the idea that sedentarism is outdated, that localism is synonymous with backwardness and decline, that nomadism is the future, actually applies only to the former type of moving individuals; for the latter it does not apply. Mobility entails optimistic expectations of benefits for individuals and states, while immigration raises questions of social integration, control, and defence of national identity. Thus, border-crossing opportunities have become the most important factor in determining the position of individuals in the hierarchy of Global Age inequalities (Faist 2019)

As a result, for citizens of more developed countries and for elites in developing countries, international mobility is now easier than in the past, while for the masses of citizens of the Global South it has become an almost unattainable chimera. Citizens of intermediate countries (Latin America, Eastern Europe), on the other hand, have to juggle between increased constraints and semi-open doorways.

In Italy, regulations provide for some 20 types of entry permits, not counting agreements that allow citizens of various countries to enter without a visa.

In dealing with the tension between borders and mobility aspirations, the prevailing impression sees a lack of vision and strategy, but in fact some decisive policy choices are clearly discernible, and trace a relative convergence within the developed world.

Regarding what is called "economic migration," the choice of governments in the EU and, more generally, the Global North is to select candidates according to three criteria, which we might call "the three P's": *passports*, *portfolios* and *professions*.

With respect to *passports*, it should be remembered that, historically, modern states have claimed not only a monopoly on legitimate violence, but also a monopoly on legitimate forms of movement across borders through the introduction of passports and the associated bureaucratic infrastructure (Torpey 1998). As a continuation and actualisation of this logic, in the world today, passports have a quite different capacity to open the doors of other countries. According to the Henley Passport Index of 2021, based on data provided by IATA, the international airline organisation, the most valuable passport is that of Japan, which allows free entry into 191 out of 227 countries. It is followed by Singapore (190), then Germany and South Korea with 189. Italy ranks fifth, with 188 countries accessible, along with Finland, Spain and Luxembourg. At the bottom of the ranking, however, we find the countries with the weakest passports, capable of only allowing access to a small number of destinations: the Afghan passport is the worst, with just 26 countries willing to admit visa-free travel for its holders. The Iraqi one is only slightly better, placing it at 28. Then come the Syrian one with 29 and the Pakistani one with 32. The inequalities are thus profound, more than 1 to 6 between the first and last in the ranking⁶.

At the European level, the selection of relatively welcome foreigners is mainly concerned with the favour given to Eastern European citizens. First and foremost, there has been the eastward enlargement of the EU: a migration policy not declared as such, which has granted millions of people the freedom to move around and seek work in the most prosperous and labour-needy countries, including Italy. The visa policy also tolerates the entry of citizens of a growing number of non-EU European countries: under a centre-right government, Maroni, Italian Minister of the Interior, in 2010 eliminated the visa requirement for citizens of all Balkan countries, starting with Albania, for tourist entry and for a period not exceeding 90 days. The Gentiloni government in 2017 eliminated it for Ukraine and Moldova, in compliance with an EU recommendation.

More generally, citizens of developed or supposedly developed countries are allowed easy entry, favouring them over the closures and controls imposed on citizens of the Global South. An important case in point is Brazil, for example, which was also lifted from visa requirements by the Berlusconi-Maroni government. Overall, EU governments do not require visas from citizens of some 50 countries around the world. Of course, formally these are usually for tourist entries and for periods of less than three months, but, as is now commonly known, once a foreigner has entered the country, repatriating him or her is neither a smooth nor inexpensive operation. What is

⁶ <https://www.henleypassportindex.com/passport>, accessed 20 March, 2021.

more, according to current regulations, once deported they could easily re-enter, possibly by resorting to another passport.

So too in the case-by-case handling of visa applications, studies on the subject show that EU authorities are more liberal toward Eastern Europe than toward the South (Finotelli, Sciortino 2013). Also for this reason, immigrants residing in the EU today are predominantly European, whereas they were not always so thirty years ago, when the Iron Curtain was still closed. The Europeanisation of immigration has thus been a sought-after and actively pursued outcome, even if only partially declared.

Speaking of *portfolios*, governments are increasingly favorably authorising the settlement of foreigners who present themselves as investors. In certain countries, even within the EU, as in the cases of Cyprus and Malta, they are granted not only entry and residence, but even citizenship, if they invest a certain amount of money and employ a few people. While we are discussing *ius soli* and *ius sanguinis*, *ius pecuniae* has been introduced: the ability to acquire citizenship through money. Several Russian tycoons, for example, have availed themselves of this faculty, thus circumventing anti-Putin sanctions.

Finally, the *professions*: with a specific permit, the Blue Card, similar to the U.S. Green Card, the EU admits professionals from a variety of sectors. Beyond this specific channel, not only scientists and experts in cutting-edge technologies enter for professional reasons: the movement of skilled migrants, in the EU as well as throughout the Global North, mainly concerns healthcare personnel. For example, in Lombardy one third of nurses are foreigners, and 22,000 doctors and 38,000 nurses of foreign origin work in Italy, according to the association that represents them.

Among the professions favoured by regulations is that of student. Some restrictions have intervened in recent years, in Trump's U.S., in the U.K. post-Brexit, occasionally even in countries such as ours when students come from suspect or stigmatised countries, such as Bangladesh after the Dhaka bombing or Egypt after the Regeni case. In general, however, higher studies abroad are one of the few channels of entry for young (affluent) people from the Global South. Many of them then, in one way or another, remain in the countries where they studied.

4. Beyond formal boundaries: the dimension of social recognition

However, if we look at the home front of receiving countries, and particularly at our own, we find that the rigid constraints and selective hierarchies established at the external borders do not project consistently within society. They undergo profound reinterpretations and

silent adaptations. Elaborating on a cue from Saskia Sassen (2008), two dimensions of the relationship between the receiving society, and foreigners perceived as aliens can be distinguished. The first dimension is the *legal authorisation* for entry and residence, and it concerns the formal aspects, regulated by institutional arrangements: the legitimacy that comes from above, from the authorities in charge. The second, on the other hand, relates to *social recognition*, and concerns the broader phenomena of acceptance, resistance or rejection towards the stay of people or groups defined as immigrants. This second dimension rises from below, concerning society as a whole. There are certainly links and mutual influences between the two: legal norms and political rhetoric influence society and processes of social recognition, just as public fears, prejudices and preferences exert effects on policy choices and institutional behaviour. Significant gaps can arise, however, between legal authorisation and social recognition. The following diagram, cross-plotting the two dimensions of authorisation and recognition, identifies in ideal-typical form the four resulting cases. Let us consider them distinctly.

Table 1: Legal authorisation and social recognition towards immigrants

	Authorisation - +	
- Recognition	Exclusion ("Clandestines", threatening invaders)	Stigmatisation (Refugees, socially undesirable minorities)
+ 	Tolerance (Irregular immigrants "deserving")	Integration (Legal immigrants accepted)

Exclusion. When the lack of legal authorisation is wedded with the absence of social recognition, a situation of marked hostility toward foreigners is produced. This is the case in which those commonly referred to as "illegal immigrants" fall: threatening invaders due to their unwanted entry, perceived as a danger to public safety and order, and increasingly as an undue burden on the welfare system. Especially in their regard, the overlap between immigration and crime, expressed by the concept of "crimmigration" (Coutin 2011), applies. With respect to this group, the demand rising from society is for a tightening of borders. Thus, deportation is the mea-

sure demanded by large sectors of society and promised by politics. As a result, the phenomenon of deportations has taken on unprecedented political and social importance (Gibney 2008), even if its actual implementation is then a much more complicated and costly matter, even in the case of the United States (Ellermann 2014). Social exclusion can be considered the internal projection, in social relations, of expulsions from the national territory.

Stigmatisation. This category includes minority components who have formal authorisation to stay, and sometimes even citizenship rights, but face substantial rejection from the majority population. Here, too, the boundaries tighten. This is especially the case today with refugees and asylum seekers: we know how much hostility to them has grown in recent years in our country as well, and how much it has weighed electorally. However, the ambivalences noted again by Ellermann (2006) must be considered: prejudices and closures are very rigid on a general and abstract level; when dealing with concrete cases, of people with a face and a name, known and settled in a local community, perhaps accompanied by children attending local schools, not infrequently groups of citizens take the defence of asylum seekers rejected and destined for deportation. The tightening of boundaries claimed in general terms becomes more uncertain and selective when it comes to applying it to concrete cases.

Tolerance. This is the opposite case, in which the lack of formal authorisation is compensated and in fact even, in various respects, surrogated by widespread social recognition. In this case, internal boundaries are expanded, albeit in a functionalist and purposeful way. The most glaring example is that of immigrant women, and in the minority men, employed in the domestic sphere to respond to the functional overload of households as primary agencies for providing services to people (Degiuli, 2016; Marchetti and Venturini, 2014). A phenomenon that affects southern Europe in a widespread way, so much so as to configure a kind of “invisible welfare” or parallel to the official one (Ambrosini, 2013; Tognetti Bordogna, 2010), but does not spare countries with more developed public apparatuses and apparently more rigorous policies (Lutz, 2017). The most interesting aspect of the affair is the fact that, especially in Italy, these immigrants quietly circulate in the company of the elderly and children in public spaces, from parks to supermarkets, without having to fear unpleasant verifications of their legal status. The de facto borders do not loom threateningly over their daily lives.

More generally, the category of “deserving” undocumented immigrants (Chauvin and Garcés Mascareñas 2014) appears in social experience, especially when they manage to legitimise their presence by working in the service of national citizens and refraining from forms of conflict or rebellion. In the Mezzogiorno and other agricultural regions, for example, the use of immigrant labour that is not regularly hired and often in an irregular condition is normal practice, tolerated and institutionalised, to the point that various municipal administrations set up makeshift housing and sanitation facilities for labourers.

This does not mean that “tolerated” immigrants do not have problems. Two in particular can be pointed out: what De Genova (2002) called “deportability,” that is, the sword of Damocles of possible interception and deportation, and the suffering resulting from finding themselves “prisoners” in the receiving country, deprived of the possibility of returning home to see their loved ones for fear of revealing their situation and having the possibility of re-entry blocked (Ambrosini 2013). In some respects, borders continue to follow them and influence their experience as emigrants abroad in a precarious legal condition. Work-related tolerance also does not transfer smoothly into the non-work sphere. Especially if undocumented male immigrants are perceived as a problem when they leave their workplace and make themselves visible in urban spaces. Tolerance and “deservingness” may therefore be contingent and spatialised. However, social recognition manages to affect the political regulation of internal borders, that is, the definition of the legal status of immigrants. This component of immigration succeeds more than the others in benefiting from amnesty measures, as was also the case in 2020.

Integration. When formal authorisation is combined with sufficient social recognition, a situation of more solid integration of migrants into the receiving society takes shape. Boundaries translate into meticulous and eye-catching procedures for periodic verification of the continued validity of the conditions that allowed access to the territory, or of the possibility of returning to visit the country of origin, or of eligibility for later stages, such as long residence permits (ILR, Indefinite Leave to Remain) or family reunification. Moreover, it is a process that is neither linear nor a foregone conclusion: the *de facto* integration practiced by the receiving society is a subordinate one, based on a tacit pact of adaptation by immigrants to take on the occupations no longer enjoyed by national workers, with no claim to advancement or claim to rights. It can also be a reversible condition, because loss of employment can result in a rapid descent down the slope of integration, socially and even legally, possibly leading to the loss of a residence permit.

Another possible development, however, concerns a new crossing of borders. Although statistical data are lacking, some research has documented the phenomenon of second migrations, or *onward migrations*: thousands of foreign immigrants who originally settled in Italy have subsequently moved to other countries, with the United Kingdom in first place (pre-Brexit), in search of better professional opportunities, for themselves or their children (Della Puppa and King 2019; Riccio 2019). Paradoxically, the acquisition of Italian citizenship favours this process, thanks to the greater rights to mobility and work abroad guaranteed by an EU passport.

5. Solidarity against borders: civil society activism

The actual functioning of national borders is also questioned on another front, that of actions conducted by various civil society actors to provide support to foreigners of uncertain or irregular legal status. I propose in this regard the concept of “solidarity against borders,” echoing Kaber’s (2005, 7) definition of solidarity: “the capacity to identify with others and to act in unity with them in their claims for justice and recognition.” Aid actions challenge the politics of closure in practice, entering into tension with the return to narrow visions of national sovereignty, though without generally aiming to subvert the social and political order, and without sharing the ideological framework and rules of conduct of large humanitarian agencies. Erecting human rights as a focal director of engagement, they counter xenophobic impulses and border closures, increasing political and cultural spaces for the settlement of refugees and immigrants in legally and socially weak conditions. These forms of solidaristic mobilisation, with their frailties, limitations and unintended consequences, should be seen as manifestations of active citizenship that challenge rigid distinctions between legitimate and illegitimate residents, between nationals and unwanted foreigners: in other words, they effectively challenge the internal boundaries of national societies. Moreover, the notion of active citizenship places emphasis on enacted citizenship practices, beyond the legal dimension, that is, on “acts of citizenship” (Isin, Nielsen 2008). Although these concepts were coined with reference to marginal or excluded groups, such as undocumented immigrants, they can be extended to actions that promote forms of “inclusive citizenship” (Kaber 2005): specifically when dealing with national citizens who in various ways open up spaces for newcomers, as Castañeda (2013) argues in the case of medical services aimed at undocumented immigrants in Berlin. Actions of practical border transgression also gain prominence because they broaden support for migrants by engaging citizens who would otherwise be reluctant to engage in explicit forms

of political struggle. They effectively rewrite both the concepts of borders and citizenship, enriching both with new ideas about belonging and rights. With regard to the identification of civil society actors and the characteristics of their mode of action, non-public actors engaged in the reception of refugees, and more broadly, immigrants in conditions of legal and social weakness, can be divided into four categories (table 2). Underlying the typology is the recognition that, in addition to institutionalised third-sector actors, such as NGOs or social cooperatives, the entry of asylum seekers into the EU has stimulated the mobilisation or transformation of other actors, such as radical social movements, as well as the ascent of ordinary citizens, without associational affiliations and previous militant or volunteer experience.

Thus, the main classification criterion is organisational consistency, whereby the four identified categories of subjects are placed on a descending scale.

Table 2. Typology of supporters of asylum seekers and immigrants in irregular condition

	NGOs and specialised organisations	Other civil society actors (volunteer associations, religious institutions, trade unions...)	Social movements	City municipalities
Main activities	Rescue at sea, reception ashore	Schools; medical services; legal protection; help with bureaucratic procedures; basic assistance: room and board	Political protest, but increasingly service provision: e.g., shelter in occupied properties; responding to basic needs	Donations of food, clothing, blankets, money. Housing shelter. Socialisation, leisure time entertainment. Other forms of voluntary help
Forms and levels of political engagement	Variable, which has grown over time in contrast to the more rigid border closures implemented by governments	Variable, but increasingly coupled with service delivery	Main purpose (no borders movements)	Variable according to biographical profiles; often absent before engagement experience
Degree of organisational structuring	High (formal organisations, contracts with public institutions)	Combination of formal structures and informal or loosely structured activities	Low, based on self-organisation	Low (spontaneous mobilisations)
Human Resources	Mainly professional staff, volunteers as additional resources	Variable, but often with significant volunteer input	Militants, volunteers	Volunteers only (but evolving in some cases to structured and professional forms)

The first category includes NGOs and other formal third sector organisations, such as social cooperatives or operating foundations. In many countries, this includes the Red Cross. These provide services to asylum seekers, refugees and other types of migrants (e.g., unaccompanied minors, female victims of sexual exploitation) on a mostly professional basis, thanks to mainly public funding. This is the case, for example, with CASs and SPRAR centres (now SIPROIMI). In other cases, however, as in the contention over NGO vessels engaged in sea rescue operations, they may act independently of governments, and even at odds with them, by funding themselves through private collections and donations.

The second group consists of other organised but not as specialised and professionalised actors. Located here, with particular reference to the Italian case, are trade unions, religious institutions, and variously connoted voluntary associations. The most important among these actors combine practical support with forms of political pressure and cultural awareness: for example, in favour of emergency measures, as was also the case in the troubled affair of the amnesty measure already mentioned (May 2020). They employ professional workers, but also many volunteers, can cooperate with public authorities, but also overcome the constraints of legal regulations: for example, offering help to immigrants in uncertain or irregular legal status. Generally, they do not like to distinguish between beneficiaries who are documented and those who are undocumented (for a parallel with the U.S. case, Hagan 2008). Since they solve problems intractable to formal institutions, their activities often benefit locally from the tolerance recalled in the previous paragraph: for example, when they provide medical care or Italian language courses even to immigrants without permits (for a parallel with the German case, Castañeda 2013). However, the hardening of policies has increased levels of conflict with public institutions, even resulting in complaints and legal action.

In the third group can be framed the radical social movements or, in the Italian experience, the so-called “social centres.” In this case, the defence of the rights of asylum seekers and immigrants in precarious conditions is in the wake of other political battles against the state and the capitalist system. The “no borders” demonstrations, especially at crucial border sites from Ventimiglia to Calais, have been emblematic expressions of this. What is new in recent years is a growing engagement in the provision of services to people: what Zamponi (2017) has called “direct social action.” The best known (and controversial) case is that of shelter in occupied buildings (Belloni, Fravega and Giudici 2020). But with it is combined Italian courses, legal and bureaucratic assistance, socialisation activities and more.

Finally, an important new development relates to spontaneous mobilisations of ordinary citizens, often lacking previous experience in

political, associational or religious engagement. The phenomenon took on particularly sizeable proportions in Germany in 2015, coinciding with the entry of nearly one million asylum seekers in what has been called the “summer of reception” (Fleischmann 2017; Pries 2018). Support initiatives are estimated to have involved 10 to 20 percent of the adult German population (Karakayali 2017). There has also been no shortage of examples elsewhere in Europe: for example, providing basic necessities to people in transit, as at Milan’s Central Station (Sinatti 2019); or providing shelter for one or more nights, as in the experience of the Plateforme citoyenne de soutien aux réfugiés in Brussels (Mescoli et al. 2019); or by facilitating transit at border locations, such as the crossings between Ventimiglia and Val Roja (Giliberti, Queirolo Palmas 2020; Menghi 2018), or between Como and Switzerland (Rizzo 2018). These mobilisations, as has been observed, had emotional involvement as their main motivating factor (Karakayali 2017). Over time, this has often waned, in part due to the influence of negative events, such as the terrorist attacks in Paris or the New Year’s Eve events in Cologne, and the opposing emotions they aroused. In other cases, spontaneous mobilisations have instead turned into structured initiatives (Rea et al. 2019).

In terms of the activities carried out, one can generally speak of informal social protection: in Belloni’s (2016) and before that, Montagna’s (2006) terms of “welfare from below,” however, broadening the scope of a concept that they both refer to only reception in the buildings occupied by social centres. Social protection is specified in a few strands: very important is assistance in bureaucratic procedures, and possibly on the legal side. Another form of help refers to moral support, provided mainly by religious groups (Bloch, Sigona, Zetter 2014: 110). Along with political pressure, initiatives aimed at public opinion should be mentioned, with the intention of promoting a more favourable climate for acceptance and commitment to human rights. Overall, *advocacy* is an important component of refugee support. It includes public demonstrations, appeals, protest actions, performances, cultural activities, and legal initiatives (Ambrosini 2014). The coalitions that have formed in their favour link social actors of very different political inspiration and cultural backgrounds, ranging from the social movements already mentioned to the Catholic church. Borrowing an ironic image from Zolberg (2006), we can speak of “strange bedfellows.”

6. *Conclusions. Border defence and human rights: a field of tensions*

Border securitisation measures have regained a high level of priority in the political agendas of parties, governments, European and international institutions. Contrary to the most optimistic expectations of the final years of the last century, after the fall of communist regimes in Eastern Europe and many trade barriers, economic and financial globalisation has not depowered national borders, but, in some respects, has revived their importance: especially vis-à-vis unwanted human mobility. Economic globalisation has heightened people's perception of insecurity, incentivising the assertion of securitarian policies.

At the same time, however, globalisation pushes in the opposite direction. Activities such as tourism, international trade, and cultural exchanges exert counter pressures to the closing of borders. As we have seen, borders function as filters rather than insuperable barriers. The key word to define their meaning is selectivity, rather than absolute closure (de Haas, Natter, Vezzoli 2018).

The selectivity of entry reveals another order of trade-offs, and hence inequalities, in mobility regimes. For some, the nexus between border crossing and security problems does not hold, while for others it is affirmed with an abundance of regulatory tools, technological resources, and economic investment.

Governments can invoke one reason to justify these glaring inequalities in *ius migrandi*, which the majority of public opinion is no doubt ready to share: the Islamist terrorist threat. It is indisputable that terrorist attacks do not originate from Eastern Europe or Brazil. The selection, explicit and implicit, of immigration candidates on geopolitical grounds may appear rational and motivated from a securitarian point of view.

This means, however, that in this respect, terrorism, assuming it has a strategy, has achieved its goal: to sharply divide "us" and "them," to prevent mixing and transitions, to crystallise religious and cultural affiliations. The so-called clash of civilisations, which finds its most pervasive expression in the management of entry, has impacted millions of people completely unrelated to the murderous attacks and unconnected to the perpetrators. Stuck in their aspirations for mobility and betterment, as well as their needs to escape war and repression, they are unlikely to cultivate friendlier feelings toward the West.

The selectivity resulting from the immigration-security pair also debunks the geopolitical horizon to which it appeals, involving citizens of countries in the Global South that are completely distant, even in ideological and symbolic terms, from the Islamist contexts responsible for the attacks. I am thinking, for example, of India, China, the Philippines, and Latin America.

As for today's most controversial aspect of human mobility across borders, namely the right to asylum, the analysis developed here has shown that, in order not to openly disregard humanitarian principles, Western governments do not openly deny the obligation of international protection, but have devised various measures to make it unattainable. The most effective is to delegate to transit countries the task of detaining people who would like to reach EU territory, even as refugees.

Moreover, closures generate the chaotic search for alternative channels of mobility, fueling a market in which legal and illegal operators thrive. Here securitarian policies have with undoubted success resulted in criminalising smugglers, concealing the underlying goal of denying reception to refugees without legal means of travel. These orientations have resulted in the abnormal development of the border control industry, which has drained huge public resources in recent decades, provided a new source of legitimacy for military expenditures, and propelled the development of related technologies and production.

On the domestic front, securitarian policies are opening up a second front of harbingers of danger to the health of democracies: that of curtailing solidarity initiatives promoted by civil society actors and disseminating mistrust of certain components of the now-settled immigrant populations. The criminalisation of solidarity is the bitter outcome of the emphasis on border surveillance in contemporary politics.

The logic of security comes into tension with that defence of human rights that the EU and the Western world have erected as a symbol of their civilisation.

Neither society nor politics, however, is inflexibly consistent in the war against unwanted immigration. The *de facto* tolerance of immigrants (and especially female immigrants) perceived as a useful workforce and therefore deserving contradicts stated closures and paves the way for amnesty measures, of which Italy is a leader in Europe; in fact, an erosion and then a rewriting of internal boundaries, relating to authorised immigration to stay and work, takes place from below.

The contention around the definition and operation of borders, with its implications, thus emerges as a key issue in domestic and international politics in the early part of the 21st century.

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*Invention of borders, invention of legal spaces.
Citizens, subjects and migrants in the history of
Law**

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*1. The boundary between protection and exclusion in the
history of Europe*

The history of humanity in the Western world has for centuries taken place in the context of tension between the natural desire for freedom to move, to know, to discover better places to live in an environment originally 'common' to all and limitations to this instinct due to a multiplicity of factors (Stara 2012: 169-171).

In contrast to the term *frontier*, also frequently used in the sense of crossroads, a space of 'hinge,' circulation, meeting and socialisation of people and cultures (Cavanna, Vismara 1982: 9-11; Alzati 2001: 55-68; Zanzi 2004: 143-427; Merlin, Panero, Rosso 2013), that of *border* defines the limits of an area of appropriation, which in turn can be defined in a multiplicity of meanings and contents.

From the point of view of the delimitation of a territory, it could be argued that the boundary has constituted and constitutes one of the cornerstones of the social, even before the legal, life of the Western world, well carved out by a famous fragment of Roman law, in which the fixing of boundaries is configured as a characteristic pertaining to

* Paragraph 1 is written by Claudia Storti and paragraph 2 by Filippo Rossi.

the relations between men both in the private sphere (of property for example), and in the public sphere of the organisation into communities or peoples (called *gentes*). The appropriation of property and the founding of 'kingdoms' are at one with the separation between men, on the one hand, and between peoples organised in different forms of government, on the other².

The problem of so-called migrants has become central to the political debate in the Western world especially since the end of the 20th century, albeit with quite different characteristics from those of similar events in the past. Such centrality has inevitably prompted the sensibility of legal historians to reflect diachronically and publish numerous studies, including interdisciplinary ones, on the 'derivatives' of the border paradigm, with regard to the concepts of migration, foreignness, 'other' (foreigner or unwelcome citizen), inclusion and exclusion.

Reframing, through the lens of the present, mostly forgotten phenomena has made it possible to identify a few recurrences over a very long time span, which I will try to summarise in broad stages in order to trace the characteristics of the legal use of the boundary paradigm (I want to recall here, among the papers published in the proceedings of the first conference I attended on this topic, Fögen 1993: 1-17).

I will start, first of all, with an initial distinction of the category 'border' into two main sub-categories: the physical-geographical and what we might define as personal and identity, in the sense of an individual's belonging to a community which in turn can be identified with people, city, hamlet, nation and state.

From the first point of view, the physical-geographical one, if we think back to ancient times, we must refer, first of all, to barriers of a natural character. With the progress of time, man added to them those of artificial character, consisting of the circumscription of territories, in the absence of natural barriers, with walls.

From the second point of view, the personal one determined by membership in an ethnic or political community, the problem of historical reconstruction is much more complex.

2 D. 1.1.5 Hermogenianus libro primo iuris epitomarum: Ex hoc iure gentium introducta bella, discretæ gentes, regna condita, dominia distincta, agris termini positi, aedificia collocata, commercium, emptiones venditiones, locationes conductiones, obligationes institutæ: exceptis quibusdam quæ iure civili introductæ sunt.

1.1. 'Ethnic' borders in the Europe of migration between late ancient and early medieval times

In historical times, and with particular regard to European history, the distinction on the basis of ethnicity of the so-called 'migrant'³ and also 'barbarian' peoples - at certain stages tending toward mutual assimilation, at others engaged among themselves in bitter conflicts - became a qualifying element in the political entities of the West, in the time roughly between the 4th and 8th centuries⁴.

The Roman Empire, now concentrated around the Eastern capital of Constantinople, was unwilling or unable to oppose the westward and southward movements of Germanic and Slavic peoples through the 'permeable' territories of Europe and the western Mediterranean. Between wars and federation agreements or acts of legitimation, political bodies on an ethnic basis were established in Europe with a slow progressive definition of the territorial spheres subject to their influence and, therefore, of their borders within which the foreigner could enter only if admitted. As provided, for example, by the Edict of Rotari, after entering, the foreigner would have to observe the law of the Kingdom⁵. The early Middle Ages also saw another very peculiar phenomenon: membership of an ethnic group that had come from afar was assigned significant symbolic value, so much so that the 'new' Europeans did not hide or even invent "stories that traced their origins back to migration from distant countries."⁶

After the end of these migrations or, rather, after the final settlement of the Kingdoms between the 8th and 11th centuries (if we think of the last great migrations/conquests of the Hungarians, Danes, and Normans), from the point of view of law, the history of borders in Europe became primarily a history of the construction of legal spaces within well-defined boundaries.

3 As Walter Pohl reminds us, the expression *migratio gentium* with a meaning similar to the current meaning of migration only dates back to the 16th century (Pohl 2019: 8). The Latin term *migratio* referred in late antiquity and the early Middle Ages not to the migration of peoples, but to the flight of slaves (Pohl 2019: 4 also for reference to sources).

4 The reasons for this phenomenon continue to be debated among historians; see for a summary and bibliographical references, Pohl 2019: 10.

5 Roth. 367, De waregang, in *Monumenta Germaniae Historica, Legum*, t. IV, Hannoverae, impensis bibliopolii aulici Hahniani, 1868 (reprinted 1965): 85.

6 I quote again from Pohl 2019: 7-8 on the different meanings of migration, the use by politics and historiography of the phenomenon of migration in a positive or negative sense; see for bibliographical references, Storti 2019a: 609-651.

1.2. Boundary as delimitation of the legal space of 'benefits' and obligations between the Middle Ages and the 20th century

Created through the continual overcoming of borders not effectively controlled by the organisation of empire, the society of Europe bases its public law on the distinctions and differentiations caused by the progressive definition and consequent defence of borders.

So it was, as already noted, with the strengthening monarchies, but so it was also with one of the most innovative 'inventions' of European law, namely the commune between the 11th and 12th centuries, when the re-discovery of Roman law and studies on its interpretation and application brought back to the centre of legal reasoning, not only the ancient categories of *ius gentium* - in the private sphere with property and in the public sphere with the partitioning among governments of areas of influence (the so-called *Regna*) - but also the definition of the boundary with regard to relations between peoples i.e., between *gentes*.

Between the early and late Middle Ages, it was, therefore, the territorial boundary that prevailed over ethnicity. This is evident, for example, from the origin, between the 11th and 12th centuries, in the urban sphere, of a body such as the commune, which 'revolutionised' the principles of public law. The repopulation of towns and villages, which was its prerequisite, took place through the attraction, within their boundaries, of the inhabitants of the countryside who would find 'freedom' there. At the same time, in the cities (as in the Kingdoms) coexisted people who, by origin (*natio*) or family tradition, 'professed' different laws and thus were differentiated in their personal *status*, while uniformly enjoying the protection of the order in which they had citizenship (Costa, 1999-2002).

From the point of view of the history of institutions, in monarchies and communes the boundary was closely connected *roughly* with what we call the ownership by the legal system (whether monocratic or representative in character) of all public powers over the persons to whom, whether subjects or citizens, the *status of* citizenship was conferred. Citizenship was not, however, defined in today's terms of the right to enjoy rights, but as a benefit. Those who violated the duties of citizenship by opposition or, even more subtly, dissent to the ruling power, and criminals, if they managed to find refuge beyond the borders and chose exile to escape local 'justice,' suffered the so-called punishment of banishment and lost all legal protection (their killing was not punished) unless, other jurisdictions were willing to take them in and provide them with the protection they could otherwise no longer obtain in the system to which they belonged.

In other words, the definition of borders was used, first and foremost, as a means of delimiting a 'legal' space for the differentiation

of citizen or subject from foreigner in 'rights' and obligations. Within that space, in addition, took place the selection between 'citizens' to be retained and those to be ousted, and between outsiders to be attracted and persuaded to reside or, conversely, those 'unwanted' or to be eliminated if they crossed its boundaries (think of the treatment of so-called vagrants) (Storti 2013b: 61-77; Storti 2012a: 123-148).

A constant or pillar of Western legal reasoning from the twelfth century onward, then, has been the use of the boundary both in defining the space for the exercise of sovereignty and in defining the enjoyment of citizenship and its benefits, which for centuries remained, however, in the 'availability' of the holders of the governing powers and - allow the huge chronological leap - certainly until the first half of the twentieth century, despite some 'liberal' constitutions of the previous century. It is not useless to recall that, as far as Italy is concerned, the 'freedoms' enunciated in the 1848 Statuto Albertino were 'legally' compressed not only in the case of the declaration of the 'state of exception' (or siege), but also through less striking and more pervasive institutions such as those of the ban on migration (Pifferi 2009: 328) or the denial of the "liberal principle" of open borders (Cazzetta 2018: 222) and, in addition, the political administrative confinement, already sanctioned by the liberal state and perfected by fascism, for 'dissenting' citizens or delinquents, or, again, the substantial revocation of citizenship as occurred with the racial laws (Storti 2019b: 75-76 and 83-91).

1.3. Exceptions to the boundary paradigm in medieval and modern times

Since the Middle Ages, and later in modern times, there have, however, been numerous exceptions to the boundary paradigm.

First of all, it should be noted that in certain spheres of activity, such as, first and foremost, those of culture, trade and finance, those centuries were, in fact, also the centuries of globalisation (with the consequent phenomenon of the so-called supranational republics of culture, finance and the market) facilitated, in the European context, by the legal institution of the extraterritoriality of the rules relating to a person's capacity, which guaranteed its enjoyment even beyond the borders of the territory of which he or she was a citizen. In addition to these categories, there were professors and students, *legates* (or ambassadors) representing municipalities, kings and other forms of government, political professionals such as mayors, judges and legal or economic advisers, artisans and artists, pilgrims and preachers. Since at least the 12th century, the so-called *salvacondotto* (literally 'safe

conduct', which is concession of entry and protection: our passport) also appears⁷.

Second, with the advances in navigation that brought down the physical barrier of the Atlantic Ocean, Europeans were able to begin to go outside the 'physical' borders of Europe. Voyaging Europeans were transformed from migrants and brave explorers into conquerors in a short period of time, resulting in the occupation of lands and the destruction of entire peoples living there thanks to a use in a 'negative' sense, so to speak, of the border paradigm (Cassi 2004; Nuzzo 2004).

Given that, in the absence of boundary determination, the exercise of sovereignty was not recognisable (Meccarelli 2012: 7-31), the justification for the conquest of the Americas was based, as a matter of law, on the difference between territories that were 'free' and protected – because they were well demarcated – by the influence of a governing power, and territories that could not, on the other hand, benefit from such protection. Territories not organised through the definition of borders and sovereignty, as understood by the Europeans, qualified as *res nullius*, were open to exploration and natural freedom of communication and trade, and susceptible to occupation. There were therefore no formal obstacles to their conquest by Europeans (as had roughly been the case with the migrating 'Barbarians' in Europe).

At the same time, at the very end of the sixteenth century, as Alberico Gentili noted in his 1598 *De iure belli*, it appeared strange to Europeans heading eastward instead that there were systems such as China's that prevented foreign merchants from crossing their borders and were unwilling to grant safe conduct (regarded as equating to a state of truce)⁸.

