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**More or Less Eligibility?
Theoretical Perspectives on the
Imprisonment Process of
Irregular Migrants in Italy**

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ABSTRACT

This article focuses on a critical review of the Rusche and Kirchheimer's category of less eligibility. The attempt of applying this theoretical model to interpret and explain the process of criminalization and incarceration of the irregular migrants in Italy, in fact, highlights some relevant contradictions. According to the results of a recent field research – based on biographical interviews recorded in prison – the relation between the penal regulation of the migrant workforce and the high levels of migrants' incarceration appears to be heavily influenced by the legal positions of the migrants. Irregularity, in other words, shows its coherence with the praxis of exploitation typical of the informal economies. My aim is to consider the ambivalence of the prison system between deterrence and residual welfarism.

Il presente contributo intende lanciare uno sguardo critico sul concetto di less eligibility (Rusche e Kirchheimer 2003). Il tentativo di avvalersi del modello teorico di questi autori per interpretare e spiegare i processi di criminalizzazione e imprigionamento dei migranti irregolari in Italia mette infatti in evidenza alcuni aspetti contraddittori. Con riferimento ai risultati di una recente ricerca sul campo basata sulla registrazione di interviste biografiche in alcune prigioni italiane, il rapporto tra la gestione della forza lavoro migrante e i livelli elevati delle presenze in carcere dei migranti sembra essere fortemente influenzato dalla posizione giuridica di questi ultimi. La definizione di irregolarità, in altre parole, appare coerente con le pratiche di sfruttamento che si realizzano nei circuiti delle economie informali. L'intento è quello di considerare l'ambivalenza del sistema penal-penitenziario tra strategie di deterrenza e erogazione residuale di servizi.

CONTENTS

- 1. Introduction, p. 4**

 - 2. Deterring the unprotected, p. 6**

 - 3. Less eligibility: Still terrorising effects?, p. 9**

 - 4. More eligibility: Rationality and Ineffectiveness of Deterrence, p. 12**

 - 5. Provisional conclusions: Horizons of mobility, p. 16**
- References, p. 20**

More or Less Eligibility? Theoretical Perspectives on the Imprisonment Process of Irregular Migrants in Italy

Alvise Sbraccia

1. Introduction

This article is focused on a critical review of the Rusche and Kirchheimer's category of *less eligibility*, central in their masterpiece "Punishment and Social Structure"¹ (2003²). The attempt of applying this theoretical model to interpret and explain the process of criminalisation and incarceration of the irregular³ migrants in Italy, in fact, highlights some relevant contradictions. According to the results of a recent field research – based on biographical interviews recorded in prison⁴ – doubts emerge about the

¹ According to the definition of Michel Foucault, simply "le grand livre" (Foucault, 1975, p. 29).

² The first complete edition is dated 1939, and it's one of the production deriving from the Diaspora of many German intellectuals in the USA. See the historical reconstruction in the contribution of Dario Melossi (1978).

³ The English-speaking reader may not understand why I use this word, 'irregular'. I deploy it instead of 'illegal' (a much more common expression in the international sociological and legal discourse on immigration) because in the Italian system this last term refers mostly to those who entered the country with no documents ('clandestino' is another common word that defines these people). The 'irregular' are instead those immigrants who lost their legal status in the course of the migration process. Therefore, I deploy the term *irregular* in order to include in my analysis this part of the foreign population (very well represented in the Italian prisons), and to remark the oscillation among legal statuses experienced by many individuals.

⁴ In this article I do not have the possibility to develop an in-depth methodological reflection on the biographical approaches in social sciences (Rustin, 2000; Roberts, 2002). What it can be said is that the Northern American criminological tradition has shown from the beginning a concrete interest for this kind of research techniques. According to Sutherland and Cressey (1978), for example, the processes of differential association and criminal affiliation must be analysed in an historical and process perspective; biographical materials are deeply analysed by Thomas and Znaniecki (1920); the related concept of *criminal career* is crucial for some scholars of the School of Chicago (Rauty, 1995); ancient (Foote-Whyte, 1993) and modern (Bourgeois, 2003; Bourdieu, 1999) classics in sociology of deviance are rooted into life history reconstructions, sometimes based on several in depth interviews with the same subject; even the passage from primary to secondary deviance, central in the labelling approach' interaction theory (Lemert, 1967) can be interpreted in a biographical framework; while more recent reflections have highlighted how a comparison between such life-reconstructions can be fundamental for the sociological attempt of producing *collective histories* (Richardson, 1995), especially dedicated to the groups and individuals living at the margins of western societies (Ferrarotti, 1981). I tried to follow the same path (during my PHD program at the Institute of Sociology, University of Urbino) by

dissuasion capability of a criminal policy rooted in a less eligibility strategy.

