



Legitimising exclusion through criminalisation

An ethnography of immigration detention in Switzerland

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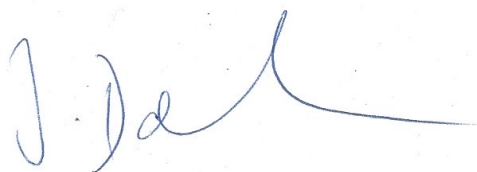
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La Faculté des lettres et sciences humaines de l'Université de Neuchâtel, sur les rapports de Mme Christin Achermann, directrice de thèse, professeure, Université de Neuchâtel ; M. Giuseppe Campesi, professeur, Université de Bari ; Mme Melanie Griffiths, Birmingham Fellow, Université de Birmingham ; Mme Ellen Hertz, professeure, Université de Neuchâtel autorise l'impression de la thèse présentée par Mme Laura Rezzonico en laissant à l'autrice la responsabilité des opinions énoncées.

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Le doyen
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Abstract

Based on an ethnography of two immigration detention facilities, this thesis asks how immigration detention as a legal measure of exclusion is enacted in Switzerland and to what kind of spaces, practices, representations and experiences it leads. Most facilities used for immigration detention in the Swiss context being ordinary prisons, the research is interested in how such embeddedness within the penal system impacts on the institutional and social realities of detention spaces as well as on the subjective experiences of both detention staff and detainees. Making use of crimmigration as a lens of analysis, it explores the various ways in which crime control and migration control are blurred in carceral facilities with a hybrid nature and function and how such blurring is productive of stigmatisation and criminalisation. Ultimately, this thesis shows that incorporating immigration detention into penal facilities (re)produces representations of migrants as security threats and potential criminals, performing a legitimising effect on the exclusion of unwanted migrants, both in terms of their confinement and deportation.

Keywords: immigration detention; crimmigration; criminalisation; exclusion; prison ethnography; carceral space

Résumé

Basée sur une ethnographie de deux centres de détention administrative de personnes migrantes, cette thèse traite de la mise en œuvre de la détention comme mesure légale d'exclusion en Suisse et s'intéresse aux types d'espaces, de pratiques, de représentations et d'expériences auxquels elle donne lieu. La plupart des établissements exploités pour la détention administrative dans le contexte suisse étant des prisons ordinaires, la recherche analyse l'impact de cet ancrage dans le système pénal sur les réalités institutionnelles et sociales des espaces de détention ainsi que sur les expériences subjectives des agent.e.s de détention et des personnes détenues. Faisant usage de la notion de « crimmigration » comme prisme d'analyse, elle explore les différentes façons dont le contrôle du crime et le contrôle de la migration sont brouillés dans des institutions carcérales de nature et de fonction hybrides et comment un tel brouillage est productif de stigmatisation et de criminalisation. En définitive, cette thèse démontre que le fait d'incorporer la détention administrative dans des établissements pénitentiaires (re)produit des représentations des migrant.e.s en tant que menaces pour la sécurité et criminels potentiels, exerçant un effet de légitimation sur l'exclusion des migrant.e.s indésirables, à la fois en termes d'enfermement et de renvoi.

Mots clés : détention administrative de migrant.e.s ; rétention; crimmigration ; criminalisation ; exclusion ; ethnographie de prison; espace carcéral

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List of abbreviations

ATF: Judgement of the Federal Supreme Court (*Arrêt du Tribunal Fédéral*)

BAS: Council office for asylum seekers of Basel Region (*Beratungsstelle für Asylsuchende der Region Basel*)

BS: Basle-City (*Basel-Stadt*)

BL: Basle-Country (*Basel-Land*)

CARA: Italian Reception centres for asylum seekers (*Centri di accoglienza per richiedenti asilo*)

CCJPD: Conference of Cantonal Justice and Police Directors

CPT: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CJEU: Court of Justice of the European Union

ECHR: European Convention on Human Rights

EFTA: European Free Trade Association

FAC: Federal Administrative Court

FDJP: Federal Department of Justice and Police

FNIA: Foreign Nationals and Integration Act (previously FNA)

IRC: Immigration Removal Centre

JVA: Correctional facility (*Justizvollzugsanstalt*)

KAZ: Church contact point for coercive measures (*Kirchliche Anlaufstelle Zwangsmassnahmen*)

