

Article

Criminalising Migration: The Vicious Cycle of Insecurity and Irregularity

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Abstract: Recent years have witnessed growing emphasis on exceptional measures to address unauthorised arrivals. This article unpacks the relationship between migration policies, irregularity, and insecurity, by examining the consequences of a specific, yet often neglected, measure: the criminalisation of irregular migration (namely, the introduction of the “crime of irregular migration”). Investigating the cases of Italy and France, two of the countries with the most severe sanctions in Europe, it argues that criminalisation led to a two-fold feedback loop. On the one hand, by exceptionalising migration and constructing a continuum between migrants and criminals, criminalisation enhanced a sense of insecurity among the domestic public. On the other hand, by giving foreigners in irregular situations a criminal record, it increased their reliance on underground networks to stay and work in destination countries. Overall, this fostered demand for restrictive, yet counterproductive, policies, creating a vicious cycle of insecurity and irregularity.

Keywords: migration; insecurity; irregularity; vicious cycle; criminalisation; Europe

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1. Introduction

In recent years, migration has become increasingly securitised. Governments have placed more and more focus on “exceptional measures” to address unauthorised arrivals. From externalisation to returns, from detention to criminalisation, countries in both the Global South and North have seen growing emphasis on restrictive policies (Palidda 2011; Rosina and Fontana 2024; Bhatia et al. 2024; FRA 2014). At the same time, however, evidence suggests that these efforts often fail to achieve the desired results (Cornelius et al. 1994; Castles 2004; Czaika and de Haas 2013).

Previous studies have highlighted that restrictive measures may generate adverse consequences, by leading to more irregularity (e.g., de Haas 2011; Reyneri 2003), or to a greater sense of insecurity (e.g., Chebel d’Appollonia 2012). The present article seeks to add to the discussion by analysing how such factors apply in the case of the criminalisation of migration. It maintains that it is not enough to consider negative consequences in terms of either more irregularity or more insecurity. Instead, the two are intrinsically inter-related, and simultaneously stem from restrictive migration measures.

Bringing into communication the two dimensions, this article aims to advance an original conceptual framework to unpack the discursive and practical implications of exceptional and restrictive migration policies. It asks the following questions: What are the consequences of these measures, for both immigrants and receiving societies? Specifically, how do they shape security perceptions and dynamics?

The article addresses these questions through the case of the criminalisation of migration. In the broadest sense, the criminalisation of migration refers to the set of “discourses, facts and practices ... that hold immigrants/aliens responsible for a large share of criminal offences” (Palidda 2011, p. 23). Studies regularly include surveillance, police actions, detention, and migration discourse as tools of criminalisation. In a narrower sense, however, the

criminalisation of migration refers to the use of the criminal law (as opposed to the administrative or civil law) to sanction immigration-related offences and, in particular, foreigners' irregular entry and stay (Rosina 2022). In other words, criminalisation refers here to the adoption and enforcement of the "crime of irregular migration" in national legislation. This article embraces the latter definition, following a narrow understanding of criminalisation. Maintaining the distinction between criminal and administrative law is crucial, not only due to the symbolic weight of criminal law but also to the differing standards of proof needed to impose sanctions on individuals (Provera 2015, p. 3). Moreover, not only is the crime of irregular migration increasingly widespread in Europe (FRA 2014), but its implications are rarely assessed (EMN 2013).

Through the cases of Italy and France, two of the countries with the most severe sanctions in Europe, the article argues that a vicious cycle emerges from the criminalisation of migration. This feedback loop is two-fold, articulated along the insecurity and the irregularity dimensions. On the one hand, by exceptionalising migration and constructing a continuum between migrants and criminals, criminalisation enhances a sense of insecurity among the domestic public. On the other hand, by giving foreigners in irregular situations a criminal record, it increases their reliance on underground networks to stay and work in destination countries. Together, spiralling insecurity and irregularity lead to growing demand for restrictive, yet counterproductive, policies, thus creating a vicious cycle that repeats itself time and time again.

The article is structured as follows: Section 2 proposes an original conceptual framework to unpack the two-fold vicious cycle stemming from restrictive migration measures, considering the different dimensions in which it unfolds and the key actors involved. After a discussion of the methodology and sources in Section 3, the article then explores the cases of criminalisation in Italy and France. Specifically, Section 4 analyses the effects of criminalisation on insecurity, focusing on the rhetorical dimension and examining the process of criminalisation and de-criminalisation in the two countries. Section 5 addresses the effects of criminalisation on irregularity, investigating the consequences for migrants' residence status, employment opportunities, and engagement with the underground economy. Section 6 draws out conclusions and implications.

2. A Two-Fold Vicious Cycle

Policies aiming to deter and restrict migration are ubiquitous today, as politicians from Europe and beyond rely on such measures to demonstrate resolve and increase electoral consensus. What impacts do these restrictive measures have on both immigrants and receiving societies? How do they influence security perceptions and dynamics?

Two main strands of the literature have addressed the consequences of restrictive migration policies: that exploring the securitisation of migration and that centred on balloon (or substitution) effects. If the former has focused on the representation of migration as a security threat and the connected feeling of insecurity (Huysmans 2000; Léonard 2010; Chebel d'Appollonia 2012), the latter has centred on the impact that restrictive policies can have on migratory flows themselves in terms of stopping or diverting them (de Haas 2011; Czaika and Hobolth 2016; Pinotti 2017).

