Security, Migration and "Social Control" in the Context of the "Constitution" of the EU

By Dario Melossi

(University of Bologna)

In spite of the rather novel fortune of the term "security", this is of course one of the oldest mainstays in the theory of social contract. Let us listen for instance to Beccaria:

> *For there is no enlightened man who does not love the public, clear and useful compacts that guarantee the common security, comparing the small portion of useless freedom that he has sacrificed with the sum of the freedoms sacrificed by others who, without the laws, could become conspirators against him (Beccaria 1764:105).*

What is however certainly novel in the uncertain times we live in, is the utter confusion that has developed between "internal" and "external" security, a confusion that is germane to the uncertain destiny of the nation-State in the nineteenth century mode. Whether one looks at the world-wide reach of the ambitions of the last and only "superpower" left, or to the rather different project of the creation of a European Union, the boundaries between what is "internal" and what is "external" in matters of security seem to have become irremediably fuzzy. This is quite clear also in the way in which disciplinary boundaries are giving way to the assault of historical change. Does one really know today in Europe when one is speaking of "domestic" law, or "European" law, or "international" law? But, more to the point, do the traditional distinctions between legal and social theories make sense when one is confronted, as we are today, with the issue of "constitution" in the double meaning of this term, in which the traditional legal-political meaning clearly unveils its roots in the logic and engineering, so to speak, of institutions? Yesterday, we did not have to ask ourselves why a legal "Constitution" is so called. That is the question asked, however, in all situations of deep crisis and change. And that is because in fact the Constitution is a kind of membrane between history and the law that binds the two and by which one keeps the other alive.

Let us leave aside for the time being the thorniest of these questions, the global Constitution and the role that the United States are playing in it. And let us devote ourselves,

for the sake of today's discussion, to the issue of Europe. Is Europe – and with it, its Constitution – a past, or is it a project? And what is the role of migrants in it? And what has all of this to do with "security" and crime? Let us be content today of devoting ourselves to such small questions!

Democracy and Social Control

In the last section of the century that has just come to a close, the contributions by Michel Foucault, from *Discipline and Punish* to the essay on "governamentality" (Foucault 1975, 1978), have deeply innovated the field of studies on social control. Indeed, they have innovated more generally the whole field of the social sciences, because they made possible to think the whole issue of social order in novel terms. They produced a complex effect of repositioning of the cultural boundaries in our field of enquiry. Such repositioning was first of all directed toward a reconsideration of the relationship between a "State" concept and the more general issue of "social order" – an issue that I will articulate here through the notion of "social control", of American origin and largely alien to Foucault's vocabulary, in the same way in which the whole development of American social sciences remained largely alien to his work. When Foucault's contributions started emerging on the European intellectual scene in the 1960s and 1970s, it was rather typical of such scene to consider the two concepts of "the State" and "social control" as strictly linked when not almost synonymous. One has however the impression – that I cannot here detail and argue for as I should[1] -- that Foucault allowed for the introduction within European social thought, through the elaboration of an apposite new vocabulary, of themes and motifs that had already been belaboured at length within the American political and social science, and that he did this exactly at the point when the social model produced in the North American context was readying itself to become hegemonic over Europe and tendentially over the entire globe with the impending fall of so-called "realized socialism". To make a long story short, Foucault explained to Europeans, in a language they could understand, a few essential things that Americans already knew. Such "things" however would have soon concerned Europeans too, and had something to do with living under the new conditions characteristic of a globalised society. All of this is particularly relevant for the issue of social control. Foucault's emphasis on the intimate

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[1] The overall argument is fully illustrated in Melossi (1990).

connections between "truth", "discourse", and "power", as well as his barely sketched critique of a state-centred model, unfolded within a type of society where social control – as Dewey, Mead and Mills and many other North American sociologists had cogently predicted – was more and more the matter of constructing a common mind and language than that of manipulating laws and guns. In a mass democratic system – that only in the 1970s was coming to maturation in Europe – it could not be otherwise. The realization that the construction of this common mind and language was taking place within the arena of the mass media of communication was the inevitable corollary of such overall development.

