The regulation of immigration as a social question: from inclusive citizenship to neo-slavery[1]

A regulação da imigração como uma questão social: da cidadania inclusiva à neoescravidão

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ABSTRACT: Today, states no longer need to build and take care of their populations in order to secure their power. They can simply select the migrations flows (as well as citizens) through the regulation of entries and expulsions. Democracy, that had been characterized for over two century by its high potential for social inclusion, in north western societies has become an excluding device through which the 'satisfied' class, by means of migration policies and prison, regulates access to rights. This is the context of Italian immigration policies that, by making regular entry of migrant workers virtually impossible, create a mechanism based on their longer or shorter irregular presence and in any event make their status utterly uncertain, forcing them to live haunted by the possibility of coming back to irregularity. At the cost of widespread illegality, this choice allows the neo-slave-like exploitation of migrants. In many sectors, from building to farming and home care, migrants – either irregular or perpetually subjected to the blackmail of irregularity – accept to work for wages that can be one half of the legal minimum. In Italy in particular, the whole sector of assistance to dependent people, is based on the neo-slave-like exploitation of migrants.
Keywords: Immigration; Neo-slavery; Italy.

For about one hundred years, since the second half of the nineteenth century, social integration in Europe was achieved through a politics of inclusive citizenship. It was characterized by a steady increase in the number of both individual holders of citizenship rights and of these rights. This process was stopped quite abruptly about

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thirty years ago, at the same time as the intensifying of migrations towards Europe and, in particular, towards states such as Italy that until then had been countries of emigration. In the immigration regulations adopted by Italy, but also by other European states, we should distinguish an apparent function, stated and almost exhibited, from a latent effective function. For it is by now fairly clear that, in spite of the proclaimed will to allow or even encourage the legal entry of foreigners seeking for a job in Italy, the policies of immigration governance have become oriented by a strategy meant to favour the presence of irregular aliens in the national territory, with periodical regularization of those that managed to stay long enough without incurring criminal prosecution.

These policies mark a sudden break: a shift from a strategy of governing society based on social inclusion to one based on excluding an increasing group of its members from citizenship rights. My proposed reading of these developments is premised on the views set out by Michel Foucault in the courses he held at Collège de France between 1977 and 1979. His views seem to me an essential tool to propose a systematic interpretation of the new ways of social integration that are forcefully emerging. I think that Foucault's lectures suggest a deep reason underlying the policies that over the last years led to a scanty concession of citizenship rights to migrants. In the light of Foucault's reading we may put forward the thesis that in Italy a neo-slavery-like model of social organization is consolidating, a model that seems to have no credible alternative today. I will expound this thesis mainly through an analysis of the recent evolution of the employment of migrants in care-giving work in Italy.

The requirement of illegal residence

An analysis of Italian immigration policies must start with act 39/1990 (so-called Martelli act). This was the first law aimed at providing an organic discipline of immigration and was meant to avoid the formation of pockets of irregularity.

The system of the Martelli act was the hinge of immigration policies for twenty years. In spite of its evident failure, the act's philosophy, based on the idea that admission of job-seeking migrants should be dependent on an employer's request, still innervates the regulation of immigration. Indeed, over the last years the connection between employer's request and admission to entry and stay has become ever tighter.

Currently, Italian immigration laws provide that, by the end of each year, a government decree should establish the quota of job-seeking non-EU nationals allowed to enter the following year. While the quota can be raised by new decrees during the year, it should be determined on the basis of the total number of employed and of the unemployment rate at the national and regional level. Decrees can provide for restrictions against the states "that fail to cooperate adequately in contrasting illegal immigration or in readmitting their expelled nationals" The stick goes together with the carrot: the decree is supposed to reserve quotas for the states with which there are "agreements for the regulation of incoming flows and readmission procedures". The same law provides that preferential quotas may be reserved to foreign workers with an Italian ascendant. The national quotas are then divided into county quotas.

Thus, an employer offering a temporary or permanent job to a foreign worker must file a nominal or numerical application to the national immigration office of the county where the employment contract is to be performed, in the hope to apply before the county quota runs out. The employer must also undertake to provide the migrant worker with suitable accommodation upon arrival and to pay for the return journey in case the migrant does not renew the residence permit. The national immigration office, after checking that the job offer is compliant with legal requirements, forwards the request to the employment centre of the employer's county so that it can be advertised. In case a worker already residing in the national territory accepts the offer, the employer may still confirm that he or she

wants to hire the non-EU worker. If within 20 day from its publication the offer is not accepted by a national or EU worker, the employment centre notifies the national immigration office. The latter asks the police to ascertain that there are no reasons of public order against the entry of the requested foreign workers in Italy. If the police do not signal any preclusive circumstance, the national immigration office issues the authorization to work and notifies it to relevant consular offices. The law establishes that the procedure for issuing the authorization shall be concluded in forty days from the employer's request. The authorization is valid for six months, within which the worker, informed by the employer, is supposed to appear before the Italian consular authority, which is often located in a city far away from his or her residence, and to ask for the work visa.

As we can see, the law on the entry for work reasons is based on the idea that foreigners should be allowed to enter Italy only if they have a known job offer that has not been accepted by others. The requirement of the existence of a known job offer upon arrival has been made a sort of migrants' iron cage by act 182/2002, the so-called "Bossi-Fini Act". This law introduced the rule of the "residence contract" which combines residence permit with employment contract. Before issuing the entry visa to a foreign worker, the government takes such pains to be sure of the existence of an employment contract that it undertakes to check for the correctness and, most importantly, viability of the job offer. Immigration law provides that the national immigration office shall

> verify its conformity with the terms of the applicable collective agreement and the reasonableness of the number of requests made for the same term by the same employer, taking into account his or her economic capacity and the needs of his or her business, as well as the compensation and insurance obligations provided for by applicable laws and national collective agreements.

Thus, local government agencies have the power to verify the enterprise risk the employer is willing to accept and his or her working organization, before

issuing the authorization to hire a foreign worker. Besides its reminiscence of Soviet-era economic planning, this law appears illegitimate at least from the point of view of equal opportunities for employment, since no such verification is required for hiring an Italian worker. Remember that the Italian government is bound to give foreign workers equal employment opportunities by the "Convention on migrant workers" passed by the International Labour Organization (ILO) on 4 June 1975 and ratified by Italy with act 158/1981, fully executed with act 943/1986.[2] The strict connection between the existence of a job offer and the entry visa is relaxed once the residence permit has been granted. The law provides that "loss of employment does not justify revoking the residence permit of a non-EU worker". The foreign worker "who loses his or her job, even by resignation, may register with the employment exchange for the residual duration of the residence permit, and in any case […] for no less than six months". It is worth emphasizing that, on expiration of the six months term, the foreigner must be employed, otherwise he or she must leave the national territory even if he or she has been always working for the six months after obtaining the residence permit for expected employment. This can easily happen in today's fragmented labour market.

The decision only to allow hired foreign workers (by an employer who never saw them and lives thousands miles away) to enter the Italian territory led legislators to outline a sort of planetary employment exchange whose branches are Italian consulates. These are supposed to draw up every year the lists of foreign workers looking for a job in Italy and to transmit them "through electronic

[2] The legitimacy of this kind of rules is usually defended at the formal level with the argument that the convention mandates to guarantee equal "opportunities" to foreign workers, whereas the rule in question affect the stipulation of the employment contract with a foreign national who is still abroad. For this reason there is formally no discrimination against the foreign "worker", in that the migrant has yet to sign the employment contract and therefore is not formally a "worker". This formal *escamotage* makes the obligation to ensure equal opportunities for employment totally meaningless: for it is evident that employment opportunities must be offered to foreigners before they sign the contract.

channels" to the ministry of labour. The lists must distinguish permanent jobs from temporary and seasonal jobs and list workers by registration order. They should be drafted for each individual country and record, besides the worker's name, his or her skills or in any event the kind of job he or she is looking for, as well as his or her knowledge of the Italian language. In legislators' intention, Italian employers needing workforce that they cannot find in the national territory should consult these lists.

Especially in an economic structure based mainly on small business in which personal relationships are crucial, nobody is willing to hire a worker whom he or she does not know and cannot know before the start of the employment relationship. This is even truer for domestic and personal care workers, for whom legislation recognizes the essentiality of personal relationship, so much so as to admit – an almost unique exception to the general rule – the possibility of dismissal *ad nutum* in case the personal relationship between employer and employee deteriorates. But even if we should assume for argument's sake that an employer would follow it, the path indicated by the legislator would prove itself immediately impracticable. A firm that has to carry out a sudden order, or a family that need to assist a senior member who has become dependent, can hardly meet their labour needs through the mechanism provided by the legislator. First, whatever the time of the year when the need for a worker arises, they must wait until the next January, when government will authorize the entry of new workers. For, until now, all jobs made available by the various "flows decrees" have always run out in a few hours after the beginning of the term for foreign workers to apply.[3] Even if the employer were lucky and the worker were needed on the very day before the publication of the "flows decree" (the day after quotas would have already run out), work could not start before the six or seven months necessary for

[3] An example: even though in 2008 no "flows decree" was issued and the decision was made to meet outstanding applications made under the decree of 2007, in the county of Florence applications made by employers at 11.45 am of the opening day were rejected because they were already belated.

the employee to obtain an entry visa. In fact, this term is often even longer: for instance, on 11 November 2008 only 106,000 of the 170,000 hiring permissions allowed by the "flows decree" of 30 October 2007 had been granted. So, 64,000 employers had to wait over one year after application in order to have their hiring request approved.

Clearly, the family that needs to assist a dear bedridden, or the firm that has to carry out an order cannot wait for a year and seven months (if the need arises when quotas have run out) or only seven months (if the need arises on the day before the publication of the "flows decree"). So, the legislators' mechanism cannot and will never be used to meet the need for workforce. In fact, the experience of all these years has shown that the employment contracts authorized by the "flows decree" are being made with illegal residents in the national territory rather than with workers waiting for authorization abroad.

Most migrants working in Italy have not acquired a legal status through a regular entry for work reasons but through regularisation, i.e. through an extraordinary measure that at a given time allows illegal working immigrants to legalize their position. Already in the 1980s, before the Martelli act, legislators had passed two regularization measures and, when passing the Martelli act,[4] had offered irregular aliens a chance of regularizing their positions. Since then, as is well known, regularization measures have been taken on a regular basis: available data show that it is not entry regulations but mostly these extraordinary measures that, from 1990 onwards, have allowed migrants to acquire the status of law abiding regular residents.[5]

[4] The rules on regularization are provided for in article 9 of the Martelli act, titled "Regularization of non-European Union citizens already present in the state territory".

[5] I have analyzed all data relating to regularizations and resident migrants in my "La fine della biopolitica e il controllo delle migrazioni: il carcere strumento della dittatura democratica della classe soddisfatta", in F. Vassallo Paleologo and P. Cuttitta, *Frontiere e diritti dei migrants*, Napoli, ESI, 2006, to which I refer the reader.

Immigration policy is characterized by the use of irregular residence as a preliminary requirement that a number of migrants must meet, in the hope that they can later manage to get a regular position. The message conveyed by Italian immigration policies is that migrants wishing to enter Italy must be ready to cope with a period of "clandestine" residence and, possibly, to cross the border "clandestinely".

Thus, the system of entry for job seeking immigrants has made the following steps an almost normal path to obtain a residence permit: entry by a tourist visa or, in a few cases, illegal entry; illegal residence during which one enters the world of irregular employment; regularization. An estimated two thirds of the 2,193,999 migrants present in the Italian territory by 1 January 2003 (of which 2,036,682 residents[6]) obtained their residence permit after passing through a longer or shorter period of "clandestine" residence. If we take into account that almost one fourth of residence permits in force by the end of 2003 had been issued for family reasons,[7] we conclude that the vast majority of migrants holding a residence permit for work reasons, obtained it through a regularization measure.