1.4. The boundaries of sovereignties in "civilised and Christian Europe"

How do we frame a European history of the 19th and 20th centuries through the category of the border? The paradigm of the border was, certainly, relevant in the organisation within European states and in the relations between Europe and the rest of the world.

It has already been noted how, during the European migrations to the Americas from the late 15th century onward, natural instinct (or the natural right of freedom pertaining to all living beings) had been able to prevail over the rules shared by men (the so-called *ius gentium*), since the Europeans themselves had not found in the lands inhabited by the tribes of the Indios of the Americas any indications of the ex-

7 I merely mention Bognetti 1930: 1-58; Bognetti 1932: 125-210; for later periods, Alberico Gentili 2008: lib. III, ch. XIV, 288 ff. (1598).

8 Alberico Gentili 2008, lib. I, ch. XIX, 124-134, 129-130 [145].

istence of politically organised bodies within territories delimited by borders in the Western manner. This had been the basis for the legal justification of the conquest (Nuzzo 2004: 87 ff; Nuzzo 2012).

Something similar happened with regard to sub-Saharan Africa in the 19th century. From the point of view of Europeans, who considered themselves superior in their degree of civilisation to the rest of the world and conceived, therefore, of a distinct divide between Europe and the 'others,' only after a territory had been occupied by a state in the strict sense (i.e., corresponding to the European model) would its borders become insuperable by third states (Nuzzo 2012: 249-258). If then the occupiers (obviously Europeans) were faced with tribes connoted by a higher level of 'civilisation' than other Africans, the occupation of the territory would have to take the form of a 'protectorate,' but the boundaries of the protectorate (i.e., the sphere of influence of the European state exercising 'protection') were still established by treaties between European states (Nuzzo 2012: 260-261).

The subject of borders, moreover, came up again even within self-described "civilized and Christian" Europe (and the United States of America, which had ended up sharing and adopting its principles), especially at the time of the Congress of Vienna 1814-1815, which sanctioned the success of the so-called "European concert" achieved to secure the balance between the Powers that had defeated Napoleon's armies. The intent had been to end both, in general, the continuing state of war between European states to extend their borders and legal space, which had characterised the centuries prior to the French Revolution, and, in the immediate term, the spread of the French Revolution's doctrine of natural rights and the territorial and legal expansionism of the French Napoleonic era (Storti 2012b: 51-145).

In the fleeting initial phase of the French Revolution, the principles of liberty, equality and fraternity of man were conceived as superior to the limits posed by state membership, and the freedom of peoples as superior to the 'space' of state sovereignty, in that the peoples-nation were supposed to regain their right to choose their place in the world and their organisation (Storti 2012a: 113-114). In contrast, the Congress of Vienna and subsequent peace treaties reaffirmed the full restoration of sovereign states within their former boundaries and without regard to their multi-ethnic character.

It was then that, with yet another reaffirmation of the category of international law as the law of territorial states and not of peoples, the defence of borders by sovereign states generated an extraordinary 'field' of tension (and thus opposition). The desire to consolidate the intangibility of legal spaces as a means of restoring control over people and nationalities clashed, in fact, with the affirmation of the rights of man as belonging to a people or nation that was denied freedom,

independence and the right to choose its own autonomous form of government, as affirmed, precisely, by the French Revolution.

In other words, the strict fixation of territorial boundaries in treaties between the sovereign states of the “European concert” perpetuated the collision between citizenship, as belonging (or subservience) to the state, and nationality – a term that is itself polysemous, as already noted – as belonging to an identifiable community, first and foremost, by boundaries not necessarily coinciding with those of state membership, but, precisely, by boundaries constituted by the identity of origin, traditions, culture, language and religion (on subsequent definitions of nationality between the nineteenth and twentieth centuries in Europe, Colao 2001: 255-360). The one and the other membership opposed, moreover, a third conception of the organisation of the world of ‘humans,’ namely, that constituted, according to cosmopolitan principles, by the commonality of humankind, ‘solidarity,’ and the elimination of differences due both to national diversity (such as, precisely, ‘borders’ or limits of a cultural nature) and to the diversity imposed by citizenship as subservience to a sovereign state⁹.

These fundamentally conflicting ideals, such as that of nationality and that of cosmopolitanism, proved, when tested by facts and the will of politics, to be pure utopia, and although repeatedly re-proposed, after the end of World War II they failed (and still fail) in practice to achieve implementation. As for the nineteenth century, just think of the history of Italians: beyond the ideals of the Risorgimento, with the affirmation of the principle of nationality, or, otherwise, with that of cosmopolitanism advocated by some of its greatest exponents, unification was essentially accomplished only through agreements between European states (Storti 2013a: 33-62)¹⁰.

If we turn to the twentieth century, nationality was wielded as a ‘weapon’ by Nazism for the inclusion of the Austrians in the German

9 How can we fail to recall in this regard the many theories of cosmopolitanism and perpetual peace dating back to at least the second half of the sixteenth century (for some mention and bibliographical references: Storti 2012b: 110-116) reformulated in the celebrated text of I. Kant, 1883, which defines cosmopolitanism as hospitality (ch. 3: 39) and considers diversities of language and religion as tools deployed by nature to divert men from intermingling and instead dispose them to hate each other and create grounds for war (51), as well as by many intellectuals and politicians in the 19th century. Regarding the regulation of the legal status of the foreigner introduced in the Italian Civil Code of 1865, which allowed his or her equality with citizens even in the absence of reciprocity of treatment, I merely refer to C. Storti, 1993: 501-557.

10 See, for recent analysis from different perspectives, the writings of Lacchè 2011, Mazohl 2011, Cioli 2011, Heydermann 2011, Bonazzi 2011, López Vega, Martínez Neiba 2011, Lucrezio Monticelli 2011, Filippini 2011, Guzzo 2011; Greppi, 2020: 79-108.

state, but it was not used by the Kurds and other minorities, dispersed among different states, to gain protection or, indeed, unification.

Not only that, after World War I, the affirmation of supranational protection of the rights of the individual, which connoted the establishment of the League of Nations, had very little effect with respect to policies restricting freedoms within the borders of sovereign states.

Moreover, in the name of the intangibility of the powers of the sovereign state within its borders, both the UN Declaration of Human Rights and the many subsequent treaties made when the memory of the atrocities committed before and during World War II was still alive; declarations and treaties that were supposed to enshrine both the 'transference' of cosmopolitan principles into the category of human rights and the protection of minorities against crimes of genocide still await full implementation (Sands, 2017).

1.5 From borders to walls

Thus we come to the present times in which the paradigm of borders has obtained a further declination in that of 'walls,' as mentioned in the introduction by Maurizio Ambrosini, to be used as opposing barriers to those who wish to enter a territory, or, on the contrary, to prevent them from leaving detention areas, as is the case in camps outside Europe, or within European states in so-called reception centres for asylum seekers, or for those awaiting recognition or to be sent back to their land of origin (Giolo, Pifferi 2009; Rimoli 2014; Augusti 2017; Pifferi 2018: 36-56; Pifferi 2019: 179-197).

The field of tension generated by the state-migrant relationship has generally been resolved, especially since the fateful Sept. 11, 2001 events, and contrary to all international conventions on the protection of human rights, by complicating and increasingly limiting the rules devised by states to prevent immigration, or, indeed, by promoting the building of walls. And it is precisely this kind of intervention that, according to Mary Bosworth in her concurring *Border control and the limits of the sovereign state*, demonstrates the decline of the state in the face of globalisation and the weakness and inability demonstrated by those states that adopt such measures, mostly of an exquisitely administrative nature, in the presumption that they are manifestations of their strength: "The border cannot protect us, or differentiate us from them" (Bosworth 2018: 199-215, esp. *conclusion*: 210; Bosworth, 2014). The very open issue, albeit the subject of endless studies, demonstrates the contrast between the roiling of scholars and human rights advocates and the very harsh tragic concrete reality and currently appears to be without solution.

2. *The boundary, the we and the other in the history of law*

2.1. *Boundaries and the state: the current state of boundaries*

The recent resurgence of control over individuals and groups within a specific territorial dimension seems to contradict the loosening of the bond between state and rights, which distinguishes the affirmation of legal subjectivity after the terrible fascist and national socialist eras. There is manifest, in our society of the Third Millennium - albeit born out of the rubble of World War II and characterised by the centrality of the human being and the 'open' ownership of rights - a return to the supremacy of the nation-state and to the closed dimension of legal spatiality (the phenomenon is very evident in the Global North: Ambrosini 2020; for the European perspective in particular Ambrosini, 2019).

The thickening of borders in a world that, in recent times, has made many efforts to do without them - a phenomenon most evident in recent years - apparently undermines that ordered reading that sees the state as a recent and, at the same time, outdated historical acquisition. In our global society, which associates itself with the idea, or ideal, of a boundless right (Vincenti 2007: 14-15), the border in fact represents the most visible manifestation of the return to a 'local' sovereignty that would (or should) have passed the baton to new forms of government, in the wake of a historical, political, economic, social and legal path aimed at eroding the prerogatives of the state and its barriers, to the benefit of forms of 'shared', 'plural', 'universal' citizenship, as we say today, perhaps superficially.

I insist on the superficiality of such an interpretation, because the widespread perception that not infrequently accompanies it ends up idealising the present, associating the border with the formation of the state and the dissolution of the former with the dissolution of the latter. But, if this were the case, if the path were a straight line marked by a starting point and an end point, one would be faced with neither the one (the border) nor the other (the state), and it would be very difficult, if not impossible, to justify the identity-based, or sovereignist, 'twist' that has gained and is gaining momentum in recent years: a phenomenon, as is well known, that arose or was reinforced by Islamist terrorism and the exacerbations of the 2008 *big crisis*, the effects of which in terms of migration and the employment crisis stimulate the recourse to rigid lines of separation, generally immaterial (the borders), but sometimes endowed with such obvious and brutal materiality (the walls) (effective iconographic representations

of walls in Molinari, 2020: 43-48), as to cast doubt on the resilience of the 'system' of human rights in its entirety¹¹.

In fact, as historiography has noted, forms of precise linear boundaries were already established in medieval times, with reference to which, to speak of a state in the technical sense would be inaccurate to say the least. Nor is it possible to deny the existence of boundaries in even more distant historical periods, when power relations were based on ties that were more personal than territorial, sociality did not experiment with permanence, and sovereignty was not substantiated in the relationship that binds an authority to a well-determined place, because both were loose (Quaglioni 2004).

Difficult history, in short, that of borders. A history that, in order to be understood, presupposes abandoning an ideal line of border refinement as we understand them today and looking at the border for what it is: a dividing barrier, a legal barrier, which not infrequently also corresponds to a physical dimension. Indeed, historically, each group marks boundaries between the inner and outer worlds, that is, between *inside* and *outside*, and, in so doing, gains self-awareness through the dividing line that separates it from the *other*¹². It follows, therefore, that one can "think about belonging to any social aggregation only by contextually delineating the criteria of separation between the 'inside' and the 'outside' of it" (Cernigliaro 2013: 17).

Looking at them from such a perspective, borders (and the gradation of their modes of implementation within a scale of forces) represent, among other things, the privileged tool for ascertaining how, at a given historical moment and in a specific geographical, political, social, economic and cultural context, the relationship between the two poles - inclusion and exclusion - within which the binomial between *citizen* (i.e., in a broad sense, the individual *within* the community) and *foreigner* (i.e., the individual, by contrast, *outside* the community) is configured. This is because the conflict between the movement of individuals and groups, on the one hand, and the legal strategies adopted in their regard, on the other, constitutes the constitutive trait of social dynam-

11 The international debate on the true or alleged failure of human rights and the human rights movement is indeed vast and it is not possible here to summarise it, not even in brief: I refer, therefore, to A. Förster, 2016: 185-199 (insights of interest also in Pannarale 2018: 89-100), as well as, most recently, to Focarelli 2020: 134, who, of the debate, points to the most recent and authoritative international bibliography.

12 Again Vincenti 2017: 22 observes how the tendency to "mark the border" between things and rights rises from a real "inner necessity of the human being." Of the border as an 'oppositional figure' (Costa 2017: 27) I dealt in more detail with "reading" Siccardi's volume 2021 as part of the *Dialoghi migranti* initiative, organised by the *CRC Migrazioni e diritti umani* of the University of Milan, on July 18, 2022.

ics, a trait of which communities offer, throughout the long ages of history, varied examples (“The need to mark an area of belonging constitutive of a group’s identity seems to be [...] a constant in the historical development of civilisation,” Marchetti 2006: 67).

2.2. *In or out. Boundaries as a tool for inclusion and exclusion*

In short, the juxtaposition of community and stranger and the strategies for recognising, from time to time, the supremacy of collective living over the non-group subject profoundly affects the nature and power of boundaries, to the extent that they represent the first great constant in the historical experience of boundaries and their continuous expansion and contraction. Of paths of exclusion of citizenship we can unearth significant manifestations in the ‘cradle’ of Western civilisation, the Greek *polis*, if we only consider that *philia*, that is, the solidarity and benevolence between members of the same *clan*, from which equality before the law derives, was denied - as incompatible with the concept of ‘altruity’ - to the foreigner (the barbarian, the one who stutters incomprehensible sounds: *bar bar bar*, the Greeks said). The denial of *philia* (a meta-legal value), from which derives the non-granting of *politèia* (a very juridical condition, on the other hand), expresses an evident ‘constitutional’ prevalence of the *us* over the *other*, in the sense that it founds, by constituting it, the order to whose safeguard the boundaries rise¹³. It then seems to me significant to add that, in the Greek world, the concept of positive law – that is, the one enacted by man – was expressed by the term *nòmos*, which refers to the measurement of the earth, to the operation of giving boundaries (Sanò 2017: 40).

The same conception of law as a boundary, which divides and gives measure, foments paths of exclusion expressed in vocabularies similar to ours and in somewhat closer times. The stranger, in archaic Rome, is called *hostis*, a word that also in Cicero’s classical Latin expresses above all the condition of “enemy,” thereby recalling the attitude, psychological but also juridical, of hostility (precisely) towards the condition of ‘altruity,’ which in turn implies the condition of abnormality, of foreignness to the dimension of rules, that is, that situation of those who do not find themselves framed in the norms of the community (Cassi 2016: 100; Cassi 2015: 26-27 and 15-17 for reflections on the stranger in ancient Greece).

After the period of the barbarian invasions – but it would be better to say *migrations* – when Europe had become a permeable territory without borders, a crossroads of encroachments, conquests and settle-

13 On the otherness of the polis, “constitutive of Greek certainty in its own superiority: we, the Greeks, and in front, the barbarians,” cf. Schiavone 2019: 10-15.

ments, the history of law coincides to a large extent with the history of the invention of legal spaces, through the delimitation of borders and the recovery of the ancient categories of inclusion and exclusion (Storti 2011: 383-41; Padoa Schioppa 2011: 1-78).

Projecting such patterns onto the medieval and modern ages, we can say that that ‘unwelcome guest’ who is the foreigner coincides with the physical or juridical person belonging to a community other than the one in which he or she is, and that their presence or transit in a territory that is not their own determines a ‘short-circuit’ between the (static) dimension of the nascent state with its struggle to assert itself within certain boundaries, and the (dynamic) one of the movement of people within multiple spaces belonging to different sovereignties, in a world in which the centres of imputation of power are many and their boundaries liable to change, or at least very frayed and brittle (Storti 2017: 17-20).

A profound dynamism of people, professions, armies, and inventions (in the Middle Ages, mobility, all kinds of mobility, including migratory mobility, is very strong) stimulates the invention of principles and institutions (personality of law, extraterritoriality), contributes to the emergence of new branches of law (amongst all, what would later be international law), activates mechanisms of intervention, protection, and relations (notices, safe-conducts, diplomatic corps), and, above all, requires discerning *which* foreigners to turn against the arsenal of instruments devised to defend borders (Storti 2019a: 609-651; Gamberini 2017: 9-13).

2.3. *The (discriminatory) politics of borders: from the city to the New World*

This reflection leads to another constant in legal history: that boundaries are selective, that is, strongly and intentionally discriminatory.

Think of the commune, whose walls represented an insurmountable divide between the inner and outer worlds, but only for those who were undesirable: the poor, the plague-ridden, the criminal, the political opponent, the exerciser of activities ‘harmful’ to the community. Otherwise, when the outsider was *interesting*, here instead are the barriers loosened, the gates raised and the doors opened. The adjective *interesting*, which does not seem accidental to me, derives from the Latin verb *interesse*, meaning “to stand in the middle,” and refers to the situation of one who occupies an intermediate position between *other* and *us* (because it is an *other* who would like to be *us*, and whom *we* would like to be), effectively rendering, even on a metaphorical level, the act of entry of the stranger from *outside* to *inside* the city.

But the gates presuppose, by their very nature, a bidirectional motion: in fact, nothing prohibited the community from excluding the

foreigner on the basis of assessments – just as discretionary and uncontroverial as inclusive ones – in terms of social condition, of political and economic needs that the *other* could not satisfy, of violation of *salus* (understood as integrity and health, in the broad sense that the polysemous term encompasses) that the foreigner could jeopardise (Belloni 22014; Storti 2013b: 61-77; Meccarelli 1998).

The ‘closed universe’ of the city (which is perhaps the most complex centre of imputation of boundaries in the Middle Ages, and at the same time the most defined, but similar discourse applies to monarchies), that is, this oxymoron between openness and closure is but a part of a whole: a whole indetermined by the lack of centralisation of power and pluralism of sources; a whole where membership of a community (or several communities) implies a personal link with a subject exercising *iurisdictio*; a whole in which the privileged criterion for limiting legal spaces consists in the claim of a *civitas* to be such through the *iurisdictio* of those who govern it, admitting and excluding participants according to rules established by politics (Costa 2002: 80)¹⁴.

Selection at entry, discretion, and public health constitute, after all, the cornerstones of the politics *of* and *on* borders even in the modern age, in the arc of whose troubled experience (especially constitutional, in the sense just above) (Hespanha 1982: 455-510) borders become less unstable, space appears to be furrowed by a less dense web of boundaries (Gamberini 2012: 408-409), and the prevalence of public interest over *ius peregrinandi* (the right to travel) that marked the Middle Ages comes to be fully enucleated in a perspective favorable to the maintenance of order.

Let me elaborate on this by highlighting how the right to migrate, even if theoretically removed from the scope of universal natural rights, ends up finding itself limited by the progressive fading of the medieval concept of extraterritoriality, in parallel with the centralisation of state powers (Storti, 2020: 62).

Freedom of movement, in the modern age, exists. The reflections of the Dominican Francisco de Vitoria, founder of that School of Salamanca to which so much is owed on the elaboration of human rights, are well known, with his upholding the existence of an *ius naturale*, an expression of *naturalis ratio*, to which positive law (including *ius gentium*) must necessarily conform. In *Relectio de indis*, 1539, Vitoria wrote that the *naturalis ratio* participates in the human inclination to *communicate*, that is, the tendency of men to come into contact with one another: hence the lawfulness of “*ius peregrinandi et degendi*,”

14 As well as 238-239 for the necessity of definite places on which to exercise it, 178-180 for the figure of those who exercise it, and 365-367, on the obligatorily circumscribed addressee, but see also Grossi 22006: 130-135. On the ‘exclusionary’ relationship reserved for non-recipients, see Storti 2012a:123-148.

to be exercised, however, without causing harm to the peoples of the Indies (the so-called “barbarians”) (de Vitoria 1557: 352 and 356)¹⁵.

On this basis, however, jusnaturalism intervenes, which, while committed to elaborating a universal system, is aimed at averting conflict and war, and subjects the exercise of *ius migrandi* to very precise conditions, in fact reinforcing the boundaries: it is better to leave *uti singuli*, argues Hugh Grotius, because otherwise “civilis societas substistere non potest” (Grotius 1625: 194-195)¹⁶; it is permissible to seek one’s fortune elsewhere, where at home this is not possible, adds Samuel von Pufendorf (Pufendorf 1672: 1210-1212)¹⁷; detachment from the *civitas* must find itself subordinate to the *iurisdictio* of the state, Christian Wolff points out (because it presupposes a rupture of the *pactum societatis* established in the social contract) (Wolff 1744: 122)¹⁸, only to whom it is incumbent to regulate, limit or exclude it, provided that it is within the boundaries of the *iustum*, clarifies Christian Thomasius (Thomasius 1720: 20-21)¹⁹.

But migrate to go where? There where borders are absent, and therefore state sovereignty is lacking: the lands of the *Indians*, which can be legitimately occupied by Europeans, just as the barbarians of late antiquity had done with Europe.

It is the politics of the “generalisation of the linear political boundary that European states extend to their colonial territories as well” (Marchetti 2006: 1), through which delimitations of national spaces and migrations remain deeply interconnected even in close eras. Very close to us.

15 It was, as is after all easy to imagine, an asymmetrical construction, conceived from the point of view of Europeans: see Ferrajoli 1992: 17-52, (especially 26-27), Pifferi 2009: 333, as well as Costa 2014: 31-36. On the invention and control of new spaces see Cassi 2004, and Nuzzo 2004: passim.

16 “[...] credibile est ad liberam civium discessionem consentire populos.” The abandonment of the individual, however, must not be detrimental to the entire collectivity on the basis of a “regula naturalis æquitas”: 195). On the contribution of the natural law school to the theorisation of *ius migrandi* (and the creation of the new borders), see Costa: 44-46, as well as Pifferi 2009: 333-338 (I dealt with the topic in Rossi 2019: 13-14, to which I refer).

17 Lib. VIII, ch. XI, Quibus modus esse civis qui desinat, § 2: 1210-1212 (“Illud frequentissimum et, ut quis sponte, permittente sua civitate, in aliam civitatem concedat, sedem ibi fortunam fixurus”: 1210).

18 “In statu naturali nullum datur jus emigrandi; hoc enim supponit civitates esse constitutas, consequenter a iure civitatis dependet” (ch. I, § 154: 122).

19 Thomasius who circumscribes peregrinations within the protection of the collectivity (*dominium eminens*) incumbent on the sovereign (lib. I, ch. I, §§ 100-104 and 107-108: 20-21). Thus, although “*jurae naturae licitum omnibus migrare ex civitate,*” “*si invitâ Majestat siat, discedere cives ex civitate jure non poterunt*” (Thomasius 1698: 126-127).

2.4. *Exceptions, controls, discretion: the border as a barrier from the community*

Although it cannot be denied that, with the transition to the contemporary age, the territorial sovereignty of the state exists progressively attenuated, the slow march toward the universality of rights encounters a brake in flows, a phenomenon certainly known from antiquity but increasingly burning between the nineteenth and twentieth centuries, to which nation-states react by tightening the instruments of exclusion elaborated in the past (Augusti 2017, and the bibliography cited therein)²⁰.

Migration waves must be governed internally - which means, also and above all, discretionarily, the convulsive decades separating the 19th from the 20th century seem to suggest - because it belongs to state sovereignty to 'manage' the borders, and thus, if appropriate, to repel foreigners who want to enter them. A few paradigmatic examples suffice here. Northern-European, specialised and non-politicised are the *extranjeros* admitted to South American countries, which progressively tighten borders previously left open to foreigners of various origins and backgrounds (including Italians), whose entry into the country was indispensable to populate (and cultivate) immense and uninhabited legal spaces (S. Costa 2007: 269-285; Hernández 2013: 23-24). No different attitude of closure was manifested by the Americans and the British toward Asians and Russian Jews, respectively, on the basis of arguments that were often specious but capable of appealing to collectivities afraid of the *other* (Wray 2006: 302-333; Pifferi 2012: 265).

Everywhere, in the course of an increasingly less liberal nineteenth century, categories of 'attenuated subjectivity' for the foreigner ("weaker subjective rights," or mere "legitimate interests," according to Raneletti 1904: 1030) are experimented with. Everywhere administrative regimes of migrant 'custody' are prepared (I think of the U.S. Immigration Act of 1891, and the "temporary removal" of "aliens" that allows for the prolonged detention over time, even months, of migrants in a kind of limbo, "as they were not there") (Pifferi 2017: 90-97). Everywhere expulsions are used, criminal in content but administrative in form, characterised by a lack of *due process of law* and never, or almost never, appealable (thus the British Aliens Act of 1905) (Pifferi 2016: 839-862). Everywhere, health checks are required, for reasons of public order, on an ever-widening category of individuals carrying 'pathogens': workers, refugees, prostitutes, vagrants, but also socialists (the dreaded and unionised socialists) or, again, individuals

20 A reading of all the essays that make up the collection is recommended.

belonging to undesirable ethnicities or races, often on the basis of physiognomic presumptions with a Lombrosian flavour.

Thus, the label of *indeseables* (undesirables) is that which the Argentine *Ley de residencia* of 1902 (*Ley de residencia* 1902: 1006-1007) ascribes to all undesirable foreigners – so many, and so different from each other – subjected to the ‘cordon sanitaire’ that rejects and expels them from the healthy but vulnerable ‘body’ of the host state. In short, in the face of ‘mala inmigración,’ the ‘work of purification and selection’ of flows (I quote from an unapproved 1904 Argentine project on foreign workers), is portrayed as the categorical imperative of the state, which claims the right to limit the landing of foreigners on its borders (Aspell de Yanzi Ferreira 1987; Rotondo 2017: 33-40; Rossi 2019).

Obsession with barriers, then. Nineteenth and twentieth-century borders, raised also and above all in order to intercept the consensus of a public opinion frightened by the increase in landings, serve first and foremost to invent national identities ‘by successive subtractions,’ through the inclusion of the excluded within an increasingly nourished set of undesirable categories, giving legal guise to the fears of communities that, without knowing what they are, know or think they know what they do not want to be (Pifferi 2019: 179-197).

An operation carried out through an ‘elastic’ conception of *law*, deferring to the executive some particularly delicate and sensitive matters - such as the condition of foreigners - in order to proceed in a more straightforward manner than Parliament, responding to the need for a prompt solution that the flows require. Thus, a law in the ‘material’ sense, including regulatory or ‘political’ policy acts, with strong discretion in form and content, to stiffen the boundaries. Thus, a regime of exception is invented, or it would be better to say a regime of ‘regular exception,’ because it is governed by law, but the law of a world in which emergency has become the everyday. A ‘regular exception’ destined to come to the fore again and again, if we think that, in Chile, the 1927 *Ley de Seguridad del Estado* was invoked several times between 2018 and 2019 to counter strikes and protests, and facilitate repatriations.

2.5. The annihilation of worthless lives: the border as a barrier from humanity

So far we have seen the border as a barrier *of* community. Then, in the twentieth century, abetted by the intertwining of distorted readings of social Darwinism, the supremacy of race, and the need to secure ‘living space’ by any means, here is where the processes of exclusion and selection operated by borders are employed to place the *other* outside of humanity: not simply by excluding him, but by eliminating him. It

is the abomination of the transformation of the concentration camps set up during colonial wars (in Cuba, South Africa, Namibia, to name some of the earliest examples) into full-scale camps of true extermination (Kotek, Rigoulot 2001; Costa 2017: 13-19; Nuzzo 2006). It is the *anus mundi*, to quote the horrifying words of Heinz Thilo, an SS doctor who actively participated in the havoc committed at Auschwitz (he who was responsible for selecting the internees to be sent to the gas chambers), in observing, in disdain, some of the prisoners in the *lager* (the episode is reported by Czech 1989: 16).

Within *Axis Rule in Occupied Europe*, just before the famous definition of genocide by which we still know it today, Raphael Lemkin recounted the legal construction of the new and aberrant spaces of destruction, clearly illustrating the stages of the progressive and scientific exclusion of Jews from the human community, he who, as a Polish Jew, had escaped this exclusion. Before the *Endlösung* (the “final solution”), accomplished by ‘suffocation’ in ghettos and *lagers*, the Nazis had in fact resorted to ordinances, and thus to the discretionary forms of police law, to ‘denationalise’ *others*. Rendered stateless, thus deprived of nationality and citizenship – and thereby placed outside all legal *boundaries* – *others* had been dehumanised: that is, deprived of all *status* and any legal protection that *status* claims for itself (Lemkin 1944: 82-90)²¹. “Nicht sein kann, was nicht sein darf” (“that which cannot be does not even exist”), the Bohemian poet Christian Morgenstern had written, and it is no coincidence that this passage from his poem *Unmögliche Tatsache* (“Impossible Reality”) was borrowed by Primo Levi to describe the invisibility of those who, like Levi at Auschwitz, could not *be* (i.e., did not exist) because they had been deprived of the essence of being human, from which the protection of being human descends (P. Levi, 2007: 130).

2.6. *Borders today, or the return to borders*

Having reached the threshold of the present, I too feel that I am respecting boundaries – this time the disciplinary ones, of the subject matter to which I belong – limiting my concluding remarks of this itinerary by stages to a reflection on the invention of boundaries and the legal spaces that barriers inevitably realise, through the defining (in the spatial sense) and classifying (in the taxonomic sense) operation that accompanies them.

The boundary, as I have attempted to clarify, defines the *we* by separating it from the *other*, specifying its physiognomy according to the context, the degree of exclusion according to the hostility from time

²¹ The process of ‘dehumanisation’ is analysed by Lemkin in a dense section of the work (part I, German Techniques of Occupation, chap. IX, Genocide, II, Techniques of Genocide in Various Fields: 82-90), to which I refer.

to time perceived, and the strength of the denial according to the goal to be achieved by the exclusion.

The *other*, in history, may find itself denied for valid reasons or not (generally not), but it remains a formidable tool of collective self-determination, especially when the *other* is not just one, but *many*, and its collective incumbency frightens even more. The relationship that each community has with the *other* allows, in short, a line of continuity to be drawn between yesterday and today, because it generalises that conflict between the *us* and the *other* on which the invention of borders and legal spaces is played out. The *escalation of flows* in more recent history may sharpen the perception of the *other*, but it does not subvert the underlying logics of mass displacement: rather, it finds, in the disagreement between *general* innate rights and the exercise of *particular* sovereignty, the eternal argument that induces the ruler of the day to lean now toward inclusive policies, now toward exclusionary policies (Brubaker 2010: 61-78).

It does not seem far-fetched, therefore, to assume that the border policy of the past shares some common features with that of today. Even after the great struggles for rights and the consecration of *ius peregrinandi* in the 1948 *Universal Declaration of Human Rights* (Art. 13), today's society – although virtually rich in protected and actionable legal positions (as is well known, Norberto Bobbio called the period we are still living today *The Age of Rights*) (Bobbio 31997: 67) – nevertheless reveals a tendency to govern flows through 'domestic' strategies of exclusion and exceptionalism (on which, in detail regarding migration on the Mediterranean routes, Siccardi 2021), to the building of walls and cultural emptying, simplifying the problem, often resorting to *fake news*. And this tendency makes it easy, today, to coincide political borders and ideological preclusions, proceeding on a path of urgency, double tracks and denials (Flores 2020; Tortarolo 2020; Focarelli 2020).

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*Borders in European Union law: norms, evolution, meaning**

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1. Borders in European Union law

In European Union law, the subject of borders is relevant and highly symbolic, since the elimination among member states of obstacles to the free movement of persons, services and capital was an essential step in the creation of the common market, a fundamental objective of the 1957 Treaty of Rome¹. .

Functional to the realisation of a primal purpose of the EU process², it took on progressive autonomy, also becoming a source of heated contrasts in parallel with the progressive development of the EU's migration policy. Indeed, the abolition of checks on people at

* Paragraphs 1-3 are by Bruno Nascimbene and paragraphs 4-6 are by Alessia Di Pascale.

1 As stated in Article 2 of the EEC Treaty, the common market is the instrument for "a harmonious development of economic activities throughout the Community, a continuous and balanced expansion, increased stability, an ever-faster improvement of living standards and closer relations among the States participating in it."

2 The project to achieve the internal market was implemented through the Single European Act, which was signed in 1986 and entered into force on 1 July, 1987. The intrinsic link between the abolition of internal border controls and the resulting compensatory measures was initially emphasised by the Court of Justice, Judgment of 21 September, 1999, *Wijsenbeek*, Case C-378/97, ECLI:EU:C:1999:439.

internal borders led to an immediate call for their strengthening at external borders, in the belief that the absence of systematic entry checks would result in a loss of security. And so the *Adonnino* Report, named after the chairman of the Ad Hoc Committee “for a Citizens’ Europe,” established by the European Council in Fontainebleau in 1984³, had indicated “the gradual application of a common policy towards third-country nationals”⁴ as a prerequisite for the abolition of internal border controls.

Even before the conclusion of the European Union treaty, which marked the start of cooperation in the areas of immigration, asylum, visas and borders, the conclusion of the Schengen Agreements (refer to Nascimbene 1995; Caggiano 2020; Di Pascale 2020) and the Dublin Convention in the early 1990s represents an important stage in understanding the progressive realisation of this policy. The interrelationship between the two instruments (explicitly stated in the Preamble of the Dublin Convention⁵) allows us to grasp how the perspective of control and containment has characterised the discourse on migration policies since its origin, in an incisive and preponderant way.

The implementation of an area of freedom, security and justice without internal borders, in which the free movement of persons is ensured, together with appropriate measures with regard to external border controls, asylum, immigration, crime prevention and the fight against crime, was introduced among the objectives of the Union (Art. 3(2) TEU) by the Treaty of Amsterdam 1997, which marked the start of EU competence in these areas, albeit on a shared basis with the Member States. The current wording of Article 67 TFEU, the opening provision of Title V, under the heading “Area of Freedom, Security

3 The Committee was given the task of preparing a report on the steps to be taken to achieve a Citizens’ Union. The report of the Ad Hoc Committee (so-called Adonnino Report) presented the following year (Bulletin of the European Communities, Supplement 7/85) contained, in essence, the new provisions on European citizenship.

4 Specifically, the Adonnino report stated that the European Council should adopt “a precise timetable for the completion of the single market and decide to put in hand now work on problems related to the effective cooperation between authorities responsible for the fight against crime, as well as to the definition and gradual application of a common policy concerning the entry, movement and expulsion of foreigners, visa policy and the transfer of control of persons to the external frontiers of the Community, and agreements with third countries on expanded cooperation in frontier passage,” Section 7.2.

