



Anglers of Men: the Politics of Rescuing African Migrants in the Mediterranean Basin

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Abstract

This article theorizes the dynamics that emerge from the intimate relationship between contemporary African migration, liquid borders, and law around the channel of Sicily, between Italy and Libya. This is one of the deadliest and most trafficked migratory passages in the world. There, in the same waters where Ulysses and Aeneas roamed for years, whose epic journeys are considered foundational within the European identity narrative, today the trajectories that migrants boats traverse are disrupting and shuffling the European geographical limits. As a response, states are enacting a policy of containment that renders African migrants' presence at sea invisible, while criminalizing human solidarity enacted by private organizations as well as individuals. Making use of a legal discourse analysis I will dig the premises behind the antinomic concept of criminal solidarity that emerges today in Europe as a somehow coherent system of thought, shaped by laws, codes of conduct, rules, and rulings. Specifically, by analyzing the rulings of one tribunal in Sicily, I will make an attempt to expose how rigid conceptions of borders naturalize state's efforts to define the limits of national territory, while conversely, I will consider how the micropolitics of justice are capable of shaping the contours of discourses on current migration.

Key words: Border, European Union, justice, migration, rescue.

Prologue

Accordingly, the drowned and the saved are parted.¹ The latter occupy a precarious space in the host society, somewhere between the camp and the city,² while the former wither away in the depths of the sea, between Africa and Europe where their cries remains inaudible. However, the scene of the crime where they died remains ostensibly visible. There, the border spectacle goes on and as Nicholas De Genova explains, illegality is displaced from its point of origin, the law, to the proverbial "scene of the crime."³ It happens then, that in order to provide a counter-narrative we have to get

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back to the scene of the crime and expose, via forensic techniques, liquid traces that reveal water footprints of all actors involved at the moment of the crime. We will have to return to the stage where the border spectacle runs, as only in there, the clear partitions of identities, us and them, can be upset in order to give dignity to the drowned.

For instance, Lorenzo Pezzali and Charles Heller in their visual-essay "The Left-to-Die Boat Case"⁴ consider the aesthetic and spatial conditions that have turned the Mediterranean into a camp space where sixty-three migrants lost their lives while drifting for fourteen days within a NATO maritime surveillance area during a military-humanitarian intervention in Libya. The visual essay is part of the Forensic Oceanography project launched in summer 2011 to support a coalition of NGOs demanding accountability for the deaths of migrants. The authors, by going "against the grain" of surveillance technologies, were able to reconstruct how events unfolded and demonstrated how different actors operating in the Central Mediterranean Sea used the complex and overlapping jurisdictions at sea to evade their responsibility for rescuing people in distress. Through the logic of the spectacle,⁵ the act of exclusion via non-intervention that has characterized the politics of African migration containment in the Mediterranean during the last 20 years, emerges through various visualizations. As the institutions at large such as national coast guards and European agencies, drew back from search and rescue naval operations - a common feature of the contemporary neoliberal nation states - NGOs and humanitarian private organizations stepped in. As a response, in Italy, the last months have been characterized by legal investigations and media campaigns aimed at categorizing NGOs' rescue operations as a migration pull factor, to the point of theorizing a stable connivance between humanitarians and terrorist organizations. Since the consolidation of the external limits of Europe in the 90s, geopolitical relations between Maghreb and Europe radically changed. Legal channels of migration became limited, and at the discourse level, the old mantra of the clash between a civilized European Christian civilization and a backward Islam revived. Unquestionably, the political trajectory of Colonel Gaddafi, specially in the 80s', have been responsible for fuelling the latest argument, but it is particularly after 9/11 with the takeoff of a global war on terror that irregular migrants trajectories, coming from the Global South towards the wealthy North, have been equated with concealed terrorist operations. Hence, the global migrant became always *in nuce*, a potential terrorist, and those humanitarian organizations rescuing migrants stranded at sea and taking them to a safe port of Europe, have been suspected of collusion. The antinomic relationship

between these two entities, humanitarian organizations and international criminal organizations, welded together in the old specter of the African migrants' invasion. Whereas this time, there are NGOs humanitarian operators and European citizens escorting the "clandestine terrorists" to the gates of Europe, through the crack and the abyss the Mediterranean have become.⁶

Legal Borders

*The boat is a floating piece of space, a place without a place that exists by itself, that is closed in on itself and at the same time is given over the infinity of the sea.*⁷

---Michel Foucault, *Of Other Spaces*, p.27.