In fact, it had been within the making of the first radically "modern" society, the United States after the conclusion of the civil war, with the accompanying phenomena of accelerated industrialization, urbanization, and mass immigration, that the traditional tools of political science had appeared for the first time wholly obsolete. These new developments particularly concerned ideas of "the State" and "sovereignty", both contemptuously rejected by the founder of modern political science in the United States, Arthur Bentley, who claimed that "The "state" itself is… no factor in our investigation... The "idea of the state" has been very prominent, no doubt, among the intellectual amusements of the past, and at particular times and places it has served to give coherent and pretentious expression to some particular group's activity…" He went on to add, after having similarly disposed of the concept of sovereignty, that "So long as there is plenty of firm earth under foot there is no advantage in trying to sail the clouds in a cartoonist's airship" (Bentley 1908:263-264). Alessandro Passerin d'Entreves noted, about statements such as this one by Bentley, that "[t]he disruption of the notion of the State in modern political science is such a challenging and portentous event that it is surprising no detailed study should yet have been made to account for it and to explain it" (1967:60).

It was instead within that very intellectual laboratory that came into being during the "progressive age" in the early twentieth century United States, that the other key concept of "social control", was to emerge. It was, the notion of social control, a notion certainly coming from a much lesser lineage than that of the State, and that programmatically belonged in the social sciences rather than in political philosophy. It belonged, even, within the "social engineering" of the early decades of last century and was designed to capture the idea of an "intelligent" government of social change rather than the metaphysical "essence" of social

order – an essence to be extracted from society through the forceps of violence. The vision of social order was no longer a vision descending from the heavens of political philosophy in a still pre-democratic society where an initiatic and essentialist knowledge of the State was pressed upon social reality by means of the tools of politics and the law. It was instead a perspective according to which the social sciences were interested in investigating the conditions and mechanisms for the construction of consensus among the masses. It was in fact the cooperation and collaboration of the latter that were at stake. Even in this case social intervention descended from high above but instead of imposing itself on civil society, its function was to capture, channel and guide the deepest currents of social change. In short, the crux of the matter was a shift from the imposition of coercion to the organization of consensus. In between, stood the emergence of fundamentally "democratic" societies.

It is only by appreciating such developments that one can understand the great importance that mass communication processes have achieved, to the point that we could think of a true "dialectic of control". During the early decades of the last century, in the United States, a common horizon of discourse and reference that had often developed on the ground of common work and life conditions was later transformed into a media-recreated world oriented toward the "Americanisation" and "integration" of the working class. What it was first conceived as a process of "liberation" – as in Simmel (1903) or Wirth (1938), the freedom made available by the coming apart of face-to-face social controls in the metropolis (*Stadluft macht frei*!) – and at the same time as the entry of wider and wider masses into the arena of democracy, which should have favored the acquisition of a "universalist" standpoint (Mead 1925), converted into a frustrated and increasingly hopeless gaze in the very *decadence* of democracy, as in John Dewey's *The Public and Its Problem* (1927), in Walter Lippmann's writings (1922) or the more recent C.W. Mills' *The Power Elite* (1956) .

The kind of social control embedded in primary informal relationships was being in fact increasingly replaced not only by formal secondary controls – where the police officer's blue uniform was taking the place of the familiar face of the relative, the friend or the shopkeeper at the corner – but also by a true "control at a distance", as Wirth called it (1938), through the mass media of communication. Such media were appropriating – and at the same time reclaiming and transforming – the language of the working class and of social movements, turning a network of solidarity and mutual help into an imperceptible but

implacable process of extension of the middle class in practical and cultural terms. This was an important aspect of that more general process of construction of a "consumerist" society that the higher wages paid at the time by Henry Ford made possible.

