
THE CRIMINALIZATION OF BLACK MIGRANT WOMEN IN ITALY: ISSUES AND ANSWERS

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Gendered and racialized individuals are often members of communities that are generally more likely to see the criminal justice system work against them. Taking the specific case of Black women migrants in Italy, this essay attempts to answer the following questions: What kind of agency do Black migrant women in Italy have through their engagement with law, and how can those migrants show agency within the constraints of a criminal justice system that generally does not work in their favor? To answer these questions, it is important to review the sociological context of migration in Italy, identify the limitations and downfalls of the Italian criminal justice system in relation to Black women migrants, discuss specific case studies related to the experience of Black migrant women in the Italian criminal justice system, and emphasize the relevance of restorative justice and intercultural law initiatives in the Italian context. The argument is that by establishing solidarity networks through migrant associations and, therefore, making cases of injustices and discrimination public, migrant women force both the legislators and the Italian public to think of new ways to uphold justice and interpret the law. Two practices will be discussed extensively throughout this paper: restorative justice and intercultural law.

Keywords: *migration, gender, criminalization, agency, restorative justice, intercultural law*

Introduction

The criminal justice system is an incredibly complex and well-oiled machine, and although it generally aims to maintain social order and safety through the isolation of those deemed dangerous, there has been an increase in the cases of injustice and wrongful convictions that are, in many places, discrediting and taking value away from that very system that both the media and the academic community have pointed out. Gendered and racialized individuals are often members of communities that are usually more likely to see the criminal justice system work against them. Taking the specific case of Black women migrants in Italy, this essay attempts to answer the

following questions: What kind of agency do Black migrant women in Italy have through their engagement with law, and how can those migrants show agency within the constraints of a criminal justice system that generally does not work in their favor? The argument is that by getting involved in migrant associations and, thus, making their claims public, migrant women force both the legislators and the Italian public to think of new ways to practice justice and interpret the law. Here, restorative justice and intercultural law initiatives will be given greater attention. It is only recently in academia that restorative justice and intercultural law have been linked to migration. Despite race and gender inequalities issues within the context of criminal justice making for a lot of academic research, restorative justice and intercultural law research texts in the contexts of gender and migration are unfortunately still very hard to find.¹ Moreover, while the role of gender in migration has been gaining traction in academia, few research projects focused on the importance of law in the process.² To answer this question, it is important to 1) review the sociological context of migration in Italy, 2) identify the limitations and downfalls of the Italian criminal justice system in relation to Black women migrants, 3) discuss specific case studies related to the experience of Black migrant women in the Italian criminal justice system, and finally, 4) emphasize the relevance of restorative justice and intercultural law initiatives in the Italian context.

Literature Review

“Migrant,” throughout this essay, should be understood as anyone who has crossed an international border to reach Italy. In line with Luibheid and Cantu’s view of the migrant category, no distinctions will be made between legal migrants, refugees, asylum seekers, or undocumented migrants, as “such distinctions do not reflect empirically verifiable differences among migrants, who often shift from one category to another.”³ Moreover, as De Giorgi explained, the process of criminalization and illegalization of migrants in Italy exists, or takes place, regardless of migrants’ actual legal status.⁴ In other words, migrants, especially Black migrants, because they are racialized, are likely to be arrested or intercepted by police officers despite having legal documents; the line between illegality and legality becoming so thin that it

1 Theo Gavrielides, “Bringing Race Relations into the Restorative Justice Debate: An Alternative and Personalized Vision of “the Other,” *Journal of Black Studies* 45, no. 3 (2014): 216-246.

2 Kitty Calavita, “Gender, Migration, and Law: Crossing Borders and Bridging Disciplines,” *International Migration Review* 40, no. 1 (2006): 104-132.

3 Eithne Luibheid and Lionel Jr. Cantu, “Introduction,” in *Queer Migrations: Sexuality, U.S. Citizenship, and Border Crossings* (Minneapolis: University of Minnesota Press, 2006): introduction.