The above quote points to Foucault's famous description of a boat as a heterotopic space. We could trace the origins of this scene describing the absence of justice and human dignity that people have to face when alone, out in high seas, back to the Italian government's formation of new borders that traversed two distinct legal realms. At the international level, on May 6th 2009, following a bilateral agreement with Libya that glossed over parliamentary debates,⁸ the Italian government unilaterally inaugurated a new strategy for stemming the flow of African migrants and asylum seekers. It consisted of intercepting migrants in Mediterranean international waters sending them back to Libya. These actions stand in violation of Art. 33 of the 1951 Refugee Convention, a convention Libya never endorsed.⁹

At the domestic level, with the introduction and subsequent enforcement of the crime of aiding and abetting clandestine immigration (Art. 110 of the Criminal Code, Art. 12 of Legislative Decree 286/98), the state effectively criminalized any action aimed at rescuing boatloads of African migrants who get stranded in the Mediterranean Sea. Some individuals, fishermen, and NGOs, have decided to act in violation of the law, while others for respect or fear of the law, have adjudged immigrant lives unworthy of rescue. In response to this new legal paradigm, three noteworthy trials initiated in the same Court of Agrigento: one in 2006 against the crew of the Cap Anamur, a German aid agency, second in 2007 against seven Tunisian fishermen, both for aiding and abetting clandestine immigration, and third one, in 2008, against Mr. Mariano Ruggiero, a fisherman 46 years old, who on the night of January 10, 2008, forced a Somali migrant, Sanwà, back to the sea as soon as he tried to get aboard the vessel. Let me present the story of Ruggiero and how he let go of the Somali migrant. The Somali migrant named Sanwà had left the Libyan coast on the night of 6 January 2008 but he never reached the Italian coasts. He drowned and his body was never found. There were about sixty people on the boat with him, Somalis

and Nigerians. The women sat at the center of the boat to stay protected from the salty water splashes.

That same morning as Sanwà's boat came out of the Libyan waters, Ruggiero's vessel *Enza D* also left from the port of Syracuse, Sicily, to go fishing south of Lampedusa. On the third night of sailing, Sanwà's boat began to run out of diesel. With little fuel left, they approached a vessel for help. That vessel was the *Enza D*. As Sanwà's boat came close to *Enza D* it turned off its engine and the passengers began to ask for help in English. They repeatedly shouted "diesel" and waved the empty can in the air. Suddenly one of the migrants stood up and gripped the edge of *Enza D*. One of the sailors on *Enza D* ran to help him. Sanwa held it tight to the vessel with both hands until he was able to haul the tank aboard. Meanwhile, the captain fearing that migrants might climb up drove away *Enza D*. The migrant who however managed to climb up was Sanwà. He begged for help and was out of physical strength. On the other hand, captain Ruggiero nervously went up and down his cabin and shouted at his men, "Here we go, all in trouble!"

A few minutes later, the sailors heard a splash in water—Sanwa had slipped down. He made few desperate strokes, but soon drowned in the sea, partly pulled down by the weight of his soaked clothes. The sailors could not believe what they had just seen. Some of them burst into tears; others went hiding on the deck. None of them had been able to stop the captain. After a couple of hours Ruggiero came back to his driving seat and resumed his work. Fishing began again as if it was more important. A year has passed since then, and Ruggiero's lawyers have requested a plea bargain. He is accused of murder aggravated with cruelty, and wrongful death. Ruggiero has never admitted to killing Sanwà. He rather argued that the reason for letting go Sanwà was the fear of the authorities who could have seized his boat. Such seizures, in fact, result in losses for three or four days of work.