LCM: Law on Coercive Measures

MP: Member of Parliament

NCCR: National Centre of Competence in Research

NCPT: National Commission for the Prevention of Torture

NGO: Non-governmental organisation

RP: Regional Prison

SAZ: Swiss centre for the training of penitentiary staff (current name: Swiss Competence Centre for the Execution of Criminal Penalties)

SEM: State Secretariat for Migration

SNSF: Swiss National Science Foundation

SRC: Swiss Red Cross

SVP: Swiss People's Party (*Schweizerische Volkspartei*)

UNHCR: United Nations High Commissioner for Refugees

ZEMIS/SYMIC: Central Information System On Migration (*Zentrale Migrationsinformationssystem, système d'information central sur la migration*)

Introduction

“The sole purpose of detention under the law on foreign nationals is to ensure the deportation procedure and the enforcement of the corresponding decision. The separation of foreigners in detention pending deportation and in detention in preparation for departure from other detainees is intended to show externally that the detention was not ordered on suspicion of a criminal offence, but has a purely administrative background. This requirement is best met by buildings specifically designed to meet the needs of detention under immigration law” (Decision of the Federal Supreme Court 122 II 49 of 2 May 1996, consid. 5, author’s translation).

“It’s not good for my reputation, to end up in a prison like that. I’m not a criminal! I’m an asylum seeker. They’ve the right to refuse my demand, but not to put me in prison! (...) It’s two different institutions, asylum and prison. (...) I feel like I’m treated like a criminal. (...) There are actually people who are here because of crime. (...) The guards, they don’t know your story, they see you as a criminal, because you’re in prison!” (Interview with a man detained in the prison of Bässlergut).

“Look here, there’s just concrete and bars. It’s a high security prison. (...) They use every means possible to crush the person in here... to show them that they should never come back here” (Interview with a man detained in the prison of Bässlergut).

The comparison between these citations, the first concerning the normative framework of immigration detention, the second and third expressing how this practice is lived and experienced by detained people, shows a strong divergence. Immigration detention is conceived as a measure of migration control through which foreign nationals are deprived of their liberty for the sole purpose of ensuring the enforcement of deportation. As such, it is not intended to be punitive and should take place in specialised detention centres which allow for free movement inside the facility and conditions that are more lenient than those in penal detention. However, both detainees quoted talk about being ‘in prison’, the second even describing the facility as a ‘high security prison’ made of concrete and bars. This is not only a matter of the perception of those individuals. The descriptions of these detainees reflect the official denomination of the prison where they were being held and the fact that criminal convicts were held in that same facility as well.

This situation is not even an exception within the Swiss landscape of immigration detention facilities. On the contrary, most facilities used to hold people under the Foreign Nationals and Integration Act (FNIA) are ordinary prisons or mixed facilities used both for criminal types of detention and immigration detention. It is important to note that the citation from the Federal Supreme Court dates back to 1996. Twenty-five years later, the situation is still far from conforming with the standards that the Court had set at that time. Despite the reiterated recommendations of the European Committee for the Prevention of Torture (CPT), the UN Committee against Torture and the National Commission for the Prevention of Torture (NCPT), immigration detention in Switzerland continues to be strongly embedded in the penal system and hugely incorporated within ordinary prisons.

How can we explain such a gap between the normative framework and actual practices in the field? One of the explanations for this rests in the federal form of Swiss government. The enforcement of removals from Swiss territory lies within the competence of the 26 cantons composing the Swiss Confederation. These enjoy a relatively high level of autonomy in this field and are also responsible for ordering detention in individual cases and for organising its infrastructure. For many cantons, using ordinary prisons located in their territory is simply the most practical and cost-effective solution. However, this explanation is only partial, and incorporating immigration detention within ordinary prisons is not a neutral choice. While a complete answer to the question of the political

choices lying behind this situation sits outside the scope of this research, this thesis examines the performative effects of such practice and the resulting spaces, experiences and representations of immigration detention.