5 The Convention determining the State responsible for examining a request for asylum lodged in one of the member states of the European Communities (the so-called Dublin Convention) was signed in Dublin between the twelve member states on 15 June, 1990 and came into force on September 1, 1997, in OJEC Series C 254, 19.8.1997 p. 1 ff. The relationship to the abolition of internal border controls is clear from the Preamble.

and Justice,” highlights the need for balancing the requirements of freedom of movement and those of security, both at the Union’s external borders and internally, within a framework marked by respect for fundamental rights⁶. As has been pointed out, the change in the notion and location of the border is one of the most striking features of recent transformations in the process of European integration, as the definition of what the border is and where it is located has become the prerogative of EU law, moving outside the realm of state sovereignty, yet functional to multiple and often conflicting objectives and interests (Gronendijk, Guild, Minderhoud, 2003).

The border area, conceived as a narrow strip of territory that abuts the border⁷, has thus become both a physical place and a legal concept, an emblematic representation of the difficult balancing act between often antithetical drives and needs (between state prerogatives and protection obligations) and the contradictions inherent within the process of European integration (Nascimbene, Di Pascale 2020).

2. The crossing of internal and external borders. The limitations posed by the pandemic

The topic of borders can be approached from two different perspectives, dwelling on the analysis of norms while at the same time having regard to the current chronicle and the various initiatives taken by the European Union and member states in relation to contingent circumstances, including those of an exceptional nature. This observation of the application profiles makes it possible to find the contrast that can arise between a normative complex, inspired by founding and superordinate purposes and values, and its actual implementation, in the face of unforeseen or politically conflicting situations. In short, cooperation in border management stands as a privileged point of observation and laboratory of experimentation for the purpose of reflection on legal phenomena pertaining to the relationship between borders and sovereignty (Vitiello 2020).

With regard to the normative profile, we must first refer to the provisions contained in the TFEU, particularly in Chapter II, Title V, which deals with policies on border control, asylum and immigration (Articles 77-80). Article 77 TFEU is entitled “border control policy,” and the terms control and surveillance recur several times in defining the objectives, which are stated in the body of the provision. These include the guarantee about the absence of any checks on persons, re-

6 On the evolutionary process of the Area of Freedom, Security and Justice, see the various contributions in Di Stasi, Serena Rossi 2020.

7 See the notion of frontier in Encyclopedia Treccani.

ardless of nationality, when crossing internal borders, which must be matched by effective surveillance of the crossing of external borders, as well as the gradual establishment of an integrated system of border management.

Implementing this provision, common measures on the crossing of internal borders by persons, as well as external border control, are now mainly contained in Regulation (EU) No. 399/2016⁸, commonly known as the “Schengen Borders Code.”

Compared to a structured legal framework, which is functional for the realisation of an objective that is referred to by the European Commission as “one of the great achievements of European integration”⁹, the recent events that have shown the fragility of the system, following the occurrence of situations and events, to which the states have reacted through the re-establishment of controls and even the establishment of physical garrisons aimed at preventing the crossing¹⁰, raise some considerations. First and foremost, mention should be made of the serious concerns for the functioning of the Schengen area, linked to the migration crisis of 2015-2017 and the numerous movements of people that followed between member states, as well as the emergence of terrorist threats in Europe¹¹. These events were followed by a series of guidance acts adopted by the Commission and

8 Regulation (EU) 2016/399 of the European Parliament and of the Council of March 9, 2016 establishing an EU Code on the rules governing the movement of persons across borders (Schengen Borders Code), in *OJEU* L 77, 23.3.2016, p. 1 ff.

9 Communication from the Commission to the European Parliament, the European Council and the Council, Return to Schengen Roadmap, COM (2016) 120 final, 4 March, 2016.

10 *Border fences and internal border controls in Europe*, UNHCR, 2017 available at: <https://data2.unhcr.org/en/documents/details/55249>. Since September 2015, as a result of the so-called migrant crisis, an increasing number of member states have begun building border walls or fences with the aim of preventing migrants and asylum seekers from accessing their national territories. These are initiatives that raise profiles of conflict with Article 14(2) of the Schengen Borders Code, according to which “entry may be refused only by a reasoned decision stating the precise reasons for the refusal.” In the absence of specific provisions in EU law on building fences at external borders, member states have erected barriers with third countries (notably Morocco and Russia), including pre-accession candidates (the Republic of North Macedonia, Serbia and Turkey) and a Schengen candidate country, Croatia. Barriers have also been built within the Schengen area, such as the fence between Austria and Slovenia, see *Management of the external borders, European Parliament*, 2021, available at: https://www.europarl.europa.eu/ftu/pdf/en/FTU_4.2.4.pdf.

11 Communication from the Commission to the European Parliament and the Council, *Preserving and Strengthening Schengen*, COM (2017) 570 final, 9/27/2017 (see Borraccetti 2016, 1:127-130; Ippolito 2016, 1.4:653-664; Ceccorulli 2019, 42. 2:302-322).

aimed at restoring trust among member states and the proper functioning of the system¹².

More recently, the reactions and initiatives related to the pandemic emergency, which has affected Europe since the spring of 2020, have raised new uncertainties about the effectiveness of the system (Jacqué 2020, 56.2: 175-180; Brosset 2020, 56.3: 493-507). As soon as awareness emerged of the seriousness of the situation and the health risks associated with the movement of people, several member states adopted, in unilateral and inconsistent ways (Caggiano 2020), measures, motivated by public health protection needs, to restrict the crossing of their borders and to identify and isolate potentially infected individuals. In order to legitimise these initiatives, between March and April, thirteen member states, in addition to Switzerland, Iceland and Norway, which are members of the Schengen area¹³, notified the European Commission of the reintroduction of internal border controls, using the possibilities related to exceptional situations and serious threats, provided for in the Schengen Borders Code (Articles 25 and 28), in the absence of specific provisions related to health needs.

The possibility of adopting measures restricting the freedom of movement of EU citizens and their family members on public health grounds, by way of derogation from Article 5 of Directive 2004/38/EC¹⁴, under which “Member States shall admit into their territory a Union citizen with a valid identity card or passport,” is expressly provided for in Article 29 thereof. These must be diseases with epidemic potential, as defined by the relevant instruments of the World Health Organisation, as well as other infectious or contagious parasitic diseases, provided that they are the subject of protection provisions that apply to nationals of the host Member State. This is, in any case, a provision of strict interpretation and to be implemented in accordance with the principle of proportionality¹⁵.

12 Communication from the Commission to the European Parliament, the European Council and the Council, *Return to Schengen - Roadmap*, COM (2016) 120 final, 4 March, 2016.

13 For an up-to-date and detailed list, see the European Commission website: https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control_en (accessed: 26/04/2021).

14 *Directive 2004/38/EC of the European Parliament and of the Council of April 29, 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC*, in OJEU L 158, 30.4.2004, p. 77 ff.

15 Art. 27(2), dir. 2004/38 (See Montaldo 2020; Barbou des Places 2020). On the principle of proportionality in European Union law, see the case law of the Court of Justice since the ruling in *Internationale Handelsgesellschaft*, judgment

Public health is among the overriding reasons of general interest recognised by Union law that legitimise a restriction on fundamental freedoms¹⁶. However, health care constitutes a matter essentially within the competence of the Member States, since, under the Treaties, the European Union has a shared competence only for certain aspects of public health, related to the management of common problems, and a competence to carry out actions to support, coordinate or supplement the action of the member states for the protection and improvement of human health (Rolando 2020)¹⁷. In the absence of specific provisions in relation to the reintroduction of internal border controls, as well as the systematic restriction of entry to external borders, for public health protection needs¹⁸, the European Commission again intervened with a guiding action, in an attempt to prevent unilateral actions (Spitaleri 2020, 2: 389-414). It recommended the adoption of a coordinated decision for the purpose of applying temporary restrictions on non-essential travel to the so-called “EU+ zone”¹⁹, for an initial period of 30 days²⁰, with the intention of “drastically reducing the flows of people entering the external borders of the Union, thereby also slowing down the transmission of the virus to other countries when travellers return, and discouraging EU citizens and other persons staying in the EU+ zone from undertaking travel.” The application of

of 17.12.1970, C-11/70, ECLI:EU:C:1970:114, and more recently judgment of 16.07.2020, *Data Protection Commissioner v. Facebook Ireland Limited and Maximillian Schrems*, Case C-311/18, ECLI:EU:C:2020:559, paragraphs 174-180.

16 Internationale Handelsgesellschaft See Art. 36 TFEU with reference to the movement of goods. According to Art. 45(3) TFEU, the protection of public health is one of the reasons legitimizing a restriction on the free movement of persons. See also Articles 168 TFEU and 35 of the Charter of Fundamental Rights, which provide, inter alia, that “a high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.”

17 See Rolando F., 2020, *Health Protection in European Union Law and the EU Response to the Covid-19 Emergency*, in *The Covid-19 Health Emergency and European Union Law. The crisis, the cure, the prospects*, “Eurojus.it,” special issue <http://rivista.eurojus.it/lemergenza-sanitaria-covid-19-e-il-diritto-dellunione-europea-la-crisi-la-cura-le-prospettive/> (accessed: 26/04/2021).

18 Recital 6 of the Schengen Borders Code lists the protection of public health as one of the objectives of border control, but the threat to public health is a ground for preventing the entry of third-country nationals only with reference to external border controls (Art. 6(1)(e)).

19 The “EU+ zone” has been referred to all Schengen member states (including Bulgaria, Croatia, Cyprus and Romania) and the four associated states (Iceland, Liechtenstein, Norway and Switzerland), as well as Ireland and the United Kingdom should they decide to align.

20 Communication from the Commission to the European Parliament, the European Council and the Council, *COVID-19: Temporary restriction of nonessential travel to the EU*, COM (2020) 115 final, 16.3.2020.

the restriction was ruled out against certain categories of people (EU and Schengen associated state citizens, and their family members, as well as third-country nationals legally residing in the EU, returning “home”). Likewise, exemption has been suggested for travellers with an essential function or need (including health workers and border crossers) (Di Federico 2020; Olivier 2020, 5.1: 613-619). Specific cautions were addressed to protection obligations, and the Commission considered, in terms that were nonetheless not peremptory, that the restriction should not apply to persons in need of international protection or travelling for other humanitarian reasons in order to ensure compliance with the principle of non-refoulement.

The recommendation was endorsed by the European Council at a meeting on 17 March, and resulted in the adoption by all EU member states (except Ireland) and the four Schengen associated states (Iceland, Liechtenstein, Norway and Switzerland), a total of 30 countries, of national decisions to implement the travel restriction. It was, however, a measure that raised numerous legal issues, as to its subject matter (travel restrictions), prerequisites, and implementation modalities (Thym 2020; Bonetti 2020). It was followed by subsequent Commission initiatives, which, in evaluating the implementation of the measure, suggested its extension until 30 June, 2020²¹.

At the end of June, the Council intervened with a recommendation²², then again with an act of non-binding legal value (like its predecessors)²³, but of definite political value, suggesting the lifting of restrictions on persons residing in third countries listed in Annex I of the recommendation. The measures were subject to periodic review, every 14 days. As pointed out, the qualifying element is not the person’s citizenship, but residence in one of the countries listed in the Annex which are considered less dangerous, from a health point of view, by virtue of a number of specified epidemiological parameters.

21 Communication from the Commission to the European Parliament, the European Council and the Council, *Evaluation of the Application of the Temporary Restriction of Non-Essential Travel to the EU*, COM (2020) 148 final, 8.4.2020. Communication from the Commission to the European Parliament, the European Council and the Council, *Second Evaluation of the Application of the Temporary Restriction of Non-Essential Travel to the EU*, COM (2020) 222 final, 8.8.2020. Communication from the Commission to the European Parliament, the European Council and the Council, *Third evaluation of the application of the temporary restriction on nonessential travel to the EU*, COM (2020) 399 final, 11.6.2020.

22 Council Recommendation (EU) 2020/912 of 30 June, 2020 on the temporary restriction of nonessential travel to the EU and the possible lifting of this restriction, in OJEU L 208I, 1.7.2020, p. 1 ff.

23 The European Union’s regulatory output in the months of the health emergency was characterized by a massive use of so-called *soft-law* instruments and procedural exemptions, in the absence of an adequate legal framework to deal with emergency situations (Fioravanti 2020).

Shortly before, the Commission had issued guidelines²⁴, to ensure that the resumption of visa operations was well coordinated with the gradual lifting of travel restrictions.

Following the resurgence of the epidemic in the autumn, the European Council at its meeting on 15-16 October 2020,²⁵, noting the unprecedented epidemiological situation of very serious concern, called on the Council, Commission, and Member States to continue the overall coordination effort based on the best available scientific knowledge, particularly with regard to quarantine standards, cross-border contact tracing, testing strategies, and temporary restriction of non-essential travel to the EU. The Commission, therefore prepared new guidelines²⁶ and recommendations²⁷ for a coordinated approach to restricting freedom of movement, including following the emergence of potentially more contagious variants of the virus²⁸.

3. Border controls and the protection of fundamental rights

The actions taken in this emergency context hint at the difficulties of the Commission, and of the European Union as a whole, which initially appeared bewildered in the face of an exceptional situation and the absence of a common framework for dealing with situations related to health needs. It is true that states retain a reservation based on public policy (Article 72 TFEU) with regard to the functioning of the Area of Freedom, Security and Justice, which includes health protection. In the absence, however, of timely intervention by the European

24 Communication from the Commission, *Guidelines for a gradual and coordinated resumption of visa operations*, 2020/C 197 I/01, in OJEU C 197, 12.6.2020, p. 1 ff.

25 *European Council Conclusions on COVID-19, 15 October, 2020*, available at: <https://www.consilium.europa.eu/it/press/press-releases/2020/10/16/european-council-conclusions-on-covid-19-and-climate-change-15-october-2020/>.

26 *Communication from the Commission to the European Parliament, the European Council, and the Council, Covid-19 Guidelines on persons exempted from the temporary restriction on nonessential travel to the EU with regard to the implementation of Council Recommendation (EU) 2020/912 of 30 June, 2020*, COM (2020) 686 final, 28 Oct., 2020.

27 *Council Recommendation (EU) 2020/1475 of 13 October, 2020 for a coordinated approach to restricting freedom of movement in response to the COVID-19 pandemic*, in OJEU L 337, 14.10.2020, p. 3, and *Council Recommendation (EU) 2021/119 of 1 February, 2021 amending Recommendation (EU) 2020/1475 for a coordinated approach to restricting freedom of movement in response to the COVID-19 pandemic*, in OJEU L 361, 2.2.2021, p. 1.

28 *Commission Recommendation of 22.12.2020 on a coordinated approach to travel and transport in response to the SARS-COV-2 variant identified in the UK*, in OJEU L 436, 28.12.2020, p. 72.

Union, they have been given space²⁹, in the control of internal security, which also involves border control. States have thus adopted uncoordinated positions. Only the Commission, belatedly, adopted *soft-law* acts, guidelines, protocols, so that guidelines that were considered common would be incorporated (Stefan 2020, 5.1:663-670; Rojas 2020, 3:531-550)³⁰.

The events of the last period raise several questions, not only in relation to the profiles of the legitimacy of such modes of intervention (Borraccetti 2020, 2: 433-436), but also as to the implementation of founding assumptions and principles of the EU order. One of these pivotal principles is the free movement of people, which has certainly been called into question by the pandemic emergency (as mentioned earlier).

According to Art. 77 TFEU, external borders must be managed in a common, harmonised way so that policy is realised internally and externally. But this must be done with respect for fundamental rights (Art. 67(1) TFEU) (Riccardi 2020:153-180). And, in this regard, one cannot fail to note that the measures implemented in an uncoordinated manner by member states have also jeopardised the right to asylum (Ghezelbash, Feith Tan 2020; Sanogo 2020, 45: 185-205; McAdam 2020, 32.2: 364-366; Lenzerini 2021, 15.1: 5-36), enshrined in Article 18 of the Charter of Fundamental Rights of the Union, where they have prevented applicants for international protection from accessing their territory. Indeed, unilateral restrictive measures have been taken in several member states³¹, necessitating Commission intervention.

29 This is an issue that, in truth, has affected the European Union as a whole and not only with reference to the issue of the movement of people. With reference to the debate on the adoption of economic measures, “this individual and conflicting management of a problem common to the member states of the Union cannot be due only to the pandemic, which is the most recent manifestation of a broader crisis, showing a growing decline in European collaboration, in favor of a policy of the member states increasingly inspired by the immediate national interest, and increasingly tolerated by the common institutions” (Pocar 2020). On this point see also AA.VV. 2020; Casolari 2020.

30 Through August 2020, a total of 197 soft-law instruments have been identified, attributable to the so-called soft-law, whose legitimacy and transparency of adoption processes have been questioned (Eliantonio 2021; Stefan 2021, 12.1:159-175).

31 For example, in Hungary, following the declaration of a state of emergency adopted by the government on 11 March, 2020, foreign nationals were not allowed to enter the country, except for beneficiaries of the right of free movement who held a permanent residence card. Only in exceptional, duly justified circumstances was the deputy chief of police allowed to allow other foreigners to enter, provided they had been tested for COVID-19, with negative results, and registered by the Hungarian epidemic control authority. In Austria, following a decree requiring the presentation of a medical certificate attesting to a negative COVID-19

In specific, clearly non-binding guidelines, it has made it clear that any restrictions in the area of asylum, return and resettlement must be proportionate and implemented in a non-discriminatory manner and consider the principle of non-refoulement and obligations under international law³² (Caggiano 2020b, Corsi 2020, Carrera and Luk 2020). Measures such as health screening at entry and the application of quarantine for new arrivals may be justified by public health protection needs, but preventing the general admission of refugees or asylum seekers without evidence of a health risk and without measures to protect against refoulement qualifies as discriminatory and incompatible with international standards, as denial of entry without guarantees of protection against refoulement cannot be justified by any health risk³³. It is, in fact, an absolute value that does not tolerate restrictions or balancing (Chetail 2020). Appropriately, some member states (Germany and Sweden among them) had expressly exempted asylum seekers from being denied entry at their borders.

The exceptional health situation has raised, with reference to the protection of fundamental rights, further questions regarding the effectiveness and adequacy of the system that has arisen from the Treaties and in particular border control policies also in relation to the so-called Schengen system. The answer is in principle negative: the need to resort to exceptional, unforeseen measures first of all highlights a shortcoming. But it also raises another issue in relation to the harmonisation to which this policy should be subject. Exceptional measures must remain as such and limited in time, proportionate to the situation at hand, and coordinated intervention must take place promptly, as measures taken unilaterally lead to differences, even raising profiles of incompatibility with EU law. In short, despite the advancement of the harmonisation process, in the emergency situations that have characterised the recent events of Europe, the border (internal and external) has appeared as a dysfunctional element and has highlighted its weakness, undermining the protection of fundamental rights.

biological test result for entry into the country, in late March, the Ministry of the Interior addressed guidance to border guards, specifying its application to applicants for international protection as well. On the different measures, see <https://ec.europa.eu/migrant-integration/news/impact-of-government-measures-related-to-the-coronavirus-on-third-country-nationals-in-hungary>. (Fiengo 2021).

32 Communication from the Commission, *Covid-19: Guidelines on the implementation of EU provisions in the area of asylum and return procedures and resettlement*, 2020/C 126/02, in OJEU C 126, 17.4.2020, p. 12.

33 UN High Commissioner for Refugees (UNHCR), *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response*, 16 March, 2020, available at: <https://www.refworld.org/docid/5e7132834.html>.

4. Migration pressure at the Greek-Turkish border and the failure to implement the right to asylum

In the spring of 2020, at the same time as the health situation escalated, a major emergency occurred along Europe's southeastern border. The Greek government was, in fact, faced with several tens of thousands of migrants attempting to cross the border into the European Union. This pressure followed the announcement by Turkish President Erdoğan who, complaining that the EU had not supported Turkish military efforts in Syria, particularly in the Idlib region, had said that migrants on its territory (more than 4 million displaced persons, making Turkey the country hosting the largest number of refugees and asylum seekers in the world)³⁴ would no longer be prevented from reaching Europe, with the border police being ordered to take no action. Within hours, in a *tweet*, the Greek prime minister had retorted that irregular entry would not be tolerated (Dicle Ergin 2020).

Far from being unpredictable, this event has its origins in the policies of containing migration flows, implemented especially at the borders, thus raising serious questions about the effective application of the proclaimed principles and rights enshrined in EU law. Indeed, it is necessary to recall the cooperation initiated with the Anatolian country in the context of the so-called migrant crisis, which affected the European Union especially in 2015-2016. In order to halt the flows along the Eastern Mediterranean route, the main route of entry into the European Union, by means of a highly controversial declaration³⁵, made public on the sidelines of the 18 March, 2016 European Council, it was agreed, as a temporary and extraordinary measure "necessary to put an end to human suffering and restore public order" a programme of repatriation to Turkey of migrants who had arrived on the Greek Islands, counterbalanced by a correlative EU commitment to resettle

34 According to UNHCR, Turkey hosts more than 3.6 million displaced Syrians and about 360,000 refugees and asylum seekers from other countries, mainly Afghanistan, Iraq and Iran (<http://reporting.unhcr.org/node/2544?y=2019#year>).

35 The joint declaration was examined by the General Court of the Union which, in a questionable ruling in February 2017, denied the nature of an act of the European Union, declaring itself without jurisdiction (Orders of the General Court of 28 February, 2017, *NF v. European Council*, T-192/16, ECLI:EU:T:2017:128, *NG v. European Council*, Case T-193/16, ECLI:EU:T:2017: 129, *NM v. European Council*, Case T-257/16, ECLI:EU:T:2017:130. The appeal was rejected by the Court of Justice, Order of the Court of 12 September, 2018, *NF and Others v. European Council*, Joined Cases C-208/17 P to C-210/17 P, ECLI:EU:C:2018:705). The conclusions reached have, however, raised heated criticism and perplexity, due to an overly formalistic approach and an analysis that appeared inadequate with respect to the complex legal issues that such an unusual act would instead require. (Cannizzaro 2017, 2.1:251-257; Caggiano 2017, 2:7-25).

from that country on its territory one Syrian national for every migrant repatriated (Favilli 2016, 2: 405-420). The main result after four years was a significant reduction in arrivals (-94 percent), compared with only about 2,700 returns to Turkey and 27,000 resettlements in the European Union³⁶.

This situation, moreover, affected a country, Greece, already under considerable economic and migratory pressure in recent years, which at that time was hosting over a hundred thousand people in its reception system. A situation that had long raised significant questions of compatibility with European Union standards on asylum and protection of fundamental rights³⁷. In an already extremely problematic context and under the pressure of several tens of thousands of people at its external border, Greece declared a state of emergency and put in place policing and control measures designed to prevent entry or remove those who might have crossed the border irregularly. The methods used to thwart the arrivals appeared, however, to be excessive, so much so that the UN Special Rapporteur on Migrants' Rights censured the facts reported in the press³⁸.

The Greek reaction has, moreover, profoundly affected the implementation of the right to asylum in the country, ordering the complete suspension of the activities of the Greek Asylum Office. In fact, on 2 March, an emergency decree (ΠΡΑΞΗ ΝΟΜΟΘΕΤΙΚΟΥ ΠΕΡΙΕΧΟΜΕΝΟΥ - Αναστολή της υποβολής αιτήσεων³⁹) was adopted, effective retroactively from 1 March, as a response to the asymmetric threat posed by migration. By virtue of this measure, all administrative services to the public were suspended, including the possibility of filing applications for protection for persons who entered the territory irregularly for a period of one month, providing (Art. 1, c. 1) for

36 *EU-Turkey statement. Four years on, March 2020*, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20200318_managing-migration-eu-turkey-statement-4-years-on_en.pdf (accessed: 4/26/2021).

37 Despite subsequent actions implemented by the Commission to improve the Greek asylum system, the current picture, exacerbated by the influx of people in 2015-2016, is still very worrying. The measures then in place, and in particular the relocation mechanism in place between 2015 and 2017, aimed at facilitating a distribution of asylum seekers among member states, have only relieved limited pressure on the Greek reception system.

38 *Greece: Rights violations against asylum seekers at Turkey-Greece border must stop*, UN Special Rapporteur on the human rights of migrants, 23 March, 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25736&LangID=E> (accessed: 26/4/2021).

39 A translation of the decree is available at: <http://odysseus-network.eu/news/translation-of-the-greek-decree-on-asylum-at-the-turkish-border-in-english> (accessed: 26/4/2021).

repatriation without registration, to the country of origin and transit (in this case Turkey). On 26 March, the government's decree was confirmed by the Greek Parliament and subsequently extended until 15 May, citing needs for health protection and prevention of contagion. In adopting the measure, the Greek prime minister publicly invoked Article 78(3) TFEU. A provision that, however, implies a very specific trigger mechanism, and does not confer unilateral power of intervention on individual member states. The choice made by the Greek government has evidently raised a multiplicity of concerns, being a harbinger of various and serious consequences, affecting the possibility for the person to have access to the asylum system. In such a serious context, the European Union has emphasised that the border is not only a Greek border, it is also a European border, thanking Greece for being our European shield in these times⁴⁰, but it has only intervened by proposing an action plan, articulated in six points, without providing either more massive mechanisms for allocation among member states, such as those implemented in 2015-2017, or condemning the position of the member state⁴¹. In the face of such inaction, which evidently testifies to the absence of adequate instruments to implement effective European solidarity (Tsourdi 2020, 32.2: 374-380), a group of European organisations sent a complaint to the European Commission urging the initiation of infringement proceedings against Greece⁴².

This case highlights the serious risks arising from processes of outsourcing immigration control to third states, which then become its arbiters. The instrumental use of refugees, in the context of the increasingly conflictual relations between Greece and Turkey, has resulted in a derogation from international protection obligations, enshrined in EU law (both in primary legislation, treaties and the Charter of Fundamental Rights, and in secondary legislation). The violent repression of asylum seekers at the border by Greece in the early 2020s constitutes a blatant violation of fundamental rights guarantees (the relevance of which has already been discussed): guarantees provided for in international and EU law (the transgression of which would

40 *Remarks by President von der Leyen at the joint press conference with Kyriakos Mitsotakis, Prime Minister of Greece, Andrej Plenković, Prime Minister of Croatia, President Sassoli and President Michel, 3 March, 2020*, https://ec.europa.eu/commission/presscorner/detail/en/statement_20_380 (reference: 04/26/2021).

41 See Statement by Vice President Schinas on Immediate Support Actions for Greece, 4.3.2020, https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_395 (accessed: 26/4/2021).

42 Complaint to the European commission concerning infringements of EU law by Greece on behalf of WeMove Europe and Oxfam international, 22-9-2020, available at: <https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/2020-09/wemove-oxfam-complaint-to-ec-asylum-greece-eu.pdf> (accessed: 26/4/2021).

be “justified” on the basis of security considerations related to the broader geopolitical scenario in the Eastern Mediterranean (Spagnolo 2020, Cortinovis 2021, and on the situation at the Spanish-Moroccan border, Fazzini 2021). The threat of opening the border, allowing the passage of millions of refugees, is a powerful means of pressure⁴³ and well illustrates how, in the context of migration, the border can shake up rights and principles affirmed at the European level in the name of *realpolitik*.

5. Borders in the new pact on migration and asylum

The border is also a crucial element of the new Pact on Immigration and Asylum⁴⁴, presented in September 2020 by the European Commission. This is the reform package, which amends and complements the acts that currently make up the Common European Asylum System, advancing the long-awaited reform of the so-called Dublin III Regulation⁴⁵ and also intervening in additional areas (including crisis and force majeure situations in the area of migration and asylum, and cooperation between member states regarding operations conducted by vessels owned or operated by private entities for search and rescue purposes). The Pact has been presented as “a new beginning” in migration management⁴⁶, with a long-term vision⁴⁷ and fully ground-

43 In March 2020, it had been leaked that Turkish authorities intended to initiate an interstate action before the European Court of Human Rights over violations committed by Greek authorities against migrants attempting to cross the border. See *Turkey prepares human rights case over Greece's treatment of migrants*, 4.3.2020, <https://www.reuters.com/article/us-syria-security-turkey-eu-idUSKBN20R2UP> (accessed: 26/4/2021).

44 Commission to the European Parliament, the Council, the Economic and Social Committee, and the Committee of the Regions, *A New Pact on Migration and Asylum*, COM (2020) 609 fin, Sept. 23, 2020. The communication explains the reasons for the reform, outlines the new elements, and outlines the articulation of the new strategy underlying the Pact. The package is, then, complemented by nine legal instruments: five proposals for regulations, signaling a desire to ensure uniform application in the member states, free from national filters or interventions, thereby confirming an approach to the matter initiated since 2016, as well as acts of a non-binding and guiding nature (3 recommendations, 1 guideline).

45 *Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June, 2013, establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person*, in OJEU L 180, 29 June, 2013, p. 31.

46 V. *Press statement by President von der Leyen on the New Pact on Migration and Asylum*, 23 September, 2020, https://ec.europa.eu/commission/presscorner/detail/it/statement_20_1727 (accessed: 26/4/2021).

47 According to Article 68 Tfeue, it is up to the European Council to define the strategic guidelines of legislative and operational programming in the area of

ed in European values and international law (De Pasquale 2020; *ibid.* the various contributions in the Focus *The proposed Pact on Migration and Asylum*; Peers 2020). Rather, in reality, the proposals consolidate an approach that has long characterised EU migration policy (Favilli 2020; Bendel 2021; Liguori 2021, 15.1:67-84), being focused primarily on containing flows and strengthening cooperation with countries of transit and origin, with the aim of preventing arrivals and combating irregular migration, including through the use of mechanisms for externalising controls (Pijnenburg 2018; Gammeltoft-Hansen 2018; Rijken 2018). There are many misgivings about its suitability to meet the challenges for the future of the Union, including border management, and to ensure effective European solidarity, given the permanence of a system essentially hinged on the current criteria for sharing competence among member states (Duez 2021, 12: 57-62; Favilli 2021, 15.1: 85-102). Among the proposed solutions, which have raised the most criticism and perplexity (Vedsted-Hansen 2020), is the introduction of a pre-entry phase through the establishment of a seamless procedure at the external border, applicable to all third-country nationals who cross it without authorisation, articulated in a pre-entry check, possibly followed by the asylum procedure and, where appropriate, a rapid return procedure, thus integrating currently separate processes with the intention of not allowing those who do not appear to have legitimacy to even enter EU territory.

Thus, a controversial (Thym 2022, Cornelisse 2022) border screening (*pre-entry screening*) procedure is envisaged⁴⁸, applicable with respect to those who are landed as a result of a rescue operation or those who arrive at the external borders without entry requirements, and there apply for international protection or are apprehended in connection with the unauthorised crossing by land, sea or air of a member state's external border (Art. 3). Those who, having escaped border control, are subsequently identified in the territory of a member state would also be *screened* (Art. 5). It is envisaged that the procedure,

freedom, security and justice, within which immigration and asylum policies are situated. However, the five-year program for 2019-2024, which was expected to be approved by the end of March 2020, based on the Strategic Agenda 2019-2024 and relating to European policies as a whole, defined by the European Council itself in June 2019, was not adopted as a result of the health situation. The establishment of strategic guidelines that qualify as long-term, by the Commission, raises concerns, not least because the reform of the system of burden-sharing among member states, which was already disregarded on the basis of the Commission's previous proposal in 2016, would have required the greater political support resulting from the institution that brings together the heads of state and government of the member states. See the findings of De Bruycker 2020.

48 *Proposal for a Regulation of the European Parliament and of the Council introducing checks on third-country nationals at the external borders and amending Regulations (EC) No.767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, COM (2020) 612 final, 23.9.2020.*

aimed at identifying and carrying out security and health checks, fingerprinting and registration in the EURODAC database, as well as ensuring faster initiation and conduct of procedures for the recognition of international protection or return, is routinely carried out within 5 days (an extension of up to a maximum of additional 5 days is allowed in exceptional circumstances, if it is necessary to subject a disproportionate number of third-country nationals to the examinations at the same time, while 3 days are provided from the detention in case the person has been apprehended on the national territory). It also includes the acquisition of information regarding the routes travelled, including the point of departure, places of previous residence, third countries of transit and those where protection may have been sought or granted, as well as the intended destination within the Union. With respect to persons allegedly returning from an emotionally and physically trying journey, it is also envisaged that information will be collected without delay regarding assistance provided by a person or criminal organisation, in connection with the unauthorised crossing of the border, and in cases of suspected trafficking.

The border thus becomes a line of demarcation, an insurmountable point of entry subject to a preliminary filter that verifies the prerequisites of legitimacy for those who fall into the aforementioned categories, which, moreover, not without complexity, also include asylum seekers (Jakuleviciene 2020), i.e., those who have explicitly expressed a need for protection. As specifically stated, during the assessments, persons apprehended when crossing the external borders are not allowed to enter the territory of a member state (Art. 4), and the assessments are carried out in places located at or near the external borders (Art. 5(1)). It should be considered that within the framework of *pre-screening* procedures, but also during the entire process of examining asylum applications in accelerated procedure cases, foreign nationals, not being allowed to enter the territory of the member state, would be subjected to detention measures.

However, no indication is found as to where, when, how, and what guarantees would be given, envisaging a kind of limbo in which foreigners would be suspended in a non-place, located outside the territory of the European Union (Joannon 2020; Pope 2020; Welander 2020). At the outcome of this *screening*, the person is referred to the competent authorities, which, depending on the circumstances, may initiate the return procedure, collect the application for protection, assessing the prerequisites for subjecting the person to the border or accelerated procedure, or relocation to another member state. Given the obvious critical issues, particularly with regard to compliance with obligations under international and European law, related to the prompt conduct of border assessment activities, it is envisaged that

each member state is at least required to establish an independent monitoring mechanism, the nature and structure of which are still rather vague, in order to ensure compliance with EU law and international law including the Charter of Fundamental Rights, as well as any national rules governing detention. Member states should also ensure the effective handling without undue delay of alleged cases of violation of fundamental rights in relation to determinations, including with regard to access to the asylum procedure and failure to comply with the principle of non-refoulement (Art. 7)⁴⁹.