The relation between the penal regulation of the migrant workforce and the high levels of migrants' incarceration appears to be heavily influenced by their legal position. Irregularity, in other words, shows its coherence with the praxis of exploitation typical in informal economies. Following this perspective it is possible to argue that, since the penal sanctions can contribute to eliminating a migrant's hope for a future regularization, they can also function to reproduce conditions that keep immigrants in the most unprotected areas of the labour market. On the other hand, what I suggest is that such conditions are so distant from the migrants' projects and so restrictive, with reference to their structure of opportunity, to provoke the failure of this kind of institutional form of dissuasion.

My aim is to discuss the hypothesis of *more eligibility* as a process of criminal adaptation for the irregular migrants. This is at once to consider how the prison system offers to thousands of them the first contacts with social and medical services, in front of an external situation that, from the biographical reconstructions, cannot be defined as more eligible in advance.

Deterrence is therefore the key category⁵ in the reflection I would like to develop in the following pages.

2. Deterring the unprotected

The crucial assumption of the theoretical approach of Rusche and Kirchheimer (2003) is that prisons are instruments of deterrence with reference to the subjects placed in the labour market's lower positions. According to this view, a relation of direct dependence connects the comprehensive conditions of such subjects in their everyday lives and the structural conditions they would ex-

recording 30 in-depth interviews with northern African migrants convicted in some Italian institutions (the prison of Venice, Padua, Trapani and Palermo and the centre for migrants' administrative detention –CPT – of Trapani), with the aim to verify how their narrations and memories could meet and eventually support a redefinition of the assumptions deriving from the theoretical perspective mentioned above. In this article, that can be seen as a first reflection, I will present some deductions oriented to what I paradoxically called the less eligibility inversion, dedicating particular attention to the theme of spatial and occupational mobility (in the last paragraph).

⁵ In this article, in other words, other hypothesis regarding the process of criminalization of migrants and minorities will not be taken into consideration. Such a choice would not be possible in a contest like the USA, where the numbers of the process of ethnically defined mass incarceration (Wacquant, 1999; Feeley and Simon, 1994; Hudson, 1995) would force scholars and researchers to reflect in term of selective incapacitation and neutralization of the 'enemy within', leaving aside the 'old' category of deterrence.

periment if sentenced to prison. This relation, of course, shows a significant level of variation depending on the demand for basic (unskilled) workforce.

Therefore, in a period characterized by the scarcity of workforce, also the concrete functions of the prison will vary. On the one hand, such institution may guarantee the availability of a quantity of persons to exploit in conditions of forced and institutionalized labour. On the other hand, supported by the ideology of rehabilitation and by eventual resources supplied by the welfare state, it may be oriented to implement “educational” projects of labour training.

When the job market has, on the contrary, to confront a situation of workforce surplus and growth of the unemployment rates, the function of the prison would be simply the one of terrorising individuals who, given their placement at the lower steps of the social stratification and their lack of economical resources, may be tempted by a “criminal” option. This complex dialectic can thus be described by referring to two types of coercive inductions on the imprisoned population: To force its members (to learn) to work in the given conditions or to force them to accept their conditions of substitution workforce.

Such secondary adaptation can now be interpreted as functional for the survival of an important part of the western economies, the ones typical of the sectors where irregular and unprotected jobs appear indispensable for their survival: For example, in Italy, these jobs are said to maintain competitive some articulations of the agriculture⁶, some sectors of the services (especially the ones dedicated to family care and assistance to the elderly), the construction business and the small industries employing few workers (Ambrosini, 1999).

In any case, what appears to be clear is that any analysis of the meaning and effectiveness of deterrence needs to take into consideration two fundamental perspectives.

As a strategy rooted into the criminal policies, and dependent on the labour markets’ settlements, it has to be interpreted with reference to the complex of structural and legal adaptations that actually define the contents of such policies.

Since it addresses individuals, we also need to challenge this strategy in the complex field of subjective motivations and choices: The meaning of the term “eligible”, in fact, is “suitable to be chosen”.

⁶ Reading the important work of Rothenberg (1998) analogies appear evident with regard to the forms of exploitation of migrant workers in the California countryside, that are very similar to the ones described by some of my interviewees and some Italian researchers as well (Ambrosini, 1999; Reyneri, Minardi, Scidà, 1997).