In order to address this topic, we first have to define immigration detention. A general definition would be “the holding of foreign nationals, or non-citizens, for the purposes of realising an immigration-related goal” (Silverman and Massa 2012: 679). Three main characteristics emerge from this definition: it consists of liberty deprivation; it only applies to non-citizens; and it is used as a migration control tool. The use of deprivation of liberty for a purpose that is not related to the criminal justice system is rather unusual yet not unique. It clashes with our shared belief that, in a state ruled by the law, you are only sent to prison if you have (or could have) harmed someone and after due process. The fact that this form of detention discriminates between citizens and non-citizens also clashes with the principle that imprisonment as a measure of criminal justice applies to all individuals who are equal before the law. This is why immigration detention poses moral dilemmas to the observer. At the same time, the right of states to control who enters and remains in their territories and to control migration altogether is rarely questioned as an overarching concept. Immigration detention is therefore commonly accepted as a legitimate measure to enforce deportation when no other means respects the sovereign decision of the state to exclude a non-member.

In other words, by its mere existence, immigration detention highlights an inherent tension between the universality of human rights and the exclusionary nature of nation states. As highlighted by Silverman and Massa (2012: 679) along with other authors, “detention embodies the conflict in contemporary immigration control regimes between a sovereign state’s capacity to regulate the entry and residence of non-members on the one hand, and its legal and ethical obligations towards those residing within its cartographic borders, on the other”. As a response to this tension, a specific normative framework has been developed which presents immigration detention as a distinct type of confinement that has nothing to do with criminal forms of deprivation of liberty. At a European level, the Return Directive – which is binding for Switzerland despite that country not being part of the EU – states that immigration detention must take place in specialised facilities allowing for wide freedom of movement and social contact, differing from penal prisons in design and conditions. The same provision is included in Swiss law, despite the text of the law allowing for exceptions due to lack of capacity.

Such a normative framework can be understood as a way to set some limits to the widely accepted sovereign right of states to control borders and migration and simultaneously as a way to legitimise that same right. This is well exemplified by countries such as Italy or France, which have addressed the tension between sovereignty and human rights by negating the carceral nature of confinement. This is visible in the use of words like ‘*trattenimento*’ (holding) or ‘*rétenion*’ (retaining) that avoid reference to detention and the criminal justice vocabulary. It is also observable in the involvement of NGOs in the daily management of these institutions and/or the stressing of the humane or even humanitarian character of detention (Campesi 2015; Fischer 2017). The detention centre of Frambois in Geneva follows this line of thinking, the spaces and conditions of detention being consciously conceived in a way that would avoid references to the penal sphere.

It is important to highlight that even when it takes place in specialised facilities and under conditions allowing for a certain freedom within them, detention remains a form of deprivation of liberty and can therefore not avoid being harmful for its subjects. However, the material conditions of detention matter in practice, impacting on the logics, the everyday work and experiences of immigration detention. As we will see in this thesis, being detained in carceral facilities that are

actually prisons is particularly painful and stigmatising for detainees and is productive of specific understandings and representations that associate detained migrants with criminality.

Based on an ethnography of immigration detention facilities, this thesis asks how immigration detention as a legal measure of exclusion is enacted in Switzerland and to what kind of spaces, practices, representations and experiences it leads. It aims to understand the everyday practices and social life of detention as well as the subjective experiences of the various actors involved, not only detainees but also prison staff, NGOs and immigration authorities. More specifically, the research is interested in the institutional embeddedness of immigration detention within the penal system and explores its impact on the institutional and social realities of detention spaces. The various ways in which crime control and migration control are blurred in and through immigration detention and the consequences for individuals, institutions and society will be the main focus of this thesis.

An ethnographic approach

The doctoral project from which this thesis stems was part of a broader research project investigating practices of exclusion within the realm of Swiss migration control and focusing on how those are experienced and resisted by the various actors involved. The project, directed by Prof. Christin Achermann, was part of the first phase of the National Centre of Competence in Research ‘*nccr – on the move*’ and was financed by the Swiss National Science Foundation SNSF¹. Immigration detention centres were identified as one key site where migrants’ exclusion is performed by Swiss agents of the state. It operates through exclusion from society in the form of confinement, and aims at the physical exclusion of the foreign national through deportation. Whereas the legislative process introducing and modifying the legal framework of immigration detention had been the focus of previous research (Achermann and de Senarclens 2011; de Senarclens 2013), little was known about what these spaces look like and what takes place within them.

