Italy and Migration: Justice on this Side of the Mediterranean

(Article begins on next page)

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Abstract. A country of emigration in the past, at the end of the last century Italy turned into a country of immigration, a major receiver of asylum seekers, a first-entry gateway into the European Union and a relevant element of the Schengen system as a whole. This progressive shift has been strongly affected by some of the country's peculiarities, by the incapability to properly step up to the demands of its role and by the divisiveness of the issue itself. The result has been a radicalization of political positions and the restriction of space for a fully-fledged and coherent debate on migration, making it all the more difficult to unify security and humanitarian objectives. While the obvious victims of this state of affairs are the migrants themselves, the country is drawing no benefits: public opinion is becoming increasingly hostile to policies which are not only in line with Italy's norms and values but which would also contribute to the country's future economic and demographic challenges. While migrants' potentialities are still not given due consideration, the issue is still ensnared within the question of control.

Introduction

It is difficult to think of another policy issue which has been simultaneously so relevant and divisive as migration has been for Italy over the last decades. The relevance and divisiveness of the issue have, in turn, been particularly magnified by some peculiarities characterizing the Italian case, which this chapter aims to uncover.

A state of 'emergency' and its (paradoxical) continuity have typified Italy's governance of migration[1] with regard to regulating legal access to and presence in the country, readiness to cope with massive and unexpected arrivals on its shores and the ability to offer proper reception

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[1] See on this point Castelli Gattinara (2017).

and integration to the migrant population. The impression that the country has often neglected the destiny assigned to it by geography is epitomized by the absence of a comprehensive political discussion that goes beyond the emergency, to the overall potential impact of the many facets of the phenomenon. Ultimately, this has favoured a vacillating stance, whereby security and humanitarian policies (both drawing on coexisting understandings of the matter) have not been properly combined (Cerno 2017). Using the three conceptions of justice (non-domination, impartiality and mutual recognition) explained in the introduction of this work (Lucarelli in this book) is of particular relevance in the Italian case as these conceptions help capture different (and sometimes conflicting) priorities in the governance of migration, some inherent but scarcely developed, others that have arisen over time and which have emerged in all their bluntness over the course of the last decades.

The chapter opens with an overview of migration and its meaning for Italy, with an attempt to sketch out the main peculiarities which have characterized and still operate in Italy, and to inform with regard to the real and perceived figures of the phenomenon. It then goes through the existing provisions on migration and asylum, also emphasizing the problems caused by the lack of proper direction. An evaluation in justice terms is then provided and a final section concludes the work.

From a country of emigration to 'the gateway to Europe'

The governance of migration is open to different challenges, depending on the context in which the phenomenon takes place, its magnitude and its reception by public opinion. The next two sections specifically look into these aspects which render Italy a case study of extreme relevance.

The inevitably peculiar Italian approach to migration

Italy is first and foremost a Mediterranean country and perceives itself and its strategic interest to be strongly related to the fate of the Mediterranean region and to what may affect this area (Gentiloni 2017). This is something which renders Italy's attention and priorities inevitably distinct from those of other European countries. In contrast to other European states, Italy has prevalently been a country of emigration for the past century, the origin of massive outflows

towards other continents (the Americas, primarily) and other European states (including Belgium and Germany).

Immigration in Italy, on the other hand, was mainly an 'internal' phenomenon during this period: significant mobility towards the northern regions has made the fortune of growing cities such as Milan and Turin but has simultaneously deprived southern regions of important resources, a divide which persists in the country. However, in the 1960s and the 1970s, inflows from third countries were not completely lacking, albeit not massive. Self-perception as an 'immigration' country arrived only later; or, more likely, Italy failed to fully recognize the small but continuous signs of its progressive shift to a country of destination, determined in particular by the impressive economic boom experienced from the 1950s onwards[2]. The country simply did not react to this metamorphosis and until the late 1980s attempts to introduce comprehensive legislation on immigration were unsuccessful. The consequence of this belated adaptation implied having to cope simultaneously with the increasing irregular arrival of migrants lured by work opportunities, the real need for more migrants[3] and the absence of legal channels of entry, the opening of which was rendered progressively more difficult by the changing political landscape.

In the 1990s, Italy witnessed deep political turmoil caused by the arrest or accusation by the judiciary of a large part of the political class of the so-called '*Prima Repubblica*'. The aim was to reveal the thick layer of political corruption in the country ('*tangentopoli*'or *Bribesville*). This political chaos led to the collapse or weakening of many political parties present up to that moment. However, this had the unintended effect of casting away a fairly widespread and generally not hostile view of the phenomenon of migration, mostly viewed through the lens of the history of Italian emigration (Einaudi 2007, 137). Turning a blind eye to Italy's recent past as an emigrating country, the 'new' political actors started to view the situation through the lens of an 'immigration country', strongly emphasizing the fears of the host community rather than the needs of the immigrants. Indeed, this phenomenon has been assigned different nuances, according to the political colours in power. But bipartisan empathy towards migrants was probably gone forever. Concurrently, Italy was taking its first steps to move in line with the common European Union (EU) policy on migration and asylum, a shift that has possibly

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2 Quite remarkably, Einaudi (2007, p.51) defines this period as 'Immigration without politics'.
3 The debate on migration and the demographic destiny of Italy has been widely discussed; see among others Livi Bacci (2017).

contributed to a different understanding of the phenomenon (see below) (Geddes and Scholten 2016, 184). All this paved the way not only for the 'politicization' of migration (i.e.that is, the start of a debate in the political landscape), but also for its 'securitization' and 'criminalization', due in particular to the rising relevance of the Northern League party, able to propose itself at the time as a fresh political movement, uncontaminated by the corruption scandals of mainstream political parties. The politicization of migration came hand in hand with greater attention to the phenomenon from the media and in public debates. Predictably, the 'cycles of fear' affecting public opinion have coincided with 'electoral and political cycles'. Moreover, the country has been in conditions of permanent electoral campaign for the last decades which means that fears associated with migration have been a constant in the public debate (Diamanti 2017).