Thus, the message conveyed by Italian immigration policies is that migrants wishing to enter Italy must be ready to cope with a period of "clandestine" residence and, possibly, to cross the border "clandestinely". In the first "Programmatic document concerning the policy of immigration and aliens in the national territory", issued under article 3 of act 40/1998 with a decree passed on 5 August 1998, the government seemed aware of the need for the entry system to be

[6] Data provided by government in the "Documento programmatico relativo alla politica dell'immigrazione e degli stranieri nel territorio dello Stato 2004-2006".

[7] The exact given provided by government in the "Documento programmatico relativo alla politica dell'immigrazione e degli stranieri nel territorio dello Stato 2004-2006" is 532,670 residence permits for family reunion out of a total 2,193,999 existing residence permits. It is worth emphasizing that the 2002 regularization caused the percentage of residence permits for family reunion to total residence permits to drop. The year before, again according to government data, they were 472,240 out of 1,512,324, that is almost one third.

liberalized in order to avoid illegal immigration.[8] Indeed, while summing up data from 1997 it remarked that, taking the about 92,000 new permits issued to citizens from high migration countries (central and eastern Europe, central and southern America, Africa and Asia excluding Japan and Israel) as a general sample, residence permit for work reason ranked only at the third place among the kinds of permits being issued. A bit more than 16,000 immigrants (about 17 percent) had entered Italy for work reasons. Lucidly, the government explained this little share with the fact that, under the Martelli act, entry for work reasons "in practice was almost only made possible by an employer's nominal job offer".

The infeasibility of entry by work permit resulted from the circumstance that the two most popular kinds of entry permit were tourist visa and family reunion. In 1997, permits for family reunion had been a little more than 23,000, about 25 percent of total. The government mainly stressed with disappointment that the biggest share (about 24,000, or 26 percent of total) of new residence permits had been issued for tourism, and remarked that this share

> very likely "*hides*" a quota of entries by foreign citizens willing to stay in Italy for reasons others than tourism but lacking the requirements, such as a request of family reunion or a job call, necessary to obtain a residence entitlement very different in nature and duration (my emphasis).

The government's hypothesis was strongly supported by data from the 2002 regularization. These data, the only available regarding the ratio of originally illegal migrants to overstayers (migrants who became "illegal" by overstaying after

[8] Already in 1993, when converting the law decree on employment into a statute, legislators were aware of the problems with the rigidity of entry mechanisms and the management of the numerous cases of irregular residence they cause. For they passed an amendment meant to facilitate as much as possible the emerging of conditions of irregularity of migrants de facto inserted in the labour market, in order to prevent their exploitation and the persistence of unfair competition against regular workers. The amendment allowed all those who could prove to have a job offer or a de facto employed job to obtain a residence permit for employed work. The modes of issuing such permits were so defined by the amendment as to give government, on a yearly basis when planning flows, an effective means to combat the stagnation of pockets of irregularity.

the expiration of their residence permit), show that 75% of the over 700,000 applicants for regularization had entered Italy regularly and had stayed after the expiration of the permit.[9] Thus, the problem of illegal immigration is not so much illegal entry as the overstaying in the Italian territory after the expiration of a residence permit. This given should have convinced legislators that the simplest way to achieve an effective control of immigration is to allow the conversion of the tourist visa into a residence permit for working, if the immigrant becomes qualified to request it while staying in the national territory.

The government appears perfectly aware of this problem when, in the later "Programmatic Document" of 2001, says that

> in order to achieve an effective control of flows […] it is not enough to establish 'a priori' entry quotas but is necessary to have rules that allow a regular entry, in order to facilitate the meeting of work supply and demand so as to discourage a clandestine inflow of workforce destined to perform 'black' work, which is a weakening factor of the policy of planning flows.[10]

[9] The data are given by prefect Pansa in his report on "L'esperienza italiana nel contrasto internazionale", presented at the international conference for the analysis of criminal cases being tried in Italy on the trafficking of persons, organized from 4 to 6 June 2004 by the Scuola Superiore Amministrazione dell'Interno. The difficulty of counting overstayers has always been a problem with any analysis of migrants present in Italy. Government itself dwelt on it in the "Documento programmatico relativo alla politica dell'immigrazione e degli stranieri nel territorio dello Stato" of 1998, in relation to residence permits expired the year before and not renewed, remarking that there was "no evidence to establish whether the flow of expired document actually translated into an outbound migration flow, or into irregular presence". Government dealt again with the issue in the latest programmatic document where one reads: "we should not underestimate the magnitude of migration flows coming from the so-called internal frontiers (inside Schengen) and, most of all, the phenomenon of overstayers, which is the illegal presence of aliens who entered Italy legally and overstayed after the expiration of the visa or residence permit. However, we cannot calculate reliable figures about this".

[10] A small but significant indicator of the schizophrenia about facilitating regular entries is that the Turco-Napolitano act did not even favour the conversion of residence permits for study into residence permits for work, providing that conversions of this kind of permits, too, shall fall within the annual quotas, thus further limiting the channels of legal access. And this even though, in the programmatic document of 1998, the governments annotates that "the number of entries for study is no less relevant, over 7,000, with central eastern Europe at the first place as usual among the areas of strong migratory pressure (more than 3 thousands), followed by Asia (a little less than 2,000 without Japan and Israel) and then by Latin America and Africa, both slightly above 1,000 units".

If we really wanted a regular immigration we could simply liberalize entry for job seekers, giving foreigners who prove to be able to support themselves enough time to find a job in Italy. For instance, we could have migrants bank a sum equal to a multiple of the social allowance and allow them to stay for as long as the sum can support a decent living. In this way migrants could look for a job by contacting possible employers *vis à vis* and stating their readiness to start working immediately. Such a system would drastically limit the presence of "irregular" immigrants in the Italian territory, since any immigrant would be identified and fingerprinted, and upon expiration of his or her residence permit could be easily identified and expelled if necessary. Today indeed the main obstacle to expulsion is the difficulty to identify the state to which irregular migrants should be repatriated, for they are mostly people without known identity and nationality. It would certainly be cheaper and, most importantly, safer for migrants to enter legally. Costs imposed by human traffickers on those wishing to enter Europe illegally are very high, not only economically (they are surely more expensive than a normal low cost flight ticket) but also in terms of suffering: there is not a single day without news of migrants dying while trying to reach European coasts (and we know very little about all the people that die while travelling other routes, e.g. while trying to cross the Sahara desert[11]). Moreover, it would be in migrants' interest to return home willingly if they do not find a job during they stay in Italy, and to come back to Italy when they can afford it again. On the contrary, if expelled they would be forced to re-enter illegally and to stay "irregular" for at least five years. Basically, under such a regulation illegal entry would only be helpful for those willing to engage in illegal activities – drug pushing, exploitation of prostitution, and so on – even before leaving, i.e. for a minimal share of migrants. This would make border checks themselves much cheaper.

[11] On these tragedies see the impressive documentation on Fortress Europe: http://fortresseurope.blogspot.com/ .

The immigration laws of 1998 seemed to have taken a little step towards this kind of system. They introduced and provided a detailed regulation for the mechanism of "sponsorship". The government seemed to attach major importance to this mechanism which, as stated in the "Programmatic document" of 2001, "allows a foreign citizen, recorded in special lists held by Italian diplomatic missions, to request a work visa by proving to have life means for about 4 millions liras, health insurance, suitable accommodation and enough money for the return journey". The government hoped that sponsorship would solve the problem of irregular entry, since it would allow "a foreigner to obtain a year's regular entry for a lower cost than that requested by traffickers for a clandestine entry".

But if we analyze the "flows decrees" of the following years and government's use of the rule of sponsorship, before it was abolished by the Bossi-Fini act, we are very disappointed: government did not use sponsorship for two years and, in order to allow the regularization of already resident aliens, has imposed narrow limits on the legal entry of new migrants.

The first "flows decree" after the Turco-Napolitano act did not provide for sponsored entries and established to use the quotas of regular entries for the purposes of regularization. The highly praised "sponsorship" was not even used the following year when, once again, regularization was preferred to regular entry. For the government decided to wait for the outcome of the regularization measure before issuing a new "flows decree". On 4 August, hence in the third quarter of the year, the government issued a directive establishing an entry quota equal to that of the previous year (58,000 units). But no one of these entries could be used through the mechanism of sponsorship: 54,500 entries were reserved to employed workers and 3,500 to independent workers. As a consequence of these choices, in 1998 and 1999 nothing had changed with respect to the previous years: as a matter of fact entering Italy required a nominal job offer (the only modest exception being the 3,500 entries allowed to independent workers). As it was the case under the

Martelli act, regular entries for family reunion[12] were much more than those for employment: in 1998, compared with 47,433 residence permits issued for family reunion, there were 26,063 residence permits issued for employment. In 1999 the latter were 29,405, compared with 43,500 permits for family reunion.

In 2000 a "flows decree"[13] was passed that seemed eventually to respond to the design of the Turco-Napolitano act. It allowed 63,000 entries, of which: 28,000 reserved to employers' direct call for permanent or temporary jobs; 2,000 to independent contractors; 18,000 to workers from countries that had signed agreements for the readmission of irregular migrants; lastly, 15,000 to sponsored workers (without restrictions related to the country of origin: "from any country outside of the European Union"). In spite of the government's fears about the utilization of the latter entries, they ran out within the prescribed 60 days. The "flows decree" of 2001[14] imposed less constraints: it increased the number of entries for permanent or temporary jobs (raised to 50,000), in addition to 33,000 entries for seasonal jobs, and dropped to 11,500 the number of entries reserved to countries parties to readmission agreement; however, if foresaw again only 15,000 sponsored entries. In the accompanying report to the decree the government seemed almost to apologize for allowing this however little quota. In spite of the relevance attached to sponsorship in migration policies and in the considerations on the fast running out of the quotas established the year before, the government declared its intention to be very cautious as to sponsored entries and to monitor their outcomes. We read in the report:

[12] The rules on family reunion of the Turco-Napolitano act contribute to this. They allow for a larger use of this institute than in the past and do not count in quotas these permits, that allow reunited persons with the required age to start working upon arrival to Italy.

[13] The decree is dated 8 February 2000 and entered into force on 15 March 2000.

[14] The decree is dated 9 April 2001 and entered into force on 17 May 2001.

> while this category of non-EU workers was already defined by act 40/1998, it has been used for the first time in 2000. Now the outcomes of the first year of its application should be verified through a monitoring activity to be performed upon expiration of the 12 months allowed by the law to find a job. Both social insertion and shelter solutions, and the actual accomplishment of the work project will be monitored.

Government's fears about the "fate" of the 15,000 migrants who entered Italy through sponsorship can be hardly understood, especially if we consider that these people were 15,000 irregular migrants within Italian territory. Residence permit grants migrants a number of rights whose preservation depends on their insertion in the world of regular labour and on compliance with a number of duties. The richer this range of rights, the bigger the stimulus to avoid the ways of illegality (provided the legal ways are not obstructed by too many constraints). In spite of this, the provision for a quota of 15,000 entries reserved to sponsored migrants was introduced as an exceptional concession rather than the hinge of a policy meant to favour regular entries. The government said that they had resolved to take this step by considering "the demands by associations to keep this important channel of access to the labour market open, also in the light of the lesser impact on the territory ensured by the presence of guarantors (so-called sponsors)". It is therefore not surprising that with the Bossi-Fini act, in spite of the mass of irregular migrants clearly due to the closure of legal entry channels, legislators abolished the rule of sponsorship. According to ISTAT,[15] this caused a drop of work permits by 1 January 2003 compared to the previous year. As mentioned above, the abolition of sponsorship was not the only provision of the 189/2002 act restricting the already narrow path of legal entry in Italy. This law ties a migrant's entry to the existence of a pre-contract of employment, already signed, by which the employer guarantees the availability of an accommodation compliant with the laws on municipal building, as well as the payment of the

[15] ISTAT, "La presenza straniera in Italia: caratteristiche socio-demografiche", *Informazioni*, n. 10, June 2004, Rome.

journey back to the country of origin. Moreover, the law limited the possibility for regular residents to have their parents obtain a residence permit for family reunion.