4 Alessandro De Giorgi, “Immigration control, post-Fordism, and less eligibility: A materialist critique of the criminalization of immigration across Europe,” *Punishment & Society* 12, no. 2 (2010): 147-167.

appears irrelevant in the context of this paper. In fact, in Italy and elsewhere in Europe, “immigrant ‘legality’ and ‘illegality’ are institutionally constructed conditions [that] are not as clearly distinguishable and mutually exclusive as the widespread anti-immigration rhetoric would have them.”⁵ Therefore, rather than a logic of legality, it appears as if it is the perception of danger that drives migrants’ criminalization from an Italian perspective. According to Fabini, Italian police officers “do not limit themselves to a finding that the migrant is undocumented. In reports, they always identify elements other than the lack of papers. ‘Illegality’ per se is under-enforced.”⁶

This paper’s focus on Black women migrants in Italy is motivated in part by the fact that, historically, there has been a tendency to see migration as a customarily male phenomenon despite evidence of extensive female primary migration.⁷ Moreover, if the presence of Black male migrants in Italy has historically provoked violent responses such as protests and racial attacks, the presence of Black migrant women – whether they come from Sub-Saharan regions, from North African countries, from Eritrea or Cape Verde – has generally been ignored by the Italian public.⁸ Black migrant women in Italy are rendered invisible and thus either ignored or discriminated against within the context of the law. As Andall points out, a “lack of acknowledgment of a migrant community or group also implies a lack of response to their specific needs and problems.”⁹

The researcher recognizes that it is impossible to talk about Black women migrants as a homogenous social group – the attitudes, cultural references, education, financial situation, status, gender, or political background can vary significantly – and attempts to be wary of different intersectional identities throughout this paper. Moreover, when talking about race and Black migrant women, the text does not embrace a biological interpretation of racial categories. It uses race and the power structures that the term is infused with to refer to the social and political process that “racializes” particular groups and communities.¹⁰ Lastly, by emphasizing the intersectional experiences of migrant women of color, this paper avoids essentializing the male/female dichotomy, recognizing that the categories of gender are politically and socially constructed. However, as Calavita points out, the male/female dichotomy is difficult to ignore or avoid in a legal context, considering that “the gender binary is solidly entrenched in the law, where it is repeatedly shored up as a taken-for-granted social reality.”¹¹ More details on the particular experience of Black women migrants in Italy are given further in the paper.

5 Ibid., 158.

6 Giulia Fabini, “Managing illegality at the internal border: Governing through ‘differential inclusion’ in Italy,” *European Journal of Criminology* 14, no. 1 (2017): 55.

7 Jacqueline Andall, “Women Migrant Workers in Italy,” *Women’s Studies Int. Forum* 15, no. 1 (1992): 41.

8 Ibid.

9 Ibid., 42.

10 Gavrielides, “Bringing Race Relations,” 222.

11 Calavita, “Gender, Migration, and Law,” 106.

Generally speaking, as numerous scholars correctly emphasized, legal policies are often framed without proper knowledge of the distinctive experiences of female migrants. As Fitzpatrick and Kelly argue, it is likely that “legal regulation of migration reproduces and exacerbates the social and cultural inequalities that disempower female migrants.”¹² What the researcher attempts to avoid, however, is victimizing women in the criminal justice system. Rather, as scholars have done in the past, they want to emphasize migrant women’s agency when negotiating and navigating a normative and rigid justice system. One might think that norms and laws cannot and will not change. However, as Ricca observes, the cultural and practical embedding of norms allows for changes to occur without breaking the legal normative system.¹³ Nevertheless, Hudson recognizes that the power of the criminal justice system lies in its ability to impose an identity of “other” – what we could label its “othering power” – so that marginalized or criminalized groups can be moved “outside the constituency of justice.”¹⁴ Therefore, when a court discriminates based on race, gender, or immigration status, whether it is against the victim or the offender, it reveals its acceptance of persistent social narratives that embrace the notion of “other”, of “unworthy”, of “illegal”.¹⁵ When Black migrant women are victims of a crime, we must also acknowledge the numerous disincentives – such as “structural constraints, [...] language barriers, perceived racism in the criminal justice system and social service agencies, and lack of adequate ethnocultural services”¹⁶ – to engaging with the criminal justice system.

This paper asserts that by establishing solidarity networks and making cases of injustices and discrimination public, migrant women force both the legislators and the Italian public to think of new ways to uphold justice and interpret the law. Two of those practices will be discussed extensively throughout this paper: restorative justice and intercultural law. Understood as “an ethos with practical goals, among which is to restore harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest

12 Joan Fitzpatrick and Katrina R. Kelly, K, “Gendered Aspects of Migration: Law and the Female Migrant,” *Hastings International and Comparative Law Review* 22, no. 1 (1998): 48.