Specific interventions are also made to the discipline on procedures for the recognition of international protection⁵⁰, in relation to border procedures, as the second stage of the process. Significantly, the rules on asylum and return procedures are combined in a single legislative instrument⁵¹, providing that applications for protection with the lowest chances of acceptance are processed quickly (12 weeks), under a procedure defined as “asylum and return,” without allowing the foreigner to enter the territory of the member state. This provision would apply to applicants who mislead the authorities, come from countries with low recognition rates or pose a threat to national security. The use of the border procedure is in terms of an option for member states (also in view of the different positions expressed on this issue by member states in the negotiation of the 2016 proposal⁵²), being mandatory only in more limited circumstances. Unaccompanied minors and families with children under the age of 12 would, in any case, certainly be excluded, unless there are security needs, and certain categories of persons (Art. 41(9)) also, due to vulnerability-related needs. Decisions, issued at the outcome of the border procedure, pertain to the admissibility of the application, being able to address the merits only if the application is examined in an expedited procedure.

49 In a speech on 23 September by Commissioner Johansson in connection with the Pact, available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1733 the intention to establish an independent mechanism, based on general guidelines set by the European Union Agency for Fundamental Rights, to prevent incidents of border refoulement was announced. On the proposed monitoring mechanism (Lanneau 2021).

50 *Proposal for a Regulation of the European Parliament and of the Council on a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, COM (2016) 467 final, 13 July, 2016.

51 *Amended proposal for a Regulation of the European Parliament and of the Council on a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, COM (2020) 611 final, 23.9.2020.

52 See the report *Reform of the Common European Asylum System and Resettlement*. Progress report, Council of the European Union, doc. no. 6600/19, 26 Feb., 2019.

The use of the accelerated procedure, which had already sparked heated controversy in 2016 as to the application of the concept of “safe third country” (Moreno-Lax 2015; Pitea 2019), is further extended here to include applications submitted by applicants from third countries for which the percentage of positive international protection decisions is, according to the latest available annual Eurostat data, less than 20 percent at the Union level. In the proposed wording, this provision does not apply if there has been a significant change in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the percentage of 20 percent or less cannot be considered representative of protection needs. This last paragraph is undoubtedly of crucial importance for compliance with the principle of non-refoulement, which requires an appropriate examination of the individual situation. Indeed, for those whose claims have been rejected in the asylum procedure at the border, the immediate initiation of the return procedure is envisaged.

The normal asylum procedure would continue to be applied to other applications. The disincentive intent for arrivals is evident (and expressed), especially toward migrants from countries with low recognition rates⁵³. When one considers, however, that in 2020 more than half of the top 30 nationalities for recognition of protection are below or close to that threshold⁵⁴, this would result in the application of the expedited procedure at the border to the vast majority of foreigners arriving at the external borders who do not meet entry requirements.

The proposed measures appear designed primarily to facilitate returns while making access to the EU asylum system more complex. Despite numerous references to founding principles in the area of fundamental rights and in relation to asylum guarantees, the Covenant highlights numerous risks of violating them.

53 Precisely to counter this risk, the European Parliament had added a clarification to the 2016 proposed regulation, clarifying in a special new recital 48-quarter that “the EU common list of safe countries of origin should not aim to reduce the number of asylum seekers originating from countries with the dual characteristic of a significant number of applications and a low recognition rate.”

54 First instance decisions by outcome and recognition rates, 30 main citizenships of asylum applicants granted decisions in the EU, Q4 2020, available at: https://ec.europa.eu/eurostat/statistics-explained/images/2/29/Table_7_First_instance_decisions_by_outcome_and_recognition_rates%2C_30_main_citizenships_of_asylum_applicants_granted_decisions_in_the_EU%2C_Q4_2020_v2.png

6. The border as a representation of the crisis of the values of the European Union

If we turn to the meaning that the concept of the border has taken on in EU law, including in light of the situations outlined earlier, it first appears to be an expression of a duality. On the one hand, the elimination of internal border controls is presented as emblematic of the success of the integration process, a representation of the unity achieved among the peoples of the Union and an achievement that strengthens fundamental freedoms.

On the other hand, with respect to third-country nationals, the paradigm appears different, configuring the border as intrinsically linked to citizenship and *status* (Lang 2018). To stay with internal borders, the Schengen Agreements have abolished systematic controls, allowing them with other informal or occasional modalities, by which they continue to be implemented, including for immigration control purposes. On the other hand, the so-called Dublin system has enshrined the insuperability of borders both for asylum seekers, who are required to remain in the member state responsible for examining the asylum application (with a prospect of further tightening found in the “obsessively” expressed concern to prevent so-called secondary movements), and for holders of protection. They cannot move, except for a short time, from the issuing member state, in the absence of mutual recognition of positive decisions, thereby betraying that lack of trust between member states that has long plagued its cooperation. Attempts made to introduce compulsory forms of outplacement, which would overcome a territorial confinement linked to the strict application of pre-established criteria, in implementation of a solidarity between member states, which is also placed at the foundation of the area of freedom, security and justice (Art. 80 TFEU), have broken against particularisms and “sovereignisms” that have so far been insurmountable. Nor is there a general possibility for third-country nationals, although legally resident, to move to another member state. Only certain categories of them (long-term residents, blue card holders, researchers, seconded staff of international companies) even have an option, subject to a multiplicity of conditions defined at the national level, which make their effective exercise very difficult.

Different considerations are required as to external borders. First, the border ceases, in the functional practice of containing migration flows and combating irregular immigration, to have a territorial nature, with the search for mechanisms that shift control functions to third countries, delegating to them the responsibilities incumbent on member states (Liguori 2019; Santos Vara 2021; Pascual Matellán 2021: 315-331), in an attempt to evade the protection obligations enshrined in EU law: outsourcing processes, proposals to create sorting

and registration centres or regional landing platforms (Carrera 2019; Cortinovis 2019; Fantinato 2019, 28.1: 63-76).

The objectives and limits of the EU's external action are defined by Article 3(5) TFEU, a norm of "constitutional" status (Cannizzaro 2021: 3-18). As far as relations with the rest of the world are concerned, the Union is committed, among other things, to contributing not only to the "strict observance," but also to the development of international law, respecting in particular the principles of the United Nations Charter. An aspect, the latter, which assumes importance in the proper application of fundamental principles of international law, such as in particular that of non-refoulement, punctually mentioned as a limitation in the implementation of asylum policy (Art. 78, par. 1, TFEU), as well as expressly provided for (in accordance with the extensive case law of the Court of Human Rights in relation to Art. 3 ECHR) in the Charter of Fundamental Rights of the European Union (Art. 19, par. 2).

But not only does a contrast between policies and values emerge: the border also becomes an area within which the application of several principles falters, although they are at the foundation of the European Union's legal system, *first and foremost* the principle of legality. It is expressly referred to in Article 52(1) of the Charter, which states that any limitations on the exercise of the rights and freedoms recognised by the Charter itself must be provided for by law and respect the essential content of those rights and freedoms, in compliance with the principle of proportionality, which allows limitations only where they are necessary and actually meet purposes of general interest recognised by the Union or the need to protect the rights and freedoms of others. Nonetheless, borders often become a place where informal practices are implemented, lacking legal basis and jurisdictional guarantees, contrary to the procedural obligations on international protection governed by EU law (Celoria 2020, 5.3: 1385-1390), involving the deprivation of personal liberty of those who are detected at or near the irregular border crossing, or are retrieved in rescue operations at sea (*hotspots*, transit zones) (Cancellaro 2020, 3: 428-444). A reminder of the principles of necessity and proportionality, as well as respect for judicial guarantees, in the face of acts that take the form of deprivation of personal liberty, is contained in the pronouncements made by the Court of Justice, with reference to the practice of detaining applicants for international protection and migrants in an irregular position, in the transit zones placed at the border (Colombo 2020) with Hungary and culminating in the finding of violation of obligations arising from EU law⁵⁵. A condemnation that even affected Frontex, the European

55 Court of Justice, Judgment (Grand Chamber) of 17 December, 2020, *European Commission v. Hungary*, Case C-808/18, ECLI:EU:C:2020:1029.

coast and border guard agency, which therefore suspended its activities in the country. But there have been numerous accusations against Frontex itself for involvement in serious violations of fundamental rights and consisting of collective and forced refoulement, failure to respect the principle of non-refoulement (Gatta 2021).

In this framework, the border ends up constituting a representation of the profound crisis that has beset it, rather than of the success of the process of European integration,. Border control, however cloaked in less evocative language focused on border management, becomes an end to be achieved by any means, capable even of shaking the value system on which the Union is founded.

It is worth then recalling what the EU Commissioner for Home Affairs, Ylva Johansson, said precisely with reference to the recalled Greek-Turkish border affair: “not everyone is entitled to refugee status, but everyone is entitled to treatment according to our values. When people seek asylum, they appeal to European values, and this appeal we must honour”⁵⁶. If one dwells on some of the recalled recent events, and the proposals contained in the new pact on migration and asylum, which responds primarily to needs of *realpolitik*, defined by the needs and circumstances of the relevant actors, characterising itself more by pragmatism than by the principles which it implements (Thym 2020; Di Pascale 2020), there is a risk that the border will become an example of antilogy, a contradiction in terms or ideas, rather than fulfillment of European ideals.

⁵⁶ Exchange of views concerning Greek/Turkish border and respect for fundamental rights, LIBE Committee, 6 July, 2020, <https://www.europarl.europa.eu/committees/it/exchange-of-views-concerning-greek-turki/product-details/20200702CAN56221>.

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*Religious and cultural pluralism in prison, borderland of rights, in the age of Security**

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1. The prison boundary

The term boundary, as we know, takes on different meanings. It can be defined in a physical and material sense, when it serves to demarcate the territory of states or the property of private individuals, or in intangible terms, whenever it intervenes to draw a line between different cultures, social classes, political ideologies and religious beliefs. In the first case, the boundary is represented by borders, natural barricades and crossings, stones, fences or retaining walls. In the second, by barriers of an ideal, political, legal, anthropological, sociological, cultural and sometimes even religious nature.

Whether material or immaterial, however, the border continues to divide and separate in spite of globalisation, as well as the rise of new cultural and anthropological-social models that have now largely deconstructed traditional patterns. Boundaries that today also take on a further significance, that of health, dramatically imposed - as we know - by the need to counter the spread of SARS-CoV-2¹.

* The structure and content of this paper were discussed by both authors: for all intents and purposes, sections 1, 2 and 5 are by Daniela Milani; sections 3 and 4 by Alessandro Negri.

1 Initially named 2019-nCoV, the coronavirus isolated in China at the beginning of the outbreak was later classified by the International Committee on

By dividing and separating, the border not only defends but also identifies. It is “through the tracing of a furrow,” the myth of Rome’s founding reminds us, that an undefined space becomes a “place of identity.” The track etched into the ground by the plowshare “locates the space of *civitas*, separating the inside from the outside, order from chaos” (Spagnoli 2008, 1:61). In this way, identity makes use of the boundary not only to defend itself from the different, but also to assert itself. And so the more the border stands up and opposes on the outside, the more it reinforces internally the allegiance to a common heritage of history, culture, traditions and values, sometimes more in rhetorical terms than in real terms.

The prison is also in its own way a border, or rather, a borderland. This land separates prisoners from the city and, more generally, from the rest of the world that lives beyond its fences or walls. But the prison is not only the place where those who have broken the law are confined; it is also a borderland where there is a presence, arguably more crowded, of people from different countries². Each with paths, histories and experiences strongly rooted in a project that has often failed to live up to the expectations placed in it. These are many minorities (numerical, linguistic, cultural and religious) living together in a shared space - not chosen, but imposed - where, perhaps more than elsewhere, diversity becomes a super-diversity³.

In this borderland, even the exercise of prisoners’ religious freedom takes on absolutely peculiar traits, because the condition of religious minority is intertwined with that of linguistic and cultural minority, in a legal system that still struggles to fully practice acceptance⁴. This is not because the problem is confined to penal institutions, but because, as many rightly argue, prison represents a kind of microcosm; a social laboratory, where reality is harshly tested in the exaggerated amplification of problems.

Entry into prison also coincides, for many inmates, with the start of a process of discovery or rediscovery of the religious, which not infrequently also takes on identity implications. The observance of worship practices, the cultivation of memory, and respect for traditions

Taxonomy of Viruses (ICTV) Sars-CoV-2. On Feb. 11, 2020, World Health Organization (WHO) Director-General Tedros Adhanom Ghebreyesus then announced that the disease caused by this virus would be named Covid-19.

2 Particularly significant in this regard are the statistics that are periodically posted on the Ministry of Justice website at https://www.giustizia.it/giustizia/it/mg_1_14.page.

3 See in this regard the articles collected in the monographic issue of the journal *Ethnic and Racial Studies*, No. 42, 2019 - Special Issue: Super-diversity in Everyday Life.

4 Among many: Rhazzali 2010; Fabretti 2014; Rhazzali 2018; Milani, Negri 2018:1-23; Milani 2019: 251-263; Santoro 2020.

become, in other words, a way of finding oneself within a need for identity that may in turn draw a further boundary, not always open to encounter with others.

On the risks potentially associated with the forms of closure raised by this ‘further border,’ already problematic in itself, fears raised by religiously inspired violent radicalisation have been converging over time. Arising in the aftermath of the September 11, 2001 attacks, these fears have grown in tandem with the attacks that have directly affected Europe since 11 March, 2004. Indeed, the explosions claimed by Al Qaeda, which in the spring of 2004 left nearly two hundred dead and more than two thousand injured in Madrid, did not remain an isolated incident. Between then and now, religiously motivated terrorism has struck in different ways and with varying intensity in many European countries. From aforementioned Spain to France, without sparing Belgium, the United Kingdom, Sweden, Denmark, Finland, Germany, and more recently Austria and Norway. The number of these attacks is considerable: about forty attacks, ten of which were surveyed in 2020 alone⁵.

Although the strategies and typology of these terrorist attacks have been changing over time, registering changes both on the side of the actors and on the side of the methods applied⁶, constant can be said to have been among analysts the conviction that the most favourable places for conveying religiously inspired processes of violent radicalisation are in most cases prisons and the web. Thus, while at one time the fears raised by the Islamic world focused mainly on the risks coming from suburban mosques⁷, after 9/11 suspicions spilled over to two places, the first physical and the second virtual, which, despite the existing differences, would evidently lend themselves more than others to conveying jihadist ideology and fostering adherence mechanisms. Places where the combination of freely assumed information, interpreted and re-articulated in a totally personal way, offers the misunderstood opportunity to overcome personal problems to individuals who, by orchestrating terrorist attacks, aspire to transform themselves into ‘heroes’. Thus, if religion is not in itself the primary factor from which the radicalisation process springs, it nonetheless provides certain individuals with inspirations and motivations that lead them to carry out violent actions.

5 Relative to attacks that took place in 2020 see the Europol report, *European Union Terrorism Situation and Trend report (TE-SAT) 2020* at <https://www.europol.europa.eu/activities-services/main-reports/european-union-terrorism-situation-and-trend-report-te-sat-2020>.

6 On this point, we refer to Marone 2020.

7 Sbraccia 2017:173-200.

2. Diversity, rights and (in)security

In the prism of the different effects that can be produced from religious and cultural diversity, the immigrant-security juxtaposition is thus found within prison walls in the Muslim-terrorist binomial, risking to overwhelm, if not properly considered and managed, the history of a relationship, that between religion and prison, which has taken on a very peculiar meaning and prominence in the treatment of prisoners over time.

The origin of this relationship in Italy is well known and is articulated in several stages that tell the story of a country in laborious evolution. This history takes its first steps from an almost exclusive relationship between the prison administration and the Catholic Church, only to open up, but only later and at the cost of challenging achievements, to religious pluralism (Milani, Negri 2018: 1-6). And so, if the presence in the oldest established prisons of chapels, statues, symbols and images of the Catholic religion is also a legacy of the role that, in liberal and fascist times, the prison administration recognised the moral value exercised by the Catholic religion in the processes of control and re-education of inmates, this role was subsequently modified with the reform of the prison system introduced in 1975 (art. 15, paragraph 1, l. No. 354/1975)⁸, which placed the exercise of religion - and no longer just the Catholic religion - in competition with other elements of treatment.

Driving forces of the revolution under consideration were, on the one hand, Article 27 of the Constitution and, on the other, the new constitutional regulation of the religious phenomenon. While Art. 27 of the Fundamental Charter introduced the prohibition of treatment contrary to the sense of humanity and oriented the function of punishment to the re-education of the convicted person, the new discipline of the religious phenomenon opened itself to pluralism of beliefs, divesting itself of the state confessionality of the fascist matrix. According to this new vision, religion ceased to perform the function of moralising and controlling prisoners, and rather contributed to the

⁸ Law No. 354 of 26 July, 1975, *Norme sull'ordinamento penitenziario e sull'esecuzione delle misure depressive e limitative della libertà*, in G.U. No. 212, 9 Aug., 1975, suppl. ord. Most recently, Legislative Decree No. 123 of 2 October, 2018, on *Reform of the Penitentiary System, implementing the delegation of authority referred to in Article 1, paragraphs 82, 83 and 85 (a), (d), (i), (l), (m), (o), (r), (t) and (u) of Law No. 103 of 13 June, 2017* (in O.J. No. 250, 26 Oct., 2018, suppl. ord. 50), amended the first paragraph of Article 15 in the following terms: "The treatment of the convicted and interned person shall be carried out taking advantage primarily of education, vocational training, employment, participation in public benefit projects, religion, cultural, recreational and sports activities, and facilitating appropriate contacts with the outside world and relations with the family" (Article 11, paragraph 1, lett. f).

unfolding of each person's personality, while respecting everyone's freedom of choice and personal dignity.

Although the 1975 law recognised the freedom of all inmates to profess their religious faith, to be instructed in it and to worship in it (Art. 26)⁹, nevertheless - it must be said - the modalities that preside in practice over the exercise of the right under consideration have remained unequal. While Catholic prisoners continue to be assured the celebration of the rites of their faith and the presence of at least one chaplain in each institution (Art. 26, paragraphs 2 and 3, l. no. 354/1975 and Art. 58, paragraph 4, Presidential Decree no. 230/2000), for members of religious denominations other than Catholic, the exercise of the same right is subject to the access of a minister of religion, who must be authorized in advance by the Ministry of the Interior, at the request of the detainee or his family members (Art. 26, paragraph 4, l. no. 354/1975 and Art. 58, paragraph 6, Presidential Decree no. 230/2000)¹⁰. Only denominations that have entered into an agreement with the state are freed from this regime to the extent that they have regulated this matter in some other form (Art. 58, Presidential Decree No. 230/2000)¹¹.

9 This right is expressly mentioned in the *Charter of the Rights and Duties of Prisoners and internees*. Approved by ministerial decree on 5 December, 2012, the charter implements Article 32 of Law No. 354 of 1975. See also Presidential Decree No. 136 of 2012, *Regulations on Amendments to Presidential Decree No. 230/2000 on the Charter of the Rights and Duties of Prisoners and internees*. The text of the charter, decree and regulations can be viewed on the Ministry of Justice website at https://www.giustizia.it/giustizia/it/mg_1_8_1.wp?facetNode_1=0_2&facetNode_2=0_8&previousPage=mg_1_8&contentId=SDC804746, where the charter is also translated into several languages.

10 On this subject, see Capasso 2016. The aforementioned disparities could be bridged by a general law on religious freedom, which has been advocated by many for years: the proposal, recently drafted by the Astrid group, introduces, for example, a provision aimed at ensuring spiritual assistance in separate communities to every individual, "in particular to those who are deprived of the guarantees provided by the covenantal legislation ex art. 8, c. 3, Const." On this point, see Mazzola 2019: 133.

11 All the laws approving the understandings to date include a special provision on spiritual assistance in penal institutions: thus Art. 8 l. no. 449 of 1984, *Norms for the regulation of relations between the State and the churches represented by the Waldensian Table* (G.U. no. 222, 13 Aug., 1984); Art. 9 l. No. 516 of 1988, *Norms for the regulation of relations between the State and the Italian Union of Seventh-day Adventist Christian Churches* (G.U. No. 283 of 2 Dec., 1988); Art. 6 l. No. 517 of 1988, *Norms for the regulation of relations between the State and the Assemblies of God in Italy* (G.U. No. 283 of 2 Dec., 1988); Art. 10 l. No. 101 of 1989 *Norms for the regulation of relations between the State and the Union of Italian Jewish Communities* (G.U. no. 69 of 23 March, 1989); Art. 7 l. no. 116 of 1995, *Norms for the regulation of relations between the State and the Evangelical Christian Baptist Union of Italy* (UCEBI) (G.U. no. 94 of 22 April, 1995); Art. 7 l. no. 520 of 1995, *Norms for the regulation*

There is a similar difference in the matter of places of worship: while, on the one hand, the presence in each institute of one or more chapels for the celebration of the rites of the Catholic Church is prescribed (Article 58, paragraph 4, Presidential Decree no. 230/2000); on the other hand, it only prescribes that directorates, even in the absence of ministers of worship, provide suitable premises for religious instruction and worship practices of members of other religious denominations (Art. 58, paragraph 5, Presidential Decree No. 230/2000).

The disparities in treatment in the exercise of prisoners' religious freedom that have just been noted are, if possible, further emphasised today in their practical effects by the significant presence in correctional institutions of a considerable number of foreign inmates who - as mentioned above - as well as professing beliefs different from those customary in the traditional scenario, belong to other cultures, express themselves with languages and gestures that are sometimes incomprehensible, and refer to behavioural and value models that are unusual for our Italian traditions.

This transformation was embryonically taken note of in the Prison Regulations enacted in 2000, which introduced two provisions aimed specifically at guaranteeing the exercise of religious freedom for those (now including Italians) who profess beliefs other than traditional ones (Presidential Decree No. 230/2000). The first recognises the right to display images and symbols of one's religious denomination in the individual room, or in the space they belong to in the multi-seat room (Article 58, Presidential Decree No. 230/2000)¹². The second commits the prison ad-

of relations between the State and the Evangelical Lutheran Church in Italy (CELI) (G.U. No. 286 of 7 Dec., 1995); Art. 6 l. No. 126 of 2012, *Norms for the regulation of relations between the State and the Holy Orthodox Archdiocese of Italy and the Exarchate for Southern Europe, in implementation of Article 8, third paragraph, of the Constitution* (G.U. No. 183 of 7 Aug., 2012); Art. 10 l. No. 127 of 2012, *Norms for the regulation of relations between the State and the Church of Jesus Christ of Latter-day Saints, in implementation of Article 8, third paragraph, of the Constitution* (G.U. No. 183 of 7 Aug., 2012); Art. 7 l. No. 128 of 2012, *Norms for the regulation of relations between the State and the Apostolic Church in Italy, in implementation of Article 8, third paragraph, of the Constitution* (G.U. No. 183, 7 Aug., 2012); Art. 5 l. No. 245 of 2012, *Norms for the regulation of relations between the State and the Italian Buddhist Union, in implementation of Article 8, third paragraph, of the Constitution* (G.U. No. 14, 17 Jan., 2013); Art. 5 l. No. 246 of 2012, *Norms for the regulation of relations between the State and the Italian Hinduist Union, Sanatana Dharma Samgha, in implementation of Article 8, third paragraph, of the Constitution* (G.U. No. 14 of 17 January, 2013); Art. 5 l. No. 130 of 2016, *Norms for the regulation of relations between the State and the Italian Buddhist Institute Soka Gakkai, in implementation of Article 8, third paragraph, of the Constitution* (G.U. No. 164, 15 July, 2016); Article 4 l. No. 240, 2021, *Norms for the regulation of relations between the State and the "Church of England" Association, in implementation of Article 8, third paragraph, of the Constitution* (G.U. No. 15, 20 January, 2022).

12 Santoro, 2010:1-9.

ministration to take into consideration, as far as possible, the prescriptions peculiar to the different religious faiths in the preparation of the canteen diet (Art. 11, Presidential Decree No. 230/2000). Provisioning the latter was also reiterated during the 2018 reform of the penitentiary system, amending the original dictate of Article 9, paragraph 1, of the 1975 law¹³.

Measures that are certainly important but prove to be insufficient in the face of the problems posed by the growing number of foreigners crowding the borderland of the prison in penal institutions. For this reason, despite the limitations of representativeness implicitly due to the absence of a unitary organisation of reference for the Islamic world, particularly interesting was the experimentation, launched in November 2015, by the memorandum of understanding signed between the Department of Prison Administration and the Union of Islamic Communities and Organisations in Italy (UCOII)¹⁴. Subscribed with the intention of “improving the way the Islamic faith is interpreted in prison [...] through the access in Penitentiaries of adequately prepared people”¹⁵, the protocol under consideration in fact set itself the goal of facilitating the entry of qualified *imams* and cultural mediators into penitentiaries, in order to provide valuable moral and religious support to inmates. However, both the type of procedure envisaged for the selection of the persons entitled to make their entry in implementation of the protocol in question and the onus on the penitentiary institutions involved in the experimentation to send a monthly report on the progress of the project to the General Directorate of Prisoners and Treatment as well as (for information) to the Office of Inspection and Control, has once again raised the issue of the difficult coexistence between the exercise of a freedom, that of religion, which is constitutionally guaranteed, and the instances of security that have so far been largely governed by an emergency logic.

13 Article 11(1)(b) of Legislative Decree No. 123 of 2 October, 2018, cited above, in fact supplemented Article 9(1) of Law No. 354/1975 in the following terms: “Prisoners and internees shall be ensured a healthy and sufficient diet, appropriate to their age, sex, state of health, work, season, and climate. Prisoners who request it shall be guaranteed, where possible, a diet that respects their religious beliefs.”

14 On this memorandum of understanding in doctrine: Fabbri 2015: 71 ff. and Angeletti 2018.

15 In this regard, Circular 3666/6116 pu - 0406462 of 2 Dec., 2015 (on the Ministry of Justice website at [https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_5&facetNode_2=1_1\(2015\)&facetNode_3=4_10&contentId=SDC1252173&previousPage=mg_1_8](https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_5&facetNode_2=1_1(2015)&facetNode_3=4_10&contentId=SDC1252173&previousPage=mg_1_8)). Lasting for two years, the trial, the circular 3666/6116 pu - 0406462- of Dec. 2, 2015, also states, was initiated based on the number of Muslim inmates and the presence of a room used for prayer in eight district houses: C.C. Verona; C.C. Modena; C.C. Turin; C.C. Cremona; C.C. Milan “Opera”; C.C. Milan “Bollate”; C.C. Brescia “Canton Mombello”; C.C. Florence “Sollicciano.”

This experimentation was recently reposed with some corrections in the Memorandum of Understanding signed in 2020 with effectiveness, this time, on the entire national territory and a two-year duration¹⁶. Nonetheless, the measures implemented in the fight against violent religiously motivated radicalisation run the risk, as we shall see, of profoundly affecting the exercise of the freedom to profess one's religious faith in prison, investing the administration with tasks and functions that, even if only of monitoring and observation, may result, in the name of security, in as many de facto restrictions, not in themselves imposed by the administration, but in fact suffered, or reluctantly tolerated by inmates. With the not insignificant danger that the anxiety to control even the conduct of those who are not detained for crimes of terrorism or aiding and abetting ends up inducing those who present real intentions in this regard to dissimulate them or, even worse, to facilitate processes of radicalisation in those who perceive and experience these measures as arbitrary and unfounded prevarications.

3. *Jihadist radicalisation in penal institutions*

If it is true that the emergence of the jihadist terrorist threat has, in fact, undoubtedly contributed to providing a renewed centrality, in public and scientific debate, to the theme of the relationship between religious freedom and security, *a fortiori* this has occurred in the prison dimension. The discovery, or rediscovery, of spirituality has always been a possibility for the prisoner¹⁷, who, in a daily situation of inevitable complexity, can identify in the religious narrative a proposal for the reinterpretation of their existence, at the same time capable of offering unprecedented prospects for the future. The primary importance attached today to this aspect of prison life, however, can not be explained without reference to the phenomena of radicalisation and the threats inherent in them¹⁸.

16 In fact, the 2015 protocol was extended through a new stipulation dated 5 June, 2020. For the related press release see <https://www.ucoii.org/2020/06/05/carceri-lucoii-sigla-il-rinnovo-del-protocollo-con-il-dapdel-ministero-della-giustizia/>. The Italian Islamic Conference and the Islamic Cultural Centre of Italy - Grand Mosque of Rome - also signed a protocol with the D.A.P. in October 2020 to guarantee spiritual assistance to Muslim detainees as part of a path to reintegration into civil society.

17 On the other hand, as already clarified, religion is, under Article 15 of the Prison System Act of 1975, one of the elements of treatment, along with education, work, cultural, recreational and sports activities, and contact with the outside world and family. For a sociological perspective on the role of religion in prison, see Sarg, Lamine 2011, 153: 85-104.

18 This issue has long been analysed by experts in prison studies. Cf. AA. VV. 2012, 9.

It is now, after all, widely believed that suburbs and mosques, once fertile grounds for jihadist proselytizing, have now been superseded and supplanted by the new radicalisation *hubs* constituted by the Web and, indeed, by prison¹⁹. Two paradoxically opposing realities, but the source of the same concerns: on the one hand, the realm of the immaterial par excellence, unlimited - or boundless, to return to the starting theme of this intervention - by definition and in perpetual change; on the other, penal institutions, in which the lives of inmates take place in cramped spaces, amidst rigidly regulated days and a substantial impermeability to any technological evolution²⁰.

Curiously, it is in places physically and conceptually at the antipodes, then, that religiously motivated radicalisation seems to find the greatest outlets, albeit, of course, in different ways. The virtual one, in fact, is an endless environment, in which the user, faced with infinite choices, can easily stumble upon unwanted content, but, just as easily, walk away from it, taking another path; in the prison context, on the other hand, the situation is quite the opposite. Forced cohabitation with others with a criminal past, coupled with the inevitable suffering caused by the deprivation of freedom and affection, can, beyond doubt, make the inmate particularly vulnerable to radicalised and radicalising propaganda.

In the case at hand, then, it is evident that the theme is intertwined with that of the more ordinary, in part already remarked upon, difficulties experienced by foreigners in penal institutions²¹; the common suffering from the loss of personal freedom is added here, in fact, to the feeling of exclusion and marginalisation suffered by the weaker subjects both outside and inside the prison²² and to the existential malaise generated, in many circumstances, by the failure of the migration project. The resulting state of particular psychological and personal fragility is, therefore, capable of explaining both the renewed spiritual needs of inmates and the danger that they, though animated by genuine intentions, will take dangerous drifts in the face of messages capable of promising a new sense of belonging and identity.

19 He notes the shift from the former binomial to the latter Sbraccia 2017: 174. Among the few voices to the contrary, see Jones 2014, 16.1:74-103.

20 Although it is precisely the need to develop new solutions in the area of countering radicalisation that seems to be pushing the prison administrations toward experimenting with innovative practices. On this point, see Caneva 2019.

21 On this point, the report of the States General of Criminal Execution, Table 7 - Strangers and Criminal Execution, p. 32, convened in 2015 by then Minister of Justice Andrea Orlando, already expressed itself.

22 These are elements that make it easier to understand the reasons for a path of radicalisation initiated in prison even according to the *Ministry's* most recent *Report on the Administration of Justice - Year 2021 - Inauguration of the Judicial Year 2022*, p. 895.

Prison conditions as a whole, on closer inspection, seem to correspond exactly to those typical of the so-called pre-radicalisation phase²³, that is, those circumstances, internal or external to the subject, that make them inevitably exposed to the risk of succumbing to the allure of the radicalised narrative.

Religiosity rediscovered in such a context, first and foremost, can be as personal as ever and mingle even more strongly with one's individual experience. There is no doubt, after all, that a lack of knowledge of the doctrinal heritage of the faith in which one was brought up, difficulties in meeting the minister of worship of the denomination to which one belongs²⁴ and an overall sense of abandonment, loneliness and failure are all factors capable of leading to the building up of that personal God of which Beck (2009) spoke. Religion (re)found can thus come to become an achievement to be exhibited, a sign of a new order, laboriously achieved, in one's life itinerary, to the point of being accompanied by the rejection of any intermediation with the deity²⁵. An external intervention can even be, in some cases, experienced as an undue intrusion, even an attempt to expropriate one's intimacy.

At the same time, however, in such difficulties, the identity aspect of religions is capable of assuming an even more central role²⁶. All the more so following entry into prison, in fact, the void caused by perceived bewilderment and alienation can be filled by fideistic symbolic universes; these can evidently come to the rescue of the newcomer, beyond the purely spiritual aspect, to provide him with a narrative to share with other inmates and, consequently, the tools capable of making him feel part of a group. Several, in fact, are the religious profiles of detainees identified by sociology; prominent among them are the identitarians, those who precisely claim faith as a key to collective aggregation and find in it essentially a symbol around which to "set up an identity representation" (Rhazzali 2010: 174).

On the other hand, we are not dealing with an entirely new phenomenon: prison has historically been a favored place for criminal

23 On this subject, see Mulcahy, Merrington, Bell 2013, 3,1:10. Illustrates the four stages of the radicalisation process Verdolini, 2019, 2:98.

24 For the legal framework that, in the absence of specific provisions, now regulates the access of Islamic ministers of religion in penal institutions, see Carnì 2015a, 19:25-27; Carnì 2015b: 211-243.

25 On this subject, see Rhazzali 2020: 115. The same author then speaks, on p. 122, of "ethical bricolage," in the face of the prisoner's construction of a new ethic and "aggregates of behavioral elements that embody beyond the letter the fundamental principles of religion." Again, see Rhazzali 2015; Rhazzali, 2010: 117 ff.

26 He points out, as two contextual manifestations of the reappearance of the sacred on the public stage, "the intense religious individualism and the partial transformation of the dogmatic and spiritual heritage of some religions into practices with strong identity character," Parisi 2020:37 note 15.

proselytising²⁷ and it is hard to see why that aimed at obtaining the adherence of ordinary offenders to the allegedly religious terrorist cause should be an exception²⁸.

Moreover, the data on jihadist attacks that have occurred in Europe and North America in recent years are remarkably significant. Since the proclamation of the Islamic State in June 2014, about a quarter of the attackers are believed to have been previously detained in a penal institution²⁹ and only a few of them were for terrorism offences. These are considerable numbers, justifying the provision of counter-radicalisation measures developed *specifically* for the prison dimension.