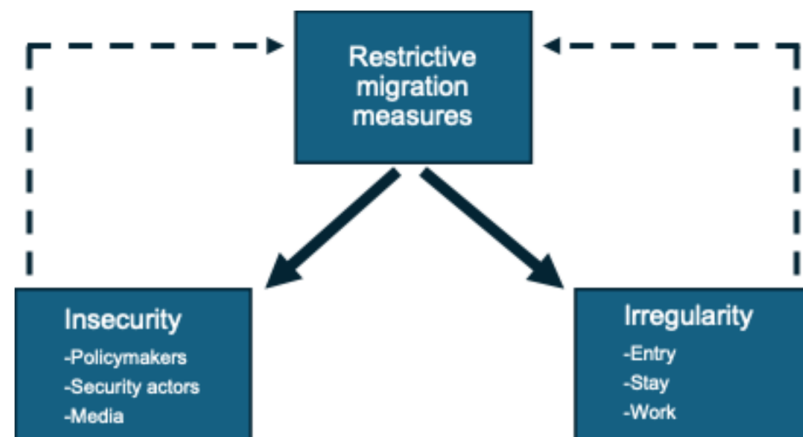
On the one hand, the literature on the "securitisation of migration" has spiralled over the past two decades, with the number of academic publications referring to it increasing by over 30 times, from about 140 in 2000 to over 4500 in 2023.¹ Understood as the "social construction of migration as a security question", the securitisation of migration implies the depiction of migration as a security issue, in need of a security response (Huysmans 2000, p. 752). It articulates a continuum between migration and an ever-expanding set of security threats, be they of criminal, terrorist, economic, health, or other nature (Léonard 2010; Karyotis 2007; Griffini 2023; O'Brien and Eger 2020, p. 11), which presents migrants as an existential threat to the survival of the community. As a result, a security-based approach (be it through increased surveillance or the criminalisation of irregular migration) is deemed the only viable one. Migration thus becomes a "lightning rod" for societal issues of disparate

nature (Boswell 2003, p. 4), leveraged by political and social actors “in their struggle over power, resources and knowledge” (Huysmans 2000, p. 762). In this context, securitisation derives from the discourse and narratives surrounding migration, including politicians’ speeches and media frames, but also from the actual practices of migration control, including border fences and the use of the military or drones (Van Munster 2009; Huysmans 2000; Bigo 2002; Léonard 2010; Paterson and Karyotis 2020; Ferreira 2019; Bonansinga 2019; Dimari 2020). It is also perpetrated by visual images, including war-like maps and pictures depicting refugees as a threat (van Houtum and Bueno Lacy 2019; Massari 2021).

On the other hand, studies focusing on balloon (or substitution) effects have examined the consequences of restrictive migration policies for migrants themselves. Often studied in the context of the war on drugs, the “balloon effect” (Windle and Farrell 2012) reflects the criminological hypothesis that, if a specific type of crime is targeted with heavier sanctions, we may see not only a decrease in that crime, but also an increase in related, alternative offences. As an example, if higher arrest rates lead to a drop in gun robberies, they may simultaneously encourage a surge in knife robberies (Levitt 1998; Nagin 1998). In the migration field, balloon effects are a key consequence of deterrence policies (Rosina 2022). de Haas (2011) provides a classification of such effects (which he calls “substitution effects”) as occurring along (1) spatial, (2) categorical, and (3) temporal lines, and through (4) reverse flows (namely, when migration increases in anticipation of upcoming restrictions). Others have attempted to estimate whether and how restrictive policies lead to shifts in the direction and composition of the flows, or in migrants’ involvement with underground activities (Czaika and Hobolth 2016; Hammoud-Gallego 2024; Reyneri 2003; Barslund et al. 2019; Leerkes et al. 2012; Pinotti 2017).

The above literature is key in unpacking the nature and consequences of restrictive migration measures. However, both sets of studies fail to capture the whole picture. While focusing on discourse highlights the potentially xenophobic tones of the public debate, it often overlooks the practical effects that harsh rhetoric has on migrants and receiving societies alike. Vice versa, many of the studies on balloon effects importantly capture the diversion of flows (in geographic or categorical terms) but fail to consider the discursive dynamics leading to the adoption of failing and counterproductive policies in the first place.

To fully understand the consequences of restrictive migration policies, we need to consider both the discursive and empirical dimensions. The two are intrinsically linked; we cannot understand the securitisation of migration without reference to its tangible impact on migrants and receiving societies, just like substitution effects only capture some of the consequences of restrictive migration policies. Bringing into communication the two strands of the literature, this article posits that, when restrictive policies are introduced, they generate more insecurity and irregularity. These, in turn, fuel the demand for restrictive—yet counterproductive—measures, thus creating a vicious cycle (Figure 1). I discuss the mechanisms of this double feedback loop in the next sections, starting with the analysis of the insecurity channel.



Author's elaboration

Figure 1. Two-fold vicious cycle.

2.1. Insecurity

While restrictive migration policies are ostensibly designed to curb migration and enhance security, they often achieve the opposite result, heightening rather than reducing insecurity.

In contemporary Europe, policymakers have strong incentives to promote visible and symbolic measures (Wright 2014; Pettrachin 2024). These are frequently framed within what Castelli Gattinara (2017) describes as a “logic of exceptionality”, demanding immediate action and urgent response, and overshadowing the “logic of normalcy” that characterises global migration. States of exception and emergency become the new norm, with anti-terrorism laws repurposed to address migration and borders increasingly militarised, in order to placate public anxieties.

Whether restrictive and exceptional measures are adopted to genuinely manage migration or merely to create an “appearance of control” (Massey et al. 1998, p. 288, emphasis in original), they often backfire. On the one hand, they inflate public expectations of the Government’s ability to control unauthorised movements. As migration becomes a focal point of new policies and of increasingly polarised debates, its salience in public discourse intensifies, and expectations of control increase. On the other hand, restrictive measures amplify the visibility of migration itself (similarly, Chebel d’Appollonia 2012). Visibility is, in turn, further enhanced by the creation of new metrics to quantify and monitor the phenomenon. This is exemplified in Europe by the emergence of multiple datasets during and after the so-called “migration crisis”, including Frontex’s irregular border crossing database (tracking data since 2009), the International Organisation for Migration’s Missing Migrant Project (since 2014), and Italy’s daily reports on migrant landings (since 2017).²

These policies and indicators, while intended to enhance control, ironically reinforce the perception of crisis and the demand for restrictive and exceptional strategies. Indeed, when irregular migration persists, despite the adoption of restrictive measures like criminalisation, the failure of these strategies is in plain sight. As irregular migration becomes increasingly visible and borders are exposed as porous, the very sense of insecurity that prompted restrictive measures in the first place is amplified (similarly, Chebel d’Appollonia 2012), leading to increased demand for exceptional strategies, and thus creating a vicious cycle.