Many commentators agree that the media has contributed to heightening the debate, especially after the politicization of migration in the late 1990s (Sciortino and Colombo 2004), and that mainstream newspapers and weekly news magazines alike have often reproduced stereotyped frames of the issue (Pogliano 2014; Musarò and Parmiggiani 2014; Furia 2016). It has been common practice for Italian public opinion to refer to irregular immigrants as '*clandestini*' (clandestine). In the past, the term was fairly neutral, but over time the word has taken on a decidedly pejorative connotation. Today, the term is frequently used by anti-immigration parties and movements to underline the 'irregularity' of migrants' arrival and presence in the national territory. Public opinion has mainly been focused on the risks posed by migrants; on the other hand, movies and documentaries on the issue such as Berlin Bear winner Francesco Rosi's '*Fuocoammare*' (Fire at Sea), contribute to maintaining the centrality of migrants as human beings, but their influence in the country remains marginal.

Two key issues have become intertwined with the phenomenon in recent years and have sharpened positions. First, the economic crisis, which has hit Italy in a significant way. The rise in migrant inflows into the country and the concomitant economic recession have given new vigour to 'protectionist' claims ('Italian citizens first') (Dalla Zuanna 2016). This was perfectly exemplified by the debate that followed the launch of *Mare Nostrum* in 2013, an operation with relevant humanitarian purposes deployed after a massive increase in the death toll in the Mediterranean. The huge costs of the operation compared to the economic downturn raised internal discontent (Panebianco S. 2016). The issue of limited resources, in turn, rekindled an old debate between humanitarian duty and 'communitarian' claims (Panebianco A. 2014). The

second issue receiving increasing attention is that which relates migration to security. The terrorist events in many European cities have regenerated old arguments supporting the intractability of certain types of migrants, Muslims in particular. In the past, not only journalist Oriana Fallaci in her renowned book *'La Rabbia e l'Orgoglio'* ('Rage and Pride') (2001) but also political scientist Giovanni Sartori provoked criticism for their pronouncement with respect to immigrants with a theocratic culture (see Sartori 2000). Today the debate has been revitalized and adds to and nests with debates more generally questioning identity issues and integration capabilities. In addition, migration has become (intricately) entwined with one of Italy's most deeply rooted problems, that of mafia organizations. From the illegal work of migrants in the agricultural sector in dire and undignified conditions ('*caporalato*'), to the running of reception centres, counterfeiting or falsification of documents, to human trafficking (mainly prostitution), migration is a highly remunerative affair for criminal organizations active in Italy. This factor reinforces the perception of the country's inability to properly cope with the challenge.

The different processes of securitization and criminalization of migration have seen their effects diluted somehow or partly mitigated by the role of some actors. The unions have mostly upheld this role in the past, but it is particularly the role of the religious community that should be mentioned as having exerted effective influence on the governance of migration, both rhetorically and practically.[4] Overall, this role has been aimed at rejecting some of the most ingrained and powerful stereotypes.

Finally, but in no way exhaustively, while the Italian approach to migration has been profoundly affected by the peculiarities of the country, the development of its migration policy inevitably has to be understood in the framework of the EU's governance of the phenomenon. Italy has come to play a major role in this governance as the main gateway for migrants and asylum seekers: as the frontline 'protector' of the EU's borders but also as a 'saviour' of many lives at sea (the assertiveness of Italian naval operations from operation '*Mare Sicuro*', Constant Vigilance, to '*Mare Nostrum*' is duly recognized). and as a country frequently responsible for examining asylum requests under the Dublin Regulation, among other issues. Willingness to be part of the Schengen club has clearly had an impact on Italian legislation on the matter. In turn, Italy has repeatedly brought two main challenges to the European table. The

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4 Of note is the cooperation between the Catholic and Protestant communities in establishing so-called '*corridoi umanitari*' (humanitarian corridors) aimed at offering vulnerable persons legal entry to Italy with a humanitarian permit and allowing them to then apply for asylum, see http://www.santegidio.org/pageID/11676/Corridoi-umanitari.html.

first is 'solidarity', poorly demonstrated during periods of massive arrivals.[5] The second theme regards the general approach to the phenomenon. Because of its geographical location, Italy has been forced on more than one occasion 'to add' an external dimension to its migration policy, a necessity the EU seems now ready to recognize.

The next section digs deeper into the real and perceived figures related to the phenomenon, so as to evaluate the space occupied by securitization moves in the public debate.