The steady restriction of the already narrow entry channels and continuous regularization measures show a clear political will to privilege the mechanism of irregular residence as a means for the social insertion of migrants. Statistical data and legislative evolution show that Italian government and parliament seem to prefer that a foreigner looks for a job and tries to become integrated in the society from a position of "illegal residence" (hence with no guarantees and very few rights), rather than taking advantage of "sponsorship", or a tourist visa, a permit for job search or for choice of residence. The "flows decree" itself only serves to regularize the presence and employment of migrants who are already in the national territory. When job applications had to be filed to the post offices, this fact was evident from the queues that formed in front of them already on the day before that of application. Those queuing were not employers but foreign workers: far from being in their countries of origin, as required by law, they were already in Italy and doing their best to file the application in the first minutes after the opening of the post office, in the hope that their employer's request might fall within the quota. Now that the application is transmitted electronically, the phenomenon has not so extraordinary expressions, but is no less widespread. The illegality of the situation is so evident that it was exposed to the Parliament in 2006 by the then-home secretary, Giuliano Amato,[16] in a speech whose only precedent is when the secretary of the Socialist Party, Bettino Craxi, in order to justify the bribes requested and received by his party, appeared before the Parliament to say "so do all" and denounce a situation of generalized illegality.

[16] See press news of 20/6/2006 on the hearing, the day before, of minister Amato in the House of Representatives. They report the minister to say, among other things, that when the law requires that a foreign worker must be still abroad when filing a job application, it imposes "an impossible requirement".

If we can speak of naïveté about 1990s inexperienced legislators who had to devise mechanisms for regulating immigration, we cannot but speak of bad faith about the legislators that during the last few years have made entry rules stricter rather than simpler, in spite of past experience. As a real manifesto of this bad faith we could take the "Programmatic document on immigration 2004-2006" in which the Italian government states that:

> the heart of Italy's approach to immigration is in labour-related policies, in order to ensure the equivalence between entry in the state territory and legal employment, based on a correct relationship with the employer and the state which includes payment of taxes and social security contributions, the availability of suitable shelter, a suitable professional training and the opportunity for full integration in the Italian society. The "residence contract" guarantees that entry in Italy for work reasons is really followed by the performance of a legal employment contract, which is the key to integration.[17]

The government's delusion of grandeur goes so far as to holding that, once the first phase of the struggle against illegal economy and irregular or clandestine residence had been finished by the 2002 regularization, the introduction of the residence contract would prevent such phenomena in the future.[18] Suffice as a refutation of this view the regularization measure for caregivers and domestic workers passed by government itself on August 2009.

Neither continuous use of regularization nor the huge number of migrants that acquire a residence permit in this way have made Italian legislators aware of the need to make foreigners' entry path easier. The fact that in twenty years of debate on immigration laws, nobody has ever introduced a mechanism to allow entrance for job search – except for the brief parenthesis of sponsorship, scarcely used and soon to be suppressed – but the system linking entrance to a job call has been made more and more rigid, is clear evidence that legislators have deliberately

[17] *Documento programmatico immigrazione 2004-2006*, p. 2.

[18] Ibid.

chosen to ensure the presence of a high share of "black" workers on the national territory rather than allowing legal entry flows. Immigration policy is deliberately characterized by the use of irregular residence as a preliminary requirement that a number of migrants must meet, in the hope that they can later manage to get a regular position.

The end of inclusive citizenship

As mentioned above, I think that the views developed by Foucault towards the end of the 1970s enable us to explain the rationale of these immigration policies meant to favour the presence of a high number of irregular migrants.

Foucault emphasizes the importance of the development, during the eighteenth century, of a field of knowledge called *Polizeiwissenschaft* in Germany and concerning "the theory and analysis 'of all that tends to establish and increase a state's power, to make good use of its forces and to secure its subjects' happiness' and, chiefly, 'the keeping of order and discipline, the regulations meant to make subjects' lives commodious and to provide them with the necessary means of living'". States relied upon this field of knowledge for a chance "of establishing and improving their position in the interplay of rivalry and competition among European states and achieving domestic order together with individuals' 'well-being'"[19]:

> a police state is interested in what men do, their activities, their 'occupation'. The goal of 'police' is controlling and taking charge of men's activity in that such activity may make a difference in the development of a state's forces.[20]

[19] M. Foucault, "Naissance de la biopolitique", *Annuaire du Collège de France, 79e année. Histoire des systèmes de pensée, année 1978-1979*, pp. 367-372, now in M. Foucault, *Résumé de cours*, Paris, Gallimard, 1994.

[20] M. Foucault, *Sécurité, Territoire, Population, Course au Collège de France 1977-1978*, Paris, Seuil-Gallimard, 2004.

> For the police is the set of techniques, interventions, and the means which ensure that living, doing something more than merely living, that is coexisting, communicating, will be really convertible into a state's forces, that is they will be really useful to creating and increasing a state's forces. Thus, police draws a line that starts with the state, as the power of rational calculated intervention on individuals, and ends with the state, as a set of forces that are growing or should grow, passing through individuals' lives that now, as lives, become precious for the state.[21]

Foucault famously argued that prison was born within the development of a variety of government techniques, defined 'bio-politics' as a whole. They were aimed at making the population, that until then had been seen as an untidy ungovernable mass of individuals, into a resource for the state. The development of these policies took momentum with the emergence of the Westphalia system. When the world came to be seen as an arena for competition among states, individual states had to rely on rational techniques to enhance their forces. Population quickly became the main resource upon which a state's diplomatic influence rested. It was seen at the same time as "the subject of needs and aspirations" and the source of a state's power. Thus, it became the "government's ultimate goal" but was at the same time an "object in government's hands".

The goal of *Polizeiwissenschaft* was, in the last analysis, that of making the population, that until then had been seen as an untidy ungovernable mass of individuals, into a resource for the state. Its subject matter was "the ensemble of mechanisms serving to ensure order, the properly channelled growth of wealth and the conditions of preservation of health 'in general'".[22] The science of police was but "the calculation and technique that make it possible to establish a mobile –

[21] Ibid.

[22] M. Foucault, "La politique de la santé au XVII siècle", in *Le Machines à guérir. Aux origines de l'hôpital moderne; dossiers et documents*, Institut de l'environnement, Paris, 1976.

but nonetheless stable and controllable – relation between the internal order of the state and the growth of its forces".[23]

It is not accidental that the development of this science was connected with the emergence of the Westphalia system. After the end of the dream of reviving the imperial Rome, a new historical perception no longer aims at uniting all of the sovereign entities that originated from the dissolution of the empire but realizes that new states are bound to fight against each other in order to survive.

The emergence of the population as the main object of government activity is to be seen in this picture: the formation of the population-government binomial is closely related to the perception that the knowledge and development of the forces a state can rely upon are vital for the legitimacy of a sovereign's power. When the world appears as an arena for the competition between states, the major problem becomes that of the rational techniques for developing a state's forces. In this context the population quickly becomes the main resource on which a state's diplomatic influence rests. Thus, two new techniques of power management develop together. On the one hand, this originates "a military-diplomatic technology aimed at securing and developing a state's forces through a system of alliances and the organization of a military apparatus". The Westphalia treaties, meant to crystallize a European equilibrium, are the outstanding product of this political technology. On the other hand there emerges "police" "in the meaning of that time, i.e. the set of means required to make a state's forces grow from within". The subject of these two power techniques is the couple population-wealth: enrichment through commerce is expected to lead to an increase of population,

[23] A. Zanini, "Invarianza neoliberale. Foucault e l'economia politica", in S. Chignola (ed.), *Governare la vita. Un seminario sui Corsi di Michel Foucault al Collège de France (1977-1979)*, Verona, Ombre corte, 2006, p. 126.

manpower, production and export, hence the possibility of having large strong armies:[24]

> the great eighteenth century demographic upswing in Western Europe, the necessity for coordinating and integrating it into the apparatus of production, and the urgency of controlling it with finer and more adequate power mechanisms, cause "population", with its numerical variables of space and chronology, longevity and health, to emerge not only as a problem but as an object of surveillance, analysis, intervention, modification, etc. The project of a technology of the population begins to be sketched.[25]

The population becomes at the same time "the subject of needs and aspirations" and the source of a state's power: therefore it turns into the "ultimate end of government", but at the same time is an "object in government's hands". *Polizeiwissenschaft* is the science of governing the population by means of the population. From now on the end of government will be the well-being of the population, the improvement of its conditions, the increase of its wealth, its longevity, its health, etc; the means used by the government to achieve these goals are themselves to a certain extent immanent to the population; it is the population itself, on which the government acts directly – through large scale campaigns – or indirectly – through specific techniques, that makes it possible […] to increase birth rates, to direct population flows towards certain regions or certain specific activities.[26]

The connection between population and health is the centre of political economy – which was born precisely between the eighteenth and the nineteenth century out of a perception of the links between population, territory and wealth –

[24] M. Foucault, "Naissance de la biopolitique", cit.

[25] M. Foucault, "La politique de la santé au XVII siècle", cit.

[26] Cfr, G. Rosen, *A History of Public Health*, Baltimore and London, The John Hopkins University Press, 1993, p. 100. On the issue of the control of the population's mobility and productive capacity by the police see also G. Campesi, *Genealogia della pubblica sicurezza, Teoria e pratica del moderno dispositivo poliziesco*, Verona, Ombre corte, 2009, pp. 138-152.

"built around the discourse of increasing states' wealth".[27] Political economy marks the transition from the art of government to political science, from a "regime dominated by the structures of sovereignty to one ruled by the techniques of government".[28] The key issue that political economy is called upon to deal with is "by and large" that of preserving, keeping and protecting "labour force". It sets itself the "objective at best to make poverty useful by fixing it to the apparatus of production, at worst to lighten as much as possible the burden it imposes on the rest of society".[29] While the new technologies of government do not configure the population as a set of legal subjects, they do not simply conceive of it as a simple agglomerate of arms for work (even though this reduction may be found in some late eighteenth century theorizations, such as Bentham's). Their ambition is to tackle a broader problem: "the economico-political effects of the accumulation of men". The science of government that emerges in the eighteenth century aims at planning society, conceived "as a milieu of physical well-being, health and optimum longevity". It is characterized, first, by the appearance "of the health and the physical well-being of the population in general as one of the essential objectives of political power"; the production requirements take into account "the specific problem of the sickness of the poor […] in the relationship of the imperatives of labour to the needs of production".[30] "Medicine developed at the end of the eighteenth century for economic reasons", Foucault writes, in that it was supposed to "provide society with strong individuals able to work, to ensure the preservation of labour force, its

[27] G. Procacci, "Social economy and the government of poverty", in G. Burchell, C. Gordon, P. Miller (eds), *The Foucault Effect. Studies in governmentality*, Chicago, The University of Chicago Press, 1991, p. 154.

[28] M. Foucault, "La 'gouvernementalité'", now in *Dits et écrits*, Gallimard, Paris, 2001, vol. II, pp. 635-657.

[29] M. Foucault, "La politique de la santé au XVII siècle", cit.

[30] Ibid.

reproduction and its improvement. Medicine was resorted to as a means for preserving and renewing the labour force for the functioning of modern society".[31]

Foucault refers by "bio-politics" to the development of a range of policies innervated by the science of police. "Bio-politics" was born and developed out of the belief that the population is "naturally" dependent on a variety of factors that can be artificially modified. It develops with the new awareness that

> the power relationship with the subject or, more precisely, the individual, cannot be simply one of subjection, enabling power to take the subject's goods, wealth and, possibly, body and blood, but power must be waged upon individuals in that they make up a sort of biological entity, that must be taken into account in order to use the population as a machine for the production of wealth, goods or other individuals.[32]

In the eighteenth century police, says Foucault,[33] was concerned with "everything from being to well-being, all that well-being can produce beyond being". It is police activity that favours the transition from sovereignty to bio-politics and enables states to take the leap from the power "to let live and cause to die" to the power "to cause to live and let die". It is not concerned with man either as a being endowed with virtues or belonging to a given social status, or as mere owner of taxable wealth. The object of its interest is individuals' activity. The population is seen "as a mass of elements which, on the one hand, belongs to the general administration of living beings (population then depended on the 'human species': the notion, new to the period, is to be distinguish from the 'human genus') and, on the other hand, may provide a hold for concerted interventions (by the intermediary of laws, but also by changes in attitude, in ways of doing and living that may be

[31] M. Foucault, "Crisis de un modelo en la medicina?", *Revista centroamericana de Ciencias de la Salud*, n. 3, January 1976, pp. 197-209.