American society – and especially its leadership – had in fact discovered that the mass media of communication offered an ideal solution to the fundamental problem of democracy from the perspective of elites, i.e. how to conjugate the reality of deep inequality in socio-economic power with a normative prescription of equality in political will formation. This had been the crucial question which capitalist and proto-democratic societies had contended with since the appearance of a "social question" during the nineteenth century[2]. How to reconnect in fact the "heavenly" sphere of juridical relationships with the "earthly" one of a class-divided society? How to reconnect the *citoyen* with the *bourgeois*, to use the young Marx's Rousseauvian language (Marx 1844a)? How to preserve the hegemony of proprietors in a society in which every human being has a vote? It is a true dialectic of internalisation of control that Marx identified and that characteristically he tied to Protestant reformation much before Weber:

> *Luther, we grant, overcame the bondage of piety by replacing it by the bondage of conviction. He shattered faith in authority because he restored the authority of faith. He turned priests into laymen because he turned laymen into priests. He freed man from outer religiosity because he made religiosity the inner man. He freed the body from chains because he enchained the heart (Marx 1844b:182).*

It would probably be possible to claim that Horkheimer and Adorno in *Dialectic of Enlightenment* (1947), as well as later Foucault in *Discipline and Punish,* simply wrote long footnotes to this passage. A common thread that ties Marx to Weber to the Frankfurt School to Foucault is the idea that, moving from Republicanism toward democracy, the crux of control became increasingly located internally to the individual and based in persuasion and conviction much more than in coercion. The techniques of advertising, printed and later radio and TV journalism, as well as of entertainment (Hollywood!), brought such processes toward unimaginable developments, where the balance of power in the end almost seemed to be turned upside down. Indeed, in the last quarter of the twentieth-century, we witnessed the

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[2] Indeed so much so that in his early writings Marx had envisaged a tendential solution to the problems of a class-divided society in the universal extension of political suffrage (1843, 1844a).

spectacle of actors who interpreted the role of President by becoming one, or TV tycoons managing the reproduction of collective representation not simply in their role as TV tycoons, but doubling up as heads of government.

European Constitution and the "Public Sphere"

Now, what has all of this to do with the European Union? Much, I believe. There is in fact something a bit paradoxical in the construction of the European Union. Initiated exactly at the time when communicative action had installed itself at the centre of the construction of social order and cohesion, the weak ring of this project appears to be the very question of language. A weakness that, I believe, is crucial to the political weakness of the whole construction.

It is from this perspective that I find particularly interesting to consider the argument with which the judge from the German Constitutional Court Dieter Grimm (1995) developed the famous *Maastrichturteil* of that court (Mancini 1998, O'Leary 2003, Ferrajoli 2002, Habermas 1995). According to Grimm in fact the very substance of democracy, if not its form, is based in the existence of certain minimal conditions of "pluralism, internal representativity, freedom and capacity for compromise of the intermediate area of parties, associations, citizens' movements and communication media" (1995:293). Now, it is quite apparent that in Europe, today as well as in 1993, there is no European party system, there are no European social movements (or perhaps we could say, they are only now emerging, we'll come back to this crucial point) and there are of course no European mass media (1995:294). There is therefore no European public sphere – Grimm maintains (1995:295). He then goes on to trace the root cause of such a situation in the absence of a common European language, because even that only language that could aspire to play such a role, the English language, is functionally spoken by a very small group of citizens, especially in Southern European countries.

What Grimm points to, then, is not at all the lack of an ethnically based *Volksgemeinschaft* – something that would allow us to discount his argument as some kind of "typically" German reactionary nostalgia. It is rather the problem of the lack of a collective identity constituted through a "capacity for transnational discourse" (Grimm 1995:297). This is, according to Grimm, a structural weakness, that cannot be remedied through institutional

effort. A European constitutional democratic State is therefore a delusion – he concludes. Certainly, institutional change may anticipate more substantial change – Grimm concedes – but such a chronological gap cannot be too wide. Whoever would insist on calling for such developments, having been made aware of the lack of legitimation that would beset such Constitution, should realize the consequences of "the movement he is thereby setting going" (Grimm 1995:299). It is not difficult to see, in the background of Grimm's strongly worded preoccupation, the fear of a European Weimar, the fear of a mere elitist constitutionalism, powerless in the last instance, that does not come to terms with the reason why European masses should be loyal to a constitutional charter that is not really expression of a common European culture and that they would find substantially foreign.

