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Residential Bordering - The (mis)use of residence status to control migrants' welfare rights in Italy and the UK

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Abstract

This article examines how «residence» has been used as a mechanism to regulate welfare access in Italy and UK. The two countries have very different approaches to monitoring and registering local populations, but share a drive towards «differential inclusion» which has led to systemic paradoxes and has been characterised by discretionality and political frictions. This «residential bordering» of welfare rights has particularly targeted migrants and progressively extended to EU nationals and other vulnerable groups.

Key words (5)

residence; residential bordering; welfare rights; differential inclusion; migration

1. Restricting welfare through residence

The ever-heated public debates on migration policies are not limited to the ability of states to decide who can entry and live in their territory. The extent to which migrants – or indeed those more broadly identified as denizens – should be allowed access to welfare and public services, and under what conditions, is equally contentious. In fact, in recent years, welfare chauvinism has represented one of the major drivers of anti-migration stances across the Europe Union (Kesinen et al. 2016), being progressively applied not just to third country nationals, but to EU citizens too (Lafleur and Mescoli, 2018). This has been eroding one the pillars of the European project: free movement; and has already produced one unprecedented fracture: Brexit (D'Angelo 2019b). The rhetoric of progressive continental integration and levelling up of rights has been replaced by increasing conditionality, targeting in particular Southern and Eastern Europeans, whilst at the same time giving new energy to post-colonial and racialised stratification of rights.

In determining who is entitled to welfare rights, the concept of residence is often central: it can denote both a legal notion and a normative tool, used to draw lines between those who deserve to be included and those who do not (Gargiulo 2021b). It represents something different from the condition of legality characterising migrants who hold a formal authorisation to enter and «be» in the country, and in some contexts it is closer to a status of para-legality, whereby individuals have to prove their effective, long-term, structured presence in the territory so as to deserve access to public support and services (De Genova 2002; Chauvin and Garcés-Mascareñas 2014). Consequently, a key issue is how such residence can be ascertained.

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In countries where devices aiming at keeping track of individuals and their movements have long been in place for citizens, this does not represent a major practical problem, while in states in which this has never been developed, and in fact historically seen in opposition to the country's values, it presents particular challenges for the institutions.

This article examines how «residence» has been used as a mechanism to regulate welfare access by comparing two European countries: Italy and UK. The rationale of the comparison is that the two countries represent opposite examples of state strategies aimed at monitoring the territory and those who live and circulate in it. Italy, since its foundation, has established a specific population register, while UK has always resisted the introduction of such a device. In both countries, however, the increase of migration movements and, specifically, intra-European mobility, has triggered the deployment of restrictive measures. Besides material and legal barriers to entry, mechanisms to discourage long-term stay have been introduced. Within a general frame of mistrust and suspicion towards migrants, a strict link between immigration and security has been drawn by media and many political actors (Huysmans 2006), feeding into an 'hostile environment' at the intersection of legal and rhetorical measures (Goodfellow, 2020).

In Italy, this has meant that population registers have changed their role. From the perspective of the public institutions which have introduced them at the early stage of the Italian state, they should work as a mere tool for monitoring resident population and allocating resources. However, from the point of view of some of the last governments and many municipalities, they are conceived as devices for the selection of those who deserve access to social benefits and provisions. In the UK, mechanisms of «everyday bordering» (Yuval-Davies et al. 2018) have mushroomed across the public and private sector and have included the introduction of a «habitual residence test» (HRT) placing on migrants the onus of proving their such 'status' in order to access welfare support (Harris 2016). Both countries, we argue, share a common trait: a form of «residential bordering» has taken place, namely, a process which hinges on residence to establish an internal border separating those who are considered «legitimate» consumers of public resources from those who are not.

This kind of bordering is strictly connected with processes of *differential inclusion* characterising Italy as well as the UK. This concept has been often applied to describe the condition of those who live in a territory without being full legally recognised and, consequently, find themselves in a state of social, economic and work subordination and dependency, more exposed to discrimination and exploitation. More generally, in the conceptualisation proposed by Mezzadra and Neilson (2013:251) differential inclusion can be used to describe and analyse «how inclusion in a sphere, society, or realm can be subject to varying degrees of subordination, rule, discrimination, and segmentation» and to stretch ideas of belonging and citizenship, through the disarticulation of rights, till breaking point. We argue this concept is particularly effective also to capture the condition of those migrants who, despite being formally allowed to stay in the host country are affected by mechanisms of exclusion which hinge on devices aiming at tracking their presence and movements. Residential bordering, moreover, speaks directly to issues of identification (Noiriel 1991; Caplan and Torpey 2001; Torpey 2019). In other words, establishing internal borders is made possible by the use of techniques and devices that have to do with identifying people or, conversely, refusing to recognise their «administrative existence».