In sum, the adoption of restrictive and exceptional measures paradoxically heightens the visibility of migration, escalating feelings of insecurity and fuelling demand for

stringent—yet often symbolic—measures. This creates a self-reinforcing cycle, where each new policy exacerbates the problem it was meant to solve.

Multiple actors contribute to strengthening this “spiral of insecurity”, including national and supranational institutions, international organisations such as the UNHCR and the IOM, third countries, local communities, and many more (Huysmans 2000; Guiraudon 2000; Geiger and Pécoud 2017; Léonard 2010; Greenhill 2011; Andersson 2016; Karyotis and Skleparis 2013). Among these, three stand out as particularly crucial: policymakers, security actors, and the media.³

To begin with, policymakers, and particularly politicians in Government and Parliament, play a pivotal role in affecting (in)security, thanks to their agenda-setting and decision-making powers. While politicians of all parties are potentially key, those associated with populist radical right (PRR) parties are particularly central to debates surrounding migration and (in)security, given their defining characteristic of nativism (the belief that “non-native” individuals and ideas are a threat to the otherwise homogenous nation-state—Mudde 2007; Griffini 2023), and have a tendency to both benefit from, and contribute to, a sense of crisis and insecurity (Moffitt 2014). PRR parties can, however, also influence mainstream parties’ immigration positions, by driving the immigration debate further to the right (O’Brien and Eger 2020). This enhances the legitimacy of PRR anti-immigrant rhetoric and policies (Chebel d’Appollonia 2012), ultimately fostering a sense of insecurity.

Beyond policymakers, the politics of (in)security also see security actors as pivotal stakeholders, including law-and-order officials engaged in migration control activities (such as border guards, police, and intelligence officers), as well as private defence groups (Guiraudon 2000; Léonard 2010; Andersson 2016). Indeed, several authors maintain that security and law enforcement actors crucially contribute to the growing association between migration and security. For Guiraudon (2000), for instance, this is due to law-and-order officials in Europe seeking to escalate migration policymaking at the EU level, where judicial oversight is weaker, in a “venue-shopping” strategy. For Andersson (2016, p. 1062), on the other hand, the European private defence sector has supported border security as an opportunity to develop a new market and legitimise its actions in times of austerity. While such arguments have been vastly influential in the literature, a note of caution should be applied. Not only are different bureaucratic bodies’ interests not necessarily fixed and generalisable (Freeman and Kessler 2008, p. 659), but migration control policies may also have selective (rather than restrictive) objectives, seeking to enable certain groups to enter but not others (McMahon 2015; Finotelli and Sciortino 2013). So, while security actors may play a key role, this needs to be ascertained on a case-by-case basis.

Finally, adding to political and security actors, the media can further contribute to shaping (in)security. Thanks to their wide audience—be it through the TV, newspapers, or radio—the media are a crucial source of information, with the power to frame and shape not only *what* is known, but also *how* this is understood (Brouwer et al. 2017; Qadri 2020, p. 63; Norris et al. 2003). By prioritizing, structuring, and framing events, they can enjoy important agenda-setting power, influencing public opinions and preferences (Norris et al. 2003; Qadri 2020, p. 63). In the field of migration, several studies have indeed highlighted the power of the media to shape perceptions surrounding migration and contribute to the phenomenon’s securitisation (European Commission 2011; Reddy and Thiollet 2023; Bruno 2016; Matar 2017).

While the focus of this article is on the domestic dimension, it is worth recalling that international actors can play a key role in fostering insecurity too. Paradoxically, increased securitisation means that the EU and its member states are more vulnerable to migration being leveraged by third countries in exchange for other types of concessions, as seen in multiple cases, from Libya and Morocco to Turkey and Belarus (Greenhill 2011; Tsourapas 2017; Rosina and Fontana 2024; Laube 2021).

In conclusion, while aimed at reducing insecurity, restrictive and exceptional measures often lead to the opposite outcome, bringing attention to the porosity of the

border and enhancing, rather than reducing, a sense of insecurity among the domestic public. The process is fostered by a multiplicity of actors, the first of whom are policymakers, security actors, and the media, and coupled with a parallel effect on irregularity, as the next section discusses.

2.2. Irregularity

In parallel to spiralling insecurity, restrictive measures lead to growing (rather than diminishing) irregularity, be it in relation to entering, staying, or working in destination countries.

When it comes to entry, the above-mentioned balloon (or substitution) effect hypothesis is now widespread in the migration literature. Its core assumption is that, given the structural nature of migration (Overbeek 1996; Talani 2015), restrictive measures do not necessarily deter, but often divert, migration flows, redirecting them towards other entry points or pushing them further underground (Rosina 2022; de Haas 2011; Czaika and Hobolth 2016; Hammoud-Gallego 2024). This relocation effect is best illustrated by former president of the American Border Patrol union T. J. Bonner. In his words,

We can “imagine the border as a big, long, skinny balloon. When you squeeze in one part, it comes out in another. It doesn’t disappear” (in Rosina 2022, p. 271).

The reintroduction of border controls in 2015 France represents a key example of the balloon effect. Following the closure of the border in the aftermath of the terrorist attacks of the mid-2010s, migrants hoping to enter France from Italy adopted multiple counter-strategies to escape apprehension. These included going further underground (e.g., in the hills behind border town Ventimiglia), attempting riskier routes (e.g., walking on the autoroute), and moving to other segments of the border (e.g., going further North, to the mountains near Bardonecchia) (see Spagnolo 2017; Riviera24 2017; Camilli 2018).