The Prison Administration (D.A.P.), therefore, has been faced with a new challenge, relating to the identification of legal instruments to be applied to subjects - convicted with a final sentence or still awaiting trial - already subjected to imposing restrictions on the exercise of inviolable rights, now the object of further attention. Even from an initial examination, the strategies to date adopted in this regard reveal how the primary objective is to avoid 'jihadist contagion'. In fact, the greatest fear that is felt is that of the spread of the radicalising message by inmates for terrorist crimes (so-called terrorists) or for other crimes, but nevertheless already radicalised (so-called *leaders*), to the rest of the inmate population; in other words, the Administration's intent is to prevent the possibility that further common criminals (so-called *followers*)³⁰ may be subjected to the fascination and influence of the propaganda operated by the more charismatic inmates.

To this end, the D.A.P. has ordered immediate isolation measures for inmates for terrorist crimes, so as to contain their recruitment potential from the moment they enter prison. Thus, since 2009³¹, they

27 Suffice it to recall here Ferrajoli's well-known reflection 1989: 259, according to which prison "is a place of diseducation and solicitation of crime."

28 The dynamics that make the prison environment ideal for recruiting new potential terrorists are well illustrated by AA. VV., 2017: 25-26. Insists on the causal factors of a possible radical drift Fronzoni 2016, 2: 294-295.

29 The data here are proposed by Marone, Olympius 2019: 4.

30 This breakdown among the categories of inmates in different capacities involved in the processes of radicalisation in prison is constantly reiterated by the Administration. Most recently, see *Report of the Ministry on the Administration of Justice*, cited above, p. 898, which also added the category of so-called *criminal opportunists*, inmates who adhere to the radicalising message for mere reasons of expediency.

31 See Department of Prison Administration Circular No. 3619/6069 of 21 April, 2009. The new High Security circuit has three different subcircuits within it, each of which has different prison facilities dedicated to it, with equal guarantees of security and treatment opportunities. Among them, the AS2 subcircuit is expressly reserved specifically for inmates for crimes committed for the purpose of terrorism, including international terrorism. According to the *Ministry's Report*

are assigned to High Security Circuit 2 (AS2), where there is both an impossibility of communication between inmates and strict separation from the remaining inmate population³². Along the lines of this choice³³, the individual who has engaged in terrorist conduct, or others who have facilitated it, is excluded from ordinary prison life through his placement in a circuit that prevents his contact with other inmates, so as to immediately neutralise his disruptive charge. Such a measure, however, is not in the prison setting evidently sufficient; setting aside the issue of terrorism inmates, it is indeed necessary to focus on identifying radicalisation processes undertaken by ordinary inmates, who previously had nothing to do with even supporting jihadist activities.

The difficulty for the Administration, therefore, lies in the necessary arrangement of another conception of radicalised, which is outside the commissioning of a crime of terrorism. The same, however, at the same time, must not prove to be a harbinger of excessive restrictions on the freedoms guaranteed to detainees by our legislation. The idea that the restriction of personal freedom is accompanied, almost automatically, by the disavowal of any other subjective position through a generalised subjection to the prison organisation is, in fact, “completely foreign to the current constitutional order, which is based on the primacy of the human person and his rights,” as the Constitutional Court has made clear³⁴.

This implies not only the impossibility of treatment contrary to the supreme value-principle of the dignity of the imprisoned person³⁵, but also that the same inviolable rights that are its extrinsic expression

on the Administration of Justice, cited above, p. 858, as of 18 Nov., 2021, there were 82 inmates ascribed to it, 43 of whom were specifically for crimes of “Islamic terrorism.” By Law No. 279 of 2002, it should be recalled, crimes committed for the purpose of terrorism or subversion had already reverted to being included among those that prevent the granting of benefits and alternative measures.

32 For a brief look at the reality experienced in AS2 sections, including with reference to the difficulties of the accomplished exercise of religious freedom, see Oleandri, Pulino 2017.

33 Moreover, not necessarily shared internationally. On this point, see Rushchenko 2018. On the difficulties of allocative choice for detainees at risk of radicalisation, see Del Vecchio 2017, 6: 193-210.

34 Constitutional Court, Judgment No. 26 of 1999, accessible online at <http://www.giurcost.org/decisioni/1999/0026s-99.html>, Considered in law, para. 3.1, whereby “the restriction of personal liberty according to the current Constitution therefore in no way entails a *capitis deminutio in the face of the discretion of the authority in charge of its execution.*”

35 According to Ruotolo 2016, 3:7, our penitentiary legislative framework “is textually based on the values of humanity and dignity of the person [...] in line not only with the prescriptions of Article 27 Const. but also - and even earlier - with the principles-values of the recognition-guarantee of inviolable rights

should, as far as possible, maintain their maximum possibilities for expansion³⁶. In other words, the very freedom that is there by nature limited cannot and should not be suppressed. What, indeed, is equally guaranteed, the residue of freedom that the system still grants, becomes even more valuable in prison “insofar as it constitutes the last sphere in which his individual personality can expand.”³⁷. It is in such a scenario of guarantees, then, that the strategy of countering radicalisation sought by the D.A.P. has been grafted, the purpose of which, however, needs to be reiterated before analysing the critical issues. While that espoused by the criminal law is undoubtedly marked by repression³⁸, this one cannot but present marked preventive traits. More than the time spent in prison, in fact, it already looks at the time afterwards, intending to avoid the risk that the period of imprisonment achieves the opposite purpose to that constitutionally envisaged of resocialising reeducation, acting instead as a criminal school³⁹.

4. The role of radicalisation indicators and the critical issues underlying them

First and foremost, the first objective was deemed to put prison staff in a position to understand the signs of ongoing radicalisation, so that they could intervene as soon as possible with measures capable of curbing its development. To this precise end, the Administration has equipped institutions with a set of criteria, called “radicalisation indicators,” the result of work carried out in 2009 by an international commission formed by Austria, France and Germany, with financial

(Article 2 Const.), equal social dignity and formal and substantive equality (Article 3 Const.).”

36 On this point, see Silvestri 2014, 2:4, who reminds how the tare of the security needs of custody must always be inherent in the protection of the rights of third parties.

37 Constitutional Court, Judgment No. 26 of 1999, cited above, considered in law, para. 4.2.

38 Comprehensively analyses, for example, all the innovations introduced by Decree Law No. 7/2015, converted with amendment by Law 47/2015, the volume edited by Kistoris, Viganò 2016. For further discussion, see the bibliography referred to by Staffler 2016, 3: 7-11, which traces, in footnote 23, only the criminal law literature on the subject published from 2005 onward.

39 With specific reference to terrorism, albeit of a political matrix, Dolcini 1979: 477 already noted that “the phenomenon of the *Nuclei Armati Proletari* [...] demonstrates, indeed, how the prison now represents in our country the ideal location for the maturation of irreversible choices of armed struggle against the state.”

support from the European Commission⁴⁰. They consist of a list of physical changes (in clothing or outward appearance) and behaviours enacted by detainees (e.g., increased isolated religious practice, proselytizing, comments on current political events, sudden change of interests) that, in the opinion of those who developed them, would merit special attention. The presence of one or more of these indicators would not in itself constitute proof that radicalisation has taken place, but should at least prompt heightened vigilance “and, if necessary, act accordingly”⁴¹.

In the wake of this orientation, the detection of said indicators may correspond to the inmate’s inclusion in one of the three levels⁴² of monitoring arranged by the D.A.P. specifically for inmates reported for alleged radicalisation. Specifically, it is the Central Investigative Unit (N.I.C.) of the Prison Corps that collects, analyses and processes all the information assumed by the various penal institutions regarding the path taken by individual subjects.

It should be clarified, however, what is meant here by radicalisation: evidently, not the commission of acts of even a mildly terrorist nature, which are largely impossible to enact in the prison setting. The same fact sheet accompanying the Handbook on Indicators, published by the Ministry of Justice in July 2015⁴³, after pointing out the difficulties inherent in attempts to identify a definition of radicalisation, does not help provide clarity on the point, even reporting four possible versions of it. Three of them classically refer to the use of violence, or

40 Austria-France-Germany International Commission, *Handbook on violent radicalisation, recognition of the phenomenon by professional groups involved and responses to it*, European Commission-Directorate General for Justice, Freedom and Security, June 2009 (available on the Ministry of Justice website at

https://www.giustizia.it/giustizia/it/mg_1_12_1.page?facetNode_1=0_0&facetNode_2=4_95&contentId=SPS1143166&previousPage=mg_1_12).

41 Austria-France-Germany International Commission, cit. p. 7.

42 The activity of the N.I.C. develops precisely on three different levels of observation: the first, defined as ‘HIGH’, which brings together those subjects imprisoned for acts related to international terrorism and those who have already aroused particular interest because of attitudes detecting forms of proselytism or radicalisation; the second, ‘MEDIUM,’ which concerns those inmates who have engaged in conduct, within prison walls, such as to suggest their proximity to jihadist ideology; and finally the third, ‘LOW,’ which includes those inmates who deserve only in-depth observation in light of the still-generic news from the institution. The illustration of monitoring levels is constantly reiterated by the Administration in its annual reports. Most recently, in the *Ministry’s Report on the Administration of Justice*, cited above, at p. 900. On this subject, see Zaccariello 2018: 57-63.

43 The *Handbook Sheet on Radicalisation* can be accessed online at https://www.giustizia.it/giustizia/it/mg_1_12_1.page?facetNode_1=0_0&facetNode_2=4_95&contentId=SPS1143166&previousPage=mg_1_12.

with direct references to the notion of extremism⁴⁴, while the fourth, certainly more original, defines radicalisation as “an increasing willingness to support hard-to-reach changes in society, which may aim at the abolition of the established democratic order and may involve the use of non-democratic methods.”

As much as the latter notion appears to be the preferable one, if for no other reason than the attempt to give autonomy to the concept of radicalisation, which is too often flattened on that of extremism or fundamentalism, it does not, however, appear to be the one actually adopted by the D.A.P.

Indeed, among the indicators of radicalisation identified are conducts that in no way could be considered symptoms of such a serious danger. One need only think of changes in outward appearance or, again, the severing of external contacts with family members. From an ecclesiastical perspective, then, it appears evident how some of those attested behaviours constitute unequivocal enjoyment of the right to religious freedom, insofar as it is expressly guaranteed by the Constitution first, and by the prison system second. The intensification of religious practice, of course, overall, but not only, comes to paradoxical outcomes: Article 58, second paragraph, of the Rules of Execution assures inmates the right to display in their individual room, or in their own pertaining space in the multi-person room, images and symbols of their religious denomination (Santoro 2010). According to the handbook provided to correctional institutions by the Administration, however, the “decoration of the cell with prayer rugs, Islamic calligraphy and the Koran”⁴⁵ is precisely one of the indicators that would justify raising the surveillance threshold on the inmate. The obvious risk that recourse to such indicators presents, therefore, consists in negatively interfering with the exercise of freedoms expressly protected by the legal system, which, as a secularist, is not entitled to derive any negative legal consequences from the legitimate religious practice of each person. Moreover, reasoning in this way, the very promotional attitude that connotes Italian secularism, which not only “legitimises legislative interventions to protect freedom of religion,”⁴⁶ but also assigns to the state “the task of guarantee-

44 Thus, radicalisation is defined as “a process that causes an individual or group to accept, support, or encourage the use of violence as a political means,” “a process of personal evolution whereby an individual adopts increasingly extreme political or politico-religious ideas and goals, with the belief that achieving such goals justifies extreme methods,” and “a process of adopting an extremist belief and willingness to use, support, or encourage violence and fear as methods to change society.”

45 Austria-France-Germany International Commission, cit. p. 8.

46 Thus the Constitutional Court in Judgment No. 508 of 2000, accessible online at <http://www.giurcost.org/decisioni/2000/0508s-00.html>, considered in law, para. 4.

ing the conditions that favour the expansion of everyone's freedom and, in this sphere, of freedom of religion," would be contradicted⁴⁷.

Along this line, the effect achieved is exactly the opposite. Instead of being promoted and incentivised, the enjoyment of the right to religious freedom is instead a harbinger of pejorative repercussions on the prisoner's prison treatment. Reporting the presence of indicators, in fact - even inferred from the exercise of guaranteed practices - allows the latter to be placed in one of the aforementioned monitoring levels. Once convinced of the subject's progressive radicalisation, indeed, the administration intervenes, mainly to prevent him from coming into contact with other inmates. The 'deradicalisation procedures' currently provided for do not in fact consist of anything more. As the Ministry's annual report⁴⁸ makes clear, the General Directorate of Prisoners, while continuing in its monitoring action, can in such cases decide to transfer the detainee, with the aim of removing him from the environment that facilitated his adherence to jihadist ideology and, at the same time, preventing him from being able to carry out any proselytizing activities himself. This transfer, at most, is accompanied by the possibility of the educational area intensifying "interviews with the subject also involving experts *ex art. 80 L 354/75*," without anything more specific. A consequence of this is the fact that, as has been argued by several parties (on this point Paterniti Martello 2017), some detainees prefer not to publicly manifest their faith in any way, precisely so as not to fall into the mapped areas of suspicion. From both an eminently practical and theoretical perspective, such a result, the child of a system incapable of effectively distinguishing between the exercise of a right and an index of radicalisation, appears undesirable. First, on a more concrete side, it carries an obvious risk: that of paradoxically encouraging the concealment of what one would actually like to bring out. Indeed, once it has been established that, for example, the posting of religiously motivated images in the cell is a telltale sign of radicalisation, nothing can be more counterproductive than the detainee who, aware of the perspective adopted by the Administration, consciously chooses to conceal as much as possible his or her own potentially flagging behaviours, refusing to wear or display religious symbols, even though they have embarked on, in their innermost being, a radicalised path.

Second, above all, such an outcome amounts to the failure of the secular and pluralist design identified by the Constituents, who hoped

47 These are the words of the Constitutional Court, pronounced in Judgment No. 334 of 1996, accessible online at <http://www.giurcost.org/decision-i/1996/0334s-96.html>, considered in law, para. 3.1.

48 In the more recent one, see *Report of the Ministry on the Administration of Justice*, cited above, p. 899.

for a system capable of removing obstacles to the free development of the individual personality and certainly not, on the contrary, creating those obstacles. Conducts such as decorating the cell, changing physical appearance, intensifying prayer or even strictly religious proselytizing directed at other inmates are undoubtedly all manifestations of the subject's personality, by which they fully affirm it, within the limits of what is permitted by the conditions of imprisonment and as guaranteed by Article 1 of the Prison Order Law⁴⁹. Indeed, that same personality to whose full development state action must be directed, finds full affirmation only if the democratic republic recognises and protects inviolable rights (Art. 2 Const.).

Safeguarding the conduct that constitutes their exercise, therefore, rather than drawing out from them clues from which to derive worsening consequences of treatment, is functional to the protection of the very dignity of the individual, the polar star to which the entire penitentiary system, already from its Article 1⁵⁰, must never cease to turn its gaze. For what has just been described, however, those conducts are not considered irrelevant, but rather as alarm bells to be monitored. A system, then, based on indicators, which not only lacks effectiveness, but also risks contradicting the very basis on which the entire legal discipline dedicated to treatment in penal institutions is founded. To the complexities inherent in the need to draw a delicate line between expressly permitted and protected practices, on the one hand, and drifts towards jihadist radicalisation, on the other, are then added the doubts regarding the real effectiveness of the outlined strategy. Indeed, it should not be forgotten that such a complex activity of observation and classification is delegated to prison staff, who often lack suitable analytical tools, even if only on the cultural and linguistic side⁵¹. The described approach to religious freedom has, in conclusion, a twofold effect. On the one hand, as pointed out, it oppresses the individual's possibilities for complete fulfillment (Fabbri 2015: 87); on the other hand, it fails to consider the right guaranteed by Article 19 Const. as a valid resource precisely in terms of countering radicalisation⁵². The accomplished and free exercise of religious

49 Specifically, the third paragraph of Article 1 Law No. 354 of 1975 makes it clear that "every person deprived of liberty shall be guaranteed fundamental rights."

50 As Article 1 of the Penal Ordinance states, "prison treatment must conform to humanity and must ensure respect for the dignity of the person."

51 Milani 2019:259 emphasises this difficulty.

52 Moreover, the role that religious freedom can play in combating radicalisation has already been emphasised by the UN Special *Rapporteur on freedom of religion* in his *Report of the Special Rapporteur on freedom of religion and belief* of 17 January, 2017, p. 17, according to which "rather than imposing undue restrictions on the right to freedom of religion or belief, promoting and protecting this right can more

practice can, in fact, equip the most vulnerable detainees with new tools of reflection functional to the consolidation of their ability to resist the Sirens represented by jihadist messages.

Since the feeling of exclusion and marginalisation is often one of those conditions typical of the pre-radicalisation phase, ensuring that inmates, whatever their beliefs, have a place to worship, continuous and non-fragmented spiritual care, and the opportunity to educate themselves in their faith⁵³ are essential measures that can help limit that perception⁵⁴.

In this direction, the Administration should be credited with the recent effort to have attempted to resolve, through the aforementioned protocol signed with the UCOII, the problem of spiritual assistance, which is notoriously complex for believers of denominations that do not have an agreement with the State and is as topical as ever, in our country and not only⁵⁵, in the face of the growing religious diversity in prison⁵⁶. Although not made explicit in the document⁵⁷, one of the reasons for its adoption is certainly the desire to anticipate the victimisation and subsequent radicalisation of prisoners⁵⁸. It is in this light that the reference in Article 2 of the protocol to the entry into prisons of both spiritual assistants and intercultural mediators should be read. An initiative that intends to curb the phenomena of radicalisation cannot in fact be based exclusively on the activity of ministers of religion, which by its very nature is mainly directed toward spiritual support; as already clarified, radicalisation in penal institutions is

effectively serve to prevent or counter violent extremism." However, the debate over the possible use of religious freedom in an anti-radicalisation strategy extends beyond European borders. For a U.S. perspective, which also cites the Pakistani case, moreover, see Khan 2016.

53 Add to this, with specific reference to Muslim inmates, that Islam is configured not so much as an orthodoxy, but as an orthopraxis, whereby material behaviours count as much as and more than what one believes; in this regard, see Aluffi Beck-Peccoz 2008: 173 ff. The possibility, then, of fully exercising religious practices even in prison acquires, for inmates of the Islamic faith, a special relevance.

54 The considerations already expressed in Milani, Negri 2018: 21 are taken up here.

55 For a *focus*, for example, on the UK case, see Paffarini 2018, 25. As for an in-depth study about Islam in French penal institutions, see the well-known study by Khosrokhavar 2016.

56 For a sociological study on the subject of religious diversity in Italian penal institutions, see Fabretti 2014. With specific reference to younger inmates, see Saracino 2017.

57 Available online at <https://www.ucoii.org/wp-content/uploads/2020/01/Protocollo-Intesa-DAP.pdf>.

58 In doctrine, he values this implicit purpose of the Angeletti Protocol 2018, 24: 5.

a path that more generally involves the delicate issues of the sense of marginalisation and the need for individual belonging, pertaining to personal and cultural identity as a whole, as well as the strictly religious sphere. In the background, there remains the inextricable problem of assessing the success of any prevention initiative implemented in penal institutions. Understood radicalisation from a strictly penal angle⁵⁹, a statistical reduction in terrorist or terrorism-related crimes would be a visible indicator of an effective strategy, albeit at the risk of undue or excessive restrictions on inviolable rights. In the absence of an unambiguous notion of radicalisation in the prison setting, however, the measurability of the success of any law enforcement action is particularly laborious⁶⁰.

One last element, however, may help in identifying the definition of radicalisation adopted by the D.A.P.: this is administrative expulsion, the “cornerstone”⁶¹ of the overall anti-terrorism apparatus set up by the system. Should the described monitoring measures, in fact, be able to ascertain that the detainee has actually completed their radicalisation course, they often go, once discharged at the end of their sentence, precisely to an expulsion measure. Just one figure, to understand the size of the phenomenon: in 2017⁶², as many as 92 individuals released from prisons were expelled for adherence to jihadism.

The complex surveillance activity carried out in the institutions, therefore, if it reaches its ultimate outcome, then results in a measure that reveals the conception of radicalisation espoused by the D.A.P. The radicalised detainee, according to this view, is a subject whose behaviours recorded during imprisonment, including religiously inspired conduct, make them worthy of special attention; in particular, it is the ways in which their religiosity is expressed that make them

59 Criminal law does not expressly define who the radicalised person is either, but the inherent limits of that branch of the legal system allows them to be considered as a person who engages in terrorist conduct, or others, deemed worthy of punishment, that facilitate the commission of terrorist acts.

60 Add to this the normal difficulties related to evaluating the results of resocialising projects in prison, highlighted, with specific reference to counterterrorism projects, by Silke, Veldhuis 2017, 11, 5: 8.

61 Vidino, Marone 2017: 6.

62 The 2017 figure is reported in the *Ministry's 2020 Report on the Administration of Justice*, p. 46. In the most recent Report, however, we read on p. 903 that, in 2021, those discharged from penitentiaries for the end of their sentences then expelled for reasons of radicalisation numbered 22. Presumably, among the reasons for this decrease in cases should also be counted the pandemic emergency, which has drawn the utmost attention not only of public opinion, but also of institutions. In this regard, the Report, on p. 832, reports, as to the training of prison staff on radicalisation, that “in recent years (2019, 2020 and 2021), however, the already existing materials have unfortunately not been constantly updated due to the severe pandemic crisis.”

considered dangerous and ready to commit acts of violence as soon as they serve their prison sentence. It is precisely this religiosity, especially if Islamic, that is a cause for concern, and such anxieties justify the use of special monitoring measures. What is most alarming, then, is the fact that their beliefs are so deep-seated and entrenched that any re-educational treatment cannot achieve any positive result, either for lack of suitable tools to counter them or precisely because of the irreducibility of their position. In the face of these difficulties, the only pursuable objectives, in the eyes of the Administration, are, first of all, to prevent the detainee from completing their radicalising path, monitoring any possible circumstantial evidence - even at the risk of reporting conduct that is completely harmless and, indeed, expressly protected by the system - then, in the event that this has unfortunately been accomplished, to take action to remove the subject as soon as possible from the country. These are, however, rather than choices that are the result of an overall vision of the issue, the only options that are practically feasible today.

This overall picture, in fact, reveals the real structural weakness of the Italian strategy, namely the lack of an overall plan for both prevention and de-radicalisation⁶³. This is a shortcoming that will necessarily have to lead in the future to the conception of unprecedented solutions, which are unavoidable in the face of a challenge of such magnitude, if we do not want to continue along tracks such as those described, perhaps effective in the short term, but certainly short-sighted, if we turn our gaze toward the horizon of a broader perspective.

5. Conclusions

Observation and monitoring are thus strategies for countering violent religiously motivated radicalisation that, while in principle not infringing on the religious freedom of detainees, can significantly in-

⁶³ As is well known, other European countries, where the importance of these two aspects is widely recognised, have instead taken steps to develop programmes aimed at de-radicalising aspiring or already radicalised jihadists. One thinks of Britain, the Netherlands or Denmark, pioneers in Europe on the issue. A British proposal on the point is formulated by Marsden 2017. For an overview of the Dutch and Danish situations, however, see Demant, De Graaf 2010, 5, 33: 408-428, Hemmingsen 2015, respectively. In Italy, an attempt in this direction had actually been made with the bill that, in 2016, intended to introduce "Measures for the Prevention of Jihadist Radicalisation and Extremism" (Bill C. 3558). The initiative, however, then fell on deaf ears; passed in the House on 18 July, 2017 but never reached the Senate's consideration, until the recent reintroduction of the text, currently the subject of Bill No. 243-3357-A176, which appears, as of 14 March, 2022, to be under discussion in the House (rapporteur Hon. Fiano).

fluence its exercise. The limitations of this strategy become even more evident when one considers that such actions are not, as mentioned above, matched in reality by the provision of as many direct interventions not only to prevent, but also to counter religiously inspired fundamentalist terrorism through effective de-radicalisation intervention (Milani, Negri 2018:13-17; Martucci 2019, 8).

In doing so, however, one runs the risk of pursuing more securitarian intentions than security in the proper sense. It is, after all, no secret that as the alarm generated by the terrorist threat grows, the relationship between the exercise of the freedom of individuals and the security of all becomes exceedingly complex⁶⁴. So delicate and complex, in fact, that the OSCE Office for Democratic Institutions and Human Rights (ODIHR) published a guide in 2019 to remind member states that measures taken in this matter must still ensure respect for human rights and, among them, freedom of belief⁶⁵. Rights that, it should be recalled, are not lost even in prison, where the restrictions due to the state of detention are not an end in themselves, but must be constitutionally oriented toward the reeducation, or perhaps better, the resocialisation, of the convicted person (Article 27 Const.).

The issue is, as can be guessed, not an easy one to resolve. In strictly legal terms, the difficult relationship between the exercise of individual religious freedom and collective security is consumed, as is well known, in the search for a balance between the exercise of the right, on the one hand, and its limits, on the other (Colaïanni 2020: 13ff.). A search that, in all evidence, is neither simple nor painless, inevitably involving sacrifices and limitations.

As if this were not enough, the adoption of measures to counter violent religiously motivated radicalisation also requires timely and adequate consideration of both individual contexts and the experience of the people involved in these processes. The radicalisation of an immigrant who has just arrived in Europe is certainly a different phenomenon from that which may affect those who were born or raised there instead⁶⁶. The latter phenomenon has intensified considerably since 2017, that is, the protagonists of more recent attacks have been young male adults, aged between twenty and twenty-eight, who, apparently

64 Lastly, around this issue we refer to the collected essays edited by Alicino 2020.

65 *Organisation for Security and Co-operation in Europe, Freedom of Religion or Belief and Security: Policy Guidance*, September 9, 2019 (<https://www.osce.org/files/f/documents/e/2/429389.pdf>). On this point, see the contributions of Ventura and Ferrari 2021: IX ff/XI ff. Also published in the same volume is an Italian translation of the document under review edited by Gabriele Fattori, Pasquale Annicchino and Marco Buccarella (p. 213 ff.).

66 This has long been a widely studied topic. See, for example, now more than a decade ago, Pick, Speckhard, Jaunch 2009.

integrated in Europe, often present a rudimentary and fragmentary knowledge of Islam, very often matured outside of stable relationships with the Islamic community and the mosque (Marone 2020).

It is also necessary to clear the field of the risk, implicit in the strategies considered above, that the practices of worship and freedom of propaganda in religious matters assume, in the eyes of those engaged in the fight against jihadist-inspired violent radicalisation, a negative valence per se. Especially if one believes that the authentic exercise of worship, as already pointed out, can be a valuable ally in policies to counter religiously motivated terrorism. The feeling of insecurity that has overwhelmingly entered our societies must not, in other words, sacrifice on the altar of security either the exercise of fundamental rights or the various paths to integration, which have been laboriously undertaken so far. Indeed, human dignity, tolerance, democracy, justice and freedom, including freedom of speech and religion, remain insurmountable limits. As was recalled, moreover, on the occasion of the joint statement of the EU home affairs ministers, which was issued on 13 November, 2020⁶⁷, in the aftermath of recent attacks in France and Austria⁶⁸. But the declaration of the EU home affairs ministers went even further, calling for, on the subject of religious freedom, the adoption of actions to protect people from instrumental use of religion and interpretations of it that foment violence. Put differently, the fight against religiously inspired violent extremism should not lead to the exclusion or stigmatisation of particular religious groups; it is not directed against political or religious beliefs, but against fanatical and violent extremism. This caveat proves particularly important today, in the face of the enactment of the much-discussed French Law No. 1109 of August 24, 2021 *confortant le respect des principes de la République*⁶⁹.

67 For those who normally pay attention to anniversaries, 13 November is not an insignificant date. Indeed, this day marks the sad anniversary of the attacks that struck the city of Paris in 2015, claiming thirty lives, including Italy's Valeria Solesin, and several injured. All fell during a sequence of coordinated attacks that were committed between the Saint-Denis stadium, and the Bataclan, as well as in several bars and restaurants located in the 10th and 11th *arrondissements*. This anniversary is particularly important not only because of the number of victims recorded, but also because the attacks launched in Paris on 13 November, 2015, coincide for many analysts with the height of the wave of jihadist terrorism fomented by the rise of the self-styled Islamic State in Iraq and Syria. A rise that politically and symbolically converged with the proclamation of the "caliphate" on 29 June, 2014. On this point, see again Marone 2020.

68 The text of the Joint Statement by the EU *home* affairs ministers on the recent terrorist attacks in Europe can be found at <https://www.consilium.europa.eu/en/press/press-releases/2020/11/13/joint-statement-by-the-eu-home-affairs-ministers-on-the-recent-terrorist-attacks-in-europe/>.

69 For an illustration of its contents see Fornerod 2021, Fregosi 2021, Tira 2021.

The *process* of this measure stems, as is well known, from the need expressed by Emmanuel Macron in the early months of 2020 to take initiatives aimed at reinforcing the secularity of the state, consolidating republican principles and combating “Islamic separatism”, a phenomenon which, by the French president’s own admission, made during a speech in Les Mureaux on 2 Oct., 2020⁷⁰, is often connected with the degradation and isolation of the *banlieues*, where citizens of the Muslim faith observe Sharia law as the only rule of life, showing themselves refractory to the secular values of the *République française*.

However, the fight against “Islamic separatism,” which the French law says it intends to implement, risks, if not properly considered and managed, to stiffen even more those boundaries that it instead sets out to erase, ignoring the real crux of the matter; that is, the now long-standing issue of European religious pluralism and Islam’s place within it. Indeed, the resolution of this issue, consciously or unconsciously postponed for too long, risks feeding the vicious circle of stereotypes, blowing ever harder on the fire of fundamentalism. For this not to happen, we need to begin to read the relationships that exist between this phenomenon and the multicultural and multireligious transformation of the societies in which we live.

Nothing new needs to be invented. Only to work in the furrow of the fundamental principles and values of the European Union, promoting policies of inclusion that can no longer be separated from an interdisciplinary vision, if we really want to give impetus to an effective and still unprecedented action of preventing and countering radicalisation.

70 “Le problème,” says Emmanuel Macron, “c’est le séparatisme islamiste. Ce projet conscient, théorisé, politico-religieux, qui se concrétise par des écarts répétés avec les valeurs de la République, qui se traduit souvent par la constitution d’une contre-société et dont les manifestations sont la déscolarisation des enfants, le développement de pratiques sportives, culturelles communautarisées qui sont le prétexte à l’enseignement de principes qui ne sont pas conformes aux lois de la République. C’est l’endoctrinement et par celui-ci, la négation de nos principes, l’égalité entre les femmes et les hommes, la dignité humaine. Le problème, c’est cette idéologie, qui affirme que ses lois propres sont supérieures à celles de la République. Je ne demande à aucun de nos citoyens de croire ou de ne pas croire, de croire un peu ou modérément, ça n’est pas l’affaire de la République, mais je demande à tout citoyen, quelle que soit sa religion ou pas, de respecter absolument toutes les lois de la République.” The text of the speech delivered by the French president on 2 October, 2020 can be read at <https://www.elysee.fr/emmanuel-macron/2020/10/02/la-republique-en-actes-discours-du-president-de-la-republique-sur-le-theme-de-la-lutte-contre-les-separatismes>. As is natural, this speech provoked heated reactions, including one expressed by the EULEMA (Council of Muslim Religious Leaders of Europe) organization on 12 October, 2020. The text of the statement can be found at <https://www.coreis.it/documenti-ufficiali/eulema-commento-sul-discorso-del-presidente-macron-sulla-lotta-al-separatismo>.

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*Psychological aspects of the boundary:
from Ego Skin to relationships
with others and spirituality**

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The theme of boundary, of limit, of separation, runs through, in many ways, the entire history of psychological disciplines. It is therefore a broad, partly nuanced topic, which in this paper we will address from three perspectives: the boundary between the internal world, of the psyche, and the external world, of reality and culture; the boundary between us, the groups to which we belong, and others, that is, the groups with which we are in a relationship; and the boundary between the material world, of the body and objects, and the immaterial world, of ideas and, for many people and cultures, of spirituality.

1. The boundary between the psychic world and the external world: the ego-skin

Studies of very early childhood highlight well the progressive differentiation between the self and external reality, primarily the mother or caregiver of the infant. The child¹ of our Species is born immature, incapable of independent survival, and for a time continues, both biologically and psychically, its fusion with the mother and her body,

* Paragraphs 1 and 2 are written by Paolo Inghilleri; paragraphs 3, 4, 5 by Tatiana Tolusso.

¹ Henceforth, for convenience, we will use the term male to refer to both genders without any hierarchical claim.

that body which had been the environment of development and of which the infant was intimately a part. Margaret Mahler's pioneering studies give an established idea of this process, which we all went through (Mahler, Pine, Bergman 1978). According to the Hungarian-born psychoanalyst, there is a stage, the first few weeks of life, that can be defined as *normal autism*: the child is mentally and bodily fused with the mother and feels that they are part of a single whole, precisely without boundaries between self and *caregiver*. External stimuli are negligible and the goal is an essentially biological homeostasis, related to food and sleep. From the second month of life, the *normal symbiotic* phase begins, in which there is a greater perceptual and affective investment by the child with respect to the outside world, particularly toward the mother, although still a differentiation between the inside and the outside, between the self and the other, is not yet realised.

This awareness of separation, which will lead to the progressive awareness of the difference between self and the world, is realised from the fifth month of age, which marks the beginning of that process of the child's development as an individual in its own right, referred to as the *separation-individuation* process: it begins with the differentiation subphase, a time when exploration of the world begins with the decrease of total bodily dependence on the mother. The child begins to actively touch the mother's body, react to it with pleasant or unpleasant emotions, use the senses and objects around it.

The differentiation subphase (from month 4-5) is followed by a process of progressive psychological "conquest" of the world and gradual awareness that there is a separation, a difference, a boundary between self and outside. For Mahler, this is followed by the subphase of experimentation (from 9 to 15-19 months), the subphase of rapprochement (from 15-19 to 24 months), and the subphase of object constancy (from year 3). That is, from the end of the second year, the differentiation, we might say the boundary, between representations of the self and external reality takes place.