[32] M. Foucault, "As Malhas do poder", lecture given at the faculty of philosophy of the university of Bahia in 1976, first part published in *Barbárie*, n. 4, summer 1981, pp. 23-7, second part n. 5, 1982, now in *Dits et écrits, 1976-1988*, edited by D. Defert and F. Ewald, Paris, Gallimard, 2001, IV, p. 193.

[33] M. Foucault, *Sécurité, Territoire, Population, Course au Collège de France 1977-1978*, cit.

achieved by 'campaigns')".[34] Governing the population becomes *the* "political" problem and politics, "bio-politics", becomes an activity aimed at creating the conditions under which "being may be converted into well-being".

State administrators and physicians were aware that relying on the natural condition of health and fertility of populations was not enough for states' prosperity, but they had to take responsibility for removing obstacles to the full development of the 'population resource'. To this end, it was necessary "to create the condition for fostering health, preventing diseases and making medical treatment easily accessible to those in need of it."[35] As Giovanna Procacci emphasized,[36] hygiene is one cornerstone which bio-political technologies rest upon; for hygiene makes it possible to invent and justify the new rules of an orderly and decipherable coexistence: "rules for urban public hygiene, 'houses police', rules on hygiene in workplaces, marriage hygiene (of Malthusian reputation)". The positions held in nineteenth century England by the Public Health Movement of the lawyer Edwin Chadwick, one of the most significant supporters of bio-political technologies,[37] are indicative of the relevance of this hygienist-regulatory aspect of bio-politics, of how, if you like, government had to define the operational scope of economy rather than being limited to comply with it. In a report published in 1842, *Sanitary Conditions of the Labouring Population of Great Britain*, the Movement focused on the causal links between poverty and sickness and claimed it had "proved beyond any doubt" that diseases stemmed from precarious environmental conditions, polluted water supply, lack of sewage draining, untimely and insufficient collection of garbage.[38] The increasing economic *laissez-faire* of the industrial age was to blame for these

[34] M. Foucault, "Naissance de la biopolitique", cit.

[35] M. Foucault, "La 'gouvernementalité'", cit.

[36] G. Procacci, "Social economy and the government of poverty", in G. Burchell, C. Gordon, P. Miller (eds), *The Foucault Effect*,. cit., p. 165.

[37] A. Parodi, *Storie della medicina*, Torino, Edizioni di Comunità, 2002, p. 199.

[38] G. Rosen, *A History of Public Health*, cit., p. XXVI.

conditions. In the logic of Chadwick and other reformers, it was tantamount to a licence of exploiting the poor, the workers and in general the ever more numerous city dwellers.

The welfare state originates from the development of "bio-political" technologies. It is but the latest transformation of these technologies: after *medizinische Polizei, hygiène publique* and "social medicine", the welfare state is the latest technological instrument used by states to look after their population in order to increase their own economic (and military) power. The apparatus of the welfare state was born when the belief emerged that population management required a reduction in child mortality, the prevention of epidemics, the provision of sufficient medical facilities, and influence on individuals' living conditions through the enforcement of rules relating to food, environmental management and urban organization. The direct link between taking charge of the population and state power clearly emerged when Britain, at the time the leading colonial power, had such a difficult time coping with Afrikaner settlers during the two Boer Wars (1880-1881 and 1899-1902). Unsurprisingly it was in Britain itself that, towards the end of the nineteenth century, the first structures of the welfare state began to emerge. In Bismarck's Germany, too, the first moves towards a welfare state were made under pressure from aggressive Prussian policies at the end of the nineteenth century. During the twentieth century this kind of population management seemed able both to meet states' need for power and to "manage" workers' demands. Thanks to this ability, it developed throughout Europe with the two world wars and was consolidated as an essential device of economic reconstruction after Second World War.

Foucault's analysis shows how "bio-politics" rests upon two logics that appeared perfectly complementary for over one century. Bio-political technologies were born to strengthen state's sovereignty: it is *raison d'état*, state's ability to increase its power in the arena of international politics, that is both the measure of their functioning and the compass of their spreading. The development of state's power,

however, follows two tracks: the "disciplinary logic", for which government technologies are successful if they produce good citizens who can contribute to state power with their work, and the logic of "introducing economy within political exercise".[39] Even though, as Chadwick claimed, it is clear that economy can and should develop only within the context defined by "hygienic" policies, bio-politics allows the market to be the judge of the success or failure of government techniques, it favours the emergence of a purely economic standard of validation and legitimization.[40]

For over one hundred years these two locomotives, "hygiene government" and market, have run on parallel tracks, favouring the development of the state. Since economy seemed mainly to need disciplined workforce to grow, the developments of market and discipline seemed perfectly symbiotical, as in Bentham's design. During the last decades, however, the belief has become widespread that, while hygienic rules and discipline are surely techniques productive of power, they do not enable states to withstand the economic competition that secures their power. The belief has become more and more powerful that the market should be let free in order to consolidate state power. Thus we have seen the accomplishment of the economic *laissez-faire* that Chadwick harshly criticized. The relationship between state and market has been inverted. There develops "a state under the surveillance of market, rather than a market under the surveillance of state".[41] The market is no longer a principle of government's self-limitation that the sovereign imposes to himself in his political autonomy but "a sort of economic tribunal claiming to measure government action".[42]

[39] M. Foucault, "La 'gouvernementalité'", cit.

[40] Foucault defines it a criterion of "veridiction".

[41] M. Foucault, *Naissance de la biopolitique, Course au Collège de France 1978-1979*, Paris, Seuil-Gallimard, 2004.

[42] Ibid.

This is not simply an inversion of the relevance of political technologies and the market. The rise of the market to the only standard for assessing state's force has a devastating impact: it undermines the synergy between discipline and market. As much as government technologies require a full visibility allowing panoptical devices to operate, the domain of the market is a domain of interests that, Hayek taught us, condemns as a capital sin of *hybris* any attempt to subject it to a gaze making it intelligible and allowing for planned interventions in its dynamics. The market is refractory to the sovereign's ordering gaze, it claims the role of ordering element for itself. Being the best allocator of resources, it cannot be an object of government; on the contrary, it is the proper measure of the social utility of government's functions.[43] The globalization of financial markets has risen to an irresistible force that states need to comply with, giving up the governance of economy. A widespread ideology,[44] that seems to have resisted also the economic and financial downturn of 2008, holds that the new world of nomadic capital, unhindered by state-created barriers, will make everyone's lives better. Freedom of commerce and movement of capitals seem the humus allowing wealth to grow to unprecedented highs.

Since some decades, therefore, the market seems to have achieved its final victory: it broke the banks that confined it within state sovereignty, so that today it is state sovereignty that is inscribed within market logic. The relationship between the market and *raison d'état* has been inverted: yesterday, it was state reason that defined the modes of market's development in order to secure state power; today, it is market operation that defines the limits within which state reason can operate to secure the power of the state itself. Such an inversion entails a deep change: as long as the market could develop through government intervention guided by 'state reason', its development coincided with that of a population's well-being, by means of different government techniques that culminated in welfare policies. A state's power was

[43] Cf. ibid.

[44] A. Scott, "Globalization: Social Process or Political Rhetoric?", in A. Scott (ed.), *The Limits of Globalization*, London, Routledge, 1997.

connected with its ability to develop policies of inclusive citizenship based on the steady extension of rights and social welfare to new sectors of the population.

A given 'population', as distinct from 'workforce' and as a delimited portion of the 'human species', is defined by sovereignty: it is policies taking care of individuals that make up a specific population.[45] As soon as the market becomes the frame of state reason, it allows no more room for 'taking charge of the population'. Governing the population seems no longer possible. In this field, too, today the market rules: it is the arbiter of the demand and supply of population, of the valuing or devaluing of available human resources. People and commodities circulate quickly, or very quickly like financial resources: this obsoletes not only the very slow disciplinary devices, but all bio-political techniques, inescapably slow compared with market speed. What Foucault had not foresaw is that, with the globalization of markets (including the labour market), the population might become itself a "worldwide" resource, no longer tied to a specific sovereignty. Today, the population is just one of the many resources that must freely move rather than the main object of government activity.

Bio-politics rests on the assumption that every state has a given people and should work upon it by regulating the mechanisms of birth and death and by establishing life conditions: through bio-power a state regulates birth, disciplines lives and proceduralizes deaths. As a consequence of the mass migrations that have affected European states during the last decades, the population is no longer a predefined set of individuals to be operated through the regulation of births, lives and deaths. Paradoxically, the fulfilment of Foucault's prophecies on the emergence of the market as the element of "veridiction" of policies undermines the central notion of his analysis. Today's states cannot "govern" the population in Foucault's

[45] M. Foucault, *Sécurité, Territoire, Population, Course au Collège de France 1977-1978*, cit.; A. Pandolfi , "La 'natura' della popolazione", in S. Chignola (ed.), *Governare la vita. Un seminario sui Corsi di Michel Foucault al Collège de France (1977-1979)*, cit.

meaning. The population can now be redefined at any time by admitting or expelling migrants and marginalizing nationals. This change upsets the foundations of bio-politics and radically changes the problem of the political and social order. At least for the migrant portion of the population (but prospectively for all the population) it is no longer necessary to ask how "to set the 'able-bodied' poor to work and transform them into a useful labour force". Nor is it necessary to ask how "to assure the self-financing by the poor themselves of the cost of their sickness and temporary or permanent incapacitation".[46] Because of immigration the population can now be manipulated without limits. A state can select much more easily its own population: through a variety of inclusive or exclusive devices, it can build up a population that is only made up of actors capable to operate in the market, with no need to 'discipline' or support members of its own predetermined population who turn out unfit to it. There is no more need to produce 'good' citizens and 'useful' self-entrepreneurs: they can be simply selected.

Since the population is no longer seen as a given resource that needs to be cultivated and taken care of in order to increase state power, which marks the end of bio-politics, the prospect is one of a society where politics does no longer take responsibility for individuals and groups, is no longer devoted to (set up an environment for) their transformation and support, but is limited to filter and select them.[47] This change is a traumatic break with the liberal political and social order, as

[46] M. Foucault, "La politique de la santé au XVII siècle", cit.

[47] Foucault ("La politique de la santé au XVII siècle", cit.) writes: "hygiene as a regime of health for populations entails a certain number of authoritarian medical interventions and controls. First of all, control of the urban space in general: it is this space which constitutes perhaps the most dangerous environment for the population […] the needs of hygiene demand an authoritarian medical intervention in what are regarded as the privileged breeding-grounds of disease […] priority areas of medicalisation in the urban environment are isolated and are destined to constitute so many points for the exercise and application of an intensified medical power. […] Medicine, as a general technique of health even more than as a service to the sick or an art of cures, assumes an increasingly important place in the administrative system […] A 'medico-administrative' knowledge begins to develop concerning society, its health and sickness, its conditions of life, housing and habits". The fact that hygienic-sanitarian structures do not take charge of a significant sector of migrant people, those who entered Italy illegally, that there are no hygienic policies targeting them, is likely the sociological basis of the stereotype that leads to consider migrants as

we have known it for over two centuries. It challenges both 'bio-political' technologies and 'disciplines' that made keeping order possible in the modern age. This phenomenon, as Foucault says,[48] "calls knowledge into question, the form of knowledge, the 'subject-object' norm; it questions the relations between our society's economic and political structures and knowledge (not in its true and untrue contents but in its 'power-knowledge' functions)".