As these examples show, restrictive measures not only redirect migration flows in geographical terms, but also increase irregularity in entry. Given the few opportunities to enter Europe with a work permit, especially for nationals of African countries (Finotelli and Sciortino 2013), migrants often resort to irregular routes. As an example, Czaika and Hobolth (2016), conducting a quantitative analysis of 29 European countries, found that a 10% rise in short-stay visa denials resulted in a 4% to 7% uptick in irregular border crossings. In relation to this, Fontana et al. (2022; forthcoming) observe an inverse relationship between (a) the number of work permits granted by Italy since 2009 and (b) irregular arrivals via the Central Mediterranean route, from countries including Nigeria, Ghana, and Bangladesh. In the Latin American context, Hammoud-Gallego (2024) similarly found evidence that introducing visa restrictions in Chile, Ecuador, and Peru led to a surge in Venezuelan irregular entries, suggesting the existence of a trade-off between regular and irregular entries.

Beyond affecting entry routes and modalities, restrictive measures foster irregular stay and work. On the one hand, they push migrants to stay irregularly, in an attempt to avoid detection and repatriation. Indeed, the formerly cited study by Czaika and Hobolth (2016) found that a 10% rise in asylum rejections leads to an average 2% to 4% increase in the number of irregularly staying migrants, showing that, even in light of toughening measures, rejected applicants do not leave but often remain irregularly. The finding is particularly notable considering that today, in the EU, less than one in four migrants who are ordered to leave is effectively returned (Luyten and Claros 2023, data as of 2021), meaning that many among them remain irregularly. As migrants can neither be returned nor regularised, they are pushed closer to underground networks and activities, as the only way to sustain themselves in Europe.

On the other hand, restrictive measures incentivise irregular work, in the absence of formal employment opportunities. This is related to the so-called “marginalisation thesis”, according to which, migrants turn to crime in response to restrictive state actions and policies. In the absence of support networks, aid from the state, and regular jobs,

foreigners in irregular situations are encouraged to turn to criminal activities to support themselves (Leerkes et al. 2012; Reyneri 2003). Examining the rise in foreigners' conviction rates in the Netherlands at the turn of the century, for example, Leerkes et al. (2012) found that up to a third of such an increase can be explained by marginalisation. Coupling this with the literature's finding that regularising foreigners' immigration status *decreases* their engagement with criminal activities, especially when it comes to economically motivated offences (Pinotti 2017; Mastrobuoni and Pinotti 2015), we can conclude that, in the absence of regularisation programs, restrictive measures are likely to increase, rather than decrease, migrants' involvement with irregular activities.

Thus, restrictive migration policies not only heighten a sense of insecurity but also contribute to increasing irregularity, by encouraging unauthorised entry, stay, and work. These dynamics, in turn, fuel the demand for stricter—yet often counterproductive—measures. The intertwined nature of insecurity and irregularity reinforces and perpetuates this vicious cycle, with each dimension intensifying the other.

3. The Criminalisation of Migration: Case Justification and Notes on Methods

In the next sections, I examine this vicious cycle through the case of the criminalisation of migration in Italy and France. Criminalisation—namely, the introduction and use of criminal sanctions to address irregular entry or stay—is a good avenue through which to study restrictive measures. First, by introducing criminal sanctions where previously there were civil or administrative sanctions, legislators set both a stricter punishment and a moral condemnation of the unwanted behaviour (Simester and von Hirsch 2011). Moreover, the criminalisation of irregular entry and stay is widespread in Europe, adopted by all but two member states (Portugal and Malta) (FRA 2014). Yet, its effectiveness and consequences are only rarely fully evaluated. According to a survey by the European Migration Network (EMN 2013), just two EU member states have fully assessed the effectiveness of criminal penalties for irregular migration, with thirteen countries, including both Italy and France, never having evaluated their impact.

In this context, Italy and France are crucial case studies. The two countries foresee some of the strictest sanctions for the crime of irregular migration in Europe; while in Italy, fines for irregular entry or stay range from EUR 5000 to EUR 10,000, in France, these are set at a maximum of EUR 3750, but are also coupled with imprisonment, making the latter one of the few EU countries to simultaneously envisage both a fine and imprisonment. Moreover, both Italy and France have recently amended their criminalisation laws: Italy introduced the crime of irregular entry and stay in 2009, while France partially repealed similar legislation in 2012 and 2018. These changes represent significant turning points that can be used to unpack the consequences of policies criminalising migration.

To fully capture the legislative changes in the two countries and their effects, the analysis focuses on the period from the late 2000s to today, and relies on a comparative case study approach. Although a case study approach is, by its nature, limited compared to large-n studies, it provides a comprehensive understanding of a process and its context, and is an essential instrument to develop and advance theory (George and Bennett 2004; Kohlbacher 2006). The article draws from a variety of primary and secondary sources, including legislative texts, court rulings, official databases (including Frontex 2024; ISTAT 2021; MoJ 2012–2018), interviews with key stakeholders (first of whom are politicians, police officers, judges, and prosecutors in Italy and France), parliamentary debates, politicians' speeches and remarks, and academic texts.⁴

Having discussed my conceptual framework and methods, I now turn to exploring the feedback loop from an empirical viewpoint, drawing from the cases of criminalisation in Italy and France. Starting with an analysis of the insecurity dimension, I then move on to the irregularity one.

4. Criminalisation and Insecurity

4.1. France: One Step Back for Every Step Forward

The criminalisation of migration has a long history in France, dating back to the early 20th century. Despite recent efforts to repeal the law, these attempts were ultimately unsuccessful, leaving much of the crime of migration still in place today.

Criminal sanctions against irregular entry and stay were first introduced in France in 1938 (French Parliament 1938). Through time, different Governments amended the penalties foreseen, which eventually stabilised at one-year imprisonment, a EUR 3750 fine, and the possible expulsion of the foreigner at the end of the prison sentence (see French Parliament 2005, Art. L.621-2). Such sanctions remained in place until 2012, when the Parliament agreed to repeal the crime of irregular stay (but not that of entry) (French Parliament 2012, Art. 2 and 8), following a ruling by the European Court of Justice (ECJ 2011).⁵ The repeal of the crime of irregular stay was an important step, insofar as it abolished the possibility of imprisoning migrants for the sole reason of having sojourned irregularly, and it was followed by further partial de-criminalisation in 2018, when the crime of irregular entry from a Schengen state was also abrogated (French Parliament 2018, Art. 35).