Even if the theoretical possibility of establishing a connection between a penal political strategy and the spheres of individual motivations that interact in a process of decision making seems to be complicated, I claim that there is no other viable way to challenge the validity of the theory. A question related to this last assumption is why should we focus on the social group of the so called “irregular migrants”. Basically, there are two orders of reasons that push me to select these subjects for my biographical research.

The first one is strictly related to the available statistical data on the imprisoned population in Italy⁷. While the percentage of migrants on the total population of the nation is estimated to be around the 4.5%, their incidence on the prison population results much bigger, having recently reached the 33%. This third of the convicted population is composed for the 85% by irregular migrants, while only the 15% refers to migrant that had a regular residence permit or a green card when they entered the prison. The overrepresentation of the selected group in the criminal justice system is therefore absolutely evident and impressive.

The second order of reasons can be put into relation with what I previously defined the complex of structural and juridical adaptations at the bases of the actual criminal and penal policy, at least in Italy. Behind the definition of “clandestino” (the common term through which, especially in the media, the irregular/illegal migrants are stigmatized), it is operative a system of legal differentiation which obviously derives from the national law on immigration. Irregularity is not an ontological trait, but a legal position acquired in Italy after the expiration of a tourist visa, after a clandestine migration travel, or after a period of unemployment in the country of immigration. This last connection with unemployment is, of course, crucial in my speculation because, independently from how irregularity is reached, it implies the impossibility to apply and sign for a regular job contract.

Anyway, the substantial and legal consequences linked with this clandestine status cannot be limited to the field of the working positions: An irregular migrant is not allowed to sign a regular housing contract; with the present legislation, he/she has no chances to be involved in a process of regularization, he/she is excluded from the bureaucratic path which leads to the acquisition of citizenship, and from the access to other forms of welfare protections (only emergency medical treatment are guaranteed) and, finally, he is not in the position to legally rejoin the members of his\her family.

All these variables should be considered in the attempt of analysing migrants’ motivational sphere; but, coming back to our

⁷ For the official data see <http://www.giustizia.it>. For interesting statistical elaborations see also Barbagli (2002) and Melossi (2002).

theoretical framework, we prefer to focus on the following, strict, alternative. The irregular migrant's job perspectives can be traced back to a forced choice: In fact, leaving aside the possibility of living on charity, either the migrant tries to find an opportunity in the vast field of the irregular labour market or he\she can decide to earn some money through illegal activities (Engbersen, Van der Leun, 1998).

In a nutshell, migrants' comprehensive social position is characterized by the most radical precariousness and lack of protections, and their system of choices is actually absolutely limited. Since the position in the irregular job market exposes migrants to the worst conditions of exploitation and to the will and speculations of the recruiters, while they cannot count on any form of legal protection, then their position in the social hierarchy and stratification is coherent with the basic hypothesis of the less eligibility, and their strategy of adaptation to the social contest (of immigration) seems to be ideal to test the theoretical perspective of deterrence as we defined it.

3. Less eligibility: Still terrorising effects?

With reference to the theoretical model of Rusche and Kirchheimer (2003) we should, first of all, be able to understand whether the labour market confront a situation of scarcity or surplus of basic workforce. The process of differentiation of this market and the incidence of the demand in its irregular articulations makes very complicated to answer this question. As we already noticed, in these sectors of informal economies the only alternative available for irregular migrants consists of living on charity and\or illegal⁸ activities. There are clear evidences that the family care system, in front of the crises of the welfare state, puts now a lot of weight on the shoulders of (mostly irregular and therefore legally unprotected) migrant women from eastern Europe. Researchers and common citizens may visit the fields (Allievi, 2003) and easily verify how the agriculture in some regions of the country survives thanks to the arms of migrant workers, while the same phenomenon can be appreciated in the construction sites in our cities.

⁸ It is interesting to observe how the terms 'illegal' and 'irregular\informal' are used in the common and even scientific language with reference to the different typologies of economy and their relations with crime. If an activity is considered a crime by the penal law, the economy in which it takes place is defined as illegal (for example, in the drug dealing economy the pushers act illegally). When the crime is committed by the employer who exploit the workers avoiding the forms of protection prescribed by the (also penal) law, such a sector of the economy is defined as informal or irregular with reference only to the actual victims, that is, the exploited workers.