Nobody is claiming – it should be made clear – that such a want is caused by the absence of a traditional foundation, to be found in the past. On the contrary, I tend to agree with the Habermasian notion of "constitutional patriotism" (1992) – of a Europe, that is, grounded in the future, in a project, in a "new Europe" created in the same way in which European colonists created a "New World" in America – a creation which, being unable to base itself in "race" (an ethnically or culturally defined "race"), can only ground itself in the existence of a vibrant and effective European public sphere. In particular, it seems to me that judge Grimm realizes that the process of construction of a democratic political will has to unfold at the very level of the public which is interested by that will formation. The "democratic deficit" is therefore not simply an institutional phenomenon which concerns the limited powers of the European Parliament, but is a deficit of the public sphere and of the formation of political will.

Can we therefore find a way to eschew Grimm's pessimism? Perhaps yes, but certainly not through institutional fast-forward manoeuvres. Or better, institutional manoeuvring is possible only in so far as institutional change goes hand in hand with real processes of creation of a European "public sphere". The fundamental issue becomes then one of a *constituent process*, a process that goes together with the formation of a common language. We could even state, after Durkheim, that the coming into being of such a common language may be taken to be an "indicator" of the real, social, "thick" existence of a European Constitution. Political initiative and social processes come into play here. Indeed we yearn for that sense of processuality that was the trademark of the Chicago school.

What is in fact the process, or the set of processes, that allow for the coming into being of these common media of communication, of this "public sphere" (Trenz 2003)? Is such a constituent process also the way in which this common sphere, this culture, this language, are created? In order to even start answering these questions, I think that we have to evaluate the nexuses linking on the one hand the extended socio-economic and political processes of homogenisation (so called "globalisation") and on the other hand several "new" or "emerging" social processes. I refer first to the emergence of social movements within which a new oppositional language is being created. In the same way in which, in the past, social movements were at the roots of the making of a common *consciousness* – whether a "class" or a "national" consciousness – so today, within such organizations as the European Social Forum, or the early hints of Europe-wide labor actions, or the extraordinary peace movement that took form all over Europe (indeed all over the world) during the Winter 2003, what is being created is also a common feeling and a common language (a common "natural" language and a common "cultural" language).

And there are, finally, the transnational movements *par excellence*, migratory movements. Here we have to note however a paradox. Migrants, who still are, in this respect, those "free" and "unattached" workers of which Marx wrote in the first volume of *Capital* (1867), in the section about "primitive accumulation" – obliged by international socio-economic and political events to be "free" now not only of any property but even of any "national" attachment, free of selling their labor-power wherever, in the globe, there is a demand for it – are, exactly for this reason, able to insert themselves into this new European construction even better than natives. And in fact they often know better than natives the common language, i.e. the English language[3]. Furthermore, they are not saddled with any specific national loyalty, they are better able to assume the "universalist" standpoint of which

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[3] In the *European* of 28-31 January 1993, one could read the following letter written (in English) by a Filipino worker from Milan, Italy: "[…] It is important for English to be understood and spoken throughout Europe. I am a Filipino and have studied English since I was eight. English has been the language of learning in schools and colleges in the Philippines for more than 50 years. I am now in Italy working as a domestic helper and find it very difficult to communicate with Europeans who do not speak English. I agree [...] that English is an enriching influence in Europe".

George Herbert Mead wrote. They are therefore better able to assume the standpoint of "European citizens" [4], who "belong" in a "European entity"[5].