13 Mario Ricca, “Intercultural law, interdisciplinary outlines: Lawyering and anthropological expertise in migration cases before the courts,” *E/C Rivista Telematica dell’Associazione Italiana di Studi Semiotici* (2014): 2.

14 Barbara Hudson, “Beyond white man’s justice: Race, gender and justice in late modernity,” *Theoretical Criminology* 10, no. 1 (2006): 33.

15 David B. Thronson, “Of Borders and Best Interests: Examining the Experiences of Undocumented Immigrants in U.S. Family Courts,” *Texas Hispanic Journal of Law & Policy* 11 (2005): 54.

16 Baukje Miedema and Sandra Wachholz, “A complex web: Access to justice for abused immigrant women in New Brunswick,” *Canadian Woman Studies* 19, no. 1-2 (1999): executive summary.

dialogue”¹⁷, restorative justice in Italy has a long history. Indeed, from the late 1960s to the early 1980s, Italy endured a period of political violence and terrorist attacks, followed by instances of reconciliation and dialogues between perpetrators and victims which helped pave the way towards the construction of a positive single shared memory of the past.¹⁸ However, the relation between restorative justice and immigration in Italy remains largely unexplored. Nevertheless, scholars¹⁹ agree that restorative justice can deliver more effective results in diverse and unequal societies. When linked to immigration, it might appear difficult to see how restorative practices can work, considering that the relation between the offender and the victim is blurred, or more complex. Yet, Sullivan argues that “restorative justice processes can be applied to offenses where there is no immediately identifiable victim, like the crime of entering a country without authorization or overstaying one’s visa without aggravating factors.”²⁰ The potential for restorative justice in Italy, therefore, exists in “the openness of the process to differing cultural sensibilities and to addressing relations of inequality.”²¹ Unquestionably, migrants and the criminal justice system could benefit from incorporating restorative justice practices in their relationship.

Finally, this paper tackles the legal relevance of cultural differences, or, namely, intercultural law. Because cases of discrimination based on race, gender and immigration status are numerous in Italy and have been covered extensively in the media, Italian legislators now have to assess how to better integrate different ways of life within the normative structure of the criminal justice system.²² The Italian state is familiar with similar practices, as it was involved in intercultural educational reforms that aimed to meet the needs of immigrant children.²³ The objective of intercultural law would thus be to overcome ignorance on the part of migrants about cultural and legal meanings, and from legislators and the public about the patterns of judgment and behavior of “the other.”²⁴ Such initiatives, as are discussed in the paper, should not be taken once the cases of discrimination and injustice already arrived before courts.

17 Theo Gavrielides, *Restorative justice theory and practice: Addressing the discrepancy* (Helsinki, Finland: Heuni, 2007), 139.

18 Anna Cento Bull, “Working through the violent past: Practices of restorative justice through memory and dialogue in Italy,” *Memory Studies* (2018).

19 Kathleen Daly, “Restorative justice in diverse and unequal societies” *Law in Context: Socio-Legal Journal* 17, no. 1 (2000); Michael J. Sullivan, “A restorative justice approach to legalising unauthorised immigrants,” *Restorative Justice* 5, no. 1 (2017).

20 Sullivan, “A Restorative Justice Approach,” 75.

21 Daly, “Restorative Justice,” 183.

22 Ricca, “Intercultural law.”

23 Anthony J. Liddicoat and Adriana Díaz, “Engaging with diversity: the construction of policy for intercultural education in Italy,” *Intercultural Education* 19, no. 2 (2008): 137-150.

24 Ricca, “Intercultural law.”

Limitations

As with any other text, this particular research work is bound to face limitations. Firstly, there is a danger of positing restorative justice as the perfect solution to, or the exact opposite of retributive justice — a distinction that, according to Daly, cannot be empirically sustained.²⁵ Secondly, Sullivan identifies practical barriers to the application of restorative justice to immigration: 1) “the summary use of deportation by immigration officials as a first line of defense against immigration offenses, without the possibility of allowing an immigrant to make amends for entering the country illegally”; and 2) “the criminalization of illegal entry as a way for government officials to avoid processing asylum claims.”²⁶ One should be wary of such limitations before contemplating restorative justice as a lasting alternative to retributive justice for Black women migrants in Italy.