However, de-criminalisation was not a unique and unambiguous trend. Instead, for every step towards (partial) de-criminalisation, one step back was taken (Rosina 2022). To begin with, de-criminalisation was pursued only when strictly necessary. As an example, in 2012, the Parliament opted to only repeal the crime of irregular stay, leaving, however, that of irregular entry in place. Further, partial de-criminalisation was regularly coupled with the introduction of new crimes of migration and tighter sanctions: While repealing the crime of irregular stay in 2012, the Parliament concurrently created a *délit de maintien*, making it a criminal infraction to remain in the country following an expulsion order (French Parliament 2012, Art. 9). Likewise, when unauthorised entry from a Schengen state was about to be de-criminalised in 2018, the Interior Ministry proposed the creation of a crime of “irregular border crossing”, to sanction foreigners entering France without transiting through an official border crossing point (*délit de franchissement non autorisé des frontières de l'espace Schengen*—see MoI 2018, Art 16). Interestingly, both new infractions imposed the same penalties as those originally set for irregular entry and stay: a EUR 3750 fine and a one-year prison term. In February 2018, the Conseil d'État (2018) opposed the introduction of a crime of irregular border crossing, yet this did not prevent sanctions for related infractions from being strengthened: the collection of fingerprints and photographs was made more systematic, and a three-year ban from France was added as a sanction for refusal to be fingerprinted (French Parliament 2018, Art 35).

Overall, the 2012 and 2018 legislative changes led to the repeal of small parts of the crime of irregular migration. However, they also introduced new criminal infractions and tighter measures, in what emerged as a spiralling path towards criminalisation.

4.2. Italy: “The People Wouldn’t Understand”

In Italy, the *reato di clandestinità* (concerning both irregular entry and stay) was only introduced in 2009. According to the law, once migrants are apprehended as irregularly entering or staying, a criminal process should start (in parallel to the administrative one leading to expulsion), potentially resulting in a fine of between EUR 5000 and EUR 10,000 (Italian Parliament 2009, Art 10-bis).

The introduction of the crime of migration sparked significant controversy. Key public figures, including the Head of the National Police, the National Anti-Mafia and Anti-Terrorism Prosecutor, and a former President of the Italian Supreme Court, strongly opposed the measure. They argued that, rather than curbing migration, it overwhelmed public offices and made related investigations lengthier and more complex (see Baer 2016; Repubblica 2017; Ziniti 2016; Loy 2016). In response to similar concerns, the Parliament, in 2014 delegated the Government to repeal the crime within eighteen months (Italian Parliament 2014, Art. 2). Although the Government introduced a legislative decree in 2015

to enact de-criminalisation, the process was never completed, leaving the law still in effect today.

Indeed, the prospect of repealing the *reato di clandestinità* led to highly politicised reactions (Rosina 2022). On the one hand, several centre- and far-right politicians vehemently resisted de-criminalisation, with multiple MPs from the PRR Lega Nord (LN) making provocative statements, and the party's leader Matteo Salvini threatening opposition in Parliament and even a referendum on the matter (see Repubblica 2016). On the other hand, the considerations of the governing coalition led by Matteo Renzi (from the centre-left Partito Democratico, PD) were highly political, centred on the repercussions that a potential de-criminalisation would have on electoral outcomes. For example, even in recognising the null deterrent effect of criminalisation, then-Minister of the Interior Angelino Alfano (from centre-right Nuovo Centrodestra) opposed de-criminalisation, on the basis that “the people would not understand” (Baer 2016; Bei 2016), thus showing key preoccupation with the public sentiment. Similarly, for the then-PD Minister of Reforms Maria Elena Boschi, the time was not right, as there was a clear “problem of security perceptions” (Baer 2016).

In short, de-criminalisation proved politically impracticable in Italy. That the law was left untouched (and has been to the present day) shows that the Government gave greater weight to political arguments, and particularly the fear of the PRR leveraging de-criminalisation for electoral gains, than to the arguments related to judicial capacity and efficacy that were advanced by the public officials enforcing the norm.

4.3. Analysis

The French and Italian cases vividly illustrate the ease with which criminalisation is introduced, and the significant challenges that arise when attempting to repeal it. In line with the theoretical discussion presented above, I suggest that we can interpret this as a vicious cycle: once criminalisation is introduced, political considerations prevent any exit from the “criminalisation spiral”, leading instead to a heightened sense of insecurity.

Specifically, I argue that criminalisation contributes to greater insecurity in two main ways. First, by sanctioning foreigners with criminal fines or prison sentences, it creates and reinforces the perception of migrants as dangerous individuals and criminals. Traditionally targeted at domestic rule-breakers, criminalisation not only draws heavily from the internal security and crime-control language, but also contributes to it, thus strengthening the link between migrants, criminality, and security in people's minds. Second, insofar as the criminalisation of a certain conduct implies that the sanctioned behaviour is morally wrong (Simester and von Hirsch 2011), it carries with it a strong stigmatising effect, further raising preoccupations with migration. The French Government itself acknowledged that imprisonment associated migrants with a “suspicion of potential delinquency” (MoI 2012, p. 33), and the Italian General Confederation of Labour warned of the marginalising and stigmatising effect of the measure (CGIL 2010).

Thus, in the case of criminalisation, insecurity is enhanced by both growing associations between migrants and criminals and by the moral condemnation implied by the very act of making migration a crime.

Indeed, as shown by polls, despite the roll-out of criminalising and further securitising measures, concerns about irregular migration remained significant. In Italy, 81% of respondents were worried about irregular migration in 2010 (the year after the introduction of the crime of migration); in France, 69% of respondents reported being preoccupied by it in 2013 (the year after the introduction of the *délit de maintien*) (Wunderlich et al. 2008–2013). While such figures are undoubtedly dependent on several factors, including migration numbers, respondents' status, and other migration (and non-migration) policies, they point to significant insecurities among the domestic public not assuaged (but likely intensified) by the criminalisation of migration.