We are faced with "a historical-political crisis" that left us, at least for the time being, without models that can guide social integration. In this picture the social insertion of individuals is considered experimental, and any experiment should be monitored. To this end, a variety of selective filters have been created: individuals are put in society, but before admitting them as full members we check that society is willing to receive them and, later, we check for their interaction with society itself. If things do not work, we reserve the power to drive them out. Resistance to admitting in the national territory migrants recognized as already entitled to a significant range of rights is then perfectly logical: immediate grant of residence permit would not allow for 'testing' immigrants. As much logical is resistance to granting a residence permit that entails a definitive entitlement to that range of rights.

If "governmental" reason cannot and should not mean planning of the population's activities but only "strategic planning" of the conditions that make for the free competition of individual interests, irregular immigration, selective regularization, migrants' uncertain status are all optimal tools to regulate a population that is always halfway between *shortage* and *excess*,[49] to govern a society

the new *untori*, the spreaders of exotic disease though to have been debellated. The racist stereotype effectively signals diffidence towards a population that is not subjected to the controls that historically characterized the evolution of bio-politics.

[48] M. Foucault, "Naissance de la biopolitique", cit.

[49] Cf. G. Burchell, "Peculiar Interests: Civil Society and Governing `The System of Natural Liberty'", in G. Burchell, C. Gordon, P. Miller (eds.), *The Foucault Effect. Studies in Governmentality*, cit., pp. 119-150 and "Liberal Government and Techniques of the Self", in A. Barry, Th. Osborne, N.

where waged labour is considered an entrepreneurial activity and migrants' mobility a subjective investment in one's own capacity for self-valorisation. The mechanism of regularization, followed by the concession of short term residence permits, fits perfectly with this new model of order. These devices ensure that only if and as long as one manages to be accepted one is admitted into the population of rights holders. Thus, the typical path that migrants are required to take is characterized by a period of illegal residence and marginalization, during which individuals are tested: only those who prove to be 'fit for the market', that is, accept to live with no social security and no rights in a totally precarious condition, without disturbing, are admitted to the rank of 'regulars' and then kept for a long time on the razor's edge of short term permits. Hygienist and welfarist policies of social inclusion are therefore replaced by policies aimed at institutionalizing marginality within state territory: marginality becomes an organized social area towards which some sectors of the population can be directed, becomes the means for governing immigration (and citizens considered 'unfit' for economic competition).

Neo-slavery

The crisis of the schemes used to interpret social phenomena over the last two centuries, and a persisting inability to work out new maps for orientation, forces politics to change its role from one of expansive planning of social cohesion to one of merely defending the interests of the native population, often only of a limited part of it. Within such a scenario politics withdraws in a corner, gives up all ambitions of social planning and taking responsibility for the population and limits its role to an attempt to protect the well being and security of a restricted *demos* living in the democratic *polis*, trying to limit, at least for it, market risks (but without governing the market which is global, hence by definition outside of states' control).

Rose (eds.), *Foucault and Political Reason. Liberalism, Neo-Liberalism and Rationalities of Government,* Chicago, Chicago University Press, 1996, pp. 19-36.

The perception, bolstered by the ideology of globalization, that the resources states can use for social purposes are inevitably scarce overcame what we might call a Fordist belief that an increase of widespread well being is a condition for the increase of individual wealth. It has been replaced by the perception that securing rights for "native" majorities entails the exclusion of migrants (and, next in line, of "undeserving" nationals) from these rights. What most voters care about is to prevent an uncontrolled admission of migrants to citizenship rights from resulting in a considerable reduction of their own traditional social security. To put it more crudely, we might say that citizens, believing that social rights are a zero-sum game, fear that granting migrants the benefits of social welfare may further decrease their own benefits, which are already being reduced as a result of economic and financial globalization. This fear lies behind a number of measures meant to limit regular immigrants' access to social rights: from measures that make it quite hard or impossible for migrant workers returning to their homeland to combine social insurance contributions paid in Italy, to measures that exclude immigrants from many social benefits (invalidity pensions, mobility allowances, etc.) unless they have resided in Italy for at least five years and hold a minimum income higher than social allowance.[50]

This process has gone hand in hand with the criminalization of migrants, that is, the creation of a body of law that, taking advantage of the impossibility of regular entry for work reasons, contributes to the widespread belief that a migrant is an "offender", until proven otherwise. This result has been achieved with the introduction of different offences that, first indirectly and then directly, have made

[50] Article 40 of the 1998 immigration act established that a yearly residence permit was enough for receiving these benefits. Article 80, paragraph 19, of act 23 December 2000, n. 388 restricted entitlement to most benefits to the holders of a residence card (now, long term CE residence permit). Recently the Italian constitutional court, with judgements 306/2008 and 11/2009, ruled that non-EU foreigners cannot be denied mobility allowance and inability allowance simply because they lack the income requirements for the residence card, before, now long term CE residence permit.

irregular residence into a crime. The most significant example of indirect criminalization of illegal presence in the territory is legislation that introduced the offences of failure to exhibit residence permits to the police, even when the offender does not actually possess them; re-entrance without a visa after an expulsion; failure to comply with an order of expulsion. To this we should add legislation that made falsification of residence documents so serious an offence that it is almost less risky to exploit prostitution or push drugs than to pretend one is regular. To make a false residence permit or simply use a false one is punishable with detention up to six years, equal to the penalty for pushing soft drugs or for inducing to or exploiting prostitution.

Underlying this systematic criminalization there is an awareness that most public opinions could hardly tolerate that access to citizenship rights may be governed by xenophobic or racist criteria, and could not easily accept that migrants should be excluded from social rights because of their skin's colour or their 'uncivilized' manners. Nor would they easily accept the purely self-interested position that since we have few resources available migrants cannot ask us to give up our already endangered allowances and health services so that they may achieve an acceptable level of social security. Such approaches are only appealing to minority and often angry sectors of public opinions. Instead to make respect of law a key condition of access to citizenship rights seemed an aseptic and politically correct position: we cannot be sympathetic to those who commit crimes. Migrants commit many offences, therefore they are criminals, therefore it is not racism to exclude them from social rights. It is of little concern that in most cases criminal behaviour results from immigration laws forcing migrants to enter Italy illegally and then to regularize their position through the fiction of application for a "flows decree" or through one of the periodic explicit regularization measures. Thanks also to new penal laws specifically targeting migrants, in a situation in which lack of legal employment tend to move workforce to informal work markets or illegal markets that are usually more

remunerative[51] (especially in affluent societies where indulgence in "forbidden" pleasures like "drug" or "prostitution" is often seen as a way, not always stigmatized, of lessening the stress of work life), the link between extraneousness and deviance tends to become a self-fulfilling prophecy. A vicious circle of exclusion is created that originates from the actuality of social relationships. Evidence of the social rooting of this circle is the fact that labelling has not been managed by a social elite, but has been supported by traditional sectors of the wage-earning class. This class began to see the origin of negative phenomena like drug dealing and prostitution in the arrival of migrants that is, instead, an effect of them. Migrants arrive to a certain territory thinking they can occupy particular niches within the legal or illegal, formal or informal, jobs market, and they stay within them if they manage to secure these niches for themselves.

In this picture the presence of irregular migrants has emerged little by little as the supporting framework of our social system. The mechanism irregular entry – regularization has quickly become the basis of both political legitimization and market logic. From the former point of view, the repression of migrants has become the main arena of electoral competition. From the latter, migrants' illegal status favours their employment with ridiculous compensation and allows not only Italian businesses that could not afford paying legal wages to survive, but also Italian families to meet some basic needs that state welfare is unable to fulfil. A sort of creeping economicist racism has become widespread. This has been an almost imperceptible shift from viewing migrants as crucial resources for the productive system of goods and services, and at the same time as people excluded from the circuits of assistance and welfare, to creating a "neo-slave" model of social inclusion. There are recurrent media reports about migrants' harsh exploitation in the sectors of agriculture and building, partly because of frequent and sometimes deadly work-

[51] Some ethnic groups are associated with high rates of criminal behaviour more than others only because of the consolidations of channels connecting them with certain illegal markets.

related injuries. Less denounced, but more silently pervasive, is the emergence of a new welfare basing assistance of aged people, hence the possibility for younger family members to have a job and live an acceptable life, on the neo-slave-like exploitation of migrants.

The exploitation of migrant workers is not a solely Italian phenomenon, but is widespread throughout the European Union. The European Court of Human Rights dealt with the issue in the *Siliadin v. France* case,[52] in relation with the obligations of member states of the Council of Europe under article 4 (prohibition of slavery and forced labour) of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court held that, according to the 1927 convention on slavery, "slavery" means the status of a person subjected to the powers of a real ownership right, so that he or she is reduced to the condition of a mere object. The Court had to rule on the case of a young Togolese woman, brought to France by a French lady of Togolese origin, with the understanding that she would be employed as a domestic worker in her house until she could refund the journey's cost. The lady had also promised to provide her with education and the status of regular immigrant. But the young woman had had her passport seized and had been "lent" to a couple needing a baby sitter and a housemaid. In the new family the young Togolese woman had to work seven days a week and fifteen hours a day without vacations and salary. She would sleep on a mattress in children's room and so did not have even a space to enjoy some moments of intimacy. After managing to get back her passport, with the help of a neighbour the young woman denounced the couple. The latter was sentenced to refund unpaid salary and moral damages, but

[52] 2006-43 EUR. CT. H. R. 16, appl. N. 73316/01, judgement of 26 July 2005, http://www.unhcr.org/refworld/pdfid/4406f0df4.pdf. Cf. A. Di Blasi, *Il caso Siliadin contro la Francia: la decisione della Corte europea dei diritti dell'uomo alla luce della nuova normativa italiana in materia di tratta delle persone*, 20/9/2006: http://www.costituzionalismo.it/docs/siliadin.pdf; H. Cullen, "Siliadin v. France: Positive Obligation under Article 4 of the European Convention on Human Rights", *Human Rights Law Journal*, 2006, pp. 585-92; V. Mantouvalou, "Servitude and Forced Labour in the 21st Century: the Human Rights of Domestic Workers", *Industrial Law Journal*, 35, 4 (2006), pp. 395-414.

was not found guilty of violating any fundamental right. The European Court of Human Rights ruled that the young woman had been reduced to a condition of slavery and condemned France for not providing adequate means of protection against slavery and forced labour. The Court considered the condition of the young Togolese woman as one of "serfdom" but not "slavery" because she had been deprived of spaces for freedom, autonomy and privacy but had not been reduced to the condition of a mere object. The International Labour Organization Forced Labour Convention of 1930 prohibits all forms of labour or service imposed under coercion or threat of punishment. Besides detention and physical and sexual abuse, violence and threats that may configure forced labour include failure to pay salary or its withholding, the impossibility for the worker to extinguish his or her debts toward the employer, the seizure of passport and identity documents and, most of all, the threat of reporting them to the authorities.

Regardless of the technical legal definition given by international instruments, much sociological literature[53] and international organizations[54] for the protection of human rights use the term "slavery" in a broad meaning to denote also situations of servant or forced labour. Partly departing from technical legal terminology, I think we can usefully speak of "neo-slave forms of social inclusion" to refer to the working conditions being imposed to irregular migrants, not only in Italy, under the threat of reporting them to the authorities. As we have seen, this threat is considered a form of

[53] "Domestic slavery", to refer to a reality not extraneous to most wealthy countries, is a phrase used by Kevin Bales in *Disposable People: New Slavery in the Global Economy*, Berkeley, University of California Press, 2000; R. Jureidini and N. Moukarbel, "Female Sri Lankan Domestic Workers in Lebanon: a Case of 'Contract Slavery'", *Journal of Ethnic and Migration Studies*, 30, 4 (2004), pp. 581-607, speak in turn of "slavery contracts" with reference to Sri Lankan domestic workers in Lebanon. On ancient and new forms of slavery, cf. T. Casadei, "Schiavitù", in M. La Torre, M. Lalatta Costerbosa, A. Scerbo (eds.), *Questioni di vita o morte. Etica pratica e filosofia del diritto*, Giappichelli, Torino, 2007, pp. 26-68.