Perceived and real migration figures

As seen before, public opinion seems to have been largely affected by the political and media discourse. One of the features that has characterizedsed public opinion is the tendency to overestimate the number of migrants in the country. At the end of 2016, just over 5 million migrants were present in Italy (around 10% of the population), more or less the same number of Italians abroad (IDOS 2017a). Of these, only a third was of Islamic religion (IDOS 2017a), even though, as reported in research conducted by sociologist Massimo Introvigne, public opinion often believes that these migrants make up the majority of the total foreign-born population, which is instead actually Christian (La Stampa 2017). Over the last ten years, arrivals in Italy have ebbed and flowed. The very few arrivals in 2010 (4,500) were amply compensated by inflows produced by the Arab Springs in 2011, which saw the numbers reach almost 65,000.[6] From 2014 to 2017, inflows did not go below 150,000 per year. By 31 October 2018, the number of arrivals in Italy was around 23,000 (over 87% fewer than the same period of the year before), while 2019 has seen the arrival of around 11,500 migrants[7]. It is interesting to note the drastic, and until now unreversed decrease in the number of inflows since July 2017 when Italy intensified its cooperation with Libya. Particularly relevant, although on the decline in 2018 (3,300) is the number of non-accompanied minors, fluctuating between 13,000 and 14,500 yearly since 2014 but with a spike in 2016, when around 26,000 minors reached Italy (Dipartimento per le libertà civili e immigrazione 2017), a significant number of which remain untraceable (IDOS 2017a). Also, the number of requests for asylum in Italy has been on the rise. In 2015, residence

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5 For an overview of Italian policy on irregular immigration, see Abbondanza (2017).
6 See http://frontex.europa.eu/trends-and-routes/central-mediterranean-route/
7 http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_31-12-2019.pdf

permits for asylum and humanitarian protection were around 28% of total permits, far outpacing permits released for the same reason in 2007, blocked at 3.7% (IDOS 2017b).[8] Asylum requests in Italy increased from 23,000 in 2013 to 123,000 in 2016 (ANCI et al. 2017), and continue to be quite sustained, elevating Italy to one of the top three countries in Europe for asylum requests. The demographic outlook cannot be disregarded in considering these migration figures; in fact, the two issues are often related. A realistic scenario for the future forecasts that the population of elderly people will account for more than 30% of the Italian population and that foreigners born overseas or with foreign origins will constitute a significant portion of the whole (one-third by 2065) (IDOS 2017a). This is a factor that will clearly test Italy's integration capacity. Specifically because of this demographic outlook, Tito Boeri, President of the National Institute of Social Welfare (INPS) from 2016 to February 2019, stated that closing the doors to immigrants would cost the country 38 billion euros over the next 22 years (Amato 2017).

Perceptions of the phenomenon are also of utmost importance: according to a poll, while the country is more or less divided on whether migrants represent a threat to public order and security (46% agree with this statement), the poll was positively answered by well over 50% of the centre-right electorate, with the electorate of the Northern League party shooting up to 75% (Demos and Pi 2017). Of no less interest is the Five Star Movement, 53% of whose electorate stated that it agreed with the statement (Demos and Pi 2017). Compared to previous years, the number of people believing that the control of migration inflows has top priority together with the protection of national borders has doubled (from 30% to 60%) (IAI-LAPS 2017). Remarkably, the centre-left electorate is also becoming significantly more sceptical about immigration (Diamanti 2017).

Italy's governance of migration

Between 'emergency' and 'pressapochismo': an inadequate response

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8 Of interest, permits granted for work reasons sharply decreased in the same time- frame, passing from 56.1% to 9.1% (IDOS 2017b).

Having zoomed in on the reality of figures, this section focuses on Italy's approach to migration and asylum. This overview aims to highlight the contours of the justice dimension in regard to the question of migration.

a). The effect of the 'emergency' approach on the handling of migration

In spite of its geographical position, Italy has only recently adapted to its new status and started to elaborate a legislative framework for the governance of migration. Furthermore, this belated response, triggered by the process of Europeanization as well as repeated massive arrivals on its shores since the end of the Cold War, has meant that the country has never really had an all-encompassing legislative apparatus, nor the tools and resources to live up to its role as an immigration country and a first gateway into the European Union. This state of affairs has been powerfully defined as a case of '*pressapochismo*' (not addressing the issue with due concern) (Einaudi 2007) and has proved to be a consequence of the perpetual instability that characterizes the Italian political landscape, where new proposals have frequently been left unattended by subsequent political turnaround. This has favoured the repeated recourse to an emergency approach to the governance of migration, that is, to 'exceptional measures' which are in no way able to properly cope with the phenomenon and which in turn add fuel to the argument of the 'state of emergency' the country is living in. Also, this has had negative consequences for the situation and conditions of migrants in the country, causing securitization and criminalization dynamics to intensify when this overall inadequacy has been speciously used by anti-immigration movements. Resistance to overcoming this emergency approach is quite entrenched.