How did political and security actors and the media contribute to the above, if at all? Starting with policymakers, both mainstream and PRR parties prioritised symbolic

politics and supported criminalisation, even when counterproductive, thus contributing to a sense of insecurity.

In both countries, mainstream parties co-opted, rather than isolated, the far right's agenda concerning criminalisation: neither the centre right nor the centre left were able to challenge the criminalisation rhetoric, but played instead into it, by incorporating it. In France, if it was a centre-right cabinet that first introduced the crime of migration in 1938, the Socialist Party also supported its reinforcement in 1981, viewing it as an alternative to expulsions (French Parliament 1981, Art. 4). More recently, given French President Nicolas Sarkozy's explicit intention not to lose voters to the PRR Front National (FN) (Marthaler 2008), the resistance to de-criminalisation in 2012 can be understood as based on the concern that de-criminalising migration would provide a political advantage to the far right.⁶ Likewise, in Italy, the centre-right Forza Italia (FI) was in coalition with the LN when the law criminalising migration was passed in 2009. Although then-FI prime minister Silvio Berlusconi withdrew his support for the proposal in 2008, he did not ultimately block it (Rosina 2022). As seen above, Renzi's cabinet similarly declined to repeal the crime in 2016, for what were primarily political reasons. Thus, in both Italy and France, mainstream and PRR parties supported the criminalisation of migration, prioritising symbolic politics over sound migration management.

The symbolism of enforcing and maintaining the crime of irregular migration, even when counterproductive, emerges clearest in a statement made by Alfano in 2016. Asked why criminalisation should be maintained, despite its limited effectiveness, he answered,

"This is not the point. In the field of security, we are playing two related but different matches: One regards reality, the other the *perception* of reality" (in Bei 2016, emphasis added).

The statement reflects the belief that migration policies should be targeted not so much at effectively managing migration, but rather at assuaging public concerns, even when this only exacerbates the issue it is meant to solve.

Paradoxically, politicians' fear of political repercussions may not be fully justified by the actual desires of the electorate, as the Italian case illustrates. Indeed, a survey carried out in 2014 among Movimento Cinque Stelle (M5S) supporters showed that almost two thirds (64%) of respondents supported the repeal of the crime (see Castigliani 2014). The results are key, revealing that the majority of the supporters of a self-defined "populist" party such as the M5S (see Castigliani 2013) were in fact ready to accept de-criminalisation—contrary to Alfano's claim that they "would not understand".

Moving beyond policymakers, the ambivalence of security actors that I hypothesised in the theory section is confirmed in the case of criminalisation, as these played a restrictive role in France but not in Italy. In the former country, political, administrative, and judicial authorities repeatedly obstructed the de-criminalisation of irregular stay in 2012. As an example, after the ECJ ruled that irregular stay should no longer be sanctioned by imprisonment, as that would infringe the Return directive, several of these actors repeatedly challenged the Court's decision (Henriot 2013). This did not happen in Italy, however, where several law-and-order officials actively supported the repeal of the law criminalising migration. Not only did multiple public figures endorse de-criminalisation (see above), but local actors also adopted coping strategies to avoid enforcing the law: public prosecutors deliberately locked files away, waiting for them to fall into proscription, and police officers turned a blind eye to migrants in irregular situations, to avoid registering them (Interviewee 14; Interviewee 47; Rosina 2022). In sum, while security and law enforcement actors may pursue restrictive migration goals, the cases of criminalisation in Italy and France show that the direction of their preferences is not always pre-determined.

Finally, the media further contribute to securitising migration, and increasing perceptions of a link between migrants and crime. As noted by Bruno (2016), the link between migration and security is regularly exaggerated in Italian media, particularly through disproportionate attention to crime news where foreigners are involved. This leads to

growing emphasis on a clear distinction between “us” and “them”, in which the media end up playing a social control role, by defining accepted and deviant behaviours and norms (ibid). Similarly, in France, Reddy and Thiollet (2023) found that, while the arrival of Syrians in Europe did not significantly affect migration figures, this situation started being regarded as a “crisis” in 2015. The politicisation of migration intensified since that year, particularly with conservative newspapers presenting certain events as “critical” and promoting a sense of “crisis” (ibid), thus contributing to what Castelli Gattinara (2017) calls a “logic of exceptionality”. Interestingly, a report by the European Commission (2011, p. 9) itself acknowledged that “negative migrant stereotypes are a result, at least in part, of negative press coverage”, thus underlining the pivotal role the media have in the framing of migration in Europe.

Overall, in both France and Italy, the criminalisation of migration became entangled in a vicious cycle of insecurity. By constructing a continuum between migrants and criminals and stigmatising irregular migration, criminalisation heightened the perceived threat of irregular migration. By failing to curb the flows (Rosina 2022), however, it exacerbated the very sense of insecurity that had justified its adoption in the first place.

The growing sense of insecurity made de-criminalising migration increasingly difficult, if not impossible. In France, every step towards (partial) de-criminalisation was counterbalanced by the introduction of new crimes and sanctions. In Italy, a centre-left Government failed to repeal the crime of migration, despite clear evidence of its ineffectiveness. Ultimately, criminalisation became entrenched in a vicious cycle, which made the repeal of the law impossible and fostered, instead, demand for more of the same.

5. Criminalisation and Irregularity

5.1. Irregularity to Stay and Work

Having maintained that criminalisation leads to more insecurity, I now turn to analysing the second part of the argument, namely, that it furthers spiralling irregularity. In the theoretical section, I argued that restrictive measures can impact irregularity via three channels: entry, stay, and work. As the criminalisation of migration is an internal measure, its impact is more evident in increasing irregularity in staying and working (rather than entry), and it is those elements that I focus on in the next few pages.

Although one of the primary aims of introducing the crime of irregular migration is curbing irregularity (Rosina 2022), I suggest that its implementation often ends up fostering it, in two main ways.