[54] Think, first, of the French Comité Contre l'Esclavage Moderne that played a key role in bringing the case of the Togolese young woman before the European Court of Human Rights. But all major associations for the protection of human rights, from Amnesty International to Human Rights Watch, generally speak of reduction to slavery to describe forms of exploitation of irregular migrants.

unlawful coercion of a migrant's will under the ILO Forced Labour Convention and is often accompanied by seizure of his or her passport by the employer or the organization that favoured the migrant's illegal entry. Therefore, this definition seems to me suitable to connote the spread of government policies and public rhetoric meant to keep migrant workers marginalized and vulnerable with respect to the actual enjoyment of their fundamental rights. And at the same time I think it is useful both to denounce the economic exploitation, the minimization of costs, risks and obligations for individual employers,[55] and to stigmatize the hosting society as a whole that takes advantage of this exploitation.[56]

In working out this "neo-slave" strategy of social inclusion Italy made a crucial step forward during the last year. The adopted strategy is quite clear and follows two parallel paths: one, by now traditional, of criminalizing migrants, and another aimed at creating a social desert around them, so that nobody may think of helping an exploited immigrant, like the Togolese woman's neighbour did in the case brought before the European Court of Human Rights. The deliberate perversity of Italian policies lies in their understanding that the first path makes an essential contribution to the functioning of the second.

Act 94/2009 finished the criminalization of migrants: under this law the entry and the staying in national territory without complying with administrative procedures is a crime. The shift from indirect to direct criminalization of irregular migrants had already been prepared the previous year, when act 125 had aggravated the penalties for offences committed by an illegal alien. The crime of "illegal presence" in the national territory was certainly not introduced to intimidate

[55] On this cf. C. Chin, *In Service and Servitude: Foreign Female Domestic Workers in the Global Economy*, New York, Columbia University Press, 1998; G. Chang, *Disposable Domestics: Immigrant Women Workers in the Global Economy*, Cambridge (MA), South End Press, 2000 e S.A. Cheng, "Rethinking the Globalization of Domestic Service", *Gender and Society*, 17, 2 (2003), pp. 166-186.

[56] On this see the interesting remarks by R. Trifiletti, "Paid and Unpaid Caregivers: How Damaged Family Configurations May Be Enforced or Reconstituted", in E. Widmer, R. Jallinoya (eds.), *Families as configurations*, Bruxelles, Peter Lang, 2007.

immigrants, who would be penalized with a fine from 5,000 to 10,000 Euros, that will certainly remain uncollectable. Its impact is, as such, purely symbolic: since, as we have seen, the possibility of legal entry for work reasons is only hypothetical, it completes the work of social construction of migrants as deviants. Almost all migrants who enter Italian territory are ab initio indictable for the new offense, and therefore "criminals". The law has a very real practical aspect, too: it is not meant to intimidate migrants, who risk their lives and undergo such extreme conditions to arrive in Italy as to make even a prison or a court room look comfortable, but to scare Italian citizens. The new criminal law requires public officials and, more importantly, all those charged of a public service, to denounce the illegal immigrants they know of. In this way undocumented migrants, who until now had only to fear the police, now should keep away from any public service, even if it is managed by a charity, because its operators are required to report the irregularity of their situation. It is not very important that the law allows also irregular migrants to request urgent medical assistance or enrol their children in school without fear of being reported, or that in many cases officials are not bound to report them because they are acting in a state of necessity (migrants risk starvation or freezing and because of this they are accepted and offered shelter), or that irregular migrants are not punishable if they are exercising their rights (for instance, they report to an official in order to denounce their exploitation). What matters is the message being conveyed: these rules are meant to persuade illegal immigrants to become even more invisible and silent, to discourage them from asking someone for help, and to instil in Italian citizens the perception that it is dangerous to deal with them.

This climate makes the reduction to slavery of irregular foreign workers easier. But Italian legislation took care of increasing the isolation also of regular migrants, by once again drastically reducing opportunities for their parents and adult children to join them in Italy. It is important to keep in mind that the precariousness, isolation and weakness, also psychological, of regular workers are a key element that

justifies counting them as part of the neo-slave system of integration. A migrant, even if regular, can be nevertheless weak and scared because of the abyss in which the irregular condition – resulting from unemployment - has been transformed. In this situation a regular migrant cannot oppose much more resistance than an irregular migrant to the proposal of work conditions that can be defined servile in legal terms.

Data of applications for the last round of regularization, reserved to irregular migrants working as caregivers or domestic workers and expired on 30 September 2009, clearly show that Italian nationals fully understood the government's message. Trade unions, the Caritas,[57] government agencies, sociologists, research institutions such as CENSIS and ISTAT estimated that there were about one million irregular caregivers and domestic workers in Italy and forecast that at least 60 percent would apply for regularization. Also, it seemed logical to add to his number a quota of illegal workers in other fields who could find a friend or a relative[58] or a profiteer, the latter for money, to help them pretend they are working for families. Thus, about 700,000 applications were expected. On expiration of the deadline, actual applications turned out to be about 300,000, less than one half of the expected number. On the one hand, many did not dare help irregular aliens to become regularly resident workers,[59] partly because the law was (deliberately?) ambiguous on the immunity from prosecution of those declaring to have been employing an irregular immigrant.[60] On the other hand, Italians understood that, since new regulations

[57] Parishes and associations are often the informal channels and the terminals for the meeting of supply and demand of care work.

[58] Keep in mind that the regularizing employer could be an alien holding a long term CE residence permit.

[59] This fear is likely to have particularly affected those who had to make a partly false statement declaring that the domestic worker was working at least 20 hours a week. This schedule threshold was required by regularization act 103/2009. However, it is infrequent for a domestic worker to work twenty hours a week for a single family. Normally they work from 4 to 8 hours per family, therefore their regularization could be possible only if one of the employers declared to be employing also the hours worked for others.

[60] In particular, article 1 *ter*, paragraph 11, of act 3 August 2009, n. 102, provides that "signing of the residence contract, together with the mandatory notification of the hiring provided for in paragraph 7, and the issuing of the residence permit entail, for the employer and the employee respectively,

would allow an even more intense exploitation of irregular immigrants, there was no real reason for regularizing them. If the estimated number of illegal family and domestic workers was correct, at least half a million Italian families thought so. Incentive to the use of illegal work overcame the reasonable demand for domestic and collective security.

The definite propensity of Italian policies towards the neo-slave system of integration is clear in the developments of the latest "flows decrees". Arguing that the economic downturn is creating unemployment and so there is no need of new workforce,[61] the government decided that only seasonal workers should be admitted for 2009. Since the "flows decree" has effectively become a measure of regularization, the decision not to allow new migrants is instead a clear message from the government to small businesses:[62] while there is not much that I can do to help you out of the economic downturn, I can protect you against the pressures of your employees who demand regularization, so that you can go on exploiting them and

immunity from offences and administrative infractions related to the violations mentioned in paragraph 8". Offences and administrative infractions referred to are entry and stay in the national territory, for the migrant, and the illegal employment of workers, including financial, fiscal, pension-related and assistance-related violations, for the employer. Therefore, on the one hand, renting an accommodation to an irregular migrant can still be prosecuted and, on the other hand, an unsuccessful application for regularization might turn into a dangerous self-incrimination by the employer and the irregular migrant. Since offences remain punishable unless a residence contract is signed, once notified they should be prosecuted. We should keep in mind that the failure of an application may depend on elements that can hardly be known by the employer, and also by the migrant. In particular, it is hard to know whether the alien has been reported as persona non grata to the Schengen information system of another member state of the European Union, which would prevent regularization.

[61] In order to protect workers who risk losing their job – the home secretary declared – the government accepted to consider the possibility of suspending the issuing of new flows decrees for two years, in particular with respect to productive sectors affected by the ongoing economic downturn. Clearly, the only protection offered by this decision to workers risking to lose their job is the guarantee that irregular workers will be "sent away" – we cannot speak of dismissal – before them, since they have no official existence and no legal protection against termination of their job.

[62] An indication of the definite turn towards neo-slave-like integration had already been given by the failure to pass the triennial programmatic document, concerning the policy of immigration and aliens in the state territory, that, under article 3 of immigration law, is supposed to lay down the general criteria for defining yearly inflows.

capitalize on all the savings that you can make with their undeclared work. Forms of neo-slave social integration are being relied upon to help small businesses survive the economic downturn, whereas the regularization of foreign workers will be on the agenda after the end of the downturn. Thus on December 2008 the Prime Minister signed a decree that formally allowed the entry of 150,000 nationals of non-EU states in search of non-seasonal jobs, but created no real incentive to regularize factory workers. In fact, the government decided to re-examine in chronological order the unsuccessful applications filed under the 2007 "flows decrees" until 31 May 2008. Formally, businesses have been allowed to hire an employee and families to hire a caregiver or a domestic worker they needed two years before. This would be making fun of employers who, two years on, have surely found a way of solving their problems of lack of workforce. But, from a substantial point of view, the measure has been a serious answer to their demands: for it allowed the regularization of people who were still working for an employer that had already stated his or her willingness to bring them out of illegal labour, while, on the other hand, creating no pressures by other irregular workers. To this it should be added that the "flows decree" is chiefly characterized as a sort of anticipated regularization of caregivers and domestic workers, for it reserves to them over one hundred thousands applications (exactly 105,400 out of 150,000), that is over two thirds of allowed regularizations – formally job offers.[63] This choice, too, is not casual for, as we shall see and is shown by the data of overt regularizations, caregivers and domestic workers are the people with the weakest bargaining power. For this reason they can hardly urge employers to

[63] It is worth noticing that, in order to make "solidarity" regularizations more difficult, the government decided not to authorize job offers by migrant employers who, by the time the decree entered into force, did not hold a long term CE residence permit. A few month later this limitation has been reiterated by the regularization act for caregivers and domestic workers. Job offers by foreign employers were 48 percent of those relating to domestic work and the government thought it was implausible for immigrants resident in the Italian territory to need the same amount of family help as the whole Italian population. While the government's suspicion was surely grounded, we should notice incidentally that the government seems to have no problem with "blackmail" regularizations, that is, applications by fake Italian employers who get much money to declare they are employing a migrant that they are going to dismiss immediately after signing the residence contract.

regularize them; even if they were regularized, they would take contract positions and wages disproportionate to their actual jobs.

To give a detailed example of how the new policies of neo-slave integration develop, I will dwell precisely on the sector of domestic work that, as mentioned above, together with building and farming is the sector where the phenomenon seems macroscopic. Focusing on what is happening in the sector of domestic work is important because, whereas the areas of building and farming involve a few thousands employers, the sector of domestic work is silently and unnoticeably disseminating the idea that the neo-slave system is inevitable and therefore legitimate to hundreds of thousands of Italian households: this sector is making a decisive contribution to establish the belief that the only solution to the problems of the restriction of state welfare is the exploitation of immigrants. Since the reasons that make domestic help seem necessary and legitimate, almost a right, especially when there is a family member needing continuous assistance,[64] play a crucial role in this legitimization, we should begin with analysing the reasons for the re-emergence of a phenomenon, domestic serfdom, that seemed bound to disappear in the modern age.[65]

More and more Italian families entrust their children and aged relatives to immigrant women workers. Traditionally, as Chiara Saraceno often remarked,[66] the Italian welfare system, less universalist than Scandinavian systems, rests upon a

[64] Thus, it is not casual that the recent regularization was reserved to migrants working in the sectors of domestic help and family assistance. Already in 2002 the government was considering to regularize only those workers, even though the Parliament later admitted all irregular foreign workers to regularization. But by then small business had not yet been touched by the downturn and could afford regularizing their employees.

[65] On this see the excellent essay by Brunella Casalini, "Schiavitù domestica e mercificazione del lavoro di cura in epoca di globalizzazione", in T. Casadei, S. Mattarelli (eds), *Il senso della Repubblica. Schiavitù*, Milano, Angeli, 2009.