Until the 1990s, migration was still quite an undebated issue in the public discussion. When it did come to the fore the discussion focused mainly on the vulnerability of irregular immigrants, attracted by and employed in the country's gigantic informal economy, a situation underlined first and foremost by the unions and the religious community. In the absence of any coherent or exhaustive policy address, '*sanatorie*' (regularization procedures) were extemporaneous and reactive measures which answered the increasing need for a foreign workforce. This paradoxical situation has never found a proper solution, even when the first flows decree (quotas for the legal entry of migrants) was launched (always at lower levels than real exigencies). This 'economic and social' interpretation of the phenomenon, however, was gradually replaced by its 'politicization' throughout the 1990s. Securitarian traits emerged,

fuelled in particular by movements placing public order priorities at the fore (Einuadi 2007, 140). This turn gained further currency after the 2001 terrorist attacks in New York and Washington D.C.. Italy's participation in the embryonic EU policy on migration and asylum somehow strengthened this security-focused approach to the matter, consolidating the idea of migration as a phenomenon to be strictly controlled. Indeed, Italy came to play a key role as a 'frontier' state. Border control came under intense scrutiny. As reported, '"there was the necessity to convince European partners that Italy was able to control its frontiers, and was not allowing high inflows that could then pass (irregularly) into other countries of the Schengen area"' (Einaudi 2007, 171). In such a context, certain 'restrictive' measures started to have more relevance with respect to other possible measures, from caps on regular migration, to more effective expulsions. Commentators noticed a 'punitive' rather than 'regulative' approach to the governance of migration (Casadonte and Di Bari 2002).

The 'Turco-Napolitano' Law Decree n°286 of 25 July 1998 (then *Testo Unico*), delivered by the then centre-left government, is thus by far the single most important document regulating migration and the conditions of aliens in Italy. Subsequent legislative provisions have made only partial corrections to it. Among these, the most important was Law Decree n°189 of 2002, commonly referred to as the 'Bossi-Fini' Law, delivered by a centre-right government in which the Northern League had begun to exert significant influence. The Turco-Napolitano document was hence the first attempt to wholly regulate migration and migration-related aspects, including inflows and integration, but also the efficacy of expulsion measures.

According to the text, regular entry into Italian territory is regulated by a 'flow decree' (*decreto flussi*), that is, quotas of aliens to be admitted for the purposes of employment, self-employment, and seasonal work, also taking into account family re-unification and measures of temporary protection (Law Decree n°286, Art. 3). Over time stricter conditions have been imposed on the granting of permits for work purposes (De Ponte and Zanotti 2016): quotas have been destined to countries on the basis of their cooperation in the campaign against clandestine immigration or on the readmission of their citizens (Law Decree n°286, 21), the first countries being Albania, Morocco and Tunisia. In this way, the alleged campaign against irregular immigration took precedence even over utilitarian reasons for accepting a substantial number of migrants. This opened to ex post regularizations, decided invariably by governments of all political colours, even when that meant bluntly contradicting the aim to combat irregular

immigration (Geddes and Scholten 183). Overall, reduced opportunities for legal migration of third citizens have also meant lower leverage on readmission of irregular immigrants towards third countries (Pastore 2016).

Over time, measures have been introduced which seem to have even further complicated the possibility of regular permanence, while also 'weakening' the position of migrants in the country. This has been particularly so in the case of centre-right coalitions (2001-2006; 2008-2011). The 'residence contract', introduced by the Bossi-Fini law as a precondition for issuing residence permits for dependent workers, subjugated migrants to their employers (who thus had to provide guarantees for their workers), ruling out reciprocity as the term would instead suggest, hence impairing their condition (Zorzella 2011). Family reunification as the right to keep or re-achieve family unity is also one of those measures which have been progressively restricted as compared to the initial provisions of the 'Turco-Napolitano' law in 1998. This has led to fewer opportunities for migrants to exert their rights and, de facto, to the closure of possible regular access to Italian territory (Zorzella 2002; Pastore 2008). The process of integration, as the process aimed at promoting the coexistence of Italian and alien citizens, in accordance with the values enshrined in the Italian Constitution (Law Decree n°286, Art4bis), has according to some experts been prey to the lack of proper reciprocity, a factor which forms the basis of effective integration into a society (Zorzella 2011). In fact, the law envisages the signing of an integration agreement, whereby the issuance of a residence permit is subject to specific integration objectives (Law Decree n°286, Art4bis). This is all the more controversial due to the fact that only migrants are subject to this agreement and not Italian citizens (Cuttitta 2016). According to some, the integration agreement, like the residence contract, constitutes 'obligations unilaterally imposed, that the party upon which such obligations are imposed has no possibility to avoid, if not by leaving the national territory' (Zorzella 2011, 63). That is, they are provisions which narrow the range of possible choices available to migrants.

The Turco-Napolitano law (Law Decree n°286, Art.14) also established the infamous 'Centri di permanenza temporanea' (CPT—centres of temporary stay), renamed 'Centri per l'identificazione e l'espulsione' (CIE—centres for identification and expulsion) by the Bossi-Fini Decree. Indeed, the attempt was to make the identification and then the expulsion of irregular immigrants more effective, answering an EU concern in this sense: to act in compliance with other European states, where these centres were already present (Nascimbene 2001; Di

Martino 2014), but also to respond to the need to cope with increasing irregular inflows. The centres have raised the delicate issue of 'administrative detention' which, according to some, sits oddly with the Italian Constitution (Veglio 2017, 132). The Constitutional Court has made it clear (with sentence n°105 of 2001) that detention in the centres of identification and expulsion is a measure that restricts personal freedom and causes 'human dignity humiliation' (ASGI 2016). Furthermore, if the word used is '*trattenimento*' (detainment), that in principle does not contravene international and Italian law, administrative detention is still reprehensible due to its symbolic meaning and how it is effectively practiced (Campesi 2014). Over time, administrative detention has become part and parcel of the governance of irregular immigration, to the point that the allowed stay in dedicated centres has been progressively extended from 30 days in 1998 to 60 in 2008, to 6 months in 2009 and to 18 months in 2011. The peripheral location of these centres (aimed at separation from the local community), their large dimensions and the poor living conditions therein have been some of the most criticized issues due to their impact on migrants. Moreover, currently these are places where rights are not guaranteed, with the risk that vulnerable people end up being prey to the phenomenon of radicalization (Licata and Perego 2017, 16).