The article is structured as follows. Section 2 focuses on Italy and analyses the mechanisms through which the use and abuse of population registers takes place. Section 3 then examines

the case of the UK, showing how policy and administrative measures have been used to address the conflict between societal resistances against population registers and the willingness to increase migration controls; the specific effects on Black Caribbean communities and, more recently, EU nationals are used as key examples. Finally, section 4 compares the strategies and devices employed by the two countries to select, through registration, those individuals who deserve to obtain benefits and services, and stresses the effects of this «residential bordering» in terms of «differential inclusion» (De Genova, 2010; Mezzadra and Neilson, 2013).

2. Control and selection: residence registration in Italy

Italy has a consolidated tradition of tracking people's movements and identifying the position of those who live in the different areas of the national territory. Such activities are made possible by employing several legal, administrative, and documental devices, which have been progressively introduced during the country's history. Censuses, civil registers, and identity cards play a key role in knowing the population and its physical mobility as well as in formally recognising individuals by registering their presence and characteristics and, in some cases, conferring them a legal status.

The rationale for the development of such devices is twofold: on the one hand, controlling the territory, which is to say keeping track for security reasons of those who live or transit in it; and on the other hand, better allocating resources, especially social benefits and services, and allowing people to have access to them. If the first end reflects a somehow conservative view of public order and of the role of surveillance of the state, the second expresses a more liberal conception of rights and their exercise.

Over the last decades, as a response to the increasing migratory movements of people towards or across Italy, central and local governments have changed the way in which they conceive and use demographic devices. The need of controlling the territory and those who live in it has largely left space to the will to select those who deserve to be registered and so to exercise rights at the local level. This has meant the proliferation of a special kind of borders, which are immaterial and, tough not able to directly regulate access to space, are effective in bestowing or denying the formal status of local resident.

This shift in the way of conceiving and using demographic devices concerns the perspective of public institutions, not the nature of such devices per se. Within the field of population metrics, the performative nature of administrative and statistical tools is a well know phenomenon (Curtis 2001; Ruppert 2007). However, this does not mean that the public institutions which adopt devices for monitoring the population share this perspective about the nature of the tools they use. As shown, for instance, by some documents produced by the Italian National Institute of Statistics (Istat), population registers are presented as a way to see the people who live within a territory in an objective way (Istat 1992, 2010). This form of «naïve» realism expresses a certain way of imagining the role of population devices, which in the last years has been challenged by other ways of conceiving them, more oriented to selection than to objective monitoring (Gargiulo 2017). In this sense a change, or shift, has taken place in Italy in employing population registers.

2.1 Why does registration matter?

Since the Italian unification in 1861, the State was concerned with identifying devices making it possible to have a detailed picture about those living across its territory,

distinguishing between those belonging to different «categories» and having different interests. To this end, population registers, which guarantee a dynamic and relatively accurate picture of the population, were established already in 1862. In 1890, the issuing of the «Rules on Public Institutions of Assistance and Charity» introduced the «welfare domicile» («*domicilio di soccorso*» in Italian), namely, a criterion for determining the distribution of the costs of hospitalisation of indigent people 'belonging' to different local administrations (Gallo, 2008). Essentially, these costs were transferred to the municipality in which the patient had most recently dwelt uninterruptedly for five years, or else to the municipality in which he/she was born. Since then, the population registry has been assigned a fundamental role: that of regulating the access to a wider set of social services and benefits, thus becoming a sort of filter of rights. In other words, registration is a «right to exercise other rights»: social assistance, health assistance, public housing, the right to vote in local elections – also for EU citizens – *de facto* ore *de jure* everything depends on it. Moreover, the lack of registration impedes the obtainment of an ID card and makes it difficult to open a bank account (Gargiulo 2021a).

Currently, population registers are regulated by law n. 1228/1954, which establishes that the status of individuals, families and cohabitations that have their residency in the municipality (as well as that of people without fixed abode that have established their domicile there) is recorded in the registry of the resident population. This means that the full status of «resident» can derive from two different conditions, both of which are defined by article 43 of the Italian Civil code: residency, namely, having a habitual dwelling ('*dimora abituale*' in Italian) within a municipality, or domicile ('*domicilio*', in Italian), i.e., having there the centre of one's affairs and interests. If in the latter case registration concerns homeless people or individuals without a fixed abode and pertains to having meaningful relations within a municipal territory, in the former case it involves those who are habitually present within its borders and who there have a home or at least a temporary accommodation or shelter.

Current regulations on registration make clearer than in the past that the enrolment in the population register entails the attribution of a legal status, that of «municipal resident». Moreover, the law states that the registration of those who are settled or have the centre of their affairs and interests within a municipal territory is compulsory. In this way, it reaffirms that population registers are a strategic tool of control. Likewise, for the same monitoring purposes, the long-standing issue of keeping track of mobile people is addressed by introducing a special register for temporary population. However, the enrolment in this register does not confer the formal status of resident, and hence does not allow the exercise of rights and the access to services and benefits.