[66] C. Saraceno, "Continuities and Changes in the Gender Structure of the Welfare State: The Italian Case", paper presented to the conference *Comparative Studies of Welfare State Development*, Bremen, 3-6 September 1992.

continuity between the family and the labour market of which women are the supporting framework. They are supposed to provide the connection between these two spheres and to be responsible not only for translating welfare resources into answers to family demands but for meeting family needs that cannot be satisfied by state welfare. On the one hand, this means that many Italian women found themselves trapped in what Robert Merton would define a classical "anomic situation".[67] They had to obey two rival social imperatives: taking responsibility for a family and having a job that could allow them to access full active citizenship.[68] In order to escape this anomic trap women started to delegate domestic work and the assistance of more dependent family members to immigrant women. On the other hand, the expansion of high income professional[69] and managerial jobs led to an increased demand for personal services or, better, for care and assistance jobs. As emphasized by a recent CENSIS research,[70] this demand almost spontaneously met with the large supply of low salary workforce provided by immigrant workers.[71]

[67] Cf. R.K. Merton, "Social Structure and Anomie", *American Sociological Review*, 3 (Oct. 1938), pp. 672-82, then republished in R.K. Merton, *Social theory and social structure*, New York, Free Press, 1957.

[68] As Casalini emphasizes ("Schiavitù domestica e mercificazione del lavoro di cura in epoca di globalizzazione", cit.) feminists have always seen paid work as a necessary element for full access to citizenship. On the issue see also L. Bonskiak, *The Citizen and the Alien. Dilemmas of Contemporary Membership*, Princeton, Princeton University Press, 2006, in particular chap. V, titled "Borders, Domestic Work, and the Ambiguities of Citizenship".

[69] It is worth emphasizing that under act 103/2009 the regularization of a domestic worker required a minimum income of twenty thousands Euros a year, but according to data from the inland revenue service professionals and independent workers earn less or barely make to that income. Therefore, tax breaks and cheats prevented those who are likely the main users of migrant women's care work from regularizing their employees.

[70] CENSIS, *Un mese di sociale. Gli snodi di un anno speciale: 2. Il sociale non presidiato*, http://www.censis.it/files/Ricerche/2008/2Mds2008.pdf.

[71] On the distribution of care work, already fifteen years ago Joan Tronto wrote: "Caring if often constituted socially in a way that makes caring work into the work of the least well off members of society. It is difficult to know whether the least well off are less well off because they care and caring is devalued, or because in order to devalue people, they are forced to do the caring work. Nevertheless, if we look at questions of race, class, and gender, we notice that those who are least well off in society are disproportionately those who do the work of caring, and that the best off members of society often use their positions of superiority to pass caring work off to others" (J. Tronto, *Moral Boundaries: A Political Argument for an Ethic of Care*, London- New York, Routledge, 1995).

These factors have reintroduced, to an extent unknown for a long time, the idea of a "servant class" for high income families. In this picture, as Saskia Sassen stressed, "the immigrant woman serving the white middle class professional woman has replaced the traditional image of the black female servant serving the white master".[72]

It should be said beforehand that the invisibility and darkness of the domestic space is an ideal place for the development of neo-slave-like relations. Given the worker's condition of isolation and solitude, the domestic space lends itself to the most deceitful forms of exploitation. Both their living in the employer's house and their lack of a real work schedule prevent domestic workers from cultivating their own private life and personality. As we have seen, the European Court of Human Rights holds that slavery in a strict meaning is characterized by the worker's becoming a property of the employer. Well, the condition of irregular caregivers sometimes comes quite close to this condition: irregular migrant women working as caregivers and living in the employer's house[73] cannot take advantage of that physical separation between work place and private home that is crucial to draw a line between labour time and private time. This distinctions, with all its implications, is the key difference between a waged worker and a slave. Irregular migrant women are often forced to work twenty four hours a day and to abandon their family or the idea to have one,[74] they have to suspend their network of family and social relations

[72] Cf. S. Sassen, *Globalization and its discontents. Essays on the new mobility of people and money*, New York, New Press, 1998.

[73] According to a CENSIS research released to the press, whose final report has not yet been published (cf. *la Repubblica*, 12 August 2009, http://www.repubblica.it/2009/08/sezioni/cronaca/immigrati-10/censis-badanti/censis-badanti.html), 35.6 percent of the estimated one million and a half foreign domestic women workers currently in Italy, lives stably with the employing family; this is over half a million people who can be easily imagined to work as caregivers for dependent family members rather than as domestic workers.

[74] According to the CENSIS report mentioned above, about 72 percent of domestic workers and caregivers are of foreign origin, and 57 percent are under 40 (87 percent are under 50). Thus, we should wonder what kind of emotional and sexual life these people can live, but also how can the

for several years: in fact, they must give up the idea of having their "own" life. The private share of their life is *octroyée*, depending solely on the employer's generosity, for claiming whatever right would cost them the expulsion from the national territory.

Under this respect the condition of domestic workers who do the cleaning in Italians' houses is much less grievous of that of caregivers who are forced to live together with their employers. Normally working for different employers in different days, having fixed schedules and a separate home make their stay in Italy an opportunity for autonomous life, independence, including economic independence, and positive relationships with other people. This is so even though their work can be quite hard and unfairly compensated because of their weak bargaining power resulting from their illegal condition. It should also be noticed that caregivers' work is very demanding in emotional terms and is often painful, and a severe test for their capacity for resistance. Thus, it is not surprising that, as shown by a research by Rossana Trifiletti,[75] migrant women prefer cleaning work, a hard and often degrading work but much less difficult than the psychological management of a sick and dependent old person whose condition is bound to become only worse, making care work more and more painful.

needs of their relatives at home be met. For migrant women who fill the "care" gap of richer countries create a similar gap in their countries of origin. These women often leave their children and their aged in their country, entrusting them to their mothers or sisters or to other less educated and wealthy women. Thus, the employment of foreign women for care work in rich countries deprives their countries of origin of fundamental resources. This phenomenon, too, makes a decisive contribution to make poor countries ever poorer and rich countries ever richer. The literature speaks of a caring drain similar to the brain drain; cf. A. Russell Hochschild, *Love and Gold*, in B. Herenreich, A. Russell Hochschild (a cura di), *Global Woman. Nannies, Maids and Sex Workers in the New Economy*, London, Granta Books, 2002, p. 17. The Philippines, where care work is the main exported resource and immigrant remittances are the country's main source of foreign currency, is starting to experience a strong negative impact, emphasized by the press, on the lives of younger generations who grew up with absent or remote mothers (cf. R. Salazar Parrenas, *The Care Crisis in the Philippines: Children and Transnational Families in the New Global Economy*, in B. Herenreich, A. Russell Hochschild (ed.), *Global Woman*, cit., pp. 39-54).

[75] R. Trifiletti, *Nuove migranti, lavoro di cura e famiglie trasnazionali*, in P. Villa (ed.), *Generazioni flessibili. Nuove e vecchie forme di esclusione sociale*, Carocci, Rome 2007, pp. 148-169.

Another important aspect of the care-giving job market is that, as emphasized also by the aforementioned CENSIS research,[76] "with respect to the specific reality of assistance to dependent people" the channels of legal entry for foreign workers "are irrelevant, implausible, ineffective". A caregiver is often chosen under the pressure of two basic needs. The first is "the need to find a caregiver who is reliable, skilled, trustworthy", which of course "forces families to restrict the search for a live-in caregiver to people who are physically present in Italy and can be contacted, seen, evaluated, possibly by testing them for a short time". When the drama breaks out of a family member becoming dependent, there begins an "often excited time of meeting and evaluation under the urgent need for care, followed by the beginning of an employment relationship". The idea that a family needing assistance help can wait for the "flows decree", and choose a person they have never seen before and cannot see because she is thousands miles away, and wait a year, at best, for her to arrive in Italy, seems offensive to common sense even more than to a family with its serious problems. The second need is for family to respect the constraint "of available resources that often must be the income of the aged person's pension, possibly integrated by freely usable subsidies (from mobility allowances to care-giving checks, to vouchers or financial support for dependent people)". The latter need implies that competition between caregivers is not about their assistance skills but their willingness to accept a reduced salary and sacrifices: for the choosing family, the caregiver's compensation for assisting the dependent member is, if not the only, surely the main parameter that is often considered.[77]

[76] CENSIS, *Un mese di sociale. Gli snodi di un anno speciale:2. Il sociale non presidiato*, cit., p. 18.

[77] Among other things, this criterion of selecting caregivers has a significant impact on the quality of the assistance of dependent people. For, because of this criterion, only in a few cases caregivers are professionals or simply people who speak and understand Italian well enough to have a satisfying interaction with the assisted people or their families. This has obvious implications, for instance, for the respect of prescriptions about the proper use of drugs and the capacity correctly to perceive and report the health conditions of the assisted person.

Faced with the impressive increase in the number of dependent people, which CENSIS estimates is today almost 3 millions, Italy has opted for what the research institute defines "low cost assistance".[78] On the one hand, home assistance of dependent people is a duty for many Italians who think family bonds (in particular of children to parents) imply responsibility for the care of a person needing continuous assistance. On the other hand, it is imposed by the lack of credible and viable alternatives, since residential facilities appear insufficient, for number and quality, to meet the assistance requirements of dependency, and the only kind of state provision for aged people in Italy is in fact the mobility allowance for dependent people.

CENSIS emphasizes that Italian state welfare cannot keep up with an aging population. Assistance of dependent people is a sector where the impact of the demise of the conception of the population as an entity for which government must take responsibility, hence of the horizon of social integration as the guideline to the design of social intervention, is clearly visible. As stressed by CENSIS, this sector is characterized by an effective "emptiness of the institutional network, partly resulting from an almost perplexing lack of programming". While originally this inertia was due to the state's having no idea, given the available resources, of how to deal with the problem, today it seems to be silently deliberate. The emptiness of social planning has been "quickly filled" by the meeting of an increased demand for assistance of an aging population with the increasing jobs supply of migration flows. A spontaneous process from below, made up of the countless streams of informality – and illegality – allowed the demand by aged people and their families to meet with the supply of women (but also men) coming from the new world epicentres of immigration in search of jobs and income.

The costs of home assistance are too high for many, in particular for aged people and mostly for aged women who live on a pension that is usually lower than

[78] CENSIS, *Un mese di sociale. Gli snodi di un anno speciale:2. Il sociale non presidiato*, cit., p. 18.

that of men.[79] Mobility allowance itself is not a big economic relief: it amounts to 472 Euros per month and is received by a little less than 10 percent aged people. On the other hand, home assistance provided by the national health service and municipalities to a tiny number of dependent old people is the classical drop in the bucket. Home assistance paid according to legal standards and sufficient to assist the person for 20 hours a day and 6 days a week should require two caregivers to cover night and day (legal standards allow 54 weekly hours maximum per caregiver) and would cost, including 13th month's pay, pension contributions and leaving indemnity, about 2,700 Euros per month, which is about 32,000 Euros a year. Clearly, only a few retired people can afford this service, and even those receiving mobility allowance, which amounts to 5,664 Euros a year, have little help to cope with this situation. The situation is not much better if we shift attention from the elderly to their families. According to the Supplement to the statistic bulletin of the Bank of Italy, *I bilanci delle famiglie italiane 2006*,[80] 12.8 percent Italian households earn less than 11,800 Euros, 11.35 percent between 11,800 and 15,300, 10.15 percent between 15,300 and 19,000, 10.3 percent between 19,000 and 22,200, 9.8 percent between 22,200 and 26,100, 9.3 percent between 26,100 and 30,600, another 9.3 percent between 30,600 and 36,300, 9.2 percent between 36,300 and 43,300, 8.9 percent between 43,300 and 55,700, and 8.8 percent over 55,700. It is evident from these data that only that 8.8 percent of Italian families earning more than 55,700 Euros can afford – not easily for incomes near the lower bottom – to provide their dependent members with assistance paid according to legal standards.