By analyzing the rulings of the tribunal of Agrigento, I attempt to expose the rigid conceptions of borders and frontiers that naturalize state's efforts to define the limits of national territory. This is the frame within which the state domesticates alterity that in order to function, entails violent bordering practices of exclusion. While discussing the rulings in relation of the three trials, I consider how the micropolitics of justice are capable of shaping the contours of the discourse on migration. With this term, following Michael J. Shapiro I refer to a "process in which individuals are affected by legality/illegality and employ different courses of action of what is just in contrast to macro politics of justice or the way states administer the law."¹⁰ Such encounters between concepts of legality/illegality and individuals highlight the way law affects

alternate loci of enunciation that exist before the law such as solidarity in the maritime context. I call this approach sympathetic because it involves the direct participation of individuals in engaging the law and related institutions. However, more important, I am interested in analyzing how irregular African migration tests the contours of legal obstacles set by national governments of the European Union and provoke the judicial order to intervene and re-set the frame of discourse around human dignity and justice. Legal cases held in front of the European Court of Human rights abound. For instance, in one historic judgment, in the case, *Hirsi Jamaa and Others v. Italy*,¹¹ the Court considered the plight of 24 people from Somalia and Eritrea who were among more than 200 people intercepted at sea by Italian authorities in 2009 and forced to return to Libya, their point of departure, and ruled that Italy violated human rights principles by spurning African migrants and asylum-seekers on the high seas. The practice violated international obligations to not return individuals to countries where they could be at risk of human rights abuses. There NGOs, the civil societies, and individuals of Europe basically reject the antinomy that solidarity is a crime. In so doing, the act of transgressing raises the tension between jurisprudence, legality and the law. In other words, micropolitics of justice do present different courses of action taken by individuals and forces the state to rethink the line between legality and illegality in relation to the dignity of human life.

Good Samaritans go to Hell

With regard to the international legislation, it is broadly recognized that the focus must be on saving the lives of migrants in distress at sea. This is a longstanding maritime tradition as well as an obligation enshrined in international law. This principle is based on two international Conventions: United Nations Convention on the Law of the Sea and the International Convention for the Safety of Life at Sea. Article 98(1) of the 1982 United Nations Convention on the Law of the Sea provides that:

Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: (a) to render assistance to any person found at sea in danger of being lost; (b) to proceed with all possible speed to the rescue of persons in distressed, if informed of their need of assistance, in so far as such action may reasonably be expected of him.

In a similar provision, the Regulation 33(1) of the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) provides also that:

The master of a ship at sea which is in a position to be able to provide assistance, on receiving information from any source that

persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so.

Not only are the obligations for individuals outlined in these conventions they also outline and define the obligations of States. For example, the 1979 International Convention on Maritime Search and Rescue (SAR Convention) obliges State Parties to "[...] ensure that assistance be provided to any person in distress at sea [...] regardless of the nationality or status of such a person or the circumstances in which that person is found" (Chapter 2.1.10) and to "[...] provide for their initial medical or other needs, and deliver them to a place of safety" (Chapter 1.3.2).

However, the interpretation of these conventions must be considered in relation to the law of the state responsible for migrants found at sea, Italy in this case, with particular regard to the distinction between rescuing people stranded at sea and abetting undocumented immigration. The thin line that separates the two events represents the space of politics, or the frontier, in which the border emerges, especially if we consider the mounting anxiety of European nation-states over the increase of immigration at the southern borders of Europe in the last few years. According to the IOM, the UN Migration Agency, 150,982 migrants and refugees entered Europe by sea in 2017 through 1 November, with about 75 percent arriving in Italy and the remainder divided between Greece, Cyprus and Spain. This compares with 335,158 arrivals across the region through the same period last year. Still, despite the increasing dangers and mounting death tolls among migrants¹² the situations they face while crossing the Mediterranean has been extensively spectacularized by the media and used by politicians for mere propaganda. De Genova discussed in depth the significance of the spectacularization and militarization of the Mediterranean Sea in relation to the idea of externalization of African migration. Because of the visual impact of boats crowded with desperate migrants lost at sea on the voting audience, European politicians have declared the containment of African arrivals on the Italian southern shores and the criminalization of whoever would assist and save them, an absolute priority. Along these lines, the government's practice of charging "good Samaritans" who had saved lives at sea with the crime of "abetting undocumented immigration" deters these humanitarian rescues and ultimately is a form of border control. Italian law stating the relevant penalties for this offense appears at Art. 12 of the Legislative Decree 286/1998. Four years after this statute was enacted, the ill-famed Bossi-Fini law, Law 189 of July 30th, 2002, made Art. 12 penalties more severe by emphasizing "the character of law enforcement and public safety [...] partly reversing