The Sociological Context of Black Migration in Italy

Although historically, Italy’s demographics have been influenced by the large transatlantic and European migration of its citizens, it is only in the past 50 years that Italy truly came to be recognized as a country of immigration. Patterns of immigration to the Southern European country have been far from static, and if the experience of certain migrant groups to Italy has been studied extensively in academia, our knowledge about Black women migrants remains fairly limited. Generally, the movement of female migrants to Italy began in the 1970s, with most of these women being autonomous primary migrants.²⁷ Despite the introduction of strict migration control policies at the time, there was still a high demand for low wage female labor in manual service jobs, such as domestic work or the nursing profession. Women’s migration to Italy was also motivated by the large informal and underground Italian economy, Italy’s aging population, and the country’s geographical condition as Europe’s southern border.²⁸ Largely ignored until the 1980s, migration to Italy began to affect public consciousness in the late 1980s. This slow response to immigration can partly be explained by the fact that women represented a significant portion of Italy’s migratory body in its early stages: women were not a visible force, as their lives were often confined to the limits of their employers’ homes.²⁹ In fact, although Black women migrants, coming primarily from Nigeria and Somalia, mostly migrated to Italy before men did, their arrival fortunately did not result, as they did for Black

25 Daly, “Restorative Justice.”

26 Sullivan, “A Restorative Justice Approach,” 74-75.

27 Jacqueline Andall, *Gender, migration and domestic service: The politics of black women in Italy* (Routledge, 2000).

28 Federico Oliveri, “Migrants as activist citizens in Italy: understanding the new cycle of struggles,” *Citizenship studies* 16, no. 5-6 (2012): 796.

29 Andall, *Gender, migration and domestic service*.

male migrants, in any form of demonstration and racial attacks.³⁰

Consequently, in its early stages, Black women migration to Italy was not seen as representing a threat to the Italian society and its labor market; these migrants were in fact “filling a vacuum left by Italian women”³¹ that were eager to assert their role in society by working outside the home and gaining political recognition.³² However, in the late 1980s, Italy experienced a growing level of intolerance towards Black women migrants. The gendered attributions through which women migrants were rendered invisible and men were seen as deviant and threatening were challenged following the emergence of sex-work-related migrations of Black women: “The contrast between these ‘new’ migrants, many of whom soon became visible as street prostitutes, and the ‘old’ ones, less noticeable and domesticated, caused a major rupture in the public perception of female migrants, who were now also identified as a threat.”³³ Although it is clear that only a minority of Black women migrants work as prostitutes, the involvement of some Black migrants in prostitution had and continues to have negative implications for women migrants in Italy.³⁴

The Criminalization of Black Migrant Women in Italy

Over the past two decades, criminalization has arguably become the default way to deal with migration, with states increasingly closing and controlling their border by establishing limits to legal entrance, but most importantly, by “enacting and enforcing criminal norms against those foreigners who happen to violate these limits.”³⁵ Three general trends can now be observed: “the increasingly harsh criminal consequences attached to violations of laws regulating migration, the use of removal as an adjunct to criminal punishment in cases involving noncitizens, and the rising reliance on criminal law enforcement actors and mechanisms in civil immigration proceedings.”³⁶ As of 2013, Italy had the largest difference in Europe between the number of foreigners in prison (1,203/100,000) and Italians (71/100,000), meaning that migrants were incarcerated 16.9 times more than Italians.³⁷ And if the imprisonment rate of Italian nationals was at 51.5 in 2007, it was at 74.3 for foreigners during the

30 Andall, “Women Migrant Workers in Italy,” 42.

31 *Ibid.*, 43.

32 Lorgia García-Peña, “Being black ain’t so bad... Dominican immigrant women negotiating race in contemporary Italy,” *Caribbean Studies* (2013), 148.

33 Isabel Crowhurst, “Caught in the victim/criminal paradigm: female migrant prostitution in contemporary Italy,” *Modern Italy* 17, no. 4 (2012): 496.

34 Andall, “Women Migrant Workers in Italy.”

35 Alessandro Spina, “A Just Criminalization of Irregular Immigration: Is It Possible?” *Criminal Law and Philosophy* 11, no. 2 (2017): 352.