Migration, Criminalization and "Security" in Today's Europe

And yet – in spite of their so described potential centrality to the European project – one could venture to say that those mechanisms that have created the conditions for migration, both at an international and at a domestic level, have also created, at the same time, the conditions for migrants' involvement in specific kinds of officially recorded crime and for an "amplified" fear of it. This situation proceeds, I believe, from a number of reasons.

As we have seen, the process of transferring sovereignty from the individual European countries to the European Union is setting the stage for deep troubles in terms of loss of national identity and difficulty in acquiring a problematic new "European" identity. On the one hand, the making of Europe is by necessity accompanied by the resurfacing of traditional "sub-national" or "stateless / national" identities (Jauregui 1986). On the other hand, the lack of an actual European system of democracy and of a genuine European "public sphere", as noted above, hampers the efforts at building a type of European common house which groups larger than the European elites may recognize as their own.

This political, and specifically European, political crisis is developing at the same time as so-called "post-Fordist" processes of globalisation and deep restructuring of the economy which, under the leadership of the United States, have deeply put in question the accustomed way of living that had emerged from post-World War II reconstruction. The decisive move of the core of the economy from the old industrial factory-based production toward a lighter, de-centered, and much more flexible electronic information-based production, with the concomitant "marketization" of much "domestic" and "care" work -- which has been called the "mcdonaldization" of society (Ritzer 2000) -- have gone together with the loss of

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[4] The proposal (then rejected) that had been advanced at the time of the Maastricht treaty to severe the European citizenship from national citizenships, then put aside, would have reflected such a historical social reality.

[5] The last piece of the puzzle here constructed would certainly be constituted by the creation of European mass media in common languages, media whose function would unavoidably be at the same time to "amplify" but also to "control" all these phenomena, thereby completing the process of creation of a European "public sphere".

centrality of a male- and union- dominated working class in favor of a sharply divided, largely poorer, disorganized, and increasingly female working class. At the same time, the wealth of upperly mobile sectors, eager for consumption of "licit" and "illicit" goods, together with a political and economic emphasis which has encouraged newer and newer forms of individual entrepreneurship, have accompanied what could be described as a true unmaking, not only in numbers and power but also morally, of the traditional working class.

It is easy then at least to hypothesize that the principal figures of deviance linked to migration – drug dealing, prostitution, "black market" entrepreneurship – have found their roots in the increased volume of demand and opportunities this new situation has generated, while the traditional sectors of the working class that have most suffered from this overall dislocation, were brought to identify their very cause in what by and large has been their consequence – that is, the coming of immigrants and their occupying specific niches in the licit and illicit labor market. The fear of the "stranger"[6] would therefore follow patterns of development with which students of deviance and social control are familiar from studies on the fear of deviance. Indeed, the otherness of the stranger and the otherness of the deviant are collapsed in the social portrayal of the criminal immigrant – in the same way in which the reference to immigration largely overlaps, especially in much local and tabloid press, with reference to crime.

Sociologist Kai Erikson, many years ago, in his *Wayward Puritans* (1966), described the "waves" of deviance that had shaken New England Puritans in the seventeenth-century. He connected such waves to historical situations of crisis in the colony. Following in the steps of Durkheim (1895), his theory was that a community publicly debates its norms and values through the notoriety of famous cases of deviance. I would like to follow Erikson's suit in

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[6] The stranger has always been a matter of deep interest for sociologists, probably because, as Alfred Schutz (1944) noted, the attitude of the stranger and the attitude of the sociologist have something in common. The stranger is obliged to behave as a practical sociologist in trying to decipher the obscure messages coming to him or her from a social group with which he or she has no familiarity. Georg Simmel (1908) wrote of the stranger as the visitor who is with us to stay, somebody we can identify as foreign but who, at the same time, is remaining with us. He is different and carries with himself an air of dangerousness. As long as this traditional attitude will prevail, a traditional attitude that is often fostered by elites' manipulation of each country's resources of racist and xenophobic discourse (van Dijk 1993), there will always be, as Sayad (1996) has written, a double suspicion toward the immigrant. The stranger, being already at fault for his strangeness, will easily be the target for suspicion of all kinds of deviant and criminal acts. If only some stranger will engage in such acts -- not least for the reasons that labelling theorists explained so well -- the viciousness of the circle will be perfect and the