A process of ethnically based workforce substitution in these sectors of our economy is, in other words, immediately evident. Sociologists of work (Reyneri, Minardi, Scidà, 1997) inform us that this process quickly took place in Italy and they underline how it is connected with the circumstance that these kinds of jobs are more and more refused by native workers because they do not meet Italians' wage and aspirations. The following question is then a bit provocative: Is there something more terrorising than picking up tomatoes or lemons under the sun of Sicily for 30 euros a day and without any serious perspective of upward mobility? If western citizens were to answer that question, I bet that most people would be oriented to really take into consideration illegal alternatives. But tomato fields and unsafe construction sites are actually full of migrants who work in such infamous conditions. On the other hand, as we already stated, they are also overrepresented in the prison population.

The crucial point, therefore, is to understand how the alternative between irregular and illegal occupations takes place in the motivational horizons of these people.

My interviews in prison confirmed what several sociologists of migration have already highlighted: A placement in these areas of the labour market can hardly guarantee the personal survival of the workers (especially difficult are the economical conditions of those who have to work in the Central and Northern region of the nation, richer and characterized by a higher cost of living) but it does not meet anyway the original motivations of their migration projects: It does not guarantee *a)* concrete chances to send money in order to support the family in the home country, *b)* to accumulate the capital needed to realize a wedding project or to open a small commercial activity and, finally, *c)* it is not coherent with any aspirations of emancipation, self-realization and access to a "western" life style or style of consumption.

The readers have noticed already that there is an important implicit question behind this last consideration. The majority of my interviewees actually experimented these kind of irregular jobs and the comprehensive life condition they can offer: I will return to this crucial point in the conclusions.

At the moment, these conditions must be put in relation with the paradigm of the less eligibility: since they are absolutely depriving and incoherent with the irregular migrant's motivational spheres, they appear to be a consistent challenge to the core of the theory. How prisons should make 'suitable to be chosen' such a dramatic social and occupational insertion? How could they maintain a terrorising effect of deterrence? My field research highlights two possible elements for a factual strategy of less eligibility: What follows is a critical overview on them.

a – Imprisonment can imply a definitive interdiction from a course of legal regularization, an interdiction eventually supported by a process of expulsion to be interpreted as an additional punishment during or after the period to be spent in prison. This statement needs to be put in a framework in which the effects of less eligibility can be interpreted only by considering the intersections of criminal policies with the current Italian law on immigration. As Carfagna (2002) put it, the large majority of the migrants that now obtained a residence permit experienced a period of irregularity in the country. In other words, in the last 15 years a considerable number of migrants entered the country illegally, and the following political strategy for their regularization was mostly based on several (5 in 12 years) programs of amnesty. Therefore, historically, illegal migrants' hope for a future regularization could rationally be founded on this system of amnesties, which clearly took place to correct and undermine the strict limitations posed by the national immigration law against the newcomers. Leaving aside this paradoxical legal schizophrenia, what emerges from my interviews and other studies as well, is that irregular migrants are really afraid (maybe even terrorised) of the possibility of an expulsion which would mark the failure of their migration projects. According to this perspective, deterrence would be rooted in a complex of institutional procedures linking imprisonment and deportation, in a way that deletes any chance of future regularization.

But there are two related objections to take into consideration. On the one hand, the last amnesty was in 2002 and, since the percentage of immigrants on the total population has grown fast and is now reinforced by the growth of the second generations, the hope for future amnesties and processes of regularization might not be realistic as it was in the past years. On the other hand, it is probably true that the effectiveness of an expulsion might be reinforced by detention but it also depends on other factors; for example, on the existence of international agreements with the migrant's home country's political authority and on the praxis of identification. The point is that such a process does not highlight fundamental formal differences between an irregular migrant in prison and another one outside the prison. Irregularity is in itself a sufficient condition for an expulsion procedure to be started. Of course, then, it is possible to claim that an illegal migrant can least count on a sort of institutional negligence, especially if he disappears in the hidden sectors of the informal economies that do not show at the moment any problem with the surplus of workforce.

b – Research in the Italian prisons (Astarita, Bonatelli, Marietti, 2006) demonstrated a direct relation between a higher percentage of migrants in the penal institutions and a higher level of prisons' deterioration with reference to the following indicators: Cells' over-

crowding, increasing number of inmates without external economic support⁹, higher level of tensions with the staff members, growth of the “interethnic” conflicts, higher percentages of self-inflicted wounds among the convicted. These elements can be easier linked with the classical theory of less eligibility: darker is the labour market’s perspectives outside, worst will be the structural and relational conditions in prison. This relation appears in fact confirmed.