At the same time, the actual functioning of population registers has historically been quite patchy. The purpose of using them to fully match the de facto population with the de jure population has remained unfinished. Many municipalities – often in order to limit their social expenses - have avoided registering several categories of people. In particular, there has been a broader tendency among municipal offices not to enrol in their registries people of the lower classes, those who live on the margins of society, who have recently immigrated, or who are more likely to require assistance and protection (Gargiulo 2017). This tendency was clear since the beginning of the Italian welfare state, and nowadays – in the middle of a process of privatisation and dismantling, or at least downsizing, of the welfare system (Busso and Dagnes 2020) – is even more evident.

In contemporary Italy, therefore, the gap between the de jure population and the de facto population is a structural phenomenon. Local governments often use the enrolment in civil registry as a tool for selecting those who deserve to be registered and considered full members of the local community. To this end, they demand that those who declare their residence or domicile must meet further or more restrictive requirements than those indicated by state laws and regulations. For example, several municipalities ask to show a work contract, the

possession of a stay permit of at least two-years, an income higher than a certain threshold or the demonstration that the applicant has no criminal record (Guariso, 2012; Lorenzetti, 2009).

All the different kind of strategies employed by municipalities for limiting registration constitute *residency policies*, namely, a set of administrative provisions, measures and actions which hinge on the recognition of the status of resident in order to exercise an illegitimate control over the local population (Gargiulo 2021a). These strategies show how registration is a disputed device, as it used to fulfil two different purposes monitoring and so «seeing» the population by registering all the people who live or have central interests within the municipal territory; selecting those who deserve to be registered. Of course, these two purposes are not incompatible per se: they become such as they are alternatively pursued through a device, population registers, that is meant for reaching the first task and not the second. Hence, those countries who use registration to select, and consequently make more difficult the control of the territory, consider selection more important than monitoring.

The strategies put in place for denying registration to those who live in an apartment or in a precarious accommodation are different from the approaches used towards homeless people or individuals without a fixed abode (Gargiulo 2021a). In this last case, municipalities, violating the clear indications provided by central authorities, refuse to institute the virtual address to which these people should be registered or, alternatively, they contest the fact that their municipality is indeed the centre of the applicant's affairs. In the first case, exclusion hinges on the denial that a person actually lives in the place he/she declares, or that a certain place is suitable as a dwelling.

Dwelling («*dimora*» in Italian), therefore, is a key notion in the Italian legislation concerning local membership and registration: it serves to qualify and substantiate the concept of residency. The Italian National Institute of Statistics (Istat) – entrusted by law with the duty of overseeing the regular activities of municipal registry offices – distinguishes between a temporary and a habitual dwelling. The first, which «can be defined as the place where the person is located at a given moment, without the intention of settling there, or at least of remaining there habitually» (Istat 2010, 26), is not relevant to the purpose of civil registration. The second, on the contrary, by referring to the quality of established presence in a place, determines the condition of being a resident.

2.2 Purposes and consequences of a missed registration

The rationale of the selection carried out through an illegitimate use of registration is not always the same. Across diverse municipalities, the categories of people who are excluded are different. Sometimes registration is denied to Italian citizens who are homeless or have criminal records, other times it is denied to e.g. Roma people, regardless of their nationality, while in other cases are EU or Third-country nationals to be affected.

Denying registration in Italy is an historical tendency that has strengthened over the last decades. Especially after law no. 189/2002 (the so-called «Bossi-Fini») was issued, Italian governments have, to a great extent, refused to recognise migration towards Italy as a structural rather than a contingent phenomenon. Moreover, from 2009 onwards, the combination of migration and security has become a «regulatory device»: all changes to Italian immigration laws have come into force by urgent decree, and have included regulations aimed at disciplining public order and security (Colucci 2018). Of course, as clearly shown by the literature on the history of the Italian migratory policies, governing migration as a matter of order and security is an older attitude, a constitutive feature of Italian migration laws since the postwar period (Pastore 1998). The genesis of such approach to migration management can be dated back in the "Testo Unico of Publica Sicurezza" of the 1931, that regulate migration up

to the 1986 Foschi Law. However, some new features of the emergency approach have emerged since 2007, when the power of local authorities in matters of security was expanded by a framework agreement on the security of urban areas and was then strengthened by the issuing of two «Security packages» (Pacchetti sicurezza), namely, decree no. 92/2008 (later turned into law no. 125/2008) and law no. 94/2009.

Within this local security turn, particular attention has been paid to new EU citizens. Since 2007, a huge number of municipal ordinances have been introduced in order to restrict the requirements for the registration of Romanians and Bulgarians. The «season of ordinances» came at a specific moment: on 1 January 2007, Bulgaria and Romania entered the European Union, and, in March of the same year, the legislative decree no. 30/2007 was issued to regulate the circulation and the stay-times of EU citizens. From that date, members of European states were no longer obliged to obtain a residence permit, but were instead subject to a special registration procedure.