36 Jennifer M. Chacón, “Managing migration through crime,” *Columbia Law Review Sidebar* 109 (2006): 135-136.

37 Claudia Mantovan, “Cohesion without participation: immigration and migrants’ associations in Italy,” *Patterns of Prejudice* 47, no.3 (2013): 257.

same year.³⁸ These statistics are astonishing, and it is imperative to problematize why migrants in Italy and across Europe are increasingly criminalized and often hyper-incarcerated. The processes of criminalization and illegalization of migrants appear to point toward a new model of punitive regulation of migrations, in which immigration law *and* the criminal justice system work together to reproduce the immigrants' vulnerability and exploitability.³⁹ Women migrants of color are also more likely to experience the harmful consequences of the merger between criminal and immigration enforcement.⁴⁰ In Italy, popular discourse on immigration is now joined with rhetorics of crime in such a way that "migrant populations are popularly viewed as clandestine or "illegal" and therefore prone to criminal behavior."⁴¹ This culture of hostility and criminalization is locally produced and understood but it also naturally makes its way into the interpretation and the application of laws within the national criminal justice system. Consequently, the increased policing of national and internal borders has made Black migrant women primary victims of this new punitive model where recourse to criminal law is considered to be an unproblematic way of dealing with migration issues.⁴²

Apart from the legal criminalizing frame of Black women migrants, there exist several other discursive strategies that essentialize and racialize migrants while portraying them as a threat.⁴³ Evidently, Black migrant women in Italy are racially marked subjects and, as such, are affected by discourses of race and criminalization. The Italian discourse on migrant criminality resides primarily in the areas of drugs and prostitution. It is common, for example, for Black Nigerian women, to be seen as sex workers and drug traffickers by the Italian public.⁴⁴ It is worth mentioning, however, that even if prostitution is perceived by the Italian public as typically foreign, available statistics show that prostitution by Eastern European women is far more common in the country.⁴⁵ Yet, although prostitution is legal in Italy, its practice implicitly criminalizes all Black migrant women both in the mind of the public and in the mind of the criminal justice system and of the people responsible for its enforcement. Discrimination and criminalization of Black women migrants are thus very much endorsed by the current Italian legislation, which asks, for example, of foreign citizens to show their documents on request to officials or face a punishment of up to six months imprisonment. A 21-year-old Black woman

38 De Giorgi, "Immigration control," 155.

39 Ibid., 158.

40 Pooja Gehi, "Gendered (in) security: Migration and Criminalization in the Security State," *Dukeminier Awards: Best Sexual Orientation and Gender Identity Law Review* 12 (2012): 363.

41 Asale Angel-Ajani, "The racial economies of criminalization, immigration, and policing in Italy," *Social Justice* 30, no. 3 (2003): 48.

42 Spena, "A Just Criminalization."

43 Oliveri, "Migrants as activist citizens," 800.

44 Angel-Ajani, "The racial economies of criminalization."

45 Ibid.

interviewed by Andall (2002) after being stopped by the police stated:

*There were three of us, three Eritrean girls and by mistake ... we did not have all our papers on us. They stopped us and took us to the police station. I can even comprehend that they did this to check out our status, but don't keep me there for five hours and don't take my fingerprints and don't treat me as if I were the last of the prostitutes.*⁴⁶

Such an example suggests that being Black and being Italian are still perceived as being mutually exclusive categories and that Italian legal policies continue to be framed "with inadequate knowledge of, and responsiveness to, the distinct experiences of female migrants."⁴⁷

On Women's Agency: Women Migrant Associations in Italy

As of now, this article focused primarily on how Black migrant women are criminalized by a criminal justice system that is bound to work in their disfavor. However, although the current Italian legislation limits migrants' participation in Italian political and legal life by not allowing political rights (e.g. voting rights) to non-EU citizens, Black women migrants in Italy are not only reacting to situations that are beyond their control. Rather, they often show agency and are active participants of a political and criminal system that seeks to illegalize and criminalize their existence. Taking the case of migrant women associations, this section will analyze how Black migrant women in Italy perform solidarity and influence the normative political and legal structures of the country.