The mother, or her substitute, is clearly perceived as a separate person in the external world and is permanently present in the child's mind. The emergence of this boundary, which is accompanied by adequate development of the attachment bonds highlighted by Bowlby (1989) and Ainsworth (2006), is critical to the healthy psychic development of the child and the future mental health of the individual. As Simon Baron-Cohen (2012: 50), a psychiatrist famous for his studies on autism, argues, "it is a process that must balance the healthy need for autonomy and closeness on the one hand, the unhealthy fear of being overwhelmed and abandoned on the other."

Recently, this positive developmental process, involving both a separation and individuation of the self and the ability to relate to

the other and his or her mind, has been linked by many authors to the presence in the brain of so-called mirror neurons (Gallese 2007; Rizzolatti Sinigaglia 2006, 2019). It is hypothesised that a network of brain cells (*mirror neuron system*), which includes parietal, inferior frontal and premotor areas of the brain, enables recognition of actions when we observe them being done by another person. For example, when we see a person eating, we activate (without actually taking action) the same motor programme that would be activated if we were actually eating, i.e., moving the muscles of chewing: it would, therefore, be a true embodied cognition, a primary mechanism, whereby cells connected to another person's action are activated in our brain. This is a device that contributes to the formation of the so-called *theory of mind*, that is, the ability to automatically understand the cognition and intentions of those in front of us, with the knowledge that they are different from our own and that *I* am separate and different from the *other*.

These brief premises allow us to approach the first point of our argument, that of a fundamental and basic bio-psychic boundary: that of the body. We have seen that the mother-child relationship is born and develops in terms that are also bodily (or within this sphere, this *limen*): the mother's body in which the embryo develops, the body of the *caregiver* (remember that it can be the mother or also another significant figure, such as the father or, in certain cultures, other women in the family group) who welcomes the child, feeds him, stimulates him, the adult's body with its smells, its movements, its expressions. It is a process that makes the child gradually perceive that he is unique and, at the same time, that he is like others. This powerful relationship between body and foundational intrapsychic processes for identity had already been well emphasised by Freud (1989: 488): "The ego is first of all a bodily entity" and, again, "The conscious ego is first of all an ego-body" (490).

In less distant years, Didier Anzieu (2017) developed a number of theorising techniques useful for our reasoning. The French psychoanalyst formulated the concept of the *ego-skin*, which can be explained, in general terms, as a mental representation formed in the child's mind and used by the child in the early stages of development. Thanks to this representation that is closely linked to the biological body, the child is able to sense their ego as capable of containing psychic material, starting from the awareness of their own body surface, which provides them with the ability to differentiate between inner and outer space. The skin and body, with their sensations, provide the child with information about the external world; they have the function of inscribing traces of the external world in the self. This does not concern purely the sensory side, but also the relational side and the symbolic and cultural side: relationships with affectively and cog-

nitively significant figures, the memory of places, landscape colours, environmental smells and scents, and the sounds of the language spoken by those around the child. Cultural psychology highlights these processes well (Inghilleri 2009). Let us think of a child in an African village, carried by his mother with a sash on her hip or back, while she grazes animals or grinds seeds in a mortar, surrounded by the other women with their voices and in some cases their songs, while the food on the fire cooks and the village dust is carried by the wind; let us now think of an Italian child, playing in a kindergarten with his educators and other children, with the noises of the city coming in through the windows, and then returning home to the crowded sidewalks and staying in his little room with his toys and his mother. These are very different environments, which lead to different cognitive perceptions and reactions, but which, precisely through the senses and relationships, also lead to common elements, particularly the affective and cognitive internalisation of the mother and those around the child and of the places and objects that accompany these relationships. We want to emphasise how this biological entity that acts as the boundary of the ego, the body precisely, is always inevitably connected to the external world, to culture with its objects (such as what psychology has called, as we shall see, *transitional objects*), its practices, such as those related to the places of everyday life, the home or the school (Inghilleri 2021).

This position is well established within the behavioural sciences since the studies of Vygotsky (1990). The famous Russian psychologist first pointed out that human development is first and foremost a *social* process, that is, it takes place through the child's relational exchange with other people in their everyday life and through the continuous sharing of meanings. It is therefore a *cultural* process, that is, it takes place in a well-defined historical context. In this process, the child through the body makes use of *tools* (the *artifacts*) that have developed in cultural evolution and are specific to the society to which they belong. This allows the formation of the mind, which, for Vygotsky, has a *mediating* function between the external and internal worlds, which are in continuous communication with each other. This mediation process allows the child to attribute meaning to experience, and to evolve in complexity, acquiring, through his movements and senses, more and more elements of knowledge and signification.

Another author who well highlighted the importance, for the formation of the self, of the relationship and boundary between the child's body and the external reality with its objects was, as is well known, Donald Winnicott. In fact, the famous pediatrician and psychoanalyst introduced the concept of the *transitional object* (Winnicott 2017). The child's first toys, still in the cradle and until about the first year and a half of life, have a fundamental function, because they

contribute to the process of forming a separation between the self and external reality: the child feels that a puppet, stuffed animal or other toy offered by the mother incorporates the other (the mother, in fact, or the guardian) and can symbolically replace it when it is not present. Thus, a double effect is achieved: a structuring boundary is established between the child's psyche and the outside world but, at the same time, the child's body, and mind, can get back in touch with the mother, touching, sucking, smelling the transitional object, such as a soft toy. That is, we see that a "game" begins between inside and outside, a kind of bio-psychic boundary dynamic, which gives security to the child.

These two examples, drawn from the history of psychology, highlight a fundamental principle: all psychic activity, whether individual or relational, has a biological basis; this basis, however, also immediately becomes cultural: examples of this are Vygotsky's artifacts and Winnicott's paying, which are social products and proposed by different cultures. In other words, the development of the self takes place through a progressive separation between the ego and the external world, that is, through the development of a boundary, but this takes place through practices related to culture, for example, the cultural definition of what a good mother's behaviour should be, or what games should be taught, at what times of the day and at what age of the child. Overall, then, good psychic functioning and identity construction result from an alliance between the functions of the body and the values, norms, and ideas of the culture in which that body grows and lives. It is interesting, in this sense, to recall the myth of Marsyas, which seems to reaffirm the bio-cultural significance of the body, and of the skin in particular, and its social function: Marsyas is flayed alive by Apollo, as punishment for challenging him on his skills as a musician. His skin left hanging in a cave, however, remains sensitive and vibrates to the music of the worshippers, while it remains motionless to tunes dedicated to Apollo, showing how a body part functions according to a cultural history.

This important biocultural function of the boundary in some cases is challenged: a bad relationship between mother or *caregiver* and child, an "insufficiently good" mother, i.e., unable to offer the infant adequate physical and emotional support, a deficient attachment relationship, a situation of not only relational but also economic, housing, communicative poverty of the context, are all factors in a possible failure to differentiate the self: That is, there remains a situation of symbiosis, in some cases outright fusion, between the child and the adult caregiver, which can lead to possibly serious psychological damage precisely because of the failure to create or the disappearance of a secure and structuring boundary.

2. A second type of psychological boundary: conflict between groups

Let us now consider a second type of boundary, the one between us and others, that is, between the groups to which we belong and those with whom we are in relation every day, in our lives: friends, co-workers, members of other families, fans of different sports teams, citizens of other Italian regions, people belonging to other cultures, and so on. This is, of course, a broad and central field of investigation and reflection for social psychology, of which we will now mention some basic points useful for our reasoning.

Very often we tend to eliminate or blur the boundary between us and those close to us, family members, friends, loved ones: that is, a definite favouritism for the group we belong to (also called *ingroup*) is realised. The mechanism by which this happens stems from the fact that our memberships are fundamental to the construction of our identity; this involves the fact that we tend to extend to the groups to which we belong, and to the people in them, affections and cognitions about ourselves, such as self-protection-seeking and self-esteem, feelings that, as if by osmosis, we then transfer to those who share our memberships. Others are then perceived as similar to us: identification mechanisms arise in this way that tighten intersubjective relationships.

On the other hand, in a complementary way, this leads to an increase in the division, the boundary, between us and members of groups to which we do not belong (also called *outgroups*). This occurs at the cognitive level, such as the fact that we tend to distinguish with greater difficulty between individual members of the *outgroup*, who are thus perceived as all the same, promoting the emergence of stereotypes. Another cognitive mechanism involves the so-called causal attribution error: in the case of positive behaviours of outgroup members to us, such as successes or good practices, these are more likely to be attributed by us to external causes (chance, circumstances), while negative facts, such as failures or misbehaviour, are attributed to causes internal to the individuals (inability, pathological personality, low intelligence). However, this division also and especially occurs at the affective level, contributing to the development of aggression, denial, conflict, phenomena of ethnocentrism, and discrimination. This is, of course, a very important and thought-provoking point: the group dimension, the boundary between Us and Them, underlies dynamics, not only psychosocial, but also historical and political current and past. Thus, in fact, negative prejudice arises, a process that seems inevitable because it is linked to our identity affiliations. Prejudice, succinctly, is defined by social psychology as the tendency to automatically perceive and evaluate people belonging to groups different from

our own, and consists of three components: cognitive, affective, and behavioural. Think, for example, of negative prejudice with respect to migration: the cognitive dimension consists of the information a person has or decides to have available to him or her, often derived from the media, such as, "delinquency rates are higher among immigrants" or "they only come to Italy to get benefits." The affective dimension consists of the emotions and affective disposition one has, in this case with respect to immigrants, such as aggression, anger or, alternatively, closeness or empathy. The behavioural dimension consists of the concrete actions one takes, thus concerns the actual discrimination. We could say that stereotyping represents the cognitive dimension of prejudice, while discrimination represents the behavioural one, and both are characterised or mediated by the affective-emotional component.

There are social, political, and normative mechanisms that accompany and sustain processes of prejudice and discrimination, such as specific laws of states or even the construction of physical barriers and walls, but what we are interested in here is to shed light on specific psychosocial mechanisms that amplify, in real-life situations, these processes and in particular so-called *dehumanisation*.

This is a terrible form of devaluation that has historically accompanied extermination and oppression and consists of defining certain groups as *non-human* or *less than human* because they do not have the essential prototypical characteristics of human beings as such. From this follows the possibility, or even the right, to be able to manipulate, violate, use, in some cases as if they were objects, the people belonging to those groups.

The boundary thus becomes radical: the difference with the *other* becomes total, even involving the essential qualities of our humanity. *Dehumanisation* is a psychosocial mechanism unfortunately much used throughout history, as it performs two powerful functions in intergroup processes, usually interrelated: violence and oppression toward opponents, minorities and those who are different, and the maintenance of the status quo. The types and forms of *dehumanisation* that have occurred over the centuries are many (Volpato 2011). They range from *animalisation* to *demonisation*, from *biologisation*, with the consequent racism and idea of contamination, to *objectification* and thus the consequent possibility of manipulating and destroying human beings as they are considered pure objects. The latter mechanism becomes particularly significant when it concerns sexual objectification whereby the person is considered, used and manipulated only according to his or her sexual performance. Then there are less explicit forms of dehumanisation, but for this reason no less serious and damaging: this is the so-called *subtle dehumanisation* whereby some people are considered somewhat less human than we are, because they are judged not able to fully experience uniquely human emotions and

feelings such as intelligence, remorse, nostalgia pride, and self-esteem. Several studies (Goff *et al.* 2008; Goff *et al.* 2014) highlight how the latter mechanism is also realised through the permanence of stereotypes and dehumanizing images from the past that, through various social forms (from education to the media), permeate attitudes, without the actors realising it. In this sense, the studies of authors such as Martha Nussbaum (1995, 2011) and Barbara Fredrickson (Fredrickson, Roberts 1997) have been very important, revealing and highlighting the depth, danger and harm, not only social, but also psychological, of these processes, particularly when related to sexual objectification. Fredrickson's research shows, for example, a disturbing finding that should give us pause for thought and give us responsibility, namely that women, when they suffer sexual objectification by the culture and society in which they live, are unconsciously driven to self-objectify themselves, that is, to evaluate themselves solely on the basis of physical appearance, which can then lead to a series of psychophysical harms, up to even severe states of depression (see also in this regard: Loughnan *et al.* 2015).

3. A third kind of psychological boundary: world of reality and world of the invisible and spirituality

We will address this third boundary with a psycho-anthropological slant, that is, drawing on recent studies from ethnopsychiatry, ethnopschoanalysis, and anthropology, with particular reference to studies on *vodu* and *juju* in Nigerian *debt bondage*, or debt slavery, one of the world's most widespread forms of modern slavery. This is a phenomenon of particular importance and topicality, as it represents an inherent mechanism of human trafficking in Europe and the consequent loss of rights and humanity.

4. Etiologies of the boundary: intangible bodies between visible and invisible

According to the Yoruba, a population living in various West African states, the cosmos consists of two distinct but at the same time inseparable worlds: *Orun*, the world of spirits and the invisible; and the *Aye*, the world of the visible and the human (Moro 2009). *Orun* is not located in a definite time or space - it can be now in the water, the earth or the sky. In this world of the invisible - where past and present coexist - reigns *Olodumarè*, the creator of existence as well as the source of the *Ase*, the life energy possessed by all that exists. This cosmological structure, which identifies the coexistence and correlation between

the world of the visible and the invisible, echoes in most etiologies of ethnographic contexts of traditional societies. Ethnopsychanalyst Tobie Nathan (in Inghilleri 2009) has called these *multiple-universe* cultures, contrasting them with modern Western society, which is considered *single-universe* instead. In *multiple-universe* cultures, “the world of the invisible, of the magical, of the spirit has as much logic and consistency as physical, concrete, linear reality,” playing an important role in both individual and collective life and in the development of the Self (Inghilleri 2009: 119).

According to the *vodu* cult prevalent in West Africa, thought concerning the structure of the Self holds that one of the three immaterial components of man is the *luvho*², which - according to Alfred Ellis (in Brivio 2012) - exists even before birth as the spirit of a long line of people. “For a short interval of time after death [it] remains near the tomb where the body was buried; afterwards it habitually enters the body of a new-born and becomes *luvho*” (56-57).

Also according to traditional African thought, but in a more properly ethnopsychiatric framework, Ibrahima Sow (2015: 84) argues that there are three “constituent dimensions of the person (Ego): the body or bodily envelope; the vital principles; the spiritual principle.” Along with the vital principle, common to humans and animals, there would also exist a bio-psychological principle peculiar to humans, underlying psychic life: “a kind of internal organiser that would be, simultaneously, the centre of the total life force” (86). Sow (2015) argues, therefore, that these components of the African Cultural ego are always related to three fundamental dimensions - vertical (spiritual or ancestral worlds), horizontal (sociocultural dimension), ontogenetic (existence) - whose respective actors would be able to act progressively on the components of the person, depending on their hierarchical level. Through the harmonious negotiation between these axes and constituent dimensions, the person is thus able to develop their own coherent and balanced identity.

It is clear, then, how the spiritual dimension assumes fundamental importance for traditional societies, as it interpenetrates phenomenological reality. And this compenetration can take place through what is now called *Ase* by the Yoruba now *gbogbo* in the *vodu* cult, or the life force or breath, present in all beings of nature endowed with

2 The *luvho* is organised into three components: “the first is represented by the shadow, the second, more evanescent, is attached to the first but visible only by people endowed with special energies, and the third is completely invisible” (Brivio 2012: 56-57). “With death [The first *luvho*] disappears and goes away to the sea, that is, to the world of the ancestors,” while the second “remains in the house where the individual lived and maintains continuous contact with the world of the living and with the family of the deceased” (*ibid.*). Finally, the third component is the more properly spiritual one.

spirit-humans, animals and plants. This life breath, therefore, would allow living beings to connect with the spiritual worlds (Brivio 2012), eliminating the boundary between these elements.

The cosmogonies of complex monotheistic religious systems also claim the existence of multiple “spiritual” worlds - such as Heaven or Hell - but for modern Western society they are in fact separate³; what these systems lack is precisely the capacity for compenetration between worlds, through the recognition of an idea of substance common to each living being, as is the case for traditional societies. According to anthropologist Philippe Descola (2014), in analysing the structures of the Self and cosmologies of traditional societies and cultures, Western naturalist thought appears to be the exception, when compared with that of other ethnographic continents, which - despite various differences in structures and etiologies, which are often highly articulated and complex - refer instead to a shared idea of continuity between the world of the visible and the world of the invisible. In contrast, the separation of the human from the spiritual dimension in earthly life dominates not only naturalist thought, but also that of complex religious systems of the monotheistic type, thus drawing the boundaries between the visible and the invisible.

Although the very existence of multiple worlds, self structure and boundaries represent a trait, for obvious reasons, of a cultural nature, it is necessary to ask whether there is also for cultures with *multiple* universes - which insist on continuity and permeability between worlds and Self - a boundary between visible and invisible. Mauric Leenhardt (in Descola 2014: 53) reports old Beosoou’s words about the effects produced by Western schooling in New Caledonia: “You did not bring us the spirit. We already knew the existence of the spirit. What you have brought us is the notion of the body.” And it is precisely the body, or rather the form, that represents the boundary between living beings and, at the same time, allows us to distinguish what is visible from what is not. While for *multiple-universe* societies the idea of vital substance is common to every living being, what differentiates them is, precisely, corporeality. Once again, the body represents the boundary. Through the body, the child perceives his identity (Ego-skin), and is able to differentiate the psychic world from the external world and to identify himself in the human group. Through the body, it is possi-

3 It is worth pointing out that this *multiple-universe* thinking pattern also appears widespread in monotheistic religious denominations, not only where the traditional artifact still lives as an undercurrent of religious thought, but also in contexts that have experienced processes of “enculturation” due to evangelization or colonialism. Evangelical and Pentecostal churches, for example, present worship experiences based on the charism of tongues or glossolalia, and healing by faith, whose practices present similarities with traditional thinking of interpenetration between invisible and visible worlds (Cingolani 2003).

ble to differentiate between the world of the invisible and the visible, as well as to identify with the group of living beings endowed with form and, at the same time, to distinguish itself from other spiritual entities, which, on the other hand, do not possess a physical body.

This is why Beosoou's words are extremely significant, for they identify the body as the sign of the boundary between these universes and the beginning of a principle of individuation that separates and distances from the idea of continuity between living and spiritual beings.

Therefore, the body embodies a boundary in spatial terms between worlds, but it also represents a temporal limit of existence, at least of earthly existence in the world of the visible, marked therefore by the passing events associated with life and death. According to traditional societies - in addition to sleep and illness - death and birth (or perhaps it would be better to say conception or, alternatively, pregnancy) do not represent two polarities of the path of human existence, but rather the crossing events between the universe of the visible and that of the invisible; as well as states of transition - or passage, threshold - of the spiritual entity from the corporeal to the immaterial dimension, and vice versa (Moro 2009).

For this reason, in the Maghreb, for example, pregnant women use to go to the doctor so that the latter can "wake up" the baby in their bellies (Réal 2006). According to this traditional etiology - which conceptually opposes the sleep of death to the awakening of birth - the fetus would still belong to the world of the invisible; and, consequently, in order for the fetus to come to life, it is necessary for its spiritual entity to be "awakened" in the body as well. In Arabic, in fact, *fetus* is called *janine*, a term that refers to the root of the word *jin*, i.e., spirit, and that can take on different meanings, each of which, however, refers to the idea of invisibility and immateriality (Moro, 2009). According to traditional Maghrebi societies, only through the cutting of the umbilical cord does the symbolic representation of the separation of the child's bond with the world of the invisible and its entry into that of the visible take place (*idem*).

Of course, these traditional beliefs are to be regarded as "extremely rational systems of knowledge" in that they have an obvious and factual logic, with respect to the context and culture to which they belong, such that the world of the invisible permeates completely and without possibility of misinterpretation the everydayness of human existence in such societies (Inghilleri 2009: 119).

According to the thinking of *multiple-universe* cultures, therefore, birth and death would be two events always correlating with each other in the same biography of existence: a birth in the world of the visible always also corresponds to a death in the world of the invisible and vice versa. These two events of passage therefore stand in a relationship of continuity, precisely because of their "immaterial bod-

ies.” For monotheistic religious systems the boundary between these worlds is often so clear that nostalgia for separation from the divine and the earthly accompanies the respective passages of life and death. In *multiple-universe* cultures, on the other hand, this nostalgic feeling is entirely absent and death, is often embraced with an attitude of awareness and trust (Ranzato 2020). In traditional societies, events such as birth and death are often greeted with important ceremonies and often accompanied by highly symbolic rituals in which natural elements and signs of continuity between life and death recur. In West Africa, for example, a ritual moment - which unites both the funeral ceremony and the birth ceremony - is dedicated to washing to purify of the body. The washing of the newborn is performed from left to right, while that of the corpse in the reverse direction; a procedure that perfectly represents the content analogy, according to which a birth is also perceived as the return of a previously vanished being (Moro 2009).

The ceremonies associated with birth and death thus represent those *rites of passage* that pertain to the individual life cycle and celebrate a change of *status* for the person, who salutes his or her exit from one group and simultaneously his or her entry into another. The three stages - of separation, transition and incorporation identified by anthropologist Arnold Van Gennep (1981) in the so-called *rites of passage* - also mark the stages of birth and death rituals in traditional societies. These two events represent the celebration of a passage of entry into or departure from corporeality by the individual spiritual entity. The ritual of these two passages simultaneously and in a coordinated sense involves the collectivity, both of the world of the visible and the invisible, and allows, at the same time, to celebrate the entry or exit into the group of beings inhabiting the respective universes. Although there is a relationship of constant permeability and continuity, generally the function of activating the relationship between these two universes is reserved for special individuals, who fulfill the function of intermediaries between worlds and who, by vocation or inheritance⁴, are more adept at relating to and moving between the universe of the visible and the invisible. Priests, soothsayers, healers and sorcerers constantly participate, relate and communicate with the world of the invisible, thus performing a mediating action between the two universes. Moreover, individuals are also able to relate to the worlds of the invisible, especially during sleep or illness, or during particular occasions of transition or altered states of consciousness.

4 *In vodu* worship, shamanic tradition, and animist societies, the initiation of priestly figures may occur through the so-called “call” in a dream or during the so-called “initiatory illness,” in which the deity precisely calls the man to the task (Brivio 2012; Eliade 2005; Descola 2014).

In traditional African thought, for example, this permeability between worlds is possible precisely because it is also reproduced in “immaterial bodies,” which would be endowed with a permeable and communicating structure, capable of exposing human beings - through doors of entry - to external agents capable of penetrating the individual’s bodies and acting in ways now peaceful now nefarious or even more simply relating to them (Sow 2015; Brivio 2012).

One of the main skills that distinguishes these intermediaries between worlds concerns the body, especially the ability to change form through metamorphosis. Group affiliation and initiation ceremonies, in fact, often involve the engagement of the skin-think, for example, of bodily markings or circumcision rites, as well as the body of the initiate, who is subjected to particular rituals, which precisely evoke the transitional states of death and rebirth⁵. Every initiation, in fact, always has a transformative and metamorphosing capacity to indicate the state transition that has taken place (Sironi 2001). The ability of actual metamorphosis, on the other hand, is often reserved for intermediaries between worlds and is possible, in animist and shamanic cultures, exclusively between beings endowed with the life force, which unites living beings, according to established hierarchies (Descola 2014; Eliade 2005). Stories and mythologies of humans transforming into animals and plants, in fact, dot the cultural artifacts⁶ of traditional societies.

Although for Philippe Descola (2014) and Mircea Eliade (2005) it eludes the classifications of the great shamanic or animist cultures, traditional African thought holds that a spirit can inhabit or possess not only other living beings, including human beings, but also inanimate objects. According to the thinking of the *vodu* religion⁷ - still widespread in Nigeria, Benin, Togo and Ghana - visible and invisible worlds in fact live in a constant relationship of permeability. And it is precisely this dynamism between spirit and matter that character-

5 Anthropologist Alessandra Brivio (2012: 155) reports the initiatory form to the *vodu* cult according to which “women are wrapped in a sheet, then in a mat and then tied with a rope, following the same process used to prepare the dead. With the body completely immobilized and hidden, from head to toe, the novice is carried into the forest” and abandoned.

6 The term artifact is used to mean “not only material objects, but all non-living entities produced by human beings and thus also immaterial ones, such as a group of people, a family or a system of ideas” (Inghilleri 2009: 96).

7 The term *vodu* (or *orisha* in Nigeria among the *Yoruba*) refers to the religion of the *vodu*, i.e., the deities that make up the *pantheon* of what has been considered the “traditional African religion” as well as their reproduction in matter, i.e., the fetish, the man-made object, as well as the natural realities inhabited by these deities (Brivio 2012; Augé 2016).

ises the distinguishing elements of *vodu* and aspects of ritual practices, properly related to the exercise of worship (Brivio 2012; Augé 2016).

In fact, in *vodu* religion, organic substances, particularly blood, play a fundamental function, since in them resides to a greater or lesser extent the *gbogbo* (i.e., the life force or breath) present in all living beings-human, animal and plant. In *vodu* rituals, the blood of the animal sacrificed and poured on the *object-vodu* (the anthropomorphised clay or wooden statue) would come to life precisely because of the life-breath poured in, and allow the deity to inhabit as well as “animate” the statue-fetish. Part of the esoteric tradition of the *vodu* cult would thus consist of the mystery of the “recipe for making” these objects, which by their very nature are incomplete, undefined and open⁸; thus capable of fulfilling one of the mysteries of humanity in the process of transformation from life to death, from inorganic to vital matter, from the human to the divine and vice versa. Mysteries, then, that must be “contained,” as the very idea behind the object refers to.

Just as the *vodu*, through their openness, allow the invisible to enter the visible of the object, by means of the organic substances that are the source of the life breath, likewise the body can accommodate other spiritual beings, as is the case in rituals and traditions of possession, thus transcending the boundaries of the body. It is evident that, according to the cultural artifacts of traditional societies, the body represents a kind of “container” of the spirit and boundary between the world of the invisible and the world of the visible; a body that can be animated thanks to the vital energy common to all living beings, but that can also be possessed - as happens in metamorphosis or possession - or still, emptied of its vital and spiritual essence, thus rendered in the same way as an object.

5. *Boundary injury in Nigerian debt bondage*

The above leads us to reflect on Nigerian *debt bondage*. Indeed, it is precisely the fear of being emptied of one’s vital essence and spiritual entity that dominates the thoughts of the victims of this *debt bondage*. It is one of the most widespread forms of *modern slavery* in the world and is the main form of explicit objectification of people involved in the tragic transnational migration flows from Africa to Europe, and more specifically from Nigeria to Italy (ILO, 2017; EASO, 2015).

Absorbing the social, economic and cultural logics of the contemporary age, modern slavery effectively replaced slavery by blood with

8 The *vodu-objects* are “constituted by the progressive layering of [organic] matter that makes them continuously expanding entities” (Brivio 2010: 19). They also have interstices that become open channels that allow the *vodu* to listen, breathe and eat.

slavery by debt (Volpato 2014), reproducing a model of subjugation based on borrowing, on the unequal exchange of a life for a non-life.

An incontrovertible characteristic of *debt bondage* is the stipulation of a debt contracted with the criminal network for the purpose of reaching or staying in another country or, again, for the purpose of obtaining a job which, through formulas of deception or blackmail, subjugates the victim by exploiting and enslaving them until the debt is repaid. Debt, even immaterial debt, has in fact by its very nature profound implications at the psychological and identity levels, insofar as it is inherently subjugating for the debtor: as much by reason of a relationship of subalternity as of possession (Solinas 2007).

In *debt bondage*, the degeneracy of the debt consists in the fact that - in return for a service or sum of money arbitrarily established by the trafficker - it may indeed be extinguished by pecuniary compensation, but its repayment is guaranteed by the exploitation and possession exercised by the traffickers over the physical person who requested the loan. From the moment the agreement is made, therefore, the identity of the victim coincides with the debt incurred, since their very existence is the physical guarantee of restitution.

This aspect highlights a first important factor of boundary violation. Debt, in fact, contains within itself the idea of subalternity between a group of dominants and a group of dominated, but especially that of possession and violation of the person's body and identity.

This bond, i.e., this bond of possession, in Nigerian *debt bondage* multiplies its implications, as one of its distinctive features concerns the use of traditional ritual systems to enter into the agreement. Such rituals are capable of reinforcing the meanings and binding structures of debt as it is contracted not only between humans but also with spiritual entities in the world of the unseen. The debt, in fact, can rely on the guarantee of repayment through the promise made by the victim, according to the rules of the traditional *oath* - which can take place in locations inhabited by the *vodu* (shrines, rivers, forests, fetishes) and often officiated in honour of Mami Wata⁹ - as well as according to particular rituals of traditional *vodu* religion, accompanied by actions that are highly performative to the point of completely involving the person in the act.

The Igbo believe that such traditional oaths are "one of the assured ways of obtaining absolute justice" (Ikenga-Metuh in Ikeora 2016: 11),

9 Mami Wata (pidgin of *Mother Water*) is the *vodu* deity most involved in Nigerian *debt bondage* ritual practices, to whom the criminal network is also often devoted. Associated primarily "with Iemanjà, queen of the sea and mother of the *orisha*" for the Yoruba (Ciminelli: 297) and with the *vodu* Dan, the snake that lives in the earth, water and rivers, Mami Wata absorbs its attributes and becomes a symbol now of fertility and wealth, now of life and death (Brivio 2010).

precisely because the victim, through the oath and ritual, pledges to repay the debt incurred before the deity and, by uttering a kind of self-curse, authorises the *vodu* to strike them with death or madness in case of non-payment.

In *vodu*, in fact, the spoken word is already concrete action, as it is able to bind matter and spirit into a whole. Thus, through the function of the priest - who mediates between the world of spirit and the world of matter - the sworn word acquires a dual interacting power that is, both supernatural, because it is capable of creating a spiritual bond between the victim and the *vodu*, based on the commitment made, and material in nature, because the word uttered before the *vodu* is capable of constructing an effective reality in itself. The ominous effects of death, madness and illness in the event of a breach, expressed during the traditional oath, thus psychologically bind victims "regardless of what will happen once they arrive at their destination, to abide by its contents and not to fail to comply with its constituent conditions" (Carchedi 2012: 82).

In addition to *vodu* oaths and rituals, a practice often used in Nigerian *debt bondage* is the *juju* and the making of a fetish, specifically composed of the victim's organic substances, along with other natural objects or components. According to traditional conceptions, the physical parts (such as hair, nails) of a person have the same "spiritual" properties as the owner, even if taken away or detached from the latter, precisely because of the life breath that resides in them. Consequently, it is believed that by intervening on such objects, through rituals or spells, the priest (also called *babalowa*) is able to act in turn at a distance even on the person who possessed them (Ikeora 2016). Thus manufactured in the context of ritual ceremony, the *juju*-object becomes, therefore, an instrument capable of killing or healing and represents the *active object* par excellence, so defined by Tobie Nathan (in Inghilleri 2009), as an object with magical properties and great power.

The *juju*-object represents, therefore, a device of complete possession and obedience to the trafficker in the context of *debt bondage*, as it primarily binds the victim to the will of the *vodu* deity and the one who holds the fetish. The traditional rituals used in *debt bondage* are in fact meant to establish a *hunkan*¹⁰, a bond between the body of the debtor and the deity; through a bond that is not only material or social, as in the case of secular agreement, but multiplies and strengthens its effectiveness in the spiritual dimension as well.

10 In *vodu* initiation practices, there is also scarification, in which the *hunkan* (i.e., the rope of blood) indicates precisely "the sign of belonging to a *vodu*" imprinted on the *adept's* skin through this procedure (Brivio 2010; 2012).

Through these traditional practices, there is thus a real *disappearance of the boundary between the individual and deity*, with the potential possession of the former by the latter. By reason of the debt and through the ritualised action, in fact, the victim not only grants as much security as possible, but also gives themselves to the *vodu* in a totalising manner, thus binding their body, existence and spirit until the debt is repaid. The physical ownership and possession of the victim by the executioner (*a second disappearance of the boundary, in this case between the executioner and the victim's body*), as a guarantee of repayment of the debt, becomes at the same time also a possible possession of a spiritual kind.

All of this has profound psychological implications: following Radcliffe-Brown thinking (in Taliani 2012), oaths, rituals and *juju* are ritual practices that have the capacity to generate uncertainty and provoke anxiety; an uncertainty that also dominates the exercise of *vodu* worship, since - in the constant interpenetration between the visible and invisible, matter and spirit, and in this constant negotiation of balancing the two worlds - it leaves the believer in a state of constant uncertainty "without ever being able to reach a position of psychological or physical tranquility" (Brivio 2012: 193). In this context, it is therefore possible to argue how in Nigerian *debt bondage* these ritual practices are capable of producing an injury to the Ego's boundaries, as much at the bodily and psychological level as at the spiritual level. The constant threat - which echoes in the victims - is a concrete, palpable threat of madness, death, and illness: conditions that can be brought about by the destruction of immaterial bodies, without which the person is reduced to the equal of an object, to the equal of a body, empty.

Thus Joy (in Giordano 2008: 598), a Nigerian girl victim of *debt bondage*, reports that she fears she will "go crazy" because she did not pay her debt to her *maman*¹¹:

My madame will do anything to destroy me, to make me go mad." The ethnopsychiatrist asked the cultural mediator the expression in Edo for "to go mad." "Iware." "Is it a general term or is it linked to *vodu* rituals?" "It means that the people who do magic to you make you become a cadaver without a body; you become a slave, useless, the living dead, as being at the threshold of life and death.