Among these ordinances, the most famous was issued in November 2007 by the mayor of Cittadella, a little town located in Veneto, in North-East Italy. This was some months after legislative decree no. 30/2007 came into effect, and was meant to offer an answer to the concerns about free circulation of EU citizens. The text of the ordinance says that «together with the numerous requests for civil registration that are periodically presented, we are witness to a true migratory phenomenon that in objective terms and quantities, save where more specific checks and verifications are implemented, could rise to the level of a true emergency so far as the safeguarding of public health is concerned, not to speak of maintaining the integrity of order and security in the widest meaning of these terms». On the base of this alleged migratory «emergency», the ordinance introduces specific requirements for EU citizens: an income higher than a certain threshold and from legitimate sources, having an accommodation in line with certain standards of salubrity, and not being considered by judiciary or police authorities as «socially dangerous» people.

The ordinance of Cittadella clearly shows that for many political actors the recognition of freedom of movement of new European citizens was not easy to digest (Gargiulo 2021b). Moreover, the alleged «invasion» of Romanians and Bulgarians was used as a bugbear to regulate the mobility of individuals at the local level (Colucci 2018, Macioti and Pugliese, 2010, and Pastore, 2007). Indeed, many initiatives aimed at restricting the right to residency involved not only new EU citizens, but also third-country nationals and some categories of Italians.

In effect, the strategies aimed at preventing municipal registration are all illegitimate, as they violate national regulations. In doing that, they are characterised by an excessive degree of discretion, since the autonomy recognised to mayors and more broadly to municipal authorities is systematically overused and exploited, often in an exclusionary way (Gargiulo 2017, 2021b). Moreover, ordinances and other administrative measures – as circulars and council resolutions – often contain openly xenophobic and racist language (Borghi, De Leonardis and Procacci 2013), and represent forms of direct, indirect or dissimulated discrimination against non-citizens (Andrisani and Naletto 2009; Basso and Perocco 2010; Bontempelli 2009). Thus, they can be considered part of a broader ensemble of local policies of exclusion (Ambrosini 2013).

On several occasions, these approaches have been fostered by central governments, which have intervened by enforcing some legislative acts. This is the case of law no. 125/2009 – the second part of the so-called «Security package» – which had the ambition of radically transforming the architecture of the population registers. More specifically, this law tried on the one hand to subordinate registration to the sanitary conditions of the dwelling, and on the other to modify the requirements for those who do not have a fixed abode, calling on applicants

to demonstrate the «effective reality» of their domicile, and instituting a register of all those recorded according to this criterion.

However, the first attempt failed, as the draft legislation was rendered less restrictive during the parliamentary procedure: the hygienic-sanitary inspections were not made obligatory, and in any case could not condition civil registration. Nevertheless, Law no. 125/2009, since its entry into force, has been used by many municipalities as a pretext to avoid registering migrants who dwell in "unsuitable" living conditions, on account of hygienic-sanitary reasons or overcrowding, or else who are homeless (Gargiulo 2017).

Some years later, the rules of registration were changed in a more substantial way. The article 5 of decree no. 47/2014[3] – the so-called «Lupi decree» or «Housing plan» (*Piano casa*) – states that «anyone who abusively occupies a property without entitlement cannot ask residency or insertion in public services in relation to that property». Consequently, municipalities are allowed to ask to those who declare themselves residents the proof of their entitlement to occupy the dwelling in which they live.

Even though two circulars subsequently issued by the Ministry of the Interior have clarified some aspects of the Housing plan and softened its more exclusionary implications[4], this law worsens life conditions of many squatters by preventing them to obtain registration and so exercise their rights locally. Among them, there are migrants, especially those refugees and asylum seekers, who, being in bad economic conditions and in the absence of a public housing program, end up occupying empty buildings.

More recently, another decree issued by the Ministry of the Interior Matteo Salvini[5] has tried to radically shrink the right to residency for migrants. Basically, it has denied registration to people who ask for international protection by establishing that stay permits for asylum seekers do not make their holder eligible for civil registration.

However, Salvini's initiative has immediately raised several critiques from political activists, some mayors, who refused to apply the decree, and several lawyers, scholars, and legal experts, who highlighted that there is a noteworthy discrepancy between the political intentions and the technical and legal implementation of this norm. Indeed, regardless of the will of the legislator, the decree does not actually deny the right to registration for asylum seekers, but simply excludes the possibility that a particular kind of residence permits can be useful documentation for obtaining residency, leaving the possibility of showing other documents to the same purpose (Consoli and Zorzella 2019; Santoro 2019). Other critiques regarded the constitutionality of the registration refusal towards asylum seekers, since excluding the right to civil registration for a particular category of people would institute an unjustified difference of treatment, therefore violating Article 3 of the Constitution. Basically, Salvini's initiative produces an evident discrimination, which has not only symbolic but also material effects, as it prevents a specific and particularly vulnerable category of migrants from exercising fundamental rights. Moving from this argument, in Summer 2020 the Constitutional Court declared the illegitimacy of the decree. A few months after the sentence, in October 2020, another decree – the so-called Lamorgese's decree – was issued, reintroducing the right to registration for asylum seekers.