Black migrant women's involvement with the Italian legal system remains limited to non-conventional forms of implication as "the nature of migrant participation is closely linked to the political and discursive opportunity structures available to these social groups where they live and act."⁴⁸ In this context, migrant women unfortunately still face multiple barriers of entry for political participation. However, historically, women migrant associations have proven to be an effective way to challenge legal categories and practices of criminalization and illegalization. Three phases have been identified in the development of women migrant associations in Italy: 1) the development of associations encouraged by Italian authorities to mediate politically between the state and migrant groups in the 1980s, 2) the mid-1990s withdrawal of migrants from said associations and the establishment of more ethnic and gender-based women organizations controlled by the migrants themselves, and 3) the current reconfiguration of these associations for political and legal purposes.⁴⁹ Such

46 Jacqueline Andall, "Second-generation attitude? African-Italians in Milan," *Journal of ethnic and migration studies* 28, no. 3 (2002): 400.

47 Fitzpartick and Kelly, "Gendered Aspects of Migration," 48.

48 Mantovan, "Cohesion without participation," 254.

49 *Ibid.*, 262.

associations, besides providing several services and forms of support and training for immigrant women, contribute greatly in “bridging a gap between migrant women associations and historical feminist associations of Italian women that until that time had remained rather separated worlds.”⁵⁰ These associations also contributed in changing discriminatory legislation against migrant women. The organization Almaterra, based in Turin, writes, on its website: “Our goal is to accompany migrant women on a journey of awareness of their rights and duties, through learning the Italian language and knowledge of the laws and history of the host country. [...] Through socialization, attempts are made to contrast the conditions of exclusion and marginality of the group, helping migrant women to acquire tools for personal strengthening and skills that lead to the activation of empowerment processes.”⁵¹ Actions for Non-EU Migrants, one of the organization’s flagship project, aims to help immigrant women navigate Italian legal and bureaucratic procedures. The project is organized around intercultural mediation activities that promote both the social integration of migrant women and their radical fight against practices of exclusion in housing, work, justice, education, and health. Participation in such organizations should be understood as “acts of ‘fearless speech’ (Foucault 2001), which create migrants as ‘actors answerable to truth against hypocrisy.’”⁵² In fact, by speaking out and taking action within these associations, migrant women are denouncing the hypocrisy of the Italian criminal justice system and the unjust functioning of the Italian society. A good example of that would be the “Manifesto” written by an association of migrant women in Bologna after the women discovered that there “was a ‘discrepancy between ideology and reality’ when it came to officials’ support of integration, and that the City of Bologna did not always deliver on the reality side of the equation.”⁵³ The “Manifesto” prioritizes legal status, criminalization and social security protection. In this context, migrant women’s acts of citizenship are based on self-critical mechanisms of democratic law that they activate to prove that their claims to rights and legal representation are legitimate.⁵⁴

Discussion: Restorative Justice and Intercultural Law in the Italian Context

It is no surprise that the illegalization of Black migrant women within the Italian criminal justice system hinders their integration by stigmatizing and removing them from society – whether it is by putting them into prisons, or, as is the case for non-citizens, detaining and, eventually, deporting the offender without consideration for

50 Tiziana Chiappelli, “Migrant women in Italy between exclusion and active participation. A gender perspective in inclusion processes,” *Comparative Cultural Studies-European and Latin American Perspectives* 1, no. 2 (2016): 43.

51 Almaterra Torino, <http://www.almaterratorino.org/it/associazione>.

52 Oliveri, “Migrants as activist citizens,” 802.

53 Calavita, “Gender, Migration, and Law,” 122.

54 Oliveri, “Migrants as activist citizens,” 803.

his/her family or community connections.⁵⁵ Why should criminal justice be considered in terms of sameness of treatment when the experiences of female migrants in Italy are so very different from those of white Italian citizens? How do we make sure that law ensures that Black migrant women's experiences receive contextualized consideration from judges, that the principle of least restrictive measures is applied, and that the current hyper-incarceration rate of Black migrant women decelerates?⁵⁶ At present, the criminalization of Black migrant women is a contextual gendered and racialized phenomenon that exists independently from a *perceived* increase of migrants' crime rate. Here, I would first like to discuss the possibility of moving law towards a restorative justice model; something that, implicitly, migrant women have done through their engagement with migrant women associations.