the vision of solidarity in an exclusively repressive approach. (Cass. Pen., sez III, sent. n. 3162/03). Following the Bossi-Fini revisions, unless the facts state a more serious offence, a person performing acts designed to procure the entry of a foreigner into Italy can be prosecuted for “abetting undocumented immigration.” An article 12 offense is considered a “common” crime, that is one of which anyone can be active subject. In other words, his/her job, skills or qualifications, - a doctor as much as a plumber - do not have any importance for the achievement of the crime. Furthermore, the criminal conduct can be almost anything - a typical free-form conduct - meaning that the authorities can apprehend someone even if the actual illegal entry did not take place. In fact, all that is necessary for the conduct to be considered a crime is for the accused to initiate an activity that potentially is able to achieve a foreigner’s arrival on Italian soil. However, the offense does require intention, which means facilitating acts must be consciously and voluntarily committed.

On the other hand, if the intention is present, then the act can be defined as an offense of “danger” which does not require any actual “damages” in order to enforce punishment. Abetting undocumented immigration is an offence characterized by anticipated consummation, which does not necessarily involve an attempt. In other words, an individual cannot be charged with “attempting” to abet undocumented immigration: thus, the intention, *the forma mentis*, is crucial. Either the person wants to facilitate the entrance of people, or not. The law outlines the crime in question as instantaneous offense. An article 12 indictment can remain subordinated should the act constitute “a more serious offense”. As a matter of fact, standard detention can last up to three years, but if the act involved smuggling five or more people, exploiting minors, or prostitution, then incarceration can be up to fifteen years.

Nevertheless, a specific exemption from criminal liability is granted in the event that assistance is given to migrants in need: humanitarian aid and assistance provided to these people does not constitute a criminal offence. This is the space of politics within which people are facing borders of migration control and attempt to mold them. Take for instance the case of journalist Gabriele Del Grande who with some friends decided to accompany few asylum seekers across the borders of Europe from Italy to Sweden and made a movie about it. The movie is entitled “On the Bride’s Side”¹³ and its popularity saved them from being arrested as traffickers and being jailed for fifteen years. It is clear then, that fishing boats and mercantile ships are dissuaded from providing assistance to migrants at sea since they fear that they could be charged with facilitating illegal immigration. Without examining the matter in

detail, which would require a more in-depth legal analysis, it is worth mentioning a couple of stories that have caused tremendous outcry in Italy and abroad, and which are paradigmatic of the conflict between the state's demand to effectively fight undocumented migration and the primary obligation to rescue people in need.

Anglers of Men

The first case is about a boat called *Cap Anamur* in which the accused was acquitted by the Agrigento Court on October 7, 2009. The boat flew a German flag but belonged to a humanitarian organization. It had rescued thirty-seven shipwrecked irregular migrants in the Sicily channel, who claimed to have escaped from Sudan because of the civil war there. After taking on board the African migrants in international waters, *Cap Anamur* (was deemed to have) passed through Maltese territorial waters, without disembarking the migrants there. The boat continued to Sicily, but when only 17 miles were left to dock at Porto Empedocles, the Italian authorities refused the boat to enter its the national territorial waters. A dispute, therefore, arose as to the jurisdictional competencies and responsibilities of Maltese, Italian and German States: Italy being the coast state, Germany being the state whose flag the boat was sailing with, and Malta being the first state where the boat arrived with the migrants aboard.