First, criminalisation fosters irregularity by prompting many to live underground, in an effort to avoid apprehension, criminal trial, and condemnation. This often means having limited access to public services and working without a regular contract, as well as refraining from reporting violence in fear of being detained (Ambrosini 2011; McIlwaine et al. 2019; Delvino and Spencer 2014). In the words of Ben Khalifa (2012, p. 26), following the criminalisation of migration in 1938, France became a true “*fabrique de clandestins*” (producer of irregular migrants), de facto forcing many to live in the shadows.

Second, as a result of criminalisation, migrants are pushed closer to irregular activities, as a means to sustain themselves. For those living in irregularity, underground employment and activities become increasingly attractive, as they lack access to regular jobs. For those who are apprehended and trialled, the very act of going through the criminal process leaves a long-lasting scar of having a criminal record. As this is registered in multiple national and European databases, it severely affects their subsequent lives, including when seeking a residence permit and a job (Saas 2012). In France, these dynamics are exacerbated by two factors: (i) the potential expulsion of migrants after serving their prison sentences, reducing state incentives to invest in their integration (see Maugendre 2012), and (ii) the criminalisation of migrant helpers (the *délit de solidarité*),⁷ which can discourage NGOs from offering assistance (see Interviewee 48; Rosina 2022).

Thus, the criminalisation of migration limits regular opportunities for migrants to stay and work—particularly by giving them a criminal record. As formal integration becomes harder to achieve, migrants are pushed closer to underground networks and activities, resulting in a self-fulfilling prophecy.

Indeed, in both countries, foreigners are regularly over-represented in statistics on irregular work and on crimes such as theft and robbery. Concerning irregular work, in Italy, in the three years after the introduction of the crime of irregular entry and stay (2010–2012), foreigners⁸ represented 18.6% of all irregularly employed people (ISTAT 2015, p. 166)—against an immigrant population of only 6.8% in 2011.⁹ Similarly, in France, almost a quarter of the people condemned for irregular work in 2012–2018 were foreign nationals (MoJ 2012–2018)—against immigrants accounting for 9.7% of the total population in 2018.¹⁰ As for crimes, in France, foreigners represented 25% of individuals condemned for theft and for receiving stolen goods in 2018 (ISTAT 2021). Likewise, in Italy, foreigners comprised 33% of people reported or arrested for robberies in 2009, with their proportion rising to 39% in 2013 (*ibid.*).

While foreigners tend to be over-represented in irregular work and criminality figures, a critical outlook is needed. First, several studies show that people of ethnic minorities are regularly subjected to more stop and searches by the police (e.g., Pantazis and Pemberton 2009). Second, it is the argument of this article that restrictive migration policies themselves push migrants to engage with more irregular work and activities, in lack of alternatives, as hypothesised by the marginalisation thesis. Third, migrants themselves are increasingly subject to discrimination and abuse. In Italy, the numbers of foreigners who were victims of bodily harm, threats, and verbal abuse all increased in the years following the introduction of the crime, peaking in 2012 (ISTAT 2021). In France, between 2017 and 2018, the majority of the victims of the most severe infractions (including violence, damage to property, and others) were of African origins (MoI 2019).

Therefore, the above is not to argue that migrants create an irregular economy that would otherwise be inexistent. Indeed, this flourishes in both Italy and France regardless of migrants' participation, being linked to structural dynamics (Talani 2018). This is most evident in the case of Italy in 2009, when the Government intentionally decreased checks on irregular employment in order to “limit obstacles to the productive system” and help firms already severely hit by the financial crisis (Rosina 2022, p. 159).

Overall, the analysis suggests that the criminalisation of migration contributes to pushing migrants to the margins of society, by giving them a criminal record, and leading to more engagement with irregular activities. Simultaneously, however, migrants are also increasingly victims of discrimination and abuse.

5.2. Pull Factors, Criminal Organisations, and Exploitation

I conclude this section by arguing that the increased irregularity brought about by criminalisation and other restrictive measures culminates, in turn, in several counterproductive consequences.

First, the prospects of finding a job in the shadow economy represent a pull factor for potential migrants. This is particularly the case in southern European countries, especially Italy, where shadow economies account for significant percentages of the countries' GDP (Reyneri 2003; Talani 2018). As an example, Reyneri (2003) found that migrants often prefer Italy to other European states, due to higher employment possibilities in its irregular economy. This finding is supported by a more recent study, according to which almost half (49%) of the *irregular* migrants interviewed stated that they chose Italy because it is easy to find a job there—as opposed to 33.5% of *regular* migrants who thought the same (ISFOL 2014).¹¹ Although the smaller size of the French underground economy may be expected to be less of an attractive factor (Reyneri 2001), the country too largely relies on irregular labour. According to the *Financial Times* (in Overbeek 1996, p. 70), already in 1990s France, “the sector of construction, including for the Channel Tunnel, rest[ed] on [irregular migrant workers]; the sector of textiles would collapse without them; domestic

services would vanish". The European Commission (2017: 9) itself acknowledged that "the possibility of finding illegal work remains a significant incentive to irregular migration into the EU".

Second, underground organisations are likely to benefit from this increased irregularity. This is the case for people smugglers, whose profits have been estimated to be second only to those of drug smuggling (Di Nicola and Musumeci 2014), and whose networks are increasingly professional. It might also be the case for criminal organisations, which benefit from "emergency" situations in which funds need to be distributed quickly, often ending up lacking accountability and control—as was exemplified by multiple scandals concerning the management of detention centres in Italy (Orsini and Sergi 2018).

Third, together with underground organisations' profits increasing, so do the vulnerability and exploitation of migrants, both along the journey and in Europe. It is enough to think about the repeated abuses and ill-treatments taking place in Libya, illustrated by the CNN video of migrants being auctioned by smugglers.¹² In Europe too, however, vulnerabilities are many. Taking the example of the Italian agricultural sector, migrants are often underpaid and exploited, with women also facing the risk of physical abuse (Corrado et al. 2018). Further, criminalisation has been suspected of raising issues of racial profiling in police ID checks and criticised for decreasing migrants' trust in the police, thus discouraging them from reporting injustices in fear of being prosecuted (Delvino 2017).