Because Italian citizens are both angered by a lack of control over immigration policy outcomes and more likely to develop positive attitudes towards immigrants if they engage with them,⁵⁷ restorative justice processes can generally be seen as a viable alternative to the criminalization of migrants in two distinct ways: 1) victim-offender mediation where there is an individual victim who has been directly harmed by a migrant's actions (whether it is drug trafficking, prostitution, or an unauthorized migrant's use of false document); 2) "community reparative boards to address the more diffuse harms arising from entering and remaining in a country without authorization."⁵⁸ The apparent disconnect between potential restorative justice sentencing practices and the relentless coercive punishment of Black migrant women exists because of the exclusion of women's narratives in the practice of sentencing law.⁵⁹ Moreover, the criminal legal discourse marginalizes Black migrant women, who often have language barriers and less knowledge about the criminal legal system of their country of residence. So-called 'crimes of migration', which could also be considered 'crimes of despair' – here we can think of violations of the immigration law, forging of legal documents, providing shelter to undocumented relatives⁶⁰ – could thus be dealt with by Italian community reparative boards who, under the guidance of judicial professionals, would implement restorative justice initiatives where migrants and communities' "argue that they have suffered harm, need repair and want to become involved as volunteers to express their views, help decide on appropriate sanctions, and facilitate community service and reintegration activities."⁶¹

55 Sullivan, "A Restorative Justice Approach," 79.

56 Gillian Balfour, "Falling between the cracks of retributive and restorative justice: The victimization and punishment of Aboriginal women," *Feminist Criminology* 3, no. 2 (2008): 115.

57 Sullivan, "A Restorative Justice Approach," 80.

58 *Ibid.*, 70.

59 Balfour, "Falling between the cracks," 102.

60 De Giorgi, "Immigration control," 158.

61 Sullivan, "A Restorative Justice Approach," 79.

Secondly, it seems imperative to discuss the potential that intercultural law practices represent for Black migrant women in the Italian context. Perhaps unknowingly, migrant women associations in Italy, by continuously providing training for cultural mediators, are indeed paving the way for such practices to be implemented at a national level. The legal intercultural approach is designed to assess “how to better integrate different ways of life with laws, rules and practical schemes of behavior.”⁶² Judicial activities are unquestionably influenced by communicative shifts taking place within society. Consequently, if the legal language itself and the institution that supports the Italian criminal justice are inalterable, legislative production and, specifically, the interpretation of legality and by extension, of criminality, has the potential to change greatly. One could, therefore, argue that the long-lasting clash of identities between Black migrant women in Italy and the Italian community is likely to affect the construction of new subjectivities. In this context, legality and criminality should not be seen as “concepts definitively forged”, but rather as “guesses permanently open to revision and verification.”⁶³ For legal intercultural approaches to take form, however, lawyers and jurists, need to be sensitive to the cultural and legal background of migrants. If such sensitivity is shown towards the migrant’s experience, migrants would likely be more prone to “use available legal tools rather than be wary of them a priori, thus condemning themselves to a sort of legal clandestine condition, lived socially underground.”⁶⁴ A commitment to inclusive uses of law in the Italian context would consequently respond to the large demand for legal protection from migrants and would act as an obstacle to the criminalization of Black women migrants by both the criminal justice system and the Italian public.

Conclusion

Law and legality were not always given so much importance within Italian society. In fact, the importance of law has come to represent a new national solidarity following the decline of corruption in the country in the late 1990s; today, the arrival of “illegal” migrants is unfortunately perceived as a sign of Italy’s national decline and an increased commitment to law and order from police forces and the criminal justice system is continuously making the lives of migrants harder to navigate.⁶⁵ In order to better integrate migrants into Italian society and to put a stop to the criminalization of Black migrant women in the country, socio-legal research, as well as the Italian society as a whole, must start to think of and invest in innovative and inclusive forms of legal practices. To achieve such goal, more financing should be made available to women migrant organizations, which are already paving the way towards reform. Black migrant women, through their involvement in ethnic and gendered-based migrant associations, are in fact taking an active role in defending

62 Ricca, “Intercultural law,” 1.

63 Ibid., 6.

64 Ibid., 41.

65 Angel-Ajani, “The racial economies of criminalization,” 54.

migrants' legitimate claims to rights and legal representation. We hope that such initiatives of cultural mediation and legal training, when expanded and developed further, will contribute to a much-needed rethinking of the Italian justice system that is in line with the idea of restorative justice and intercultural law. Knowing that this research is somehow preliminary and that such initiatives are still limited within the Italian context, further research could address the differentiated access that Black migrant women coming from various educational, economic, social, and cultural backgrounds could have to said initiatives. Perhaps, restorative justice and intercultural law may work differently for women with upper-class backgrounds or higher educational attainment. Answering these questions, however, is beyond the scope of this paper.