3. Residence vs testing: residential rights in the United Kingdom

[3] Turned into law no. 80/2014.

[4] Circular no. 14/2014 and no. 633/2015.

[5] Decree no. 113/2018, turned into law no. 132/2018.

Unlike many other European countries, the United Kingdom "does not have a population register or a set of coherent identifiers across administrative datasets held by government" (Abbott et al. 2020). This affects the ability of the State to effectively measure its resident population, as well as the ability of individuals to easily provide an undisputable proof of residence. Such approach has often been explained in connection to the British public's traditional oppositions to «governmental actions that appear to be overbearing or bureaucratic» (Redfern, 1989:21) and particularly to major societal concerns about state controls. Over the years, however, this «national trait» has come into blatant contradiction with a burgeoning of internal checks and registration processes imposed on migrants as a precondition to access welfare support and other rights.

3.1. Population registers and British 'exceptionalism'

Currently, population statistics in the UK are underpinned by the Census, undertaken every 10 years and used in combination with a range of surveys and administrative data-sets (Cangiano, 2010; UNECE 2018). Introduced in the early XIX century, the UK Census was motivated by the same pressures faced by many other Western countries at the time (Duke-Williams 2017), including concerns about population growth, food production and the need to plan military campaigns. This alignment with a wider European tradition (Dugmore et al. 2011) did not apply to population registers, with every attempt being quite short lived. In 1939 a National Registration Act was introduced at the start of the Second World War (Duke-Williams 2017), also in light of major population movements caused by mass evacuations and of the needs of military and economy-of-war planning, including food rationing. The Act was linked to the production of a live register and required everyone in the country to produce an identity card on demand. Seen as an emergency measure, it was repealed in 1952. It was only 50 years later, in the context of the «war on terrorism» that the UK saw a new major attempt at introducing identity cards. An Identity Cards Act was slowly and painfully pushed through Parliament between 2004 and 2006; this would have led to the introduction of a centralised, computerised National Identity Register, containing tens of pieces of information about each individual living in the country. The legislation raised major concerns amongst civil liberty groups, which saw it as a serious threat to privacy and individual freedom (Joinson and Paine, 2005; Beynon-Davies, 2011). The scheme was finally abandoned in 2010, when the Conservative-Liberal Democrat coalition came to power. The new Home Secretary Theresa May emphatically explained this decision as «a first step of many that this government is taking to reduce the control of the state over decent, law-abiding people and hand power back to them» (Beynon-Davies, 2011:20). In the mainstream debates, the rejection of population registers and identity cards was often connected to broader notions of British 'exceptionalism'. As Dugmore argued (2011:631) «in societies that are highly regulated, the public may be used to and accept the need to register for various public schemes» – but this is not the case in a country traditionally concerned with privacy and the potentially malevolent use of public-sector data-bases. At the same time, British exceptionalism was one of the key sentiments fuelling that anti-EU front which paved the way to the 2016 Brexit referendum in which 52% of the electorate voted to leave the European Union. The other key sentiment was anti-immigration.

Within this context, since at least the mid-2000s, the lack of reliable migration data (and registers) has become a highly political issue, often linked to the inability of the national government to 'manage' migration and control resident population of migrant origin across its territory (D'Angelo and Kofman 2018). In the absence of population registers, migration statistics in the UK are usually derived from a combination of census and survey data (Boden and Rees, 2010), in some cases triangulated with other administrative sources. Up until 2020,

estimates on flows have been mainly relying on the International Passengers Survey (IPS), a survey undertaken by the ONS (Office for National Statistics) on a sample of passengers from major airports, at sea routes, at Eurostat terminals and on Eurotunnel shuttle trains. These data have also been widely criticised for being unreliable and having a significant element of bias (Abbot et al. 2020). In fact, in Summer 2019 the ONS had to admit a systematic underestimation of EU migrants and overestimation of others (Casciani, 2019). In 2020, the IPS was suspended as a result of the Covid-19 pandemic, with the ONS undertaking a "process to improve the UK's migration data, by moving away from sample surveys" and using administrative data instead, such as those held by the Department for Work and Pensions (Migration Observatory, 2020).

Meanwhile, over a decade of political obsession with (unreliable) statistical data and migration targets (McNeil, 2020) had been feeding into that toxic – and increasingly popular – anti-migration rhetoric which led to the so-called 'hostile environment' (Goodfellow, 2020) of which the very same Home Secretary Theresa May has been the main architect.