Immigration detention centres lie among the ‘obscured places’ (Maillet et al. 2017) in which migration is regulated and hidden from view. They are difficult to access and data are often not available to the public. Statistical data are not collected in a systematic way in all countries and are difficult for civil society to access (Global Detention Project et al. 2015). In Switzerland, policies of immigration detention encounter criticism and resistance from migrant support organisations and activists, yet they are rarely debated in the public sphere. Moreover, very little is known about spaces and practices of detention, except from information provided by the National Commission for the Prevention of Torture (NCPT) in their reports based on visits to carceral facilities. This lack of knowledge and transparency about what takes place inside detention facilities has been the driving force motivating this research.

Based on the conviction that, in order to understand immigration detention as a practice of exclusion, it was necessary to look inside those closed, obscured places, I adopted an ethnographic approach with the aim of observing the spaces and practices of immigration detention as well as the perspectives of the various actors involved. I observed the everyday life and work of a small number of facilities in order to be able to explain what immigration detention actually *is* and what it *does* to the people and institutions involved as well as its effects on society at large. I explored the

¹ I was hired as a PhD student to work on the project “Restricting Immigration: Practices, Experiences and Resistance” (IP13) from 2014 to 2018. PostDoc Jana Häberlein and PostDoc Jonathan Miaz have been fellows of this project. The research programme ‘*nccr – on the move*’ is currently in Phase II, with a number of new projects in progress.

social world of immigration detention facilities as resulting from the interplay of institutional logics and norms, how these are put into practice, and how they are experienced and resisted. My focus was concerned with the representations of confined people, both in terms of those on which the detention regime was based and those produced or fostered by such a regime. I listened to how different actors talked about immigration detention, made sense of their experiences and sometimes contested or resisted it.

The majority of the participant observation took place in two detention facilities which, at the time of my research, were responsible for both immigration and penal detainees, despite having diametrically opposed histories. The Regional Prison of Bern is a rather old, cantonal prison that was originally conceived as a jail for remand prisoners. It then started to hold convicted criminals as well, and lately immigration detainees, who were originally held together with the other detainees. Since the beginning of the 2000s, a dedicated area was set up in a separated wing for immigration detainees. The Prison of Bässlergut in Basel, on the other hand, was planned as an immigration detention facility from its inception in 2000 and was – at least in theory – not expected to hold prisoners. However, due to a lack of places in the cantonal prisons, since 2011 it has progressively dedicated some separated areas of the prison to the holding of criminal offenders. Since the 2019 expansion of the prison with a new building now dedicated to the serving of prison sentences, the original facility is exclusively used for immigration detention. In this thesis, however, I refer to the situation as it presented itself in 2016-2017, discussing the effects of this blurring of the boundaries between immigration and criminal detention.

In both prisons, I conducted participant observation within the limits set by the institutions, which were strongly related to their securitised nature. In the Regional Prison of Bern, I was able to observe the work of prison officers during only seven full days, but I could carry out a relatively high number of interviews with prison staff, detainees and other actors working in the prison. In the Prison of Bässlergut, I was able to delve into the daily life of the prison through observations both in the detention area (but always accompanying staff members) and in the courtyard during the detainees' walks. This presence allowed me to conduct a long series of more informal conversations with both staff members and detained migrants. To complete data collection in Bässlergut, I also carried out a certain number of rather more formal, recorded interviews with detainees and staff.

The data collected in these two prisons were supplemented with a few interviews with other relevant actors outside the prison space – particularly immigration officers – and with four one-day visits to other immigration detention facilities in Switzerland. The latter was aimed both at enabling this thesis to address the diversity of detention facilities and conditions, and at better grasping the generalities and specificities of the two prisons that I researched in greater depth.

In researching such spaces, I investigated the specific conditions of immigration detention, but decided not to focus on any particular group of detainees based on their origin, immigration status or type of detention. Indeed, my aim was to understand the work of immigration detention in transforming individual migrants with their own stories and trajectories into a rather homogeneous category of 'detainees' or 'illegals'. In this sense, I understand my research as "an ethnography of a legal process rather than of a particular group" (Coutin 2000: 23, in De Genova 2002: 423). If I refer to 'detainees' or 'immigration detainees' in this thesis, it is only to highlight the temporary condition of confinement to which these people are subject, and neither to uncritically reproduce administrative categories nor to *reduce* them to that condition. As my interest resides in practices and experiences of border and migration control, and not in the causes of migration or the procedures allocating migrants a status or label – e.g. asylum procedure – in this thesis I use

‘migration’ as a general and inclusive term for different forms of mobility, including forced migration.