The Nigerian system of subjugation thus seems to be structured on constitutive stages involving the progressive *dehumanisation of* the victim so that the victim can become and consider themselves an ob-

11 *Maman* plays a central function within the organisation, being the link between those at the top of the network and those directly involved in exploitation, as well as the management of the profits from the exploitation of victims (Carchedi 2016; EASO 2015).

ject to be dominated and possessed not only on a bodily level, but also on a spiritual level. *Dehumanisation*, in fact, is, as noted above, a process of physical, psychic and spiritual annihilation of the human being. In many cases, it is a process that nullifies the prerogative that distinguishes man from an animal or an object, in whose representations precisely the human is reduced (Volpato 2014). In the distinction between man-beast and man-object, however, two distinct purposes for those who dehumanise become evident: one simply wants the annihilation of the victim in order to destroy and dominate him or her; the other, on the other hand, annihilates the victim in order to instrumentalise, use, and possess them. This distinction allows us to understand how the techniques of Nigerian executioners, necessary for *dehumanisation*, are comparable to those used by torturers. Torture, in fact, is also distinguished by purpose: in one case, it aims to annihilate the victim as an enemy of the executioner group; in the other, it has an instrumental purpose, that is, to obtain something from the victim (Sironi 2001; Zamperini 2016). According to this perspective, the techniques of violence that distinguish instrumental torture seem comparable to those used in Nigerian *debt bondage* to subdue victims, and allow us to understand how the artifacts of traditional Nigerian systems fit into the process of *dehumanisation*. The accounts of Nigerian *debt bondage victims* can be likened to those of torture victims reported by Françoise Sironi (2001), in which bodily and psychological violence are multiplied by violence that leverages traditional artifacts. This occurs powerfully in Nigerian *debt bondage*, where victims and perpetrators share deeply in the same artifacts and cultural practices: in this way the person is exploited and instrumentalised precisely through the cultural artifact, which binds together victim and perpetrator by reason of sharing in the same traditional systems.

Add to this the fact that the phenomenon is located within a migratory process, in the framework of which the artifact becomes instrumental in fixing the individual as much as possible to the cultural system of belonging, reducing, if not zeroing out, the possibilities of adaptation to the host one. In this sense, it is also possible to read the oscillating narratives of the victims (Taliani 2012): suspended between one cultural reference system and another, in the *detritorialisation* of a shattered migration experience; suspended between a world of the visible and the invisible, without rights, waiting for a freedom still denied.

These last considerations highlight two final elements. On the one hand, in general terms, we can see how in the analysis of any human behaviour it is useful, we might say indispensable, to use a powerful and complex lens constituted by the complementary use (Devereux 2007) of the socio-anthropological and psychological disciplines; the latter, in turn, must be considered from all their points of view: clinical, social, and developmental.

Second, this approach and this lens have led us to consider the psychological boundary and its rupture as a complex concept, in which the relationship between our individual minds and those of the people with whom we interact must be seen by emphasising intersubjectivity, that is, the fact that our psychic processes are always and everywhere separate from the external world but, at the same time, they occur only and because we are always in relationship with the *other*. This nuanced, we might say ambivalent, dynamic of the boundary is also expressed at a second level, that of the relationship between our groups and the groups to which we do not belong but with which we are in relationships. In fact, as we have seen, we define ourselves by comparison with outside groups: with these groups we can establish alliances or instead raise barriers generating conflict. This depends on the characteristics of the groups, but also on the decisions and experiences of individuals and thus intersects with the first level of the boundary. Then there is another level of the boundary, so important in the history of the human species: that of spirituality, of the relationship with the invisible, with the divine. We have exemplified this level here with *vodu* and its implication in human trafficking and modern slavery: it is, however, in the experience of all of us, whether atheists or believers and belonging to different religions, the importance of this boundary, which on the one hand separates us, but on the other can blur or even disappear, leading to profound forms of union. On this point we want to conclude, based on historical and scientific evidence (Harari 2014). Human tends and is predisposed to empathy, cooperation, altruism: these processes are based on precise biological grounds (Baron-Cohen 2012), because they have been a great evolutionary advantage for the human species (Inghilleri 2021) and for the survival of the groups. That is, we have all the tools, biological and psychological, to use our boundaries well, to be ourselves, but also to break them and approach others when necessary. The concept of boundary is thus replaced, in potentially positive and open terms, by the concept of *threshold* (Benjamin 1995; Nicolin 2020), which defines the relationship between inside and outside not as separation but as passage and exchange between people, groups, and cultures.

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Latin American narratives of the border: from the ocean crossing to the Frontera Norte

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1. Introduction

Whether sea or land, barbed wire or steel, guarded by military or natural forces, visible or invisible architecture, the normative space of the border determines the emergence of the migrant condition, defining it through the lability, arbitrariness or insubstantiality of the right to mobility. No one is born illegal or migrant, Chambers writes. He concludes, “migrants are literally products of our legislating the world” (2018:9). A territorial, political, and symbolic order that demarcates state perimeters and configures imaginary communities of the *gods*, the border - in the historical tradition to which we belong - assigns or denies memberships, establishes or dismisses citizenships, legalises and spectacularises, that is, publicly and formally stages the state of relations between the us and the ‘not us’ of the other (Cavalli Sforza and Padoan 2013). It acts as a generating device of a performative narrative based on the binary mechanism of inclusion/exclusion. A narrative that organises the world, or the relationships between worlds, through the system of “differential inclusion” (Brambilla 2015:6): different weights and measures of softening or hardening of border politics depending on the perception, the political and cultural relationship, and the historical contingency in which otherness is situated.

In the dual nature of the border, in which “the exclusionary bi-political side appears to be the flipside of the inclusive cosmopolitical side” (Esposito 2016: 225), in the tension between what can be internally accommodated and what must be kept away, civilising programmes expose the permanent fragility of the dialectic with the other and the beyond, establishing in the order of space the order of

power, therefore itself evading the regime of exchange, sharing and discursive interaction. The migrant challenges this order, aspires to this exchange: exchange of homelands, of belongings, of citizenships. It induces a crisis that is not only political, economic or social, but - and more radically - epistemological, since it produces the advent of the unthought of, that is, the claim of the outside to be housed in the inside, the demand for place for the outside-placed, of the made invisible to become visible. Created by the border, the migrant thus refutes this very border, that is, the political and cultural order underlying it, through the power of their own anomie. Theirs is in fact the exact opposite order: that of *trespassing*, which is arbitrary entry into other space, into the space of the other. Figuratively speaking, trespassing means stepping outside the limits of a determined, that is, pre-determined sphere. It implies rupture, interruption, undermining of a prior arrangement, injury inflicted on the sovereign body of the nation.

If so far the response that has supported the border policies of the Western Hemisphere, from the Mediterranean to the Atlantic, has been condensed into the securitarian narrative, other and anti-theoretical is the narrative that has emerged from the 'civil societies' of which Maurizio Ambrosini speaks in this same volume: a narrative defined as humanitarian because it operates in the field of non-violence, highlighting by contrast how the securitarian one operates in the field of the production of violence. Among the actors of humanitarian narrative are not only activists, but also 'artists'¹: artists, intellectuals, writers, producers of 'narratives' actions² that fuse social

1 The term 'artivism' comes from the fusion of 'art' and 'activism' to refer to contemporary art forms that "understand their craft as a civic adventure" (Trione 2022: 15), aimed at the transformation of the world. See in this regard the second issue (2021) of the journal *Remote Connections. Artivism_theater_technologies*, edited by Laura Gelmini, Dalila D'Amico and Vincenzo Sansone, published in open access by Milano University Press. On artivism in Latin American contexts, and on the tension towards the production of artistic forms that go beyond the tradition of political art, staging collaborative mechanisms elicited by the realisation of works in public spaces and the participatory reaction of users, see among others Ortega Centella (2015), Antivilo (2018), Quiroz (2022), as well as the web-zine *ARTivismo en América Latina* (<https://artivismo.info/2019/05/28/editorial>) and issue 8 (2018) of *Revista Index* dedicated to *Arte y activismo en América Latina* (<https://edipuce.edu.ec/revista-index-08-arte-y-activismo-en-america-latina>).

2 Scarabelli (2022) uses the term of 'narr'actions,' borrowing it from the Spanish 'narr-acciones,' used in other work (2021) to indicate the peculiar action of the word in the work of Chilean writer Diamela Eltit, the creator of one of the most literarily advanced operations in interweaving literature, art, and politics, that is, writing and activism. By 'narr'actions,' Scarabelli means, on the one hand, "a diffuse form of storytelling that does not solely use writing to embody itself and that, when it remains on the verbal horizon, unhinges genre boundaries by producing hybrid textualities, which are difficult to define and catalogue. On the

engagement with innovation and artistic creation, far from ideological paradigms, but held in solidarity alliance with the out-of-place, the voiceless, the invisible, the inaudible, the disappeared. Writings, images, objects, artifacts, materials, sounds are constituted as sites of a global representation that exchanges stylistic features, evades genre boundaries and recomposes them into hybrid, meticulous narrative creatures. Fluctuating between voices and silences that take on the task of narrating absence, mourning, the interdicted and the unspoken: the border as margin and marginalisation. Figural gestures that bear witness to catastrophe and cooperate in the transformation of the present time.

The Latin American activist and *'narr'attivo'* field can be considered exemplary champions in the establishment and prefiguration of this symbolic partnership between art, literature, politics and engagement. This is both because of the consubstantial vocation for a narrativity in which the interweaving of History and stories has distinguished the specificity of its evolution, and because of the peculiar and extremely intense resistance response produced in the traumatic contexts of the dictatorships of the Southern Cone and, today, of the Frontera Norte between Mexico and the United States: a paradigmatic frontier and forerunner of the confrontation between the North and South of the world. It is far from coincidental the line of continuity that, in cultural vocabulary and representations, metaphorically unites the *desaparecidos* of the Argentine military dictatorship installed with the 24 March, 1976 coup d'état and the *nuevos desaparecidos* who populate the tragic *border of* the Frontera Norte. Their mournful figure is the same one that now inhabits Mediterranean narratives³.

Since the 1960s, with a decisive acceleration since the 1990s, the space of the migratory narrative has become in Latin America, on the

other, a praxis that often places writing in cross-media dialogue with other media (photography, video, performance...), in an attempt to capture an always undefined meaning that shakes the established order, as a poetic and political inscription [of the text] in reality" (14). The term is very fruitful in defining the current attitude, not only of the Chilean author, but more generally of an important part of the contemporary Latin American *'narr'attiva'*, which develops the tradition of political engagement in formats of literary production, often intertwined with other arts, based on the centrality of the co-participation of readers and protagonists in the realisation of the work, as well as on the polyphonic construction of the narrating voices, including those of the users, in order to decentralise the monolithism of the author's single voice.

3 On the circulation between the Mediterranean and the Atlantic of the figure of the *desaparecidos*, see Susanna Nanni's magnificent book, *El desafío pedagógico en tiempo de pandemia. Memoria y derechos humanos entre Argentina y el Mediterráneo desde un aula virtual* (2022). In it, in addition to discussing the meaning of such circulation and the contamination between narratives, the model of transnational memory as a pedagogical practice is posited.

one hand, a place of memory, when - in order to rethink state models - it has recovered the great story of the late 19th and early 20th century exodus from Europe to Argentina; on the other hand, a poetic and political space, constructing a strong response to the necropolitics practiced along the borders that split the Americas in two. A space organised especially around the forms of testimony, direct or mediated, which in the victim's narrative has identified the fulcrum for weaving a counter-hegemonic narrative, that is, one committed to countering the process of dehumanisation to which violence subjects the person, to restoring body and biography to those who have been rendered absent from history, to reclaiming justice and memory, to refounding the paradigms of the civilisational process and its imaginaries.

A large corpus of texts, which often leave the confines of the literary canon to intertwine with other modes of representation (visual, aural, artistic), elaborates the migration narrative in the two contexts. Corpus traversed by a narrative strategy that, if in one respect reflects the historical difference between the two migratory events, in another shows some aspects in common: micro-stories of individual or family lives are privileged, which rewrite the post-independentist modernising epics (this is the Argentine case) or contemporary securitarian ones (this is the Mexican case) promoted by official narratives. Therefore, the faces, biographies, and dreams of those who leave, that is, who choose to change their destinies, 'trespassing' on those assigned, are illuminated. Migrating precisely. The autobiographical key, often articulated in the format of the family album, is favoured in Argentine narratives. The testimonial one, often composed through the collection of the stories of those who do not have access to writing or of those who have disappeared, leaving no trace other than bones in deserts, floating bodies in rivers, nameless corpses in dumps, prevails in the narratives of contemporary Mexico.

The history of borders enacted by this literature coincides with the development of a history of emotions - hope, fear, pain, affection, desire - to be placed at the foundation of the migratory one: an event that is always collective and that, therefore, macerates subjectivities, liquefied in quantitative mathematics, in the gigantism of flows, of masses, of peoples on the move yesterday as today. Along with public history, this literature intends to restore and establish an intimate, private, individual history, which on the one hand recovers the migrant's human dignity, and on the other hand restores their condition as a historical actor, active in the tension of change in personal, family and social circumstances. Two very different scenarios, in terms of timing, geography, and policies of reference are those that narrate the massive trespass from Europe to Argentina and from Central America to the United States. However, it is the comparison between these two narratives that makes it possible to observe, in a particularly signifi-

cant way, the tragic precipitation of the theme of borders in the evolution of migration discourse and its representations.

2. The border as threshold. New Argentine narratives of migration

A substantial set of narratives accompanied the historical migrations from Europe to Argentina, with a decided prevalence of works written by descendants of Italians, or Russian or Polish Jews. They are distributed in two major eras: the one coeval with the exodus, whose major authors basically belong to the last two decades of the nineteenth century and the first decade of the new century, and the one published especially since the second half of the 1980s, continuing until today, focused on the rewriting of a memory of migrations that offers new paths to the Argentine identity imaginary.

The first era opens within the framework of positivism and naturalist aesthetics. It responds to the reaction of the River Plate intellectual elites to the “tearing of the imaginary” (Gruzinski: 1988) caused by the grandeur of a migratory flow, which the narratives of the time record with the image of biblical floods. This is to say, of the impact on the prior arrangements of Argentine society caused by the arrival of millions of individuals, moreover in legal entry, in a relatively short period of time (Rosoli, 1994; Mansi, 2006). Stimulating the migratory flow were the nation-building policies designed by the liberal governments that emerged from the independence season consummated in the first decade of the nineteenth century. Policies centred on the repopulation and modernisation of the nation’s vast territory, through massive contingents of European workers. If the national project is initially sustained on the myth of the centrality of the European contribution to universal civic progress, the starving, miserable, illiterate reality of migrants who came out not from libraries or museums, but from desertified countryside, pogroms, and proletarianisation, actually induces the powerfully and nationalistically adverse reaction of the resident society. The transition from civilising myth to Babylonian myth is rather rapid, as Ainsa (2000) writes. At this moment in transcontinental history, political boundaries are permeable yes, but class and cultural boundaries remain powerful. The literature of the time amply reflects this reaction, fixing it in the production of degrading and devaluing stereotypes, especially towards the majority migrant nationalities, first and foremost the Italian. This page of literary, social and cultural history is in fact widely described⁴.

4 Among the most significant studies to retrace this page in the history, including literary, of migration to Argentina, I refer to those of Alma Novella

The second narrative era arises after several decades of literary silence on the migratory affair in Argentina, despite the fact that it constitutes the foundation of the nation's demographic constitution and considering the persistence of flows, albeit of lesser intensity, in the *interwar* period and between the end of World War II and the 1970s. Significantly, it is since the end of the dictatorship in 1983 that we see the recovery of the memory of migration. It is consubstantiated with the process of reconstruction of a society disarticulated by the violence of state terrorism. Reconstruction that coincides with the rethinking of migratory origins as a foundation - plural, diasporic, dialogic - on which to rest in order to reimagine the national community. In this journey, the new narrative woven by literature plays a central role. Through it, the construction of a memory is elaborated in which the "encroaching anomie" of migrating (Di Cesare 2017: 137) nourishes, even metaphorically, the process of de-writing and re-writing the idea of nation. Rhizomatic genealogies, which fix every boundary; new filiations, which graft themselves onto the monocratic body of official history; transterritories that liquefy political borders to design changing and plural spaces of citizenship are the recurrent motifs of a narrative that not only politically rethinks the nation, but instigates an epistemology of hospitality, of co-ownerships, which heals the lacerations produced by the discourse of violence and authoritarianism.

In a fine article by Ilaria Magnani (2006), devoted to identity reconstruction projects in post-dictatorial Argentina, the effects of this change of perspective in the perception of the migratory event are highlighted. Effects to which the literary fact also contributes, in its function of reconfiguring social and cultural imaginaries. The scholar points out the four planes on which the construction of a 'good' memory of migration in Argentina is arranged in this period. The first

Marani in *Relaciones literarias entre Italia y Argentina* (1992), Camilla Cattarulla and Ilaria Magnani, *L'azzardo e la pazienza. Emigrant Women in Argentine Fiction* (2004), Vanni Blengino, *La Babele nella pampa. L'emigrante italiano nell'immaginario argentino* (2005), Emilio Franzina, "L'Argentina di "carta": libri, lettere e memorie di un altro patria degli italiani," in *L'America gringa* (2008), Fernanda Elisa Bravo Herrera, *Huellas y recorridos de una utopía. La emigración italiana en la Argentina* (2015). Given the majority consistency of the migratory flow from Italy, it is inevitable that it dominates in Argentine literary representations of this period and, consequently, in theoretical-critical systematisation. With regard to the Jewish community, which was also substantial, although not as substantial as the Italian one, the first text that collects the history of its Argentine migration is written by Alberto Gerchunoff, a Proskurov native. It is *Los gauchos judíos*, from 1910. On Gerchunoff and the coeval Jewish immigration to Argentina, see also Monica Szurmuk's extensive biography, *La vocación desmesurada* (2018). The contribution to migration literature of Jewish-Argentine authors would become decidedly more important in the following period. See among others the volume *Múltiples identidades. Literatura judeo-latinoamericana de los siglos XX y XXI*, from 2012, edited by Verena Volle.

concerns the renewed valorisation of the migratory contribution. The second, the implementation of cultural projects of strong symbolic value, aimed at strengthening collective memory and at the same time restoring a socially positive relationship with pre-migratory origins⁵. The third relates to the microstructural perspective through which to rethink the history of migration, a perspective that is affirmed in historical and sociological studies and, powerfully, in literary production. The fourth derives from the previous one and concerns the valorisation of individual histories, each considered exemplary history, and thus universal.

Looking at the literary production that began to be written from the second half of the 1980s, with important foreshadowings in the 1960s and 1970s, one can observe some constants peculiar to the new Argentine narrative of migration, to which significant authors such as Pedro Orgambide (1984), Antonio Dal Masetto (1990, 1994, 2011) Héctor Bianciotti (1992), Rubén Tizziani (1992), Ana María Shua (1994), María Angélica Scotti (1996), María Teresa Andruetto (1997), Griselda Gambaro (2002), María Rosa Lojo (2010), and Mempo Giardinelli (2009)⁶ contributed.

Predominant in this narrative is the interweaving of autobiographical substance and the fictional format of the narrative, as writers carry the migration story inscribed in their family memory as descendants of migrants (their surnames certify this). The narrative is projected over two or three generations, in an overall process that witnesses the transition from experience to memory. The works, each in its stylistic, thematic, and contextual specificity, are constituted as pictures of a collective fresco that transcends from an experience of non-assignment (proper to the first generation), in which one belongs neither to the world left behind nor to the one to which one arrives, to processes of adaptation to new homelands (proper to the first and second generations), to always complete with the definitive sense of belonging (proper to the third generations). From this condition of belonging the authors we are talking about write, with the intensification over time of the number of female authors, becoming builders of history, of another history: *herstory*, no longer *history*. The common goal

5 Among the most noteworthy projects reported by Magnani was the 2001 opening of the Immigration Museum in the former Hotel de Inmigrantes, a landing and sorting customs house for migrants arriving from Europe, a border between the Old and New Worlds, which selected access based on health conditions, rejecting or welcoming, now transformed into a symbol of the same page of history shared on both sides of the ocean.

6 Of these novels, those translated into Italian are only the following: Ana María Shua, *The Book of Memories. In Buenos Aires because that's the way life is*, 2011, Alberobello, Poiesis; María Rosa Lojo, *The Family Tree*, 2016, Salerno, Oèdipus; Mempo Giardinelli, *Holy Office of Memory*, 2017, Rome, Lit Edizioni.

moves from feeling part of a national history to be rewritten, either to rethink the sense of citizenship violated by dictatorship, or to reinvent it through the re-emergence of women's history. The two paths may converge, but in each case they fix the origin of the nation in the epic of the humble or the invisible, not the heroes or the fathers of the homeland. The intergenerational path, also constant, certifies the occurrence of trespassing, that is, the entry into the other's territory and its gradual diffusion into the circuitry of the foreigner who has become a resident. Interestingly, the fixation of belonging, over generations, is produced when the descendants of migrants, either real (the writers) or fictitious (the characters), join militant organisations against dictatorship or act, culturally and politically, from *gender*.

The border recalled by this literature is not the political one, in fact permeable in this period of historical migration, but the psychological and cultural one. The general narrative figures the fractures and recompositions that inhabit the migratory experience, including the internal boundary within oneself, relating to one's original, personal or family affiliations. The one side and the other side of the border constitute the poles of the dialectical tension, torn and lacerating, that the writing takes charge of bringing out, in order to recompose in its entirety the identity narrative. The first moment of that narrative fixes the migration experience as an initiatory experience, articulated in the anthropologically classic stages of detachment, trials, and re-birth. The first concerns the exit from the border that circumscribes one's world. The large fresco, of which the individual works are pieces, establishes as its primary scene the narrative of separation from the known in order to lean out, remaining invaded, by the unknown. It is the domain of anguish and mourning, determined by the process of symbolic death both to one's social and family community of reference and to oneself, having lost affective, cultural and spatial referents (De Martino in Martelli: 2010). All the authors considered dwell, to a greater or lesser extent, on the foundational relevance - in the migrant condition - of the phase of separation. During the crossing of the border, internal and external, the figures of loss (of one's territory, language, affections) emerge, imprinting on the movement of trespassing the sign of that "territorial anguish" that will accompany the migrant in their journey to the elsewhere (Martelli 2004: 341). The tear with the origins takes on the aspect of a disintegrating violence, which disarticulates the primary affections: the abandonment of mothers, the youngest or the oldest enunciates as proper to the migrant condition that "knowledge of pain" named first, in literature, by Syria Poletti, a Friulian who landed in Argentina in 1938, in a precursor novel such as *Gente conmigo*, published in 1961, an autobiographical tale of exceptional narrative accomplishment⁷.

⁷ There is an Italian translation of it, *Gente con me*, for Marsilio types, published in 1998.

The arrival in the new world is an event marked by the character of absence. In Stefano's dreams, in María Teresa Andruetto (1997), the ghost of his mother Agnese will be constituted into a *revenant* who will testify to her son's condemnation of grief for abandoning her. The losses, lacerations, and bewilderment add up to the general unrecognisability of the new *realia*, engaging the protagonists in complex internal negotiations, as in Poletti, Bianciotti, Dal Masetto, Giardinelli, Andruetto, or Tizziani. The boundary, cultural, affective and symbolic, persists, moving until it overlaps with the entire target space, at least until the initiatory path induces new reconfigurations of the *self* (Cabibbo: 1983). In many of the aforementioned novels, the representation of Argentina bears the signs of an emotionally irreducible liminality, which will require - in the continuation of the migratory affair - the recourse to a gigantic 'work of the emotions' (Bjerg 2020, 2021), provoked by the processes of adaptation, by negotiations with the affectively traumatic conditions of departure.

This traumatic condition, which invests the first perception of the country of arrival, thus the landscape of trespassing, is accounted for in the deliberately figural narratives of authors such as Poletti, Bianciotti, Giardinelli or Dal Masetto: Argentina is a leviathan devouring fathers, mothers, brothers in Syria Poletti; a space of disintegration in Giardinelli, crystallised in the symbol of ships and the port as signs of the eternal hope of reunion, of the reunion of divided affections. In Dal Masetto it is the transitional home, which one never comes to possess definitively: the protagonist, Agata, maintains herself in the dream of returning to her homeland, a return whose task it is to heal the original rupture imposed by the crossing of the spatial boundary, and then temporal, between past and present. In Bianciotti, who in his migrant circumnavigation between Italy, Argentina and France, will choose to write in French, the condition of 'confinement' (Cuttitta 2012: 10)⁸ becomes metaphysical. A metaphysics of emptiness, of suspension, of radical uncertainty will characterise Bianciotti's Argentina, rendered through the images of a "terre sourde aux grands espoirs" (1992: 52), "néant géographique" (75), "création interrompue, à l'abandon," the face of "dispersion, de la dissolution dans le vide," "manière du néant perceptible" (190). The beyond becomes a visualisation of the archetype of the Fall.

If the new migration narrative is, as mentioned above, returned in the form of the initiatory tale, the long and painful crossing of the symbolic border between one's own world and the other world subsequently results in the exposure of processes of identity reconfiguration, which impose themselves as the outcome of both the elaboration of mourning for the losses suffered and the weaving of new affections.

8 For Cuttitta, 'confinity' is the "set of those characteristics that make a place a border, or that a place derives from being a border." I consider the first meaning.

Exemplary in this regard is María Angélica Scotti's novel *Diario de ilusiones y naufragios*, a narrative of migration that has the tone of a mythical tale. The work is elaborated in the midst of the dictatorial era, through the collection, which took place between 1976 and 1979, of accounts of the lives of immigrants in Goya, in the province of Corrientes. From these materials, Scotti constructs a story whose time space covers the period between 1889 and 1950, although it is written during the *Proceso militar*. As the country becomes dehumanised, the story proposes a humanising epic, built around a family with an Italian father and Basque mother, which is formed during the journey from Barcelona to Argentina. The mother already has a daughter, Pura, who sails as a stowaway hidden under her skirts. She will be the one to write a small, sacred story that preserves the human dignity of this migrant family, descending the Parana River, listening to languages, stories, cultures that make that river water a torrent of dreams, rising above the cascade of blood made to gush by violence. The work, prodigiously ingenious, visionary, anticipatory (a bandwagon for magic shows, the founding of the first cinematograph, the hot air balloon flights made by the father), qualifies the vitality of this family, foundational and migrant, to tell of the function as social, active, productive, modernising actors of those who crossed the boundaries of their world to pursue hopes. In the works written in the last two decades, a further articulation of the migratory affair, now made memory, can be observed: there is, in fact, a marked propensity to settle positively in *the in-between*, re-establishing contact between this side and the other side of the Atlantic. The original themes of loss (of homelands, of languages, of ties), of non-belonging, of the border as a fracture that disarticulates identities, change sign, replaced by the recurring motif of the richness derived from the proliferation of roots and their interweaving. New maps are drawn, generated not by borders, but by passages. Migrant memory now constructs its own and other geopolitics, which contrasts the infertility of the confined nation's order with the boundless prodigality of transnational alchemy. Novels such as Griselda Gambaro's *El mar que nos trajo* (2002), Ana Kazumi Stahl's *Flores de un solo día* (2003)⁹ or María Rosa Lojo's *Árbol de familia* (2010) are the most successful examples. If in Gambaro the ocean liners that transported the protagonist's grandmother are wombs that give birth to germinating multitudes, emblems of connection and not of mourning, in Lojo it is the figure of the corridor that crosses the Atlantic and unites Galicia with Argentina, engulfing fluid, prismatic, unclassifiable identities. For her part, Ana Kazumi Stahl has earned from Argentine critics the title of "nuestra escritora transnacional"

9 The novel was translated into Italian in 2004 by Sellerio under the title *Fiori di un solo giorno*.

(Bujaldón de Esteves 2014) for her paradigmatic exemplification, as much biographical as narrative, of the theme of multicultural capital as the happily unstoppable destiny of the contemporary condition. Daughter of a Japanese mother, and father of German descent, the writer was born and lived in the United States until, in 1995, she decided to move to Buenos Aires, abandoning English and beginning to write in Spanish. It is a choice that adds to the other cultural roots proper to her profile (the Japanese one, the German one, the American one in the Anglo-Franco-Spanish variant of Louisiana, the state where she was born and grew up). The novel works with “inter-imperial” diasporic remnants, as Teresa Ko (2019) calls them, circulating between the domains of East and West, thus transhemispheric. In this intersection of global cultural territories, in which the notion of border epistemologically evaporates, lies the protagonist, Aimée, a French name for a young woman of Japanese and Sicilian parentage, who lives in Buenos Aires, arriving from New Orleans to return to set out as far as the small town of Delacroix, a French-Spanish enclave in Louisiana, in search of her father. Aimé does not live tensely, or contentiously, his protean roots, but rather in the natural spontaneity of his everyday life, pivoting to an exemplarily contemporary story.

In the stories narrated by authors such as Gambaro, Lojo or Kazhumi Stahl, with their strong autobiographicalism, figures of contact elide the original figures of separation: seas, corridors, passages that do not divide, but unite. Figures that install themselves comfortably in the fluctuation, in the shifting boundaries of transterritoriality, re-designing civilising programmes from the de-signification of the very concept of border. The migrants represented by the complex of these narratives weave their stories in the key of a victory over death: over that symbolic death placed at the opening of their story, caused by the traumatic separation from their affective context (including language) and their environment of reference. The paradigm of mourning is processed and transcended, to go and settle as a memorable past, that is, worthy of memory: it can be remembered, therefore narrated. The wound, the original laceration, belongs to a concluded time, overcome by the conquered rootedness. The narrative becomes a story of new births, refoundations, resolutions. It records the fracture, but recomposes it. It is constructed, not surprisingly, as a family album, a family tree, an archive of transmissible, tellable memories, through words that do not struggle against the silence of the unspeakable or trauma. It tells us of boundaries crossed, of the test of the beyond overcome, of reconfiguration occurring after losses.

Thresholds, not walls, these borders, although they contain a historical experience, today conflate shockingly with the reality of the ongoing migration experience in other latitudes of the planet, starting with the Frontera Norte.

3. *Images of passage*

The three images placed here in succession emblematically summarise the radical change in the register of representations when they are subjected not to historical but to contemporary migrations.



Fig. 1. Argentina. The suitcases - Public domain

In the first, the Argentine scenario is fixed: a line of migrants disembarked in the port of Buenos Aires waits to load what they own onto a train departing for their intended destination. The departure ended with an arrival, the arrival with the incipience of a project. The suitcases, small bellies containing fragments of quintessential lives, objects and things of both necessity and memory, present the persistence of the autobiographical tracing of their owners, holders of their own history, albeit minimal or, as it were, 'stylised'. Migrants are stretched toward an unimaginable destiny.



Fig. 2. "Men waiting to board a nonexistent plane". Adrian Paci, 'Temporary Residence Centre' 2007. Courtesy of Kaufmann Repetto Art Gallery

In the second, Albanian artist Adrian Paci holds in narrative image a row of migrant bodies today, leaning toward the nowhere of a plane that is not there. If in the former, the occurrence of trespassing, the persistence of an individualising biographical trace (the suitcases, precisely, as the origin and remnant of one's memory), and the possibility of self-fulfilling fulfillment are captured, in the latter, opposite signs are elaborated. Migrants are confronted with emptiness and absence: they are not included in any political or social project (nothing awaits them, nothing accompanies their journey), absolute abandonment carves their condition, any property or biographical trace is rendered invisible. All that remains is waiting, blind hope, the force of necessity and desire to trespass from pre-assigned existences. Their fate remains unimaginable.

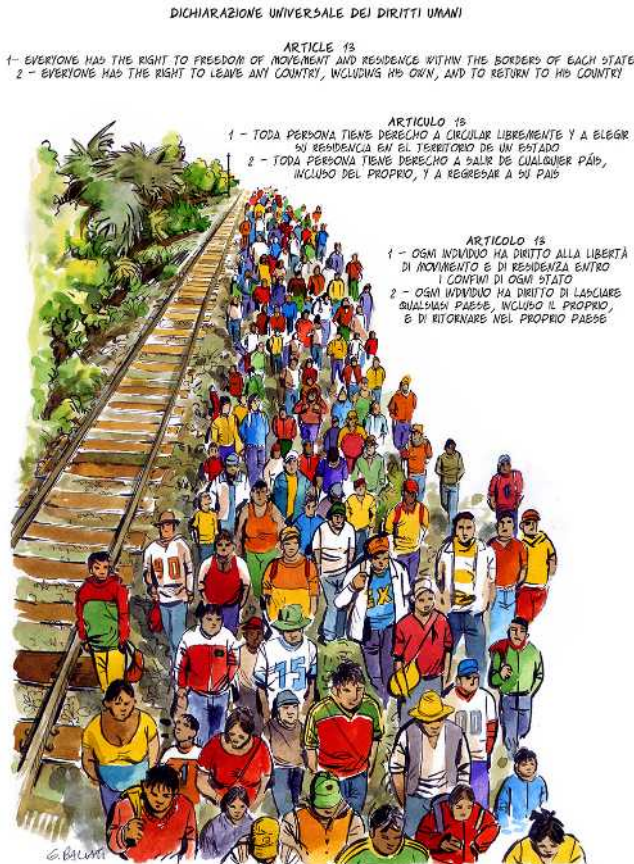


Fig. 3. "The world is moving" - narrative drawings by Giovanni Ballati.
Courtesy of the author

In the third, Giovanni Ballati's 'narrative drawing' directs its gaze toward the *Frontera Norte*, toward another line of migrants, incalculable in number, walking along the tracks of the freight train known as 'The Beast,' a mythological and hellish name for the means they await to travel that immense border area that is the entirety of Mexico, from south to north. Empty and full organise the symbolic space of the image: on the one hand, the empty rails of a suspended destiny, entrusted to the arbitrariness of a means of which nothing is known, except of its ferocity in maiming or killing those who fall, or in obeying - making itself the site of kidnapping, theft, violation - the sole laws of criminal organisations; on the other, a multitude on the road, deprived of any possessions, but that nevertheless moves, irrepresible, driven by the sole energy of lack, hands in pockets, made the daily dispossession incessant, walking. A multitude that becomes a warning and emblem of the deprivation of all rights. Which crowds its hope in the face of border policies made impermeable, forcing the path to take place outside the law, which has deserted the field of human rights, and within criminal trafficking organisations. Bodies are its prized commodities. Bodies that Ballati makes emblematic of the inoperability of the law that should protect them.

4. Necroconfines. Representations from the Frontera Norte

To say of the violence of the new borders, the narrative of the *Frontera* in Mexico appears to be inhabited by symbols, figures, meanings, and processes of the opposite sign than that of Argentina, consonant, if anything, with the poetics and politics practiced by activism and 'narratives' actions that are being elaborated in the Mediterranean area, in its grim substance as a multicultural cemetery¹⁰.