Nevertheless my interviews forced me to consider another important relation: The one between an irregular legal position and a complex of external conditions that cannot be limited to the ones existing in the labour market. Overcrowded and deteriorated spaces, thus, characterize also the “housing” arrangements – often into dismissed firms or factories far away from the cities — of persons who do not have the right (and resources) to establish a regular housing contract. Therefore, they are exposed again to a new form of blackmail: The one created by the landlords that does not differ so much from the one created by the ‘irregular’ employers and their recruiters. When ‘housing’ solutions are found in the cities’ areas characterized by an ethnically oriented segregation, in addition to the problems above mentioned, we need to consider a bigger exposition to the risk of being involved in episodes of violence and to the selective controls operated by the police forces (a fact determining consequences measurable through the numbers of stop and search, arrests, detentions in the CPT structures and expulsions)¹⁰.

4. More eligibility: Rationality and ineffectiveness of deterrence

In the previous paragraph, I tried to prove how the factors that could be operative and coherent with a less eligibility’ strategy of deterrence show their ambivalence if one puts them into relation with the external life conditions of the large majority of the illegal migrants. The instruments of deterrence seem to be, at least par-

⁹ The lack of external economic support by relatives and friends is considered an important form of additional deprivation in the environment of the penal institutions. According to a recent research in which I participated (Sbraccia, 2004), this deprivation is accentuated by the fact that, in order to avoid interethnic conflicts, to facilitate the guards’ surveillance and, maybe, to respond to explicit requests of the inmates, Italian prisons are often organized through forms of segregation (defined as ‘ethnic cells’).

¹⁰ Recent field researches in these environments (Vianello, 2006) show the consistency of the theoretical speculation of Loic Wacquant (2002) about the analogies between the North American segregated areas (ghettoes) and the prison. According to the view of this author they are characterized by “structural homology” and “functional equivalence”.

tially, ineffective when directed toward the most radically unprotected persons living at the margins of western societies. While in other contexts this reflection is covered by the theory of the underclass (Katz, 1993; Massey and Denton, 1993), such a category must be, in Italy, enriched by considering how such a new *lumpen-proletariat* is factually defined also by the political choices in the field of the immigration law and by variables linked with its illegal position.

As a consequence, we are able to present the hypothesis of an inversion of the less eligibility theory. In particular, we claim that a criminal adaptation (at least, partial) can be seen as 'suitable to be chosen', that is, more eligible for the 'clandestine' migrants when: *a)* opportunity structure is limited by the present conditions of the labour market; *b)* the informal economies have an important incidence on the same market; *c)* when the perspectives are those of a never ending precariousness and exposure to different kinds of blackmail; *d)* there are difficulties in finding a way out from legal irregularity; *e)* there is a constant risk of deportation.

I will now highlight the elements that, from my biographical recordings, can uphold this hypothesis. As I did with those elements that appeared to be coherent with the theory of the less eligibility, I will then develop some critic reflections on the matter.

a – With reference to the above developed logic of a closed alternative between legal and illegal positions and to its relation with the migration projects' fundamental elements¹¹, an adaptation based on illegal activities (such as drug dealing or stealing¹²) can be seen as eligible for a migrant without residence permit (irregular legal position in the country). Of course, it is difficult to put on the balance of rationality either immaterial goods like freedom or the possibility of choosing what kind of people to spend time with and what kind of relations to maintain with them. Even more difficult is

¹¹ It is probably useful to state once again that, from my research and the ones by other sociologists of migration in Italy (King, 2001; Sacchetto, 2004), such fundamental objectives can be brought back to a family- or clan- strategy of risk reduction: According to Douglas Massey (1998), for example, an individual migration can be understood as the effect of a shared collective strategy (according to which some members of a family can be selected to try the path of the local job markets' insertion while others are bound to develop as much as possible their studies, and others to try to reach a better wage level through migration) aiming to pursue either a project of individual emancipation or a combination of these two orders of factors.

¹² These are the two typologies of crime for which the very large majority of northern African migrants are sentenced to prison. To be more precise, around the 70% of the detained Maghrebians have been arrested for drug dealing (usually with small quantities of drug). Rumanians, are almost always detained for stealing. This is why in Italy criminologists often refer to what they call 'ethnic specialization in crime's typologies' (see Mosconi and Sarzotti, 2004).

to esteem rationally the psychological costs of detention¹³, not to mention how the variable time (of imprisonment) can make a difference in a costs-benefits evaluation. The theoretical model of less eligibility is nevertheless centred on a rationalistic view, and, therefore, I tried to discuss it (also) in these terms with my interviewees. Even if they included among their motivations for immigration, immaterial elements as “meeting new people”, “visiting new countries” or “making other life experiences”, a rationally based communicative exchange was possible and always accepted because the accumulation of money was in any case considered as an instrumental starting point to pursue their migration objectives: Family support and/or emancipation from the family, wedding projects and/or access to western styles of consumption.