During the trial it also emerged that *Cap Anamur* had visited the port of Malta at two occasions, before and after the rescue. In particular, captain Schmidt on June 25, five days after the rescue, did not communicate the authorities of Malta the presence of 37 migrants aboard when the boat was docked for mechanical repairs. Moreover, the Italian authorities began to believe that Captain Schmidt had communicated to them that the rescue happened on June 30 instead of June 20 in order to obtain permission to dock at the harbor. Finally, three weeks later Italy granted the permit of entry in Porto Empedocle and the following day disembarkation was authorized. The captain and the crew were accused of abetting irregular migration and were arrested, while the shipwrecked people were sent to a reception centre. The following day the captain and the crew were released, as the competent court did not confirm the restrictive measures against them.

The second case involved captains of two Tunisian fishing boats who were arrested at Lampedusa and had their boats seized in August 2007. They claimed to have saved the lives of 44 migrants (including 11 women and two children) from rough seas 30 miles south of Lampedusa, but the captains of two fishing boats and their five crew were charged with abetting illegal immigration. In November 2009 they were sentenced to three and a half years of

detention. Interestingly, just a month after their sentence, the German Federation for Human Rights awarded them the Gold Civil Medal. What was crucial to notice about this case was the fact that the captains of the two Tunisian fishing boats, Abdelbasset Zenzeri and Abdelkarim Bayoudh, had contacted the 'Maritime Rescue Coordination Centre' asking for medical assistance for one of the two children aboard. However, during the medical visit, the authorities determined that the health condition of the migrants was not critical. The determination, therefore, closed the possibility of claiming the humanitarian reasons of exemption from the liability. The Court of Agrigento thus validated the provisional arrest of the captains along with the crew, ruling that there was adequate evidence of guilt in their conduct in relation to the crime of abetting illegal immigration.

The two cases are particularly interesting in view of the fact that they raise the question of the legality of the conduct: How did the conduct relate to the logic behind the criminal offence of abetting irregular immigration? Each case questions the limit of the exemption from criminal liability on the basis of humanitarian reasons, which from time to time different European governments have fixed, altered, and/or tried to render historically contingent – that is making dependent upon a specific regime of visibility and/or invisibility.¹⁴ In addition to decisions taken by the executive power, the valuation of migrant lives—whether they are worth rescuing or to be left alone as bare lives¹⁵ is dependent on the complex discourse of migration control. For instance, the media and certain politicians were very keen on showing the effects of insecurity and panic created by *migrants' invasion* among the general public. The Italian audience was puzzled with such questions as: Could the claimed rescues be counted as true rescue operations or those were intended for different other purposes? Did the rescuers intend to provide assistance or they took the shipwrecked migrants on board for other reasons? The contemporary rise of populist movements against irregular migration signals how the Italian, and in general the European, audience suspect the good intent of rescue operations.

In the case of Cap Anamur, the element of profit-making, among other reasons, were thought to be involved. On this basis, the initial arrest of the captain and the officials were made. Although they were certainly not *passeurs*, that is professional smugglers, and were therefore not motivated by economic interests, the constitutive element of the crime of smuggling was ruled to be present. According to the Prosecutor, the crew wanted to get the most of the media coverage and publicity in favor of the organization. On the contrary, as it emerged during the trial and as we can read in the motivations of the panel of judges, the Cap Anamur did not invite journalist and photographer on the boat. On the contrary, the same journalists have

instead themselves come to the conclusion that the issue at hand was worth it. Still, even if the Cap Anamur uploaded photos and news about the rescue of African migrants, according to the Court, that element is completely irrelevant once the conduct – saving migrants lost at sea – is cleared of criminal illegality. As regards the application of the exemption for humanitarian reasons, the decision issued in favour of the provisional arrest is in line with the Public Prosecutor's position: the captain and officials of the Cap Anamur on the one hand willingly and unlawfully introduced the 37 migrants into Italian territorial waters, in breach of Italian law on migration. On the other, according to the accusation, the persons involved were neither real asylum seekers, nor they were in a critical status needing prompt assistance. As a consequence, they were not entitled to claim exemption from liability.