3.2 The Hostile Environment

As argued by Yuval-Davis et al. (2018), since the Second World War the 'internal reach' of UK borders has been progressively extended «via the interplay of immigration policy, the privatisation and deregulation of state roles and the British welfare system». From the end of the 1990s, the steps undertaken by successive Government (starting with Labour) followed «a gradual pathway towards the restriction of social benefits for migrants», with the imposition of further conditionality also on those already present in the country (Alberti, 2017). Following the General Election 2010, this approach found further justification in the wider 'Austerity Agenda' of Conservative Prime Minister David Cameron, which presented domestic migration and welfare as «two sides of the same coin» (Morris, 2018). A step-change in this process was marked by the Immigration Act 2014, which extended «bordering processes more deeply into everyday life» (Yuval-Davis et al. 2018) and assigned border-guard roles to a range of public and private actors within society. Measures introduced included a legal requirement for the Health Services (NHS), employers, landlords, banks and even charities to carry out identity checks and to refuse services to those unable to prove legal residence in the UK on the basis of e.g. a passport or immigration status documents (depending on the circumstances). Alongside this, the government introduced also stricter and more expensive processes to obtain «leave to remain» and naturalisation. The overall aim, as explicitly stated by the then Home Secretary Theresa May, was to create a "hostile environment" for irregular migrants. The impact of this shift, however, was much more wide-ranging, gradually affecting most categories of migrants (Morris, 2019) as well as Black and Minority-Ethnic British citizens.

In fact, over the last decade, mobility, residence and welfare rights have been eroded not just for third-country nationals, but increasingly for EU migrants too (Alberti, 2017). The increased mobility and settlement of EU citizens, especially from Eastern Europe, played a major part in the public debate leading to the 2016 Brexit referendum (Ford and Heath, 2014; Roberts, 2020). In spite of no statistical evidence (DBIS, 2014; MAC, 2014), EU migrants were accused of 'benefit scrounging' and of creating labour market imbalances. Thus, «in an attempt to reduce the supposed pull factor of welfare and to counter the growing appeal of the anti-immigration anti-EU United Kingdom Independence Party (UKIP), from November 2013 the Coalition Government introduced a series of measures targeting job seekers and their families» (D'Angelo and Kofman 2018), as further discussed in section 3.4.

3.3 From the Windrush scandal to Brexit

The pernicious effects of the «hostile environment» erupted towards the end of 2018 with the so-called «Windrush scandal», when it became apparent that hundreds of Commonwealth citizen had been wrongly detained, deported and denied legal and welfare rights. This involved mainly Caribbean-born migrants of the so-called «Windrush generation» (taking his name from the «Empire Windrush», the ship that brought one of the first groups of West Indian migrants to the UK in 1948). Many had arrived as children «before the tightening of immigration rules in 1971, and had lived in the UK for decades» but now were «struggling to access benefits and NHS care, were barred from returning after travelling abroad, and were threatened with deportation» (Craggs, 2018). As recalled by the Independent Review commissioned by the Government, the causes of the scandal «can be traced back through successive rounds of policy and legislation about immigration and nationality from the 1960s onwards, the aim of which was to restrict the eligibility of certain groups to live in the UK. The 1971 Immigration Act confirmed that the Windrush generation had, and have, the right of abode in the UK. But they were not given any documents to demonstrate this status. Nor were records kept» (Williams, 2020). In fact, «because many of the Windrush generation arrived as children on their parents' passports, and the Home Office destroyed thousands of landing cards and other records, many lacked the documentation to prove their right to remain in the UK» (JCWI, 2020).

The review also identified «the organisational factors in the Home Office which created the operating environment in which these mistakes could be made, including a culture of disbelief and carelessness when dealing with applications, made worse by the status of the Windrush generation, who were failed when they needed help most». (Williams, 2020). The scandal led to the resignation of then Home Secretary Amber Rudd (April 2018), but the policies underpinning it are still in place – in fact, in spite of repeated calls for it, they have not been suspended even during the Covid-19 pandemic (JCWI 2020).

It is now feared that the Brexit process could in fact produce a «Windrush on steroids» for those EU migrants who had entered the UK freely under EU law and under which «they only needed their national identity card or passport to have the right to reside and entitlements nearly identical to British citizens» (Dunin-Wasowicz, 2019). In 2019 – ahead of the UK exit from the European Union - the Home Office launched an «EU settlement scheme». This allows EU nationals to request and obtain «settled status» (equivalent to «Indefinite Leave to Remain») if they can demonstrate their continuous residence for at least five years prior to 31 December 2020. Those who entered the UK before that date but do not have five years of residence at the time they apply, can receive «pre-settled status» and thus be allowed to stay for a further 5 years. For all, the deadline to apply is 30 June 2021[6] (with the total number of applications received up to 31 May 2020 being 3,612,400 – Home Office 2020). This system does not entail a recognition of status but, rather, represents a constitutive system, i.e. «one only acquires settled status or pre-settled status by successfully applying» (Dunin-Wasowicz, 2019). Those whose applications are rejected, or who do not apply on time, risk to become unlawfully resident overnight, with no right to work, to free healthcare and to welfare benefits.