A clearly identifiable restrictive approach with regard to migrants' rights was pursued by Law Decree 160/2008, implemented by a centre-right coalition with a leading figure of the Northern League party as Minister for the Interior. Much more than before, between 2008 and 2011 the general approach to migration was framed with the objective of preserving 'public security' (Zorzella 2011). The clearest securitarian traits of this approach were mostly visible in 2009 (Law n°94 of 2009) when the *crime* of illegal entrance and permanence in the territory of the Republic was established (Savio 2009). 'Irregularity' hence became a crime (Peprino 2009), and collective expulsions (prohibited by national, EU and international law), the so-called 'push-back' operations, were openly implemented, expulsions for which Italy was heavily criticized and sanctioned (Boldrini 2010).

B). Asylum in Italy: a mismatch between possible and effective international protection

It was only in the late 1980s that Italy eliminated the 'geographical reservation' for asylum seekers, that is, recognition of protection only for European refugees. Throughout the second half

of the twentieth~~20th~~ century, the preservation of this clause had made Italy one of the first countries of temporary asylum for non-European asylum seekers, who then asked for permanent protection in other European countries (Petrovic 2016). However, the preservation of this clause became incompatible with Italy's participation in the Schengen system and the Dublin Regulation, according to which Italy was called on to play a prominent role as a frontier state. The elimination of the 'geographical reservation' and the adoption of a visa requirement for countries with high emigration allowed Italy to finally enter the Schengen ~~C~~club in 1990 (Einaudi 2007, 161). In practical terms, this move required the elaboration of a fully-fledged asylum policy. However, Italy has fallen short of this objective, with the consequence that time and again new waves of arrivals have been addressed as 'new emergencies', requiring exceptional measures. 'Emergency' has become the new normal.

Surprisingly, the Turco-Napolitano law did not adequately address asylum matters (Trucco 2002). This legislative void is all the more puzzling considering that the right of asylum is not only fully imbedded in the Italian Constitution (Art. 10, comma three in particular) but that it is also quite extensive:

> *The foreigner to whom the effective exercise of the democratic freedoms granted by the Italian Constitution is denied in his country, has the right to seek asylum in the Republic, according to the conditions established by the law…*
> *Art. 10, Italian Constitution*

'The juridical sensitivity shown by the Republic in recognizing and ensuring the right of asylum', it is reported, 'does not find equally full and relevant examples in other democratic states' (Asprone 2012, 33). As specified by some scholars, the 'democratic freedoms' granted by the Italian Constitution are quite extensive and encompassing, to the point that the right of asylum applies to a wider category of persons in comparison with the 'political refugee' (Bonetti 2008). In spite of this, the article has never been translated into law so as to ensure full implementation and practicability of this extensive form of protection (Petrovic 2016, 143) or so-called 'constitutional asylum', while protection has been mainly issued on the basis of the United Nations Geneva Convention on the Status of Refugees (1951) and European Union law (Stege 2017, 27).

Hence, the development of asylum legislation has been belated in Italy and mainly triggered by transposition of EU legislation. In addition to the EU's categories of protection (refugee status and subsidiary protection), Italy has introduced 'humanitarian protection' in the case of special vulnerabilities (Law Decree n°286, Art.18). While this is indeed a positive addendum to protection, humanitarian protection does not grant rights similar to those of the other categories and allows for much shorter residence permits.[9] Moreover, it has been further restricted by the Security Decree passed in December 2018 (Law 1st December n°132).

c) From first reception to integration possibilities

Doubtless, the reception system is the Achilles heel of Italy's asylum policy, a weakness that motivates frequent (mostly rhetorical, or politically motivated) reference to 'emergencies' (for the country) in times of massive arrivals and which then actually creates a true emergency with regard to the treatment of asylum seekers and refugees. The role Italy plays according to the Dublin Regulation further underlines the urgency of having a proper reception system. As stated by Schiavone (2017, 76), Italy is the country where the impact of flawed EU policies will be felt the most if the overall legal orientation (the Dublin Regulation) is not wholly and profoundly modified. Recently, debates have particularly focused on the hotspot approach, encapsulating a measure to ensure the proper fingerprinting of all migrants arriving by sea. In fact, there is no EU or national law regulating the structures established in Greece and Italy (Molfetta 2017, 61) and the Ministry of the Interior has adopted standard operating procedures that do not have a clear legal basis (Raffaelli 2017, 6). The lack of legal assistance, of appropriate structures, the attested violations of basic human rights and uncertainty over the destiny of many migrants classified as not being in need of international protection are issues of concern (Veglio 2017; Marchetti 2017). They are Italy's responsibility but they also embody a 'political' responsibility of the European Union which has set forth the approach (Amnesty International 2016). Indeed, the lack of solidarity among Member States in times of massive arrivals, would affect any country, irrespective of how well its reception facilities function.