The judgment rendered by the third section of the Court of Appeal of Palermo in the case of the Tunisian fishermen, Mohamed Hedi and Mortadha, however, took a more "open" approach. It ruled against the decision issued by the Tribunal of Agrigento in the first level, which had condemned and validated the provisional arrest of the rescuers. According to the Court of Appeal, the circumstances grounding that order in relation to the conduct of the fishermen were not sufficient to establish that they had acted for the purpose of facilitating illegal immigration. In particular, the facts that neither net nor fish were found on the boat by Italian authorities was not considered as appropriate evidence. Similarly, in relation to the exemption from criminal liability, the fact that the doctors who visited the shipwrecked migrants on board did not judge that migrants' lives were in danger was not sufficient to exclude the matter of fact that the fishermen acted in good faith. During the trials, it has also been pointed out that the state has to cooperate in rescue operations at sea. Those operations require apposite technical action that has nothing to do with state's power and duty to pursue people abetting undocumented migration according to the law. The fishermen were fully absolved because the act of rescuing does not represent a crime as they carried it out in consideration of what was perceived as a state of necessity/emergency.

Micropolitics of Justice

In the context of these cases, if we heed to Jacques Rancière, to save these stories from the mere assessment of what is right, we may say that justice can only be formulated as a question. It is a matter of telling apart legal expressions within power relations. The judgments in both cases drew wide interests, especially as we consider the media coverage and the tension they generated. The rulings were pronounced in 2009 and 2011 and both rulings

absolved the defendants from the charge of abetting undocumented immigration, but with some relevant differences. In the case of Cap Anamur the defendants were absolved because their conduct did not constitute the crime. According to Art. 530 of the Italian Criminal Code, thus the Tribunal of Palermo acquitted the seven Tunisian fishermen of abetting undocumented immigration but found the two captains guilty of resisting Italian coast guards who had attempted to stop them. It is worth noting that during the trial some important newspapers like *Il Giornale* and *Der Spiegel* promoted the public prosecutors' accusation that the two boats ignored stopping instructions of Italian Coast Guards and requiring the boat to return to the Tunisian port. At the trial, it also came to be known that the Italian Coast Guards had made several attempts to intercept and return the two Tunisian boats out of the Italian territorial waters as it was "an American Cup for illegals."¹⁶ However, the boat did not return given the bad weather conditions and also because the survivors aboard needed urgent medical attention. The pursuit by the Coast Guard is in violation of all international conventions, which recognize the right to ask for asylum even in extraterritorial waters. In the past, such pursuits and forced interceptions have resulted in collisions, for instance between a boat called Sybille and the Italian Coast Guards and the resulting shipwreck of 70 Albanians in 1997.¹⁷ Back then the practice of interrupting the flow of migrants across the Mediterranean Sea border had become frequent. It is important noting that these practices of interception tend to focus on national security concerns and for this reason, it is hard to reconcile them with human rights treaty obligations.¹⁸ Indeed, interception and rescue share little common ground. What they have in common is the management of time in terms of promptness of intervention or, on the contrary, abandonment and delays in intervention. The capacity of managing time, to divide it or to extend it to the infinity of death is a matter of politics. It is delimitation and systematization that simultaneously determine and shape the border as a form of experience, and shape the community around it.