In sum, as criminalisation contributes to pushing migrants further underground, growing irregularity acts as a pull factor for further migration, while also increasing the profits of criminal organisations and migrants' vulnerability. This prompts policymakers to adopt further restrictive measures, in an attempt to address growing irregularity and public concerns, which completes the vicious cycle of criminalisation, taking us back to where we began.

6. Conclusions

The article has sought to unpack the relationship between migration policies, insecurity, and irregularity. It has done so by proposing a conceptual framework revolving around the notion of "vicious cycles", and illustrating it through the case of the criminalisation of irregular migration—namely, the introduction of the "crime of irregular entry or stay".

I have argued that exceptional and restrictive migration measures often contribute to spiralling loops of insecurity and irregularity. While the two channels have been separately analysed in previous studies, their simultaneous effect is often overlooked, particularly in the case of criminalisation.

The first dimension of the vicious cycle is centred on the notion of insecurity. By pursuing restrictive and exceptional measures, politicians not only increase expectations of control, but also reinforce the visibility of (irregular) migration. When these measures fail, however, the sense of insecurity rises, and this, in turn, fosters demand for stringent—though often symbolic—measures.

The case of criminalisation well exemplifies the process as, once the measure was introduced, not only did it portray a continuum between migrants and criminals, but it also became virtually impossible to repeal. In France, each step towards (partial) decriminalisation was paralleled by the creation of new crimes or sanctions. In Italy, the abrogation of the *reato di clandestinità* proved politically impracticable, even in light of evidence demonstrating its ineffectiveness and counterproductivity, showing the prevalence of symbolic politics. In both countries, criminalisation became embedded in a vicious cycle, which intensified insecurity perceptions instead of alleviating them, and prevented any exit from the "spiral of criminalisation".

The second dimension of the vicious cycle concerns the generation of irregularity. Restrictive measures, combined with a scarcity of regularisations and legal pathways, make foreigners increasingly reliant on irregular routes to enter the EU. They also contribute to more irregularity in staying and working, as migrants seek to avoid

apprehension, and lack access to the regular labour market. When it comes to criminalisation, having a criminal record worsens the prospects of finding employment, further pushing migrants to the margins of society.

Restrictive measures such as criminalisation therefore often increase migrants' reliance on irregular networks to enter, stay, and work in Europe. As a result, not only do underground organisations thrive, but the possibility of finding employment in the shadow economy becomes a pull factor for further migration. Simultaneously, however, migrants' vulnerability to abuse and exploitation increases and, with it, so do overall irregularity and insecurity, thus completing the vicious cycle.

In conclusion, as this paper has sought to demonstrate, multiple counterproductive consequences emerge from the criminalisation of migration, for both migrants and receiving societies, leading to a vicious cycle of criminalisation, irregularity, and insecurity. Similar considerations have led several authors to advocate for regularisations, especially for those migrants who cannot be returned, as a means to decrease irregularity, depoliticise discussions with countries of origin, and lessen foreigners' vulnerabilities (Hinterberger 2023; Panizzon 2022). As the logics of exceptionalism, securitisation and criminalisation conflict with the structural drivers of migration, establishing legal pathways for both labour and refugee migration offers a more promising approach to break this cycle and create a more effective migration system.

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Notes

- Using the American spelling—see https://scholar.google.com/scholar?q=securitization+of+migration&hl=en&as_sdt=0%2C5&as_ylo=2000&as_yhi=2000 (accessed on 1 September 2024).
- Respectively: <https://www.frontex.europa.eu/what-we-do/monitoring-and-risk-analysis/migratory-map/>, <https://missingmigrants.iom.int>, <http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/cruscotto-statistico-giornaliero> (accessed on 1 September 2024).
- For reasons of space, the article omits the role of the EU. See however Léonard (2010), Guiraudon (2000), Rosina (2022).
- The article is part of a broader research project aimed at investigating the purpose, nature, and consequences of the criminalisation of irregular migration in Europe. For a comprehensive analysis of the interviews and other data, see Rosina (2022).
- According to the ECJ, the norm was in contrast with the EU Return Directive, insofar as it prioritised the imprisonment of third country nationals rather than their expulsion (ECJ 2011).
- For a similar reading of the relevance of elections for the unwillingness to decriminalise, see Henriot (2013). For more on the co-optation of the far-right rhetoric in France and Italy, see Chebel d'Appollonia (2012, pp. 243–47).
- In 2018, the Conseil Constitutionnel declared the criminalisation of humanitarian assistance to migrants in need as opposed to the constitutional value of *fraternité*. Yet, it still appeared to be sanctioned in certain cases. See <https://www.vie-publique.fr/focus/decrypter-actualite/delit-solidarite.html>; <https://www.la-croix.com/France/Exclusion/Le-delit-solidarite-toujours-sanctionne-2020-01-15-1201072000> (accessed on 1 September 2024).
- Including both TCNs and EU nationals.
- See <https://www.tuttitalia.it/statistiche/cittadini-stranieri-2011/> (accessed on 1 September 2024).
- See [https://www.ined.fr/en/everything_about_population/demographic-facts-sheets/faq/how-many-immigrants-france/#:~:text=In%20France%2C%20demographers%20classify%20as,population%20\(of%2067%20million\)](https://www.ined.fr/en/everything_about_population/demographic-facts-sheets/faq/how-many-immigrants-france/#:~:text=In%20France%2C%20demographers%20classify%20as,population%20(of%2067%20million)) (accessed on 1 September 2024).
- The interview pool was made up of 3000 migrants, of which of 41.6% irregular, 37.3% regular, and 18.4% not occupied (ISFOL 2014).
- See: <https://edition.cnn.com/videos/world/2017/11/13/libya-migrant-slave-auction-lon-orig-md-ekj.cnn> (accessed on 1 September 2024).

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