Aside from the impact of EU legislation on Italy and the lack of or ineffectual implementation of solidarity mechanisms (such as the relocation scheme decided on during the

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9 The residence permit (renewable) issued for refugee status and for subsidiary protection is for 5 years.

recent 'migrant crisis'), it is largely the inability to cope with the issue that has constantly recreated emergencies, heightening social tension in the country and impairing recognition of asylum seekers' and refugees' legitimate rights. To a certain extent, the lack of specific guidelines on reception at the EU level has contributed further to this mismanagement. Reception is understood in the Italian system as a two-tier process: first and second reception phases (Law Decree 18 August 2015, n°142, Art. 9; ANCI et al. 2017). A preliminary rescue and assistance phase (arrival, identification and notification of the intent to submit a request for asylum) is provided in centres which, as in the case of the hotspots above, lack a clear normative framework of guarantees. This situation has caused Italy to be accused of severe violations of the laws of the European Court of Human Rights (Schiavone 2017, 94; Veglio 2017, 125). Temporary emergency structures can only be used in the case of lack of accommodation. First reception is hence intended as provisional, to be complemented with full provision of reception and integration measures. The second tier of reception consists of the 'Territorial Reception System'—the protection system for asylum seekers and refugees (SPRAR)—and has been dedicated both to applicants who, after having made an official request, can demonstrate their inability to provide for their own sustenance and that of their family, and for persons already recognized as refugees.[10] SPRAR should be the ordinary system of reception, providing social and material assistance (Schiavone 2017, 97). However, the system runs on a voluntary basis, depending on municipalities' willingness. Because they are voluntary, SPRAR facilities are not homogeneously distributed across the country, ultimately rendering ineffective the idea of a territorial reception and integration model. On paper, only in the case of immediate lack of accommodation in SPRAR facilities can an asylum applicant be held, and only temporarily, in first reception centres or in 'extraordinary reception centres' (*CAS-Centri di Accoglienza Straordinari*).

However, the reality is that, given the massive arrivals of recent years, the bulk of asylum seekers are not detained in the SPRAR system (ANCI et al. 2017), but in the 'extra-ordinary' reception system which, according to Schiavone (2017, 100), 'reproduces that state of permanent emergency that from the very beginning has represented the ponderous characteristic of the Italian reception system for asylum seekers' and which, according to Marchetti (2017, 151), does

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10 The Security Decree released in November 2018 restricts the SPRAR system to refugees, de facto depriving asylum seekers of important integration measures.

not give asylum seekers the possibility to enjoy the rights to which they are entitled. In fact, social integration is not provided for in this system. The situation is further aggravated if one considers the length of the evaluation process, which generally takes around a year (ANCI et al. 2017, 25).

But the situation is also far from appropriate for persons already entitled to international protection. In this respect, Italy lags behind many other European states, with a very feeble and by no means certain system for their integration and progressive autonomy in Italian society, worsened further by various local practices. This inevitably subjects migrants to marginality. In September 2017, the former Ministry for the Interior released the first 'National plan for the integration of persons entitled to international protection', identifying priorities for social inclusion (Ministero dell'Interno 2017). However, the Security Decree of December 2018 drastically reduced attention to and plans for integration. Many informal encampments in and around cities (at least 35) are partly a product of the lack of effective integration opportunities and they expose asylum seekers and refugees living therein to many vulnerabilities, such as lack of healthcare services (Godio 2017, 196; ANCI et al. 2017).

The lack of effective provisions for non-accompanied minors is yet another weakness of the Italian reception system. Here a disconnect has emerged between the rhetoric, that has always accompanied the protection of minors, and the practice, in which minors are mainly held in the centres for identification and expulsion and more recently in hotspots (Oxfam 2016).

While the asylum and reception system in general reveals the loopholes still existing in the governance of migration, the long-standing hesitation to reform Italy's very restrictive citizenship law based on *ius sanguinis* (citizenship derived from lineage and not from territoriality-*ius soli*) is just as relevant. It denotes a lack of adaptation to the new reality, where the number of foreign nationals or persons with foreign origin is on the rise in the country, as seen before (IDOS 2017b). In spite of this new reality, or probably because of it, public support for *ius soli* has decreased: while in the 1980s it was at 80%, in September 2017 it had dropped to 52% (Demos and Pi 2017). On the other hand, the increasing presence of foreigners has underpinned the necessity of a foreign dimension of migration and asylum governance, an understanding that has matured over the years and that is presented in the next section.

When migration intersects with foreign policy

The first massive arrivals in Italy, clearly marking the inevitability of an external dimension to the governance of migration, came about during the 'Albanian crisis' of 1990 when deep economic and political turmoil, exacerbated by the end of the Cold War, led to the outflow of around 30,000 Albanians to Italy. After the first episodes of solidarity (Marchetti 2017, 146), the Italian approach grew increasingly restrictive and irregular immigrants were mostly repatriated. The 'Albanian crisis' gave rise in 1991 to 'Operation Pelican', aimed at providing humanitarian aid to the Albanian population (so as to discourage departures). Italian cooperation with the country resumed in 1997, with the signing of an agreement envisaging, among other aspects, the joint patrolling of Albanian and international waters. Moreover, Italy promoted and was subsequently at the head of a multinational humanitarian mission, 'Operation Alba', to cope with the renewed Albanian crisis that erupted in those years. The objective was to provide humanitarian assistance but also, with a military presence, to help stabilize the country which was again falling into severe economic and political disarray. This was the occasion for Italy to establish strengthened relations with Albania, especially in terms of assistance and training.