Recent media reports and research have highlighted that many EU migrants in the UK are still unclear about the process, struggling with the administrative requirements (Gentleman, 2019) or unaware they need to apply, with several at risk of falling through the cracks. As arguing by Bueltmann (2019:4) «to avoid a Windrush-type scandal on a much larger scale […] the decision not to make the system an automatic process needs to be revisited urgently».

[6] https://www.gov.uk/settled-status-eu-citizens-families/ (Accessed May 2021)

Unfortunately, at the start of 2021, this seemed unlikely to happen. As for the future, in spite of Westminster's guarantees that the rights of those already living in the UK will stay unchanged, it remains «improbable that EU migrants' rights will be enhanced in the future» (Dwyer et al. 2019: 147), and the rights of those entering from the EU after Brexit will be submitted to the same strict regulations previously applied to third-country nationals.

3.4 Restricting welfare access through the Habitual Residence Test

As mentioned earlier on, among the changes introduced during the Conservative-Liberal Democrat coalition Government (2010-2015) there was a set of measures to restrict the access to welfare benefits for EU migrants (EEA). These entailed no immediate access to Jobseeker's Allowance (JSA) and Housing Benefit (HS) for the newly arrived. Moreover, there was the introduction of a stricter, more robust Habitual Residence Test (HRT), from December 2013 (DWP 2017). As for non-EEA migrants, most of them remained subject to immigration controls by the Home Office under the principle of «no recourse to public funds». This had first emerged with the Immigration Act (1971) which «required all new migrants to support themselves as a condition of entry» (Dwyer et al. 2019:139). Later, the Immigration and Asylum Act (1999) explicitly adopted the term and established the exclusion of anyone subject to immigration controls from a range of welfare provisions, including income support and housing benefits (Alberti 2017; Hayes 2002). Alongside these welfare restrictions, in 2013 the Government introduced the Universal Credit system, combining six means-tested benefits and tax credits into a single monthly payment. Though widely received as a «very good idea in principle» (Millar and Bennet, 2017:169), the progressive roll-over of the system was characterised by major implementation problems and delays and attracted increasingly criticism for generating «unprecedented scrutiny and control» (Millar and Bennet, 2017:169) over the daily lives of those already hit by personal and economic insecurity. For EEA citizens (and non-EEA citizens exempt from the no recourse to public funds principle), access to Universal Credit was also subject to the Habitual Residence Test, as well as the need to prove one's «right to reside» (Harris, 2016).

The Habitual Residence Test was first introduced for key means-tested benefits by the Conservative Government of John Major in 1994. The move was justified «through an attack on 'Benefit Tourism' […] and through a brief, partially inaccurate, comparison with the provision in other EU states» (Patterson, 2002:168). As argued by Roberts (2020:592) this «wasn't simply a technical measure to address a perceived problem but was ideologically charged with the anti-European rhetoric that became widespread during the Coalition Government». As shown by Patterson (2002:169), from the onset the habitual residence test had «a disproportionate discriminatory effect on minority ethnic claimants».

Since the legislation contains no official definition of habitual residence, this is left to officials to determine (Allbeson, 1996; Harris 2016) and it usually involves «considering a number of factors, such as the length and continuity of residence, the reasons for coming to the UK, and a person's centre of interest» (Parkes and Morris, 2005:5). In absence, as we have seen before, of national or local population registers – or indeed any other centralise system to certify residency – habitual residence must normally be established through documentary evidence. For example, «a tenancy agreement or household bills which are addressed to the person making the claim; proof that a child is attending a local school (for example, a letter or email from the local school); proof of the usage of local amenities, such as a gym membership; a letter or email from a doctor or dentist» (Parkes and Morris, 2005:5). This way of proving residence would be quite hard to understand and navigate for migrant used the administrative

systems of most other European countries. For many applicants, retrieving the kind of paperwork required, as well as accessing the Government digital platforms represent major additional challenges; furthermore, from the onset, evidence indicates a large number of «irrational and perverse» decisions (Adler, 1997:145) taken by the officers implementing these regulations. Unsurprisingly, according to the Department for Work and Pensions (DWP) own accounts, in the period 2013-2015 there has been a significant decline in the number of EEA nationals claiming benefits (DWP 2017). On the basis of a Freedom of Information request, Institute for Public Policy Research (IPPR) estimated that «around 45,000 claims to Universal Credit were closed due to the failure of a HRT» over the course of a year (Parkes and Morris, 2020:21).

4. Tensions and contradictions of residential bordering

The cases of Italy and the UK show how ascertaining and keeping track of people's presence can become a strategic feature of public policy in an age of migration – and of increased, politicised concerns about it. Notions of «habitual dwelling» (in Italy) and «habitual residence» (in the UK) reveal how very different legal and statistical systems can fulfil similar objectives of «residential bordering»: i.e., implementing mechanisms to regulate access to welfare at the intersection between 'legality' and long-term presence in a territory by those who are deemed deserving.