Money is the main question, money is the main answer. The majority of the migrants I had the opportunity to speak with in prison experimented these alternatives¹⁴: Without shadow of a doubt, they referred about substantial incomes differences that are in favour of the illegal activities if compared with the ones available in the irregular job market, and they always automatically connected this theme with a lucid view on the irreducibility of their projects to the opportunity structure¹⁵ they face in the country of immigration. It is important to highlight how, in the framework of such personal evaluations, the costs of imprisonment (incomes interruption, forms of deprivation, psychological and relational diseases) were always taken into account by the interviewees. They also show a remarkable level of consciousness with reference to the high risks of being arrested and sentenced deriving from the social and geographical contexts in which they usually have committed crimes (mostly urban areas in which the street level drug dealing is concentrated and where the controls operated by the police forces show their selectivity and are constantly reinforced).

In this sense, one could assume that the idea of a complete ineffectiveness of deterrence through prison finds a solid confirmation; but then difficulties will rise up in explaining why irregular migrants are working in large majority in the informal (not illegal) economies for ridiculous wages and in conditions of radical exploitation.

¹³ An articulated attempt is provided in the recent work edited by Concato and Rigione (2005). To stay at my direct research experience, I remember at least 5 interviews (on 30) realized with persons with evident psychological difficulties: They were sedated with elevated doses of psychotropic (“legal”) drugs, and were diagnosed with panic attacks. Moreover, they experimented improvised methods of detoxification, showed signs of recent episodes of self-inflicted harms, ingested sharp objects, and suffered chronic insomnia.

¹⁴ See the interview reported in the last paragraph.

¹⁵ To me, their words sounded as a perfect example of the Cloward and Ohlin’s (1960) theory relating delinquency and the opportunity structure.

Should not they all look for “better” perspectives through crime? Here we are in front of a logic short-circuit and, according to the results of my research, we can find a solution only outside our rationalistic theoretical framework. Key variables to oppose the hypothesis of the more eligibility are available in the narrations and evaluations of my interlocutors and of some other irregular migrants (never criminalized) that I met in the course of other researches (Sacchetto, Sbraccia, 2006): They are mostly rooted in the importance and soundness of normative, moral and religious references (ethics of sacrifice, terror of stigmatization, abstract acceptance of laws’ contents, sense of guilt for the potential harms caused by their behaviour, fear of the judgement of God and of the one of the family members).

Such elements can be interpreted as powerful instruments of resistance against the stable acquisition of a criminal identity, since they also seem to maintain their capability of producing doubts when, rationally and for urgent needs, the choice of selling drugs or stealing has been taken. The David Matza’s (1964) concept of *drift* seems effective in describing this kind of cultural conflicts. Even if the techniques of neutralization (Sykes and Matza, 1957) can be easily found in the social contexts we described, and considering also how in the process of delinquent affiliation resources of legitimacy for illegal behaviours are available (once again, in a framework of rationality), those traditional elements are the main reason why some of my interviewees in prison justified their decision to go back to the lemon or tomato fields in the south of the county before being arrested for old crimes. This is probably also the main reason to explain why hundred of thousands of other irregular migrants do not enter in the penal circuits, while the rational basement of a more eligibility of illegality seems to be confirmed.

b – Prison structure and internal programs can offer to their unprotected inmates a minimal access to services (and actually rights) while they are detained. Basically, I am referring to minimal forms of protection (food and lodging), school (literacy skills, communicative skills, technical training for eventual future jobs) and health (first contact with a doctor in the immigration country, basic screenings, programs of detoxification). Is it possible to argue that we witness a ‘more eligibility of desperation’? According to my interviews it is possible, while facing the concrete results of the failure of the politics of social integration (assimilation is a concept impossible to apply to the courses of these life\migration histories) and the complete exclusion from the basic rights and services that should give substance to such policies.