Taking full consideration of its geographical position and triggered further by the Balkan crises, the planning document of the Turco-Napolitano law clearly underlined the necessity to engage with transit and origin countries to better govern migration (Einaudi 2007, 214). After Albania, Tunisia also started to cooperate with Italy, and by 2001, 22 readmission agreements with other countries were signed, plus other cooperation agreements on migration-related aspects (Einaudi 2007, 269). Currently Italy has more than 250 agreements with third countries aimed at improving police cooperation (ASGI 2016).[11] A peculiarity of some of these agreements is their 'informality': deals, pacts, 'technical agreements', memoranda, and letters of intent (often not for public consultation), are the formula used to frame relations based on Italy's technical and material assistance in controlling outflows, streamlining repatriation procedures, and providing preferential quotas or other rewards at the national or EU level.[12]

An emblematic example of relations with third states is the one with Libya, which is not limited to the recently signed agreement with the country (see below) but which dates back to the period when Colonel Gaddafi was in power (Ceccorulli 2014; Paoletti 2011). The need to

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[11] For an overview of Italy's readmission agreements, see Borraccetti 2016.

[12] Of particular note are the recent memoranda with some 'disputable' governments such as Gambia and Sudan; in the case of Sudan, the memorandum constituted the basis for the rapid and 'collective' repatriation during the summer of 2016 of some Sudanese blocked in Ventimiglia (at the frontier with France), some of whom came from the ravaged region of Darfur. Italy was accused of both collective expulsion and violation of the *non-refoulement* principle (ASGI 2016; ANCI et al. 2017, 55).

cooperate on migration and related matters has produced many deals and agreements since 1998, the contents of which have remained undisclosed in most cases. Both centre-left and centre-right governments have considered cooperation with Libya as inevitable. Two deals have been particularly relevant: one, signed by the centre-left government in 2007 was a protocol of cooperation on illegal immigration and its exploitation, employing joint maritime patrolling operations in Libyan territorial waters against irregular departures. To implement this plan, Italy agreed to loan Libya six naval units of the *Guardia Di Finanza* (an Italian law enforcement agency under the authority of the Minister of Economy and Finance) and to train Libyan personnel to work in autonomy (Governo Italiano 2007). The deal, however, was put on hold until a new centre-right government came into power and in 2008 the 'Treaty of Friendship, Partnership and Cooperation', was signed. This treaty not only implemented the previous cooperation terms but also created a broader framework for cooperation between the two countries. In this period, arrivals to Italy by sea dropped significantly.

Recently, the overall governance of the phenomenon has been challenged by concomitant factors: reception already at full capacity, instability in Libya and the absence of a reliable interlocutor (De Giovannangeli 2017). In this respect, Italy's effort goes hand in hand with the process of stabilizing the country. Further complicating factors are inaction and silence from the rest of Europe (Venturini 2017; Calabresi 2017), with Italy confined to the 'onerous and uncomfortable 'role of 'buffer state' (Pastore 2016) and most importantly a lack of solidarity among Member States in terms of allowing disembarkations (Zatterin 2017; IOM 2017). Repeated threats by Austria to close the Brenner Pass border crossing and tensions with France at the Ventimiglia border have added to the urgency of relying on the North African country to decrease arrivals (Minniti 2017). On 2 February 2017, the Italian government and the Libyan Government of National Accord signed a memorandum on 'cooperation in the field of development, fight against illegal immigration, human trafficking and the strengthening of borders' to reduce inflows to Italy, explicitly referring to the 2008 Treaty of Friendship (Repubblica 2017a). As in the past, contestation concerned the conditions of migrants returned to Libya or prevented from departing (Repubblica 2017b), training the Libyan Coast Guard and institutions aimed at preventing outflows, providing coastguard speedboats (Amnesty International 2017), deploying Italian ships in Libyan territorial waters (ECRE 2017) and relying on a country which has not signed basic conventions on human rights (not even the 1951 Geneva

Convention on Refugees), and which is now much more politically vulnerable than in the past. Another issue of equal concern is the drafting of a code of conduct for NGOs engaged in search and rescue operations in the Mediterranean (Bresolin 2017). The situation of NGOs, according to one Italian journalist, has produced what can be defined as a 'moral reversal' (Mauro 2017), whereby even rescuing humans at sea is no longer perceived as an undisputable duty.

In this respect, Italy's experience within the EU Migration System of Governance is not unique: as stated by Sciortino (2017, 133-134), EU Mediterranean states are often abandoned, with the end result that regardless of what they do (agreements with controversial states, no rescue of migrants, rescue and return of migrants, rescue and transfer of migrants in national ports), they cannot 'win' because they inevitably fall prey to many accusations, including not respecting human rights, the asylum law or, on the contrary, of favouring irregular immigration, such as in the case of Italy with Operation *Mare Nostrum.*

Schizophrenic (in)justice?