With regards to the Cap Anamur's case, the motivations of the government become clear, although, at the time of the first police report, the fishermen were blamed for both the communication delays and the state of emergency experienced on the ship. Also, the initial court decision was taken in light of the statements made in the court by the top leadership of the Ministry Interior. However, in reality, the delay was due to the fact that the Interior Ministers of Germany and Italy failed to agree on the request for entry and asylum filed by survivors. The facts of the case were established: the denials interposed for weeks to the entrance of Cap Anamur in national territorial waters lacked legal basis or legality. Instead, they

were the product of political decisions of the then Minister of the Interior, Mr. Pisanu. Later the same positions were agreed upon at a European summit in Sheffield with Germany and Britain. The same political decisions at the domestic level were then translated into orders for the suspension of permits for protection in humanitarian assistance granted to twenty-one refugees after the landing in Sicily. Later the refugees were expelled. The expulsion was carried out despite the precedents provided by different courts and an appeal pending at the European Court of Human Rights.

While it is significant that both rulings absolved the defendants from the accusation of abetting undocumented immigration, it created the perception, especially among fishermen, that those who rescue illegal migrants stranded at sea do so with the risk of having their boats and fishing tools confiscated for years. They would then face public trials with enormous legal expenses and with the consequence of compromising the financial fate of their families.

Let us return to the question of *when* is the border? There is a border when fishermen cannot save the life of a drowning African migrant because of the fear of years of litigation and the cost of having the boat confiscated while, as always, “work will not wait.”¹⁹ The two cases mentioned here act as a deterrent for those who may be in the position of rescuing migrants in international waters. Hence, they signal the moment of the border. Many migrants provide evidence that ships and fishing boats ignored their request for help, sometimes without giving the alarm to the closest safe port or authorities. Sometimes then, migrants are left to die at sea, simply ignored. They become bare life and no one will be directly responsible for their death. And sometimes things are even worse. The same Court of Agrigento that heard the aforementioned cases, was also in charge of ruling on the accusation of homicide against Mr. Mariano Ruggiero. The conditions under which Ruggiero acted can be described in Shapiro’s words: “what other notion could he have of the world, if around him, the word ‘just’ had always been suffocated by violence and the wind of the world had merely changed the word into a stagnant, putrid reality?”²⁰

Against this background, we should understand the spectacle of the undocumented migrants’ journeys and the fascination of the national audience with it, a form of desensitization and depoliticization of the public sphere in itself. Just as the military operations of European states on the high seas to destroy traffickers’ networks, the interception of African migrants is often compared to those operations and accordingly considered humanitarian. But these individual practices of either rescuing or killing, once carried out, attain their own life and signify a choice to follow: to close down or open up new possibilities for the European political community.

Fundamentally I believe that individuals do fashion innovative contours of the border and shape the space of the political on the border: “the genesis of a space of this kind also presupposes a practice, images, symbols, and [...] of localized social relationships”²¹ like between Tunisian anglers and African migrants. In other words, the idea around which this argument is built relies on a conception of territory that is constantly modified, contested, restructured both according to actions of individuals and to institutional settings. It is then the space wherein the concept of personhood finds its own perennial origins beyond the “normality of national citizen-subject.”²² When this normality is internalized, the border itself becomes internalized within the individual and it moves with him or her. “As a consequence borders cease to be purely external realities. They became also [...] what Fichte [...] magnificently termed inner borders [*inner grenzen*]; that is to say, invisible borders, situated everywhere and nowhere.”²³

Conclusions

Imagination is as essential as much as unresponsiveness for the construction and operability of the border. The imagination of the invasion of undocumented immigrants from Africa brings out anxiety among the people of Europe, which precipitates the militarization of the border and increased responses of law enforcement agencies. This is true for the Mediterranean Sea as much as for European metropolises. That anxiety lurks on the streets and become oddly familiar but rarely takes shape. It is everywhere and nowhere at the same time. That anxiety causes political rigidity, which may manifest itself as a wall of indifference that is the border in itself. Still, the border is contingent on power practices that despite its perennial fluctuations seems to most of the people to be natural and inevitable.²⁴ It is important to shake this assertion and demonstrate the border’s reliance on a complex interconnection of historical contingencies. That means to articulate its violence and, at the same time, its precariousness because the idea of fixity of the border reinforces the discourse of the Fortress Europe²⁵ as a socio-political body under a permanent state of siege that instigates violent panic reactions. At the same time disconnecting present-day migration politics and past colonial histories we run the risk of privileging a trivial understanding of migration as a security issue. The discourse of securitization and risk analysis thus conceals the real functions of a frontier and/or border, which is to filter out certain individuals and politics while crystallizing the image of the Nation-State²⁶ as the only place in which authentic politics²⁷ is possible. This is the logic behind the government’s approach of accusing fishermen and NGOs of human trafficking coalescing with