submitting that, through this central and vexed issue of immigration, we Europeans are conversing about ourselves, who we are, and where we want to go. The talk about immigrants' criminal and cultural deviance, with which European mass-media are replete (van Dijk 1993; Ter Wal 1991), only in part is a vehicle for controlling immigrants' behavior. It is especially a vehicle for intra-European debate about the existence, nature and essential characteristics of a European identity that, as noted above, appears to be very problematic (Schlesinger 1992).

It is in any case a fact, the degree to which today, the prisons of Europe, and particularly of the Southern European countries (which had traditionally been countries of e-migration), are replete with increasing numbers of migrants from Africa, Asia and Latin America (see Table 1).

The column at the right end in Table 1 represents the ratio of the percentage of foreign inmates to the percentage of resident foreigners from countries other than the European Union[7]. Such ratio should be considered with caution because it relates measures taken at two different points in time, 1 September 2000 for the inmates and 31 December 1998 for the residents. The latter, it can be argued, may have increased during those 20 months, producing therefore an inflated ratio. Keeping therefore these cautions in mind, for the countries for which we have data, we obtain an overrepresentation of non-EU foreigners that goes from 4 times for Austria to almost 20 times for Greece. Note especially the very high ratios for the Southern European countries, Spain, Portugal, Greece and Italy. These are of course countries of very recent immigration and the comparison with other countries, which have a colonial past, may be unfair. In fact, in former colonial countries, such as France or the United Kingdom, there may be naturalised citizens, often of colour, who are in prison because of social mechanisms not unlike those that preside to foreigners' imprisonment

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stranger will be found doubly guilty, for his strangeness and for his deviance, already implicit and wholly predictable in his being a stranger (see also Bauman 1997:35-45).
[7] For some countries it may be debatable not to take into account the foreigners from the European Union, because among the foreign inmates there may be a substantial number from countries of the EU. This would apply less, though, to the major countries that are the focus of analysis here.

Table 1. Foreign population in European penal institutions on 1 September 2000

	Number[8]	%[9]	%[10]	Ratio[11]
Austria	2 077	30,1	9.1/7.6	4.0
Belgium	3 501	40,4	8.7/3.7	10.9
Denmark	557	17,0	4.8/3.4	5.0
Finland	168	6,2	1.6/1.2	5.2
France	10 553	21,6	6.0/4.0	5.4
Germany	26 778[12]	34,1	8.9/6.5	5.2
Greece	3 892	48,4	2.9/2.5	19.4
Hungary	762	4,8		
Ireland	199	7,5	3.0/0.7	10.7
Italy	15 258	28,5	2.2/1.9	15.0
Netherlands	1 026[13]	7,4	4.2/3.0	2.5
Norway	341	12,9		
Portugal	1 560[14]	10,7	1.8/0.8	13.4
Slovenia	188	16,6		
Spain	8 470	18,8	1.8/1.0	18.8
Sweden	1 211	21,3	5.6/3.2	6.7
Switzerland	3 999	62,6		
The F.Y.R.O. Macedonia	86	6,2		
Turkey	951	1,3		
United Kingdom			3.8/2.2	3.9[15]
England and Wales	5 586	8,5		
Northern Ireland	29	1,9		
Scotland	111	1,9		
European Union			5.2	

but obviously they do not show up in foreigners' statistics. What is probably specific to Southern European countries however, as it has been observed (Calavita 1998 and 2003), is their high level of undocumented migrants, caused by the almost impossible task of immigrating legally, especially for reasons of work. Particularly in these countries, the

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[8] Number of foreign prisoners (data Council of Europe, SPACE 2000.3) at 1.9.2000.

[9] Percentage of foreign prisoners on the total number of prisoners (data Council of Europe, SPACE 2000.3) at 1.9.2000.