The above outline of Italy's legislation and approach to migration and asylum reveals the different interpretations of justice emerging from the governance of the phenomenon. But providing a definitive assessment of the conception of political justice (or injustice) is not an easy task. This is especially so because there are different conceptions that are simultaneously embraced in the country, albeit with inherent conflicting priorities. In the case of migration, possible conflicts between coexisting objectives of justice are particularly tricky insofar as migrants' mobility is likely to clash with states' sovereign right to decide who is entitled to cross national borders, something that approaches an understanding of justice as non-domination. However, the issue implicates human beings who are entitled to basic human rights (at least according to liberal democracies), and even more so persons often vulnerable or in need of protection. As seen above, the moral dilemmas and ethical implications of the choices made by frontier states are particularly complex, specifically because of their role as 'dividing' lines between safe and unsafe regions, between the certainty of rights and their absence, and indeed between 'haves' and 'have nots'.

Italy has started to regulate migration only recently but with a clear attempt to control and select arrivals. This belated move has indeed strengthened the country's sovereign prerogatives.

While this aim has been pursued invariably by all political formations, the attention given to migrants' rights has substantially differed. Overall, centre-left governments have also focused on integration and have mostly eschewed criminalization and securitization moves. However, both the centre-right and centre-left have embraced the 'emergency' trait of the governance of migration. This makes one wonder whether, as Caputo argued almost twenty years ago, we are still promoting an exceptional law for foreigners (Caputo 2000, 52): the exceptional situation triggered by the constant 'state of emergency' has inevitably weakened solid protection of human rights on many fronts. This has been demonstrated particularly by the increasing reliance on third states with more than dubious human rights records (the agreement with Libya being only one example). The casual nature of many of these agreements (lack of transparency, of parliamentary inspection, of timely information and public access) raises further doubts about the pursuit and protection of human rights. Also, clear evidence of this negligence has been epitomized by the way reception for both irregular immigrants and asylum seekers has been offered: in times of emergency it has resulted in conspicuous violations of human rights, including those recognized by the European Court of Human Rights. The lack of an effective and efficient reception policy also risks obscuring the assessment of an operation such as *Mare Nostrum*: while the 'humanitarian' and warm-hearted inspiration behind the operation is widely recognized and applauded, the ethical judgement of the destiny of over 150,000 rescued migrants is inevitably a trickier question.

Of greater ethical concern, however, is the delayed adoption of provisions and the persistent lack of regulations concerning some migration-related aspects. As has been noted, the adoption of an asylum policy in Italy has been very tardy, in spite of the fact that the country has been an effective destination for asylum seekers since the 1990s. The adoption of a national plan for the integration of persons in need of international protection is very recent (2017)—and according to some, still insufficient. To this we must add the lack of effective legislation for non-accompanied minors and an up-to-date reform of citizenship. Ultimately this could demonstrate the clear violation of all three conceptions of justice taken into account. In fact, while impartiality and mutual recognition are clearly impaired, with individual rights being bluntly violated and vulnerabilities being neglected, it seems that the absence of legislation allows for practices of arbitrary interference, that is, of possible domination leading to social marginality.

The instability characterizing the Italian political system, whereby long-standing dossiers never see the light of day, cannot excuse the Italian government from this negative assessment.

And yet in Italy there is a clear understanding of justice in terms of impartiality and mutual recognition. Inherited from the suffering endured during the Second World War and from its experience as a country of emigration, it has one of the most extensive understandings of international protection in Europe (Art. 10 of the Constitution) including a humanitarian form of protection (although now being challenged) that recognizes specific vulnerabilities. This has been demonstrated through solitary and costly actions, such as the search and rescue operation *Mare Nostrum* or the proposal to address the root causes of outflows. It has also been extensively and constantly buttressed by institutions traditionally supportive of vulnerable persons, such as the unions and the religious community.

The major risks for the country, hence, seem to be firstly an increasing divide between rhetoric and norms on the one hand and practices on the other (Petrovic 2016, 159). Secondly, given the sensitivity of the issue, an increasingly worried and misinformed public opinion legitimizes some of the most contested practices of the past (such as the push-backs of 2009) and the continuous postponement of urgent measures such as integration or the issuing of citizenship, challenges which seem to be strengthened by the extremely restrictive approach and narrative of some political formations.

Conclusion

October the 3rd has been proclaimed in Italy 'the national day in memory of the victims of immigration'. What may seem to be a national concern instead portrays Italy's role in the European Migration System of Governance, a system in which Italy has started to play a major role and which has greatly affected the country.

A country of emigration in the past, at the end of the last century Italy turned into a country of immigration, a major receiver of asylum seekers, a first-entry gateway into the European Union and a relevant element of the Schengen system as a whole. This progressive shift has been strongly affected by some of the country's peculiarities, by the incapability to properly step up to the demands of its role and by the divisiveness of the issue itself. The result has been a radicalization of political positions and the restriction of space for a fully-fledged and

coherent debate on migration, making it all the more difficult to unify security and humanitarian objectives. Also, and as a consequence, this has led to the above-described '*pressapochismo' (superficial approach)* (Einaudi 2007, 155) and ultimately to the tyranny of the emergency (incapacity to govern in an ordinary and planned way) which is today one of the greatest problems affecting Italy, for it paves the way for criminalization and the transformation of the situation into a security matter.

While the obvious victims of this state of affairs are the migrants themselves, the country is drawing no benefits: public opinion is becoming increasingly hostile to policies which are not only in line with Italy's norms and values (*non-refoulement*, proper and dignified reception, insistence on the right to asylum) but which would also contribute to the country's future economic and demographic challenges (integration and citizenship). Ultimately, the underdevelopment of the reception and integration realms means that migration and migrants' potentialities are still not given due consideration, while the issue is still ensnared within the question of control.

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