The first and greatest of the figures that inhabit the representations of the U.S.-Mexico border written in the last decade is, in fact, that of the dead, not the living as in Argentine narratives: nameless and faceless, unburied dead, corpses that have lost the quality of bodies, naked precarious lives that embody, figurative and mute, the unstoppable proceeding of the necropolitics of capitalism and crime. Remains that linger as a trace of a process of reification, of abuse, violation and enslavement, that macerates the transit of migrants for worlds that have become entirely borderline. Remains that are faint signs of inaudible histories, impossible memories, broken genealogies. For these border

10 It is by Syrian activist Khaled Barakeh, the photo series on the 28 August, 2015 shipwreck deaths of eighty Syrians and Palestinians near the coast of Lebanon. The sequence, centred on the bodies of the drowned children, is titled "The Multicultural Graveyard." It is posted by the artist on Facebook on 29 August. On 30 August, Facebook censors it, deleting it.

narratives, Cristina Rivera Garza, in Mbembe (2003), introduces the term ‘necroscriptures’: “writings that hold death by the hand, that inhabit the plexus of death” (2013: 384). In another work (Perassi 2018), I ascribed these narratives to a constellation of writings (sound, visual, alphabetical), contemporary and Latin American, calling them ‘nosographic’ because of their willingness to catalogue and represent the pathological, diseased condition of the *extrême contemporanéité*. Writings that re-signify the role of the author, who is no longer a Nerudian sentinel, that is, a mighty antenna that picks up and amplifies the word of marginality, but a Benjaminian angel contemplating ruins, absorbed in listening not to his own voice, but to the voices of others, to generate plural and choral weavings, which huddle around those who do not return. Installing themselves in the genealogy of the Shoah, inheriting its character of homage and commemoration, challenging the silence of the submerged, these narratives understand and semantise migration as the “Holocaust of the 21st century” (Monge in Santiago 2015). They work with the impossibilities and paradoxes of saying trauma and absence. They sustain themselves on the action of authors who make themselves chorus, who speak by proxy, on behalf of those who can no longer speak. They are texts in the flow of becoming witnesses in the Agambenian manner (1998), collecting the stories and faces of the *desaparecidos* produced by the border. The narrative, in writing or in image, becomes the site of that denied burial, that ritual of mourning, which deserts or seas have made impossible. For these incessant narratives, in search of remnants, barely perceptible murmurs, of traces that recover existences pulverised by the necrophobia of the *Frontera*, the reflection of Gao Xingjan in his speech at the awarding of the Nobel Prize for Literature in 2000 seems entirely appropriate: “We live in an age devoid of prophecies and promises, and this in my opinion is a good thing. The writer should stop acting as a prophet or as a judge, since many of the prophecies of the last century have turned out to be frauds. What the writer should do is to return to his role as a witness, trying to represent the truth” (2010:130). Countless are the works that are constructed as testimony, that is, as clear evidence of the spectralising nature of the border. These are works that are often disobedient even to the logics of narrative genre, interweaving codes, formats, languages that intend to gain ground on the unspeakable. In the strictly literary field, I think of those of Sara Uribe, *Antígona González* (2012), Alejandro Hernández, *Amarás a Dios sobre todas las cosas* (2013) or Emiliano Monge, *Las tierras arrasadas* (2015)¹¹. Their foundational image, the symbolic space that accommodates the narrative, is not the promised land, but hell: the hell of *desaparición* as the

11 The novel was translated into Italian in 2017 for La Nuova Frontiera types under the title of *Scorched Earth*.

outcome of a journey through the circles of the cone of shadow, of the inverted pyramid that becomes the figure of the current 'civilisational' program. The border stands there unsurpassed, a wall covered with crosses, as in Francisco Matas Rosa's painful photographic narrative or coffins, as in that of Tomás Castelazo¹².

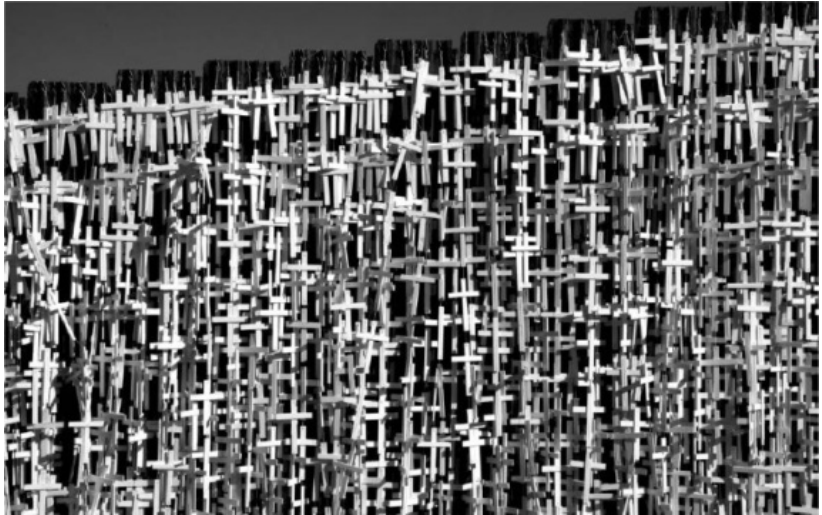


Fig. 4. Francisco Matas Rosa, "Tijuana", Baja California Norte, 2010.
 Courtesy of the author

As a place of silence and absence, the representation of the border resorts to interstitial and polymodal strategies, often working with extremely heterogeneous materials brought together in narrative collages, in which every expressive format is legitimised to intervene in order to overcome the symbolic boundaries of the unspeakable and to make thinkable the genocidal nature of real borders. The word does not give up the narrative. Constant is the recourse to the forms of quotation as a "call for help," Petrelli (2002:76) writes, the word of the other that succours the missing, insufficient, incomplete word of the authors. Listening, collecting stories, assembling news, reports from human rights associations, reportage as a journey together with migrants, are some of the forms through which the new *Frontera* narrators intend to place their protagonists as the subject, not object, generating the narrative.

The texts become chronicles that meticulously, courageously explore the unclean substance of the frontierised reality in which the invisible move. At the same time, they elevate denunciation to the rank

¹² The image can be seen at the link <https://www.artelista.com/obra/5972203118483628-ataudescoffins.html>.

of liturgical writing of remembrance, which restores transcendence, that is, individual body and biography, to 'discarded lives' or, rather, discarded, reified lives.

Sara Uribe's work is a prime example of this. It is written after the massacre in San Fernando Tamaulipas, a hundred kilometers from the border, in which seventy-two migrants are murdered by their traffickers with a gunshot to the head after being tortured, between 22 and 23 August, 2010. Fifty-eight men and fourteen women arriving from Central America, crossing the five thousand kilometers between the borders to the south and north of Mexico, effectively made one border area¹³. The massacre, far from being the first episode of heinous violence against migrants, nevertheless arouses a profound impact on civil consciences, producing the mobilisation of intellectuals, journalists, activists, photographers and writers who, alongside the families of the victims, give rise to the growing involvement of vast sectors of culture in Mexico. They accompany, multiply, and spread the demand for justice, memory, and reparation, moved by the circuits of activism and associationism.

Sara Uribe is part of this mobilisation. Her *Antígona González* is poem, theatre, and essay, a conceptual work based on the appropriation, re-signification, and rewriting of the Antigone mytheme. Constructed as a citation palimpsest, most of its sources are testimonies from family members of the disappeared along the migration route, or from survivors, from the news collected about the dead or from newspapers or from the platform *Menos días aquí*¹⁴, from the blog *Nuestra aparente rendición*, edited by

13 See Cuttitta's reflections, grounded in those of Newman (2006) and Balibar (2007), on the elasticity and continuous movement of borders: "Borders are distinguished by their elasticity and continuous movement, by their ability to escape local spatial constraints [...] thus transforming entire continents into borders and the world itself into a global border zone" (2012:17). See also Cuttitta (2007).

14 *Menos días aquí* is a collective project of extra-official counting of violent deaths in Mexico, operated through a blog and Twitter account. The platform is formed from the voluntary, and often anonymous, work of citizens who each donate a week of their time to search for news, starting at 6 p.m., of violent deaths that occurred in Mexico that day by consulting the crime section of online newspapers. The blog header reads, "Contamos muertes por la violencia en México. Mantenemos viva la memoria de nuestros muertos. Reclamamos paz." Uribe herself explains how "the painstaking and painful task of counting dead [has] to do with bodies, absence and language. It is about recomposing and establishing, succinctly, in the case of the blog, or with surgical brevity, in the case of the tweets, the exact location of the discovery, the circumstances and characteristics of a murder, an execution, or a death. It is about specifying the particular marks, the type of clothing, tattoos, scars, whether the victim - almost always unknown - wore shoes or was barefoot, what he or she looked like, the colour of the skin, what he or she had with him or spread around. It is about building with words a place of memory that remembers all our bodies. It is, in fact, about naming absence and making it visible" (*¿Cómo escribir poesía en un país en guerra?* published in issue 7, 2017, of

Lolita Bosch¹⁵, from passages taken from Sophocles, Judith Butler, María Zambrano, Marguerite Yourcenar, and Romolo Pianacci. The Antigone that the work constructs becomes a receptacle for a mournful chorus that does not abandon its dead to the silence of law or forgetfulness. It socialises grief - as in the founding example of the Mothers of the Plaza de Mayo - transforming individual tragedy into collective tragedy: Antígona González is not the superhuman and lonely princess of Thebes in search of Polynices, but Tadeo's sister, migrant among the *desaparecidos* migrants, sister among sisters in search of the bodies of their own disappeared, to give them burial, to restore names to the few remains found. In the introductory poem/preface/prose/monologue, titled "Instructions for Counting the Dead," Antigone presents herself invested with a prismatic protagonism, encompassing the transfiguration of the author into multitude: she who writes is the volunteer who searches for the dead through the blog and twitter of *Menos días aquí*, the volunteer among the many who become the memory and voice of the family members who search for their dead, the whole tightened into one alliance, ethical, affective, political, in one face, in one gesture. The active community that replaces the absence of the law and the state. Creon is in fact the only absent figure. These are the instructions given by Antígona in his *overture* that is manifest:

First, dates, as well as names, are the most
Important. The name above the calibre
Of the bullets.

Second, sit in front of a screen. Look for the news
On violence in all online newspapers. Preserve
The memory of those who have died.

Third, counting innocent and guilty, hitmen, children,
Military, civilian, authorities, migrants,
Traffickers, kidnappers, policemen.

Count them all.

the journal "Tintas. Notebooks of Iberian and Ibero-American Literatures" (<http://riviste.unimi.it/index.php/tintas>. Translation is mine). In this same text, the author gives an account of the complex and peculiar genesis of her work.

15 *Nuestra aparente rendición* is a project started by Catalan writer Lolita Bosch, who has lived in Mexico for a long time. In 2009 she decided to launch a blog that would convene writers, intellectuals, academics, and journalists to demonstrate against violence and for peace. After the San Fernando massacre, the blog transformed into a more structured page to generate reflection, consciousness, criticism and debate. After a year of activity, the publisher Grijalbo offers to collect a selection of the published articles into a book. With proceeds from the book, scholarships are funded for the children of women murdered in Ciudad Juárez. At this link, the blog: <http://nuestraaparenterendicion.com>.

Name them all to say: this body could
Be my own.

Lest we forget that all the nameless bodies
They are our lost bodies.

My name is Antígona González and I am looking for among the dead
My brother's dead body.¹⁶

Against the logics of necroconfines, generators of death; against the violence that semanticises them; against the elasticity of the border, a space of delimitation engulfed in a space of exclusion that coincides with the entire national territory, Uribe's work erects poetics of the affections as a communal politics, in which the principle of hope is transcended into the principle of responsibility, of taking charge of the 'pain of others' (Sontag 2003). The de-signification of the epistemology of the border passes through the construction of an alternative epistemology, based on a culture of nonviolence, which is configured as a subjective and collective practice. In her imaginary dialogue with her deceased brother, Antígona, after traversing the hell of the nation's body-boundary (police stations, morgues, dumpsites, the countryside, mass graves), declares the ethical and political project of which she is an emblem: "Tadeo, I was not born to share hatred/ I desire the impossible: that the war cease/ that we build together, each from his own place." The encroaching anomie of migration tends to the radical refutation of the contemporary civilisational paradigm, pointing to the urgency of another order of culture. In the works of Alejandro Hernández and Emiliano Monge, the representation of the border, of its 'elastic' nature, explicitly makes use of the metaphor of hell, building itself around the eloquent reprise of Dante's allegory.

For five years, Alejandro Hernández travelled the migration routes in Mexico, Central America and the United States, talked with hundreds of illegal migrants and was part of the government commission that drafted the first public report on their abduction and disappearance.¹⁷ His testimony, along with the voices and stories of countless

16 The translation is mine. The text is also available in Spanish under Creative Commons: <https://poesiamexa.files.wordpress.com/2016/06/antc3adgona-gonzc3a1lez.pdf>.

17 Another account from hell are Salvadoran journalist Óscar Martínez's chronicles collected in *Los migrantes que no importan* (2013), an oral investigation, later merged into fourteen articles published in Latin America's first online newspaper "El Faro.net," finally in book form. Winner in 2008 of the Mexican Fernando Benítez Prize for Journalism and, in 2009, of the Human Rights Prize from the University of El Salvador, Óscar Martínez - between 2009 and 2014 - follows migrants in their movement to the *Frontera Norte*, to document - with extraordinary courage - the ferocity of the treatment they are subjected to due to

other witnesses, flows into a novel that collects their fates, recounting their journey hanging from the 'Beast,' commodities, lives that are naked, precarious, enslaved, sold, and murdered by body traffickers.

An epigraph opens the narrative: "Dejad, todos los que entráis, toda esperanza. Dante Alighieri / Inscripción a la entrada del infierno / Infierno III, 9 / *Divina Commedia*" (Hernández 2013). Quotation par excellence, quintessence of quotation, perigrathy that occupies the void over which writing juts, the epigraph, writes Compagnon, "c'est la place du mort, de la manque: et l'on ne met plus d'épigraphes que sur les monuments funéraires" (Compagnon 2016:36). There is no need for further mention of the *Comedy*. The verse becomes emblematic of the crossing of the border. It radicates its extension: the entire journey will take place within a world-boundary, a land of infinite punishment, of the unlimited torment to which migrants will be subjected. Not migratory journey, but journey to the underworld, not allegorical, but real. Unlike in *Comedy*, there is no correspondence between retribution and guilt. The retributive logic of *Comedy* breaks down, imposing the advent of its opposite, namely the radical lack of meaning: experience is not oriented by the categories of the imaginable, but by those of the unimaginable. What follows will be glossed over, that monumental knowledge of pain that is the knowledge of these migrants, who die in the deserts of the north, natural walls toward which the artificial barrier forces them, seeking dramatic passage:

Everyone knows that migrants die at the U.S. border, it is not a secret, only no one cares. It is not a quick death, but a slow one, a death that drains all capacity for resistance, the body, the consciousness, until the migrant loses his lucidity, is made insane by the sun or the cold, becomes lost, walks in circles, delirious, feels asphyxiated, realises he is dying, even though he remains alive for hours more, his lips dry, his skin torn, his heart bursting, his memories confused, his lungs on the verge of bursting, until resignation takes over. He slumps as soon as he finds some shade, waiting for the end. If he succeeds, and he has with him what it takes to do so, he writes his farewell greeting, otherwise he prays, trusts, asks for help for his family members, while the sun dries the last drops of his life or the cold of the night snatches the last gasps from him. If the victim is lucky, someone will find its corpse a few days later and perhaps notify the family, or not, perhaps it will remain there, devoured, disappearing little by little, or it will go to the cemeteries of strangers, and no one will ever know where its remains are (Hernández, 2013:309)¹⁸.

the State's absconding and collusion. The book has been translated into Italian by Fazi under the title *La Bestia* (Rome, 2014).

18 The translation is mine.

In Alejandro Hernández, the entire plot is built on the author's collection of testimonies and stories heard during his missions. He reworks them into a fictional narrative centred on the figure of Walter, a young Honduran man, a metonymic migrant going through hell, a narrative and plural collector of a collective story, whose narrative uses a grammar of the first person plural, not singular. The text becomes a repertoire of the unarchivable, of that which resists, by exceeding it, the necrophagous silence of the state-boundary. Here, too, as in Uribe, if this same State has decreed the violent death of those who wished to cross it, the narrative opposes it, edifying itself through the word of the invisible: the indocility of their ghostly bodies unhinges the order of nations.

Emiliano Monge's novel, *Las tierras arrasadas*, also thematises the migration from Mexico to the United States, the residual, rejected bodies that dis-inhabit the world. Rather, inhabiting it is the narco-factory as necro-factory, a Lucifer that sustains the narrative. Compared to the abundant set of migration writings, *Las tierras arrasadas* develops an unprecedented theme, as it places - in a dominant position in the textual economy and alongside the victims - the torturers, that is, those who oil the gears of the machinery of buying and selling death, who control the body-boundary of the nation and the 'goods' that transit it. The protagonists of this horror have names made possible by the cemetery scenario of which they are emblems. They are called Epitaph, Estela, Mausoleum, Osaria, Ausencia, Sepulchre, Cemetery, Esequio, Hipogeo. Divided into three books, like the *Comedy*; punctuated in three days, like the *Comedy*, the narrative rises as a funeral song in memory of the martyred bodies of migrants, a song that is a tragic chorus built on quotations, either alternating, or conjoined, of 49 verses from the *Divine Comedy* and as many testimonies taken from reports by the National Commission on Human Rights, the Inter-American Commission, Amnesty International, the Hermanos en el Camino shelter, the Las Patronas association, the Migrant House, Médecins Sans Frontières, and the Migrant Child's Home. Not signalled by quotation marks, but by italics, the quotations on the one hand emphasise the waiver of copyright, acquiring in enunciative continuity multiple authors; on the other hand, and again, they allow for the choral amplification of the narrative voice, crossing the boundaries of the representation of the unspeakable: "*As when the fog dissipates, and the gaze little by little depicts /what conceals 'I vapour, those who come from other homelands but not from other languages recognise the song that is sung over them and that is how they understand that they will have to leave all hope'*" (Monge, 2015: 218).

In Monge's novel, a skillful interdiscursive dialectic builds a palimpsest of quotations, in which Dante's verse eternalises the punishment of the humble and the forgotten. It redeems them from their condi-

tion of thing, of merchandise, allowing a worthy act of burial, thanks to the liturgy celebrated by the high magisterium of the poetic word. If the border has decreed the humanity of the person interdicted, literature returns to restore it, making itself the embodied space of a hermeneutics of hospitality (Ricoeur 2013), a mirror of the face of Others (Lévinas 2016), a narr'azione that symbolically produces justice, in sign and denunciation of its absence. Converging on the same poetics and politics of responsibility for the other, the narratives of migration to Mexico in the last decade articulate the range of expressive possibilities offered by a "second-hand" testimoniality (Givoni 2011; Perassi 2017)¹⁹, which focuses on the tropes of horror. It is emblematic that a constitutive object of the traumatic heritage formed from the memory of the Shoah recurs in visual narratives: shoes²⁰. A genuine arch-image, perhaps the most sinisterly cumulative in representing the genocidal industry of death in the camps, it has become permanently inscribed in the testimonial imagination, given its elocutionary power. It functions as historical evidence and memorial icon that captures the rupture, the disjunction between *bios* and *zoé*. The

19 By "second hand testimony," as distinguished from first hand testimony, Givoni means that which surfaces, especially since the 1960s and 1970s, through the activities of NGOs. In order to procure proximity with distant victims, NGO workers produced and still produce data, documentation of violations, autobiographical writings, images of suffering, statements, and reports that collect victims' accounts. Picking up on Didier Fassin and Richard Richtman, Givoni points out, "[...] humanitarian organisations replace the first hand testimony by partnerships who report what they have seen and heard" (2011:162). Givoni emphasises the open-ended nature of witnessing and the process of "becoming a witness" as a new aspect of contemporary testimoniality, which develops the act of listening and transmitting the traumatic narrative. For my part, I have extended this notion to that set of Latin American narratives written by posthumous subjects, who have not experienced the traumatic event and yet shape and transmit its memory through authors who have become witnesses (Perassi 2017). A further example of this new and pressing practice of testimoniality, in addition to the artistic and literary works mentioned so far, is provided by Flaviano Bianchini's text, *Migrantes. Clandestine to the American Dream*, from 2015. Bianchini, a journalist and indomitable Italian activist, entered Mexico clandestinely from the *Frontera sur*, that is, from Guatemela, and crossed the entire country clinging to the 'Beast,' making himself a migrant. He took the fictitious name of Aymar Blanco, posed as a Peruvian and left his passport at home, so as to live in a condition of illegality, exposing himself firsthand to the lack of protection. Bianchini's body, placed at the centre of the experience and its representation, functions in the manner of the 'embodied archives' Zaccaria (2016) speaks of, memory that holds the inarticulate language of emotions and knowledge accumulated in the journey. Bianchini's peculiar testimony becomes a *graphic novel* drawn by Giovanni Ballati (2018), enabling the greater circulation, to other audiences, through other channels, of the testimony itself.

20 I dwelt on this image in an earlier work on object-witnesses in contexts of violence, from which I take some arguments. Cf. Perassi 2020.

shoes refer to missing, ghostly bodies, as they continue to retain the form of those who wore them, who existed and are now dissolved, who should be there but are no longer. Form without content, they tell of the radical disarticulation between bodies and existences.

In the memory of the exterminations, the shoes tend to a similar figurative arrangement: stacked and exposed in their quantity, they signal the massiveness of violence and are converted into evidence of the death of an immeasurable collective body, of its unanimous and tragic biography, anonymous and universal.



Fig. 5. Block 5: "Material evidence of crime."
Auschwitz Museum - CC-BY-SA 3.0 Licence

They usually present themselves as mound and heap, to say of the sinister arithmetic of thanatopolitics, and at the same time they certify an endless mourning, continually exceeding what can be put into word and form. Mute, inert, each pair different, empty of the person, they are the final image of the absent, the irreducible remnant of their traces. As Huyssen (2002) observes, tropes of concentration camp horror will decentralise to representations of other genocides, within the transnational movement of memory discourses. Recurrent, in fact, are representations of the *Frontera* inhabited by the *nomos* of extermination. Visual narratives, as I mentioned, are significant examples of this. In them, the image of shoes circulates as evidence of the annihilation of the life project of migrants on their way to the border. They

restore, along with the historical evidence of the dying that marks this same border, the effect of death in the living, constituting themselves into symbols of their moving into the territories of absence, in search of their disappeared. With this meaning, the image of the shoes appears eloquently in the book, originally conceived as a virtual altar, *72 migrantes.com* (2011), commemorating the San Fernando massacre²¹, through the narrative photos of Ricardo Ramírez Arriola, Daniela Rea and Javier García. They certify the endless journey, dispossession and abandonment, giving evidence of that crisis of dwelling into which the circumstance of migrants plunges, unable to stop, to shelter, to reach a home that is stable, definitive.

Also in the 2016 exhibition *Huellas de la memoria*, designed by sculptor Alfredo López Casanova as a tribute to the thousands of *desaparecidos de la Frontera*, touring between Mexico, England, France, Italy, Germany, and Japan, the real and symbolic subject are shoes donated to the artist by family members. Engraved on their soles are not only the essentials of the biography of the disappeared, but also the messages that mothers, fathers, friends, and brothers would like to send them: "I am looking for my son. This path is of many tears and endurance until I find you. Mom," is a heartbreaking example. The soles are painted green, so as to function as stamps that, symbolically, can imprint along the path the trace of a despair, but also of a hope: worn-out, worn-out, deformed shoes from having moved through ministries, cemeteries, hospitals, morgues, prisons, pits, dumps, riverbanks, impervious roads, without help or means except the strength of affections. The State-boundary, its public, administrative, health, and natural geographies are the space of the absence and silence of the law, traversed and marked by these clamorous footprints, such because they demand justice, consciousness, taking charge, visibility of the tragedy. The footprints, in their spread through the various mirror pages of the web, multiply beyond all borders, enunciating the persistence of life despite the necrophilia.

21 The book began as a project organised by journalist Alma Guillermoprieto, bringing together writers, journalists, activists, political scientists, artists, photographers, and musicians in tribute to the seventy-two migrants murdered in San Fernando. Each of the participants composed a text, one for each victim, accompanied by as many photographs. Some texts contain information about migration and violence. Others place migration in the global context. For the most part, however, they contain portraits of the victims, either elaborated from dialogue with family members, or imagined (in case the victim remained unknown). When it arose, the project consisted of a website. By clicking on the "Los 72 que murieron" icon, one could read the real or imagined biography of each of the victims. In the "Descargar canciones" window, one could listen to music donated by the authors participating in the project. One could also make "Donaciones" to contribute to the feeding and care of the migrants. Or it was possible to "Dejar una rosa en el altar." The project later turned into a book, published in 2011 by the publisher Almadía in Oaxaca, and later the site was shut down.



Fig. 6. Alfredo López Casanova, "Huellas de la memoria" (2016). CC-BY licence

But it is in the work of the great artist and photographer Lourdes Almeida, particularly in the photographic project *Tierra ignota. Zapatos de migrantes* (2015-2017), that the hundreds of shoes, collected by the author in the deserts of the frontier or donated by family members, narrate the spectralisation of bodies dissolved in the journey without return in the hell of migration:



Fig. 7. Lourdes Almeida, "Tierra ignota. Zapatos de migrantes".
Courtesy of the artist

At the same time, the icon becomes a relic that sails on mythological waters, without beginning or end. Waters that eternalise the memory of the departed, along which descend shoes that are funerary, monumental, liturgical vessels:



Fig. 8. Lourdes Almeida, *"Tierra ignota. Zapatos de migrantes"*.
 Courtesy of the artist

Another recurring figure in representations of the necroconfine is the enumeration of the name of the dead, generating a rhetoric of accumulation, which returns to the evidence of the horror in action. Listing corresponds to breaking down the whole into its parts, allowing its analytical perception (Mortara Garavelli 1997:216). An index of the person in his uniqueness, an essential attribute in defining the subject as such, the lost proper name is a sign of the radical loss of this same subject. The return of the name as the return of the autobiography, as an identifiable and individualisable part of a larger whole, is core to a poetics that intends to repair the dismissal of the subject effected by the necro-confinement, returning to the institution of historicity, the identity of the person. "If your body cannot be named, however, then it is just a corpse. It is a corpse that is less than human, it is a thing. While this thing waits to be claimed, you will become something else in this world: you will be called Missing. There is no ritual for mourning the unclaimed. There is no paying of respects for unmarked graves," writes Ethiopian writer and activist Maaza Mengiste. The absence of a name is tantamount to the impossibility of mourning, of a grave from which to articulate remembrance.

As commemorative acts of restitution and recognition, as necessary sepulchres to enable the rituals of leave-taking that are bridges that restore the continuity of life and death, those works that take up the

figure of the enumeration of the proper names of dead migrants are thus constituted. Exemplary is the sound poem by Luz María Sánchez, an artist from Guadalajara, entitled *2487*²². The work consists of recording the 2487 names of as many people found dead in the *Frontera Norte*. Each is mentioned through his or her name. As Jennifer Davy (2006) comments, this eight-channel sound work grows slowly toward a perceptible auditory field in which names are generated from different locations, signaling different movements across the frontier. Interspersed with periods of silence, some names are spoken in isolation, while others sound like links in a chain. Some overlap. The shifting rhythm that names them interrupts any sense of repetition, the serial monotony of a list. It is a random pattern that alternates between moments of contemplation and moments of anxiety. Not being able to hear all the names emphasises “la inmensidad y la gravedad de lo que está siendo clamado, no solo exclamado” (Davy 2006).

In the shaping of a transnational memory of necroconfines, the circulation of, among others, the styleme of the enumeration of names, peculiar to the funerary and memorialistic tradition, stands out²³. An example of this is Dagmawi Ymer’s 2014 video, *Asmat-Nomi*, to commemorate the massacre of victims that occurred on October 3, 2013 off the coast of Lampedusa, in which all the names of the disappeared are pronounced, overwriting the images. In the presentation text, it reads:

In a moment, in a single day, on October 3, 2013, so many young people who called themselves Selam “peace,” or Tesfaye “my hope,” left us. We name our children because we want to let the world know our wishes, dreams, beliefs, the respect we pay to someone or something. We give them names loaded with meaning, just as our parents did to us. For years these names, with their cargo of flesh and bone, have gone far from the place of their birth, away from their home, composing a written text, a text that has reached the borders of the West. These are names that have defied borders and human laws, names that disturb, that question African and European rulers. If we can understand why and when these names fell away from their meaning, perhaps we will be able to get an infinite text to our children that will reach their chil-

22 The work can be heard at the link <https://www.diaspora2487.org>. From it, one can go back to a further page where there is a list of migrants with their names and, where known, their age and place of origin. http://1n19qwy20q2jg1kl3d0t-prhkg.wpengine.netdna-cdn.com/wp-content/uploads/2016/09/2487_Names.pdf. The sound poem is part of a solo exhibition by the artist titled *Diaspora I / II* (6 June - 10 September, 2006)

23 Remember that the name of the Holocaust museum Yad Vashem, on the top of the Mount of Remembrance in western Jerusalem, means “a memorial and a name.” It comes from the book of Isaiah 56:5, where God says, “I will grant in my house and within my walls a memorial and a name ... I will give them an everlasting name that will never be blotted out.”

dren, grandchildren, and great-grandchildren. Despite the fact that the bodies that contained them have disappeared, those names remain in the air because they were spoken, and they live on even far from their human boundaries. We do not hear them because we live submerged in the chaos of millions of poisoned words. But those syllables live because they are recorded in the cosmos. The film's images give space to these names without bodies. Names charged with meaning, even if their meaning is difficult to grasp in full. We are forced to count them all, to name them one by one, so that we realize how many names were separated from the body, in a single day, in the Mediterranean²⁴.

Note how the gesture of “counting them all” echoes the “Instructions for Counting the Dead” already in Sara Uribe's *Antígona González*. The effects of Mexican and Latin American *border critical thinking*, with its epistemologies and poetics, sensor and detonator of new conceptual and representational paradigms, are clearly discernible in the constitution of that territory that Paola Zaccaria calls the MediterrAtlantic (2016), traversed by similar stylistic features in contagious circulation. Related to the figure of the name, consider also the installation *Palinsesto* (2018), by Colombian artist Doris Salcedo, exhibited in the Palacio de Cristal del Parque del Retiro in Madrid. From the floor, which simulates the sand of the seabed, rise drops of water that slowly come together until they form the names of men and women who drowned in the Mediterranean in an attempt to reach Europe, names recovered through archival research by the artist's collaborators. The same poetics of enumeration is in Turkish artist Banu Cennetoglu's installation *The List*, made between 2002 and 2020, i.e., continuously expanding, which collects the names of 34,361 refugees, migrants and asylum seekers who have died over the past three decades while trying to reach Europe²⁵. On the importance of identifying the dead, giving them back their names, hence identity, one cannot forget the extraordinary work of Cristina Cattaneo and the Labanof forensic anthropology and odontology laboratory, whose ethical goals are perfectly defined in *Faceless Castaways. Naming the Victims of the Mediterranean*

24 The video was produced by the 3 October Committee, in collaboration with the Archive of Migrant Memories, the Truth and Justice Campaign for the New Desaparecidos, and the support of Open Society Foundation, Amnesty International Italia, Emmaus and the Church of San Nicolò dell'Arena. It is available at <https://www.archiviomemoriemigranti.net/film/co-produzioni/asmat-nomi/>.

25 *The List* has been printed, distributed to passersby in various cities, near schools or sensitive places. Exhibited at the Liverpool Biennial in 2018, along the way, it is defaced by vandals. The most recent version of the work was published as a special supplement of “The Guardian” to coincide with World Refugee Day on 20 June, 2018. In 2017 it is in Milan, published in the catalog *La terra inquieta* of the exhibition of the same name at the Triennale (28 April -20 Aug, 2017). The artist works with listings, relocations, archives, making peculiar use of printed paper.

(2018), a testimonial narrative of their work since the 3 October, 2013 shipwreck off the coast of Lampedusa²⁶.

5. Conclusions

From this review, albeit a partial one, it is clear that the contemporary representations of migration that I have placed under observation are ascribed to a narrative and figurative genealogy that moves into the realm of narratives of extermination. A genealogy that passes, in the Latin American case, through the challenge already addressed by word and image to the domination of the unspeakable established by the *desaparecedoras* practices of the Cono Sur dictatorships.

In the new Argentine narratives of historical migrations, the perception of the migratory event can be traced back to the typology of an initiatory journey that, from the traumatic event of separation from primary ties, leads to a reconfiguration of identity, albeit complex, in the society and culture of arrival. The border is shown in its nature as a transformative instance, signalling in migration the crossing of different spatialities and temporalities, for which it is necessary to operate in terms of identity negotiation, processes of emotional and affective adaptation, and resemantisation of origins. The migratory affair takes place within a framework of legality. This allows it to become a life path that produces, in the arc of its transgenerational evolution, the evaporation of the notion of border as limit or barrier and its resignification as a zone of contact, where mobile, rhizomatic, enriched identities proliferate. In contemporary Mexican narratives, by contrast, the equivalence between migration path and death path dominates. The narrative no longer captures a process of identity transformation, but rather its opposite: the dismissal of the humanity of the subject operated by the criminal industry of migrant bodies. The silence of the law, the barbarisation of border policies, the retreat of the state, the consequent control of the territory by narco-trafficking, and the predominance of the securitarian narrative across the border are denounced as the substance that produces the *Frontera* as a site of the denial of life. Word and image stop in a time devoid of evolution: the time of death as absolute time, which does not flow, which erases the before and disables the imagination of the after. The border is world. Its crossing registers not dynamism, or change, but fixity, stasis in the circles of a dead-end hell. The desertion of institutions is radical, replaced by humanitarian action alone, including that of literature, art, culture. An action based, together with the ethics of care, on the awareness that the current paradigm of the border challenges the entire paradigm of civilisation.

26 This account is also ascribable to the field of "second hand testimonies."

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