Specifically, the Italian legal system explicitly includes the notion of habitual dwelling, which, through the link with population registers, acquires substance and turns into an administrative status. Thus, a mechanism which originates in the need for monitoring and counting the overall population, becomes a tool to selectively attribute status. However, countries which do not have such registers, such as the UK, may resort to ad-hoc mechanisms. Here, the onus of registration, and the heavier burden of demonstrating one's residence, are imposed on migrants, whilst remaining anathema for most British citizens. Both systems, however, are characterised by a significant degree of discretionality - *de facto* more than *de jure*. In the UK, this is due to the lack of a clear definition and regulation in the Law. In Italy, this is made possible by the delegation of powers (or, in practice, appropriation of powers) from the State to the local administrations.

Moreover, in spite of their differences, the Italian and the UK cases illustrate how residence tracking can be politicises to such an extent that ideology can take precedence over more pragmatic considerations, producing major (and sometimes unintended) effects. In the UK, in particular, the Habitual Residence Test (HRT) has been described as a typical example of ideology-driven policy, «not least because it embodies no less than three components of Conservative Party ideology: scepticism towards Europe, disdain for the so-called 'dependency culture' and enthusiasm for further public expenditure cuts» (Adler, 1997:144). In Italy, the continuous use of security decrees since the mid-2000s has been used by successive governments of different political orientation as a smokescreen to reassure the electorate about the allocation of economic and welfare resources only to those deserving them.

In effect, the introduction of the policy mechanisms described in the previous sections has produced tensions and systemic paradoxes. The securitising turn of Italian migration policies, exemplified by the Security packages, the Housing plan and the Salvini decree, have more or less directly reduced the right to local registration for migrants and other undesirables. Local administrations have misused «residence» as a tool to implement their own level of migration controls to regulate welfare access. Moreover, turning migration into a security issue has produced a sense of uncertainty and distrust towards registry offices from migrants themselves

(Gargiulo 2021b). As highlighted by the Constitutional Court in the sentence[7] which declared the illegitimacy of the Salvini's decree, by preventing some migrants from being registered, the norm has made them administratively invisible and paradoxically, in the name of security it has put public security at risk. In the UK, by contrast, we see the paradox of a country which, one the one hand, has no official register of the resident population and no national system of identity cards, which are widely seen as repressive, also by progressive civil society associations. On the other, recent policy developments have been characterised by processes of internal bordering, control and scrutiny over the resident population, targeting migrants but, more generally, most of those who occupy the lower strata of the UK socio-economic and racial hierarchy. Thus, as Yuval-Davis et al. (2018) pointed out, «bordering has come to be increasingly a part of the everyday experience of British people»; a process which «undermines a naturalised sense of entitlement to citizenship rights to a growing section of the population – especially, but not only, the racialised and vulnerable ones". The very fact that migrants or racialised people have to prove their entitlement to welfare, creates a stratification of rights and belonging (Ibid.).

Overall, these two countries exemplify a more general trend in contemporary policy-making, whereby **c**ontrols and restrictions on individuals' presence reinforce systems of civic stratification (Morris 2002, 2003, 2019) and foster the process of «multiplication of borders» (Mezzadra and Neilson, 2013) and «precarisation of memberships» (Gargiulo 2019). Since the lack of registration or certification of one's residence entails the impossibility of exercising rights, it worsens the life conditions of many people, exacerbating the already existing process of differential inclusion. For people who are not «illegal», mechanisms such as registration denial and the HRT (Habitual Residence Test) act as «last resort» border devices, with wide-ranging effects. They produce vulnerable and docile individuals who, having very few entitlements, are more easily exploitable in the labour market (D'Angelo 2019a; Gargiulo 2017). In some case, however, the same mechanisms can be employed against people who are not easy to deport, in order to expel them, at least from a local area. This can happen when those who are denied registration or are not certified as residents are, for example, homeless, of roma background, have a criminal record or have been labelled by police authorities as «socially dangerous» (Gargiulo 2019).

Indeed, some of the policy changes analysed in this article see the extension of the logic of differential inclusion from non-EU to EU-migrants, with an emphasis on the link between habitual residence on the one hand and employment (Alberti 2017) and economic self-sufficiency on the other. In particular, these measures have affected «out of work non-contributory benefits such as job seekers allowance, access to which has been curbed in the past years also for EU migrants through harsher rules over residency rights» (Alberti, 2017). In the UK, the introduction of the HRT and other welfare restrictions were supposed to prevent, but in fact paved the way for the complete rupture from the European Union following the 2016 Brexit referendum. In Italy, where since 2007 EU nationals have been subject to a special regime of registration, the members of «undesired» states – namely, Romania and Bulgaria – have been the target of discriminatory and exclusionary actions. In both cases, a mix of discretionality, muddled regulations and the nurturing of systemic hostility has lubricated the administrative and political frictions characterising residential bordering for increasingly large populations.

[7] https://www.cortecostituzionale.it/actionSchedaPronuncia.do?param_ecli=ECLI:IT:COST:2020:186. (Accessed May 2021)

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