terrorist organizations. Nevertheless, with these case studies I emphasize that any individual can undertake the responsibility to set up a dialogue with the other, to have a say in who is in and who is out, to break the wall of silence and invisibility intrinsic to any externalization practice. Relying merely on “police”²⁸ we run the risk of becoming indifferent when people silently disappear within the space of exception, because as Agamben notes, “one of the paradoxes of the state of exception lies in the fact that in the state of exception it is impossible to distinguish transgression of the law from execution of the law, such that what violates a rule and what conforms to it coincide without any remainder.”²⁹ It is essential then to rediscover the substance of the border, at the edge of the externalization of migration control, inside as well as outside of Europe, closer to Africa. That is a space of negotiations, confrontations and recognitions of diversities without which there exists no polis and no politics but only a pencil-drawn silhouette of the European citizen, cut off from bureaucracy.

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Notes

1. Levi, *The Drowned and the Saved*.
2. Opondo and Rinelli, “Between Camps/Between Cities.”
3. De Genova, “Spectacles of Migrant ‘Illegality,’” 10.
4. Heller and Pezanni, “Liquid Traces.”
5. De Genova, “Spectacles of Migrant ‘Illegality.’”
6. Bensaâd, “The Militarization of the Migration Frontiers of the Mediterranean.”
7. Foucault, “Of Other Spaces,” 27.
8. Lavenex, “Shifting up and out.”
9. The Jamahiriya had signed neither the 1951 Geneva Convention nor the 1967 Protocol and continued to consider asylum seekers as foreigners without any particular distinction. Still, UNHCR opened an office in Tripoli in 1991 and worked with Libyan authorities. Libya also signed the Convention of Refugee Problems in Africa adopted by the Organization for African Unity in 1969.
10. Shapiro, “The Micropolitics of Justice,” 480.
11. *Hirsi Jamaa and Others v. Italy* [GC], Application no. 27765/09.
12. “Missing Migrants: Tracking deaths along Migratory Routes,” last modified August 14, 2018, <https://missingmigrants.iom.int/region/mediterranean>.
13. Augugliaro, *On the Bride’s Side*.
14. Ranciere, *The Politics of Aesthetics*, 12-19.

15. Agamben, *Homo Sacer*. In his seminal text the Italian philosopher goes deep into the Roman juridical figure that reveals the close link between the sacred and the taboo. Agamben defines the sacred person as one who can be killed and yet not sacrificed to the altar of gods. This is a paradox I see as operative in the status of the modern African migrant in a system that exerts control over irregular migration that render "naked life" of all individuals deprived then of any political status and therefore without state protection.
16. "17 pescatori tunisini detenuti ad Agrigento."
17. "Naufragio canale di Otranto."
18. These practices were defined by the IOM 'one of the most effective measures to enforce states' domestic migration laws and policies in UN Doc. EC/GC/01/11, 31 May 2001.
19. Ranciere, *The Politics of Aesthetics*, 13.
20. Shapiro, "The Micropolitics of Justice," 481.
21. Lefebvre, *The Production of Space*, 245.
22. Balibar, *Politics and the Other Scene*, 78.
23. Balibar, *Politics and the Other Scene*, 78.
24. Williams, *The Ethics of Territorial Borders*.
25. Gebrewold-Tochalo, *Africa and Fortress Europe*.
26. Balibar, *Equaliberty*.
27. Walker, *Inside/Outside*.
28. Ranciere, *The Politics of Aesthetics*, 89.
29. Agamben, *Homo Sacer*, 57.

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