[79] In Liguria, the Italian region with the highest percentage of aged people, where caregivers are 40,000 (compared with 39,000 factory workers), "the average pension is 850 Euros per month, but 60 percent receives less than 600. A place in a rest home costs between 1,500 and 2,000 Euro per month, a foreign caregiver between 1,200 and 1,400" (G. Visetti, "Liguria il paese con i capelli bianchi", *la Repubblica*, 5 June 2008, pp. 1, 37, 38, 39).

[80] http://www.bancaditalia.it/statistiche/indcamp/bilfait/boll_stat/suppl_07_08.pdf.

Clearly, the situation becomes much better if the costs of assistance go down to about 15,000 Euros a year, the average cost according to CENSIS.[81] Moreover, it should be noticed that the average cost estimated by CENSIS is calculated for all kinds of domestic workers and caregivers, whether legally or illegally employed. Considering that, for the reasons already mentioned, caregivers have less bargaining power than domestic workers and illegal workers surely earn less than the average, the actual cost of an illegal caregiver is likely to be noticeably lower, probably around 9/10,000 Euros a year (in any case a bit less than twice the mobility allowance, even though the exact figure varies in different geographic zones), and the number of families that can afford paid assistance for their dependent loved rises accordingly. At this effective cost, the 35.7 percent of Italian families that earn less than 36,300 Euros per year are likely in a position to pay for the assistance of their dependent relative, with some sacrifices but, if they can rely on the aged person's pension, without having to starve.

Thus, the costs of home assistance are low because irregular foreigners, owing to their weak bargaining power, accept working conditions and wages much worse than legal standards. According to the research institute, irregular migrants are "a breather for low income families" which allows them to find, although with some sacrifice, an answer to their urgent and otherwise unaffordable needs for assistance.[82]

It is worth emphasizing that this phenomenon of privatized care giving does not result from the dismantling of state welfare: in Italy there has never been social welfare in this sector. The need for assisting dependent people has emerged in a period of apparent contraction of social welfare and increasing migration pressure. A family-based model of assistance, firstly developed on small scale given institutions'

[81] According to forthcoming data from CENSIS, (cf. *la Repubblica*, 12 August 2009, cit.) domestic workers work on average 35 hours a week and earn about 930 Euros net a month. The data about working hours should be weighed by the fact that it concerns both domestic workers, who have usually more certain and humane working schedules, and caregivers.

[82] CENSIS, *Un mese di sociale. Gli snodi di un anno speciale: 2. Il sociale non presidiato*, cit., p. 18.

inability to cope with the problem, gradually became a large scale neo-slavery-like model. The utterly unrealistic rules of immigration policies have supported and favoured this phenomenon. After all, from a merely economical standpoint the neo-slavery solution is definitely a convenient and rational choice. As the authors of the GALCA (acronym for *Gender Analyses and Long Term Care Assistance*) European research emphasize, Italy's tacit neo-slavery-like choice allowed it to satisfy the national preference for a family-based long term assistance while keeping costs low.[83] The costs of the Italian model are lower[84] than those of both the Danish model, which relies on state-funded public and private services for assistance, with no charges for families, and the Irish model where the much lower percentage of the aging population and a much more limited number of irregular migrants led to a system in which it is mostly women who take care of assisting dependent people within families, and often leave their jobs or reduce working hours to devote themselves to assistance.[85] For the time being, the neo-slavery-like management of caregivers has allowed Italians to deal with the problem by "cutting" on welfare expenditure and reducing overall costs for families.

The view that this is an intrinsically neo-slave system and cannot allow for regularly employed caregivers is supported by at least two givens. First, even though migrant caregivers often work twice as much as the maximum number of hours

[83] GALCA *Project,* GENDER ANALYSES AND LONG TERM CARE ASSISTANCE, *Final Report,* http://www.fondazionebrodolini.it/OrganizationFolders/FGB/6646.pdf.

[84] Costs are in any case very relevant. According to forthcoming data from CENSIS, (cf. *la Repubblica*, 12 August 2009, cit.) 71.6 percent of the estimated one million and a half domestic workers in Italy is of foreign origin. As mentioned above, they work on average 35 hours a week, earning about 930 Euros net a month. Therefore, households spend about 18 billions Euros a year on these women workers. By cross-checking these data and those indicating that one third of them lives in the employer's house, and are therefore likely caregivers, we can see that Italian families spend at least 6 billions Euros a year on these silent replacements for state and municipal agencies responsible for social services. It is a massive flow of resources from families towards society, following therefore a reverse path compared to that characterizing state welfare.

[85] Estimates of the GALCA research indicate that women's giving up employment, or full time employment, to devote themselves to care is by far the most costly choice; cf. GALCA *Project,* GENDER ANALYSES AND LONG TERM CARE ASSISTANCE, *Final Report,* cit., p. IX.

permissible for a single worker, once regularized they sign contracts for twenty working hours, which is the minimum requirement to obtain a residence permit. The persisting bargaining weakness of regularized migrant women, and possibly an often understood blackmail undergone to obtain an *octroyée* regularization, do not allow migrant women to protect their rights. The second given, even more disquieting, is that over 20 percent of migrants that had been regularized through the measure of 2004, in 2007 were no longer registered with social security for domestic work: this indicates a likely relapse into illegal employment, hence into "clandestine" residence, because the residence permit depends on regular employment.

The planning emptiness emerges even more dramatically from a prospective analysis of the neo-slavery model's ability to solve the problem of assisting dependent people. What is considered today as a convenient solution to avoid dealing with "a social and economic model that creates a tension between the search for individual self-realization in the labour world and in the public space, and ideals of family life that are as much demanding in terms of energy and care work spent in home making, educating and growing children, paying attention to the elderly and generally dependent individuals",[86] appears totally untenable as soon as we take a look at the near future,. The neo-slavery model seems unable to last beyond the current generational transition, because of both foreseeable domestic demographic and social changes – rising number of grandparents, falling number of granddaughters, longer duration of labour life – and improvement of economic and life conditions in the countries (first of all Eastern European) where many caregivers are from. As the GALCA reports forecasts, these elements are likely to undermine the unstable balance that currently makes low cost assistance possible and to raise the costs of care work for dependent people.

[86] B. Casalini, "Schiavitù domestica e mercificazione del lavoro di cura in epoca di globalizzazione", cit.

Caregivers and domestic workers are nowadays a necessity for one tenth of Italian families. According to CENSIS, 2 millions and 451 thousands families hire a domestic worker or pay for the assistance of an aged or disabled relative, which is 10.5 percent of the total.[87] According to recent estimates, today in Italy caregivers and domestic workers are more than one and a half million overall, 37 percent more than in 2001, and about half of them are irregular.[88] This army is going to grow larger every year, given the expected huge increase in the number of over-eighty and over-ninety people.[89] A good many of them will be affected by some physical, mental or cognitive deficit[90] and this will make survival in one's home difficult,[91] especially for aged people who are going to be alone, which will likely be the case for many married women who statistically survive their spouse in 5 cases out of 6. We should also bear in mind that, owing to the big drop of the birth rate, the number of adult children able to provide their parents with economic or psycho-social assistance is rapidly decreasing. Whereas almost all of today's thirty-years-old have (or had) two parents that are going to grow old, not all old people have and, most importantly,

[87] Data taken from the aforementioned press release of a research whose final report has not yet been published, cf. *la Repubblica*, 12 August 2009, http://www.repubblica.it/2009/08/sezioni/cronaca/immigrati-10/censis-badanti/censis-badanti.html.

[88] According to data collected in the 2007 report of the Istituto di ricerche educative e formative, in Italy there are 745 thousands domestic workers registered with social security. As mentioned above, irregular domestic workers before the regularization measure were an estimated one million. 50 percent caregivers work for aged people over 65 (cf. *la Repubblica*, Monday 11 February 2008, p. 17).

[89] Again according to the forthcoming data of CENSIS, between 2001 and 2008 the number of domestic workers and caregivers grew from 1 million 83 thousands to 1 million 485 thousands, marking a 37 percent increase (cfr. *la Repubblica*, 12 agosto 2009, cit.).

[90] While dependency affects a number of youths and adults, victims of diseases or injuries, most totally or partially dependent people are aged and there is a close connection between aging and the possibility to become totally or partially dependent (according to ISTAT, 47.6 percent of people over 80 and 19.3 percent of those over 65 or older suffer from some form of disability). CENSIS, which estimates over 2 millions 270,000 dependent aged people in 2004, thinks that by 2025 they might become over 3 millions 500 thousands, equal to 24 percent of total Italian aged population.

[91] It should be kept in mind that even the elderly that reach this age in acceptable health conditions often lack sufficient resources to face everyday life's problems, including frequent and uneasy bureaucratic duties.

will have children, given the demographic trend of the last years. More and more people are single or are not willing or able to have children. Not only: the increasing number of marriages that break down makes children "part-time children" with respect to their biological parents, and this is making private home assistance of people with children more and more precarious.

These data, relating to the endogenous factors of the impending foreseeable crisis of the neo-slave system of assisting aged people, should be complemented by caregivers-related data. In particular, besides the steady foreseeable improvement of life conditions in domestic workers' countries of origin, we should consider that, according to CENSIS forecasts, even though most caregivers currently living in Italy are still under 40 (18 percent is under 30 and 39.3 percent is between 30 and 40), a significant quota is aging: 13.6 percent is over 50, 29.1 percent is between 41 and 50. These people are facing a nightmare old age. For, while over the last years low cost assistance for the elderly has been structured by the key role of tens of thousands invisible women workers, this system has provided them with no prospective of a safe and stable life in Italy. According to CENSIS estimates, only a little more than one third of foreign caregivers can think of planning their lives in Italy: namely, the nationals of a EU member state or those who obtained Italian citizenship or a long term residence permit. The rest – about one million people – have always or almost always been employed illegally and after regularization have always had short term residence permits. And this, CENSIS emphasizes, in spite of the fact that, on average, they have been living stably in Italy for 7 years and a half and have been performing care work for 6 years and 5 months.[92] These migrant women have no prospects of living a quiet old age either in Italy or in their countries, after years of very hard work, because they never had their pension contributions paid, if not for a negligible amount and a very short time.

[92] Cf. *la Repubblica*, 12 August 2009, cit.

While it is far from clear how the problem of assisting the dependent elderly will be solved in Italy over the next years, it is safe to predict that the sense of insecurity is becoming stronger with the spread of an awareness that many old people will not be able to live their last years in an acceptable way. It is as much safe to predict that the first victims of the crisis of the neo-slave system will be irregular migrant caregivers themselves. They will be the first to suffer the consequences of households' reduced ability to provide their aged members with assistance and it is an easy prediction that they will be requested to work even harder for an even lower wage.

A regulação da imigração como uma questão social: da cidadania inclusiva à neoescravidão

RESUMO:
Hoje, os estados nacionais não mais precisam edificar e cuidar de suas populações enquanto requisito para assegurar seu poder. Eles simplesmente podem selecionar ondas de migrantes (enquanto cidadãos) por meio da regulação de entradas e expulsões. A democracia, que foi caracterizada por mais de dois séculos pelo seu potencial de inclusão social, se tornou nas sociedades ocidentais um dispositivo de exclusão em que a classe "estabelecida" regula acessos aos direitos por meio de políticas migratórias e prisões. Este é o contexto da migração italiana que, pela produção da impossibilidade virtual da entrada de trabalhadores imigrantes, cria um mecanismo que opera no maior ou na menor irregular presença dos imigrantes e também em qualquer evento que produz seu status inteiramente incerto, forçando-lhe uma vida sobressaltada pela possibilidade de voltar para a irregularidade. No custo social e político desta ilegalidade difusa, esta opção autoriza a exploração de pessoas migrantes em regime neoescravidão. Em muitos setores, da construção à agricultura e serviço doméstico, os migrantes – tanto irregulares ou perpetuamente sujeitos à chantagem da irregularidade – aceitam trabalhar por salários irrisórios que podem chegar à metade do mínimo legal. Na Itália em particular, todo o setor de assistência para dependentes está baseado na neoescravidão dos migrantes.
Palavras-Chaves: Imigração; Neoescravidão; Itália.

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