Before these people meet a teacher in prison, Italian was usually a 100 words language to use in the drug dealing transac-

tions; health treatments –needed in particular by those who live in the street, often using drugs – are a chance to take only after an arrest. I found hard to accept, through the words of my interviewees, that prison can be described as an institution which replaces itself to a selective and more and more weakened welfare state; and, therefore, in this paradoxical way, more eligible than what is outside.

Such an admission has anyway to be contextualized, considering also the (controversial) literature that highlighted specific pathologies related to imprisonment (Concato, Rigiore, 2005). In the recent years, the financial crises of the state brought some cuts to the public expenditure for penal institutions, resulting in a further decrease of the (qualitative and quantitative) levels of the already minimal services provided in these places – specifically, with particular reference to health treatments and medical staff. Moreover, the lack of a residence permit usually excludes the irregular migrants from the methadone therapeutic treatments outside, but also inside, the prisons (only sometimes informal practices save lives) (Perocco, 2005). Nevertheless something is better than nothing, as I learned to recognize in the course of this study.

Waiting for the deconstruction of stereotypes as well as for a strong opposition against the scapegoat-based rhetoric of the ‘enemy within’ (Dal Lago, 1999), and for new forms of solidarity and conceptions of society to see the light, the hypothesis of the more eligibility of crime and imprisonment appears controversial but cannot be superficially thrown away.

5. Provisional conclusions: Horizons of mobility

As Sandro Mezzadra (2006a, 2006b) has recently put it, also on the bases of a review of the juvenile works of Max Weber, the insertion of migrants at the lower levels of the social and occupational structure of western societies, the crucial support of the legislations on migration in producing and reproducing the physical and symbolic borders of their (partial) exclusion through irregularity, and, finally, the connected rhetoric of the ‘enemy within’, constitute a complex of factors functional to migrants’ discrimination and exploitation. We can see such factors acting complementarily in a process of victimization of the migrants, that paradoxically seems to imply their massive criminalisation¹⁶. According to this

¹⁶ I have no space to develop the question of the selective praxis implemented by police forces with regard to the migrants. Selectivity takes place, for example, in the criteria adopted to stop and search, in the ‘environmental’ choices about which kind of articulations of the drugs market to subject to penal repression

view, criminal justice system and its institutional actors appear to play an important role: On the one hand they support the ideological (racist) construction which structures the common sense and the ideology of those who are included in society (Rath, 1993; Wacquant, 2005); on the other hand, they provoke an expansion of the penal control instruments in the field of the administrative management of (illegal) immigrants.

Where to place penal deterrence in such a political and social context? Of course, it must be put in connection with the worsening of prisons' structural and relational conditions, and with the unacceptable forms of exploitation that we have described, especially with reference to the unprotected and uncontrolled sectors of the Italian informal economies. With regard to this matter, I hope that in the previous pages I have been effective in highlighting what are the old and new elements of continuity that confirm the consistency of the less eligibility theory.

But I also tried to reflect about the hypotheses according to which the insertion in the illegal economies (most of all in the drug dealing, independently on the positions occupied in the 'pyramid' of such market) would be more suitable to be chosen. Through the comparison of the biographical reconstructions that I had the chance to collect by interviewing Northern African prisoners in Italy, I could in fact provide a critical outlook on the mechanisms that connect this aspect of the criminal policy with the motivational spheres of my detained interlocutors. The idea of a 'more eligibility', after the analysis I conducted, appears to be valid in a rationalistic framework: Irregular occupational alternatives to crime can be therefore considered as less eligible.

Nevertheless, as I tried to show, this kind of hypothesis is to be handled carefully. Moreover, inside the framework of a 'rationality of desperation', my research brought me to take into consideration how the prison system, despite the expenditure cuts it is facing, guarantees a sort of basic services substitution in front of the full social and institutional negligence that irregular migrants experience outside its walls.

Outside the framework of rationality, elements of moral resistance against the drift into illegality and against the acquisition of a criminal stable identity, play a role that I cannot neglect on the bases of my data.

That is why I want to conclude referring to the key concept of mobility. A consistent part of the persons I met during my research has described the period spent in the immigration country as characterized by continuous movements, showing different facets of mobility. *Geographical mobility* is deployed to describe a sort of never ending search (from the south to the north of the country

(and about the ones to tolerate). See the contributions of Waters (1990) and Melossi (2002).

and back again) of ‘better’ options available in the slippery and dangerous field of the informal economies. *Occupational mobility* is obviously related with the previous kind: What is interesting to observe is that criminal adaptations can be defined as *occasional* (e.g., to survive after the loss of an unprotected job while looking for another, to respond to a family emergency, etc.); as *complementary* (to integrate the poor earnings of an irregular job, to find the resources needed to pay a rent, to abandon a pure survival’s life perspectives, to have a bite of a western style of consumption); finally, as *definitive*, when different options are not given or they are perceived as less eligible with references to the field of individual aspirations and migration projects.