[10] Percentages of foreigners/foreigners from outside the EU on the resident population (my elaboration of data from CARITAS 2001:35) at 31.12.1998.

[11] Ratio of % foreign inmates to % foreigners from outside the EU.

[12] For Germany, number and percentage of foreign prisoners still refer to 1.9.1998 (data Council of Europe, SPACE 98.3).

[13] The Netherlands has had a dramatic decrease of the foreign population in prison between 1998 and 2000 (from 3625 and 32.7% to 1026 and 7.4%) of which we do not know any specific reason.

[14] Also for Portugal, number and percentage of foreign prisoners still refer to 1.9.1998 (data Council of Europe, SPACE 98.3).

criminal justice system provides the only type of institutional "care" available to "criminal" migrants, almost always undocumented and therefore devoid of political or social citizenship. Rather therefore than *substituting for* welfare, the penal system constitutes the *only* system of welfare available, *lato sensu*.

Often analysts – even social scientists! – tend to read documents such as Table 1 as evidence of criminal behavior. It goes without saying that this would be calamitously wrong! The rate of incarceration is at least a measure of criminalization as is a measure of criminality. On this, one should never forget the importance of the "Sellin principle", the idea, that is, that, "as Professor Sellin has repeatedly pointed out, 'The value of criminal statistics as a basis for measurement of criminality in geographic areas decreases as the procedure takes us farther away from the offence itself'" (Sutherland and Cressey 1978:30). We do not have the time and space here to even mention all the social mechanisms that produce those data, from the high visibility of migrants' crime *vis à vis* the extremely low visibility of other kinds of crime ("crime in the street" vs. "crime in the suites", as it is often said), to the specific crimes that only migrants can commit, from the public and legislative sensitivity against migrants to the discriminatory behavior of many public institutions, from the migrants' deprivation of the fundamental right to have an efficient defense to the impossibility of applying to migrants a host of pre- and after-trial benefits that keep natives out of prison but that railroad foreigners into detention. And of course this does not even touch on the basic issue of the social, economic, cultural and legal condition of disadvantage that many migrants start from![16]

However, a move that would be essential to even start coping with all of this is the basic recognition of Europe as a "country of immigration"! The historical acceptance by the new German government in 1999 of Germany as a *Einwanderungsland* has to lead the way for all of Europe: *Europa ist ein Einwanderungsland*! It is not an accident that the evolution of criminological reflection on the issue of migrants' crime has been so strictly linked in Germany to the main directions of immigration policies and immigration law (Monte 2002). I realize this is not easy. At the very least, it assumes an attitude to considering Europe maybe not a State, maybe not a nation but at least a "country"! This brings us back to where we

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[15] This has been calculated by dividing the prisoner data for England and Wales by the foreign population from outside the EU in the United Kingdom.

[16] About some of these aspects, more specifically, see Melossi (2000) and a forthcoming special issue of the journal *Punishment and Society* (Melossi 2003).

started. The issue of migration in Europe – with all those other issues to which it is usually, rightly or wrongly, connected, such as that of security and crime – is *prima facie* the kind of issue that cannot be discussed (only) in the very many languages that characterize Europe today as a political entity. As all the issues which are vital to the very existence of Europe it has to be discussed in ONE language, transnationally – because transnational have to be the decisions and the policies to be made and implemented. To be shy on such matters simply means to give in to what is going on in many European countries today where issues such as migrations are not even discussed any longer in national languages but are discussed in localistic dialects and *argots* arching back to a rhetoric of *Blut und Ehre*.

I hope European elites have learned from the very recent disaster – European disaster – of the war in Iraq. Their role is to go ahead with the greatest urgency and decision toward the creation of an actual common area of "freedom, security and justice", not as an area of conversation among a few government functionaries, but as an area of conversation amidst the wider European public. Democracy in Europe is not something that has to be defended or preserved. It is rather something that has to be built and, indeed, *constituted*!

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