This last point leads us to consider how also the bases of identity, already affected by the processes of redefinition described in general terms by Schutz (1971) in his analysis of the figure of the migrants, are subjected to mobility. The crucial relevance (Akers, 1998) of the structure of opportunity and the networks relating individuals to other immigrants and the natives, is shown in the following interview with A.N., an 18 years old Algerian, in prison in Venice (my translation into English).

So when you first arrived in Marseille you and your friends were looking for a place to stay, to sleep...

We met an Algerian guy and he gave us hospitality for some days. I told him I would have better look for a job, and this is what he answered: <<Look, there are no jobs, there is nothing: if you want you can sell drugs, if you’re able you can steal, whatever you want, but nobody will offer you a job if you don’t have the documents. And remember, if the police stops you, don’t say you’re from Algeria and choose another name and country of origin>>. He was experienced, he helped me and I start learning how to go out and work with the guys and see some money. By the way it’s easy: French guys come around and, even if they don’t know you, they ask for some hashish...

How is this possible?

I don’t know: it seems that you have written drug pusher on your forehead if you have Maghrebian traits. The same is here in Italy: I sit in a bar and after 3 minutes they will come and ask for hash, hash, hash, always hash. You are trying to earn something, you’re looking for a normal job and maybe you are hungry. So you resist the first, the second time but then...you start living in another way, you see some money finally.

So we can say that your experiences of France and Italy are similar...

No. I grew up with the stories of my grandfather about the French occupation of Algeria: French people have always exploited Algerians, also the immigrants in France. Even if they’re gentle, I always feel this distance, I see them as monsters, I cannot trust them, I always doubt...This is why I moved to Italy to begin a new life, meet new people and another culture and language. People is different here, also my people: in

France you find immigrants with their families, there is now the third generation, you cannot be on your own and have your own apartment. In Italy we are the first generation. You still can find girls with no family, friends...

This gives you a sense of freedom, somehow?

Of course, but the only occupation I found was drug dealing anyway: maybe it is the easiest thing I can do. If I steal an apple my face becomes red, I'm not able to do it. When I first arrived in Milan I was looking again for a job, but the only persons who helped me were two men from Morocco and Tunisia: they fed me, gave me a house. I was 16, you know, they bought even new clothes for me. I spent two months without going out because I was so scared of the police, I feared that they would have sent me back to my country. After a while the Moroccan returned to his family in his country and I started working with the Tunisian: street dealing, we were selling hash. From that moment I learned that here you cannot find a decent job without documents. I tried and tried to find one: people sometimes just say 'fuck off', sometimes they kindly ask you for the documents, knowing in advance that you don't have them. When you're looking for a job you meet hostile people, they become gentle when they need drugs. This makes a difference when you try to be a good fellow. We are not born as criminal, I didn't want to come here to sell drugs, I wanted to eat and be safe enough. In the end also Italians come around and ask me for drugs. They say: <<hey, my friends, how do you do?>>. Then you meet the same people when you look for a job: <<Dirty Moroccan, piece of shit, why don't you go back to your country?>>.

I perfectly got your point. So, in the end, in Milan you never found a job...I mean an irregular one?

One I found: for a short period I worked at the fruit market unloading the crates from the trucks. I have to be honest, it was too hard for me, I wasn't strong enough and I had a serious injury to my hand. Here in prison the doctor said that I needed an operation, so they took me to the hospital. When it happens I thought: <<fuck, all this to get 20 euros for a truck?>>

Can you tell me how you found this job at the fruit market?

For that you don't need to search, you just go there and ask when you see a truck arriving. You ask the driver. If he says ok you just go to unload or load the vegetables for an average of 30 euros. In other cases he will say: <<No, I already got people inside the truck>>.

Any comments to add? Terrible horizons of mobility and paths full of traps and risks? Sad perspectives? The embryonic forms of organisation for a political movement of the unprotected, illegal migrants in the USA and Europe maybe let us to see a light at the end of this tunnel. The solid intersection between institutional racism, informal discriminations, exploitation and criminalisation of the (illegal) migrants can, in the meantime, be questioned through the search of new orientations in the field of the policies and legislations on immigration. An eligible search, a suitable chose.

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