The crimmigration lens

The use of quasi-penal measures of incarceration within the immigration control system can be understood within the framework of ‘crimmigration law’ (Stumpf 2006), a concept that points at the increasing merger between migration and criminal law and enforcement. Immigration detention has been defined by Juliet Stumpf (2014: 85) as “one of the mainstays of crimmigration law” and one of its “most extreme manifestations”. Indeed, it is a good example of how a measure generally used in the criminal justice system has been transposed onto the realm of migration control. Through this transferral, however, detention has been deprived of its usual procedural and constitutional guarantees, which is understood as one of the ways in which crimmigration works (Legomsky 2007; Stumpf 2006, 2015).

If crimmigration was originally seen as a mainly legal process of hybridisation between immigration law and criminal law, a broader understanding of this notion – and phenomenon – has been developed more recently. Crimmigration has been defined as “the interlacing” or “the intertwinement of crime control and migration control” (respectively Stumpf 2015: 237; van der Woude et al. 2014: 562), including not only the legal realm, but also the institutional and social spheres. However, while crimmigration as a legal process has been analysed in detail and within several contexts, there is still little understanding of how the legal, institutional and social dimensions of this merger interact and converge in the process of crimmigration. For this reason, in this thesis I follow the suggestion made by van der Woude et al. (2014: 575) to study “the law in action, meaning the ways in which crimmigration laws and policies are being enforced by individual law enforcement officials as well as the ways in which these policies and regulations are perceived by the immigrants themselves”.

The Swiss system of immigration detention is a very good case to study how crimmigration law emerges and functions, and to what kind of social reality and discourses it gives rise. A great diversity of detention spaces and conditions ensues from the significant discretion that cantons have in organising immigration detention. The general tendency to use ordinary prisons and the institutional embeddedness of immigration detention facilities in the penal system is fertile soil for crimmigration control. As an analytical perspective, crimmigration allows us to unpack all the different ways in which migration and crime control are merged and blurred in carceral facilities with a hybrid nature and function. At the same time, it sheds light on how immigration detention in Switzerland participates in blurring the distinction between migration and crime control and, consequently, between ‘immigrants’ and ‘criminals’. Throughout this thesis, I will question how this blurring is manifest in the daily work of the prison and is experienced, made sense of and contested by prison staff and detained migrants.

Investigating what happens inside the ‘black box’ of detention centres is of high relevance given the significant impact that immigration detention has both on migrants’ lives and trajectories, and on society at large. In this respect, García Hernández (2018) argues that the merging of migration and crime control harms people, as well as institutions and law, as it touches some of the fundamental pillars of democracy and important constitutional principles such as proportionality or the procedural guarantees provided in the case of deprivation of liberty.

Maintaining social order, legitimising exclusion

The confinement of foreign nationals on the basis of their immigration status is not a new phenomenon – it will suffice to mention its use in several countries including Switzerland to manage foreigners during the First and Second World Wars. However, according to Bloch and Schuster (2005) immigration detention became normalised as an instrument of migration control only after the end of the Cold War, when the declining power of national states in the face of globalisation and terrorist attacks generated the need for governments to demonstrate that they were able to control the movements of non-citizens. It was in this period that we witnessed a growth in the regulations, infrastructure and incarceration rates of immigration detention across most immigrant-receiving countries.

The crimmigration lens offers a good perspective to analyse a quasi-penal measure such as detention being used outside the criminal justice system. This is, however, not the only nor the first time such a shift has occurred. One historic comparison is particularly striking here. Until 1981, there was a form of administrative detention in Switzerland – called ‘administrative internment’ – directed at citizens who did not conform to the expectations of modern society. Examples of people who could be interned were prostitutes, alcoholics or unemployed people of ‘indolent’ character. These people could be deprived of liberty on grounds of perceived immoral conduct, with the aim of cleansing society from those deviant, disturbing subjects and their potentially contagious behaviour, and of correcting and reforming them into good citizens.

This practice was recently the focus of a commission of experts who have raised strong criticism of the ways in which this measure was used, highlighting that its administrative rather than judicial-penal character gave space to arbitrary decisions, against which interned persons could not even appeal (Independent expert commission on administrative detention 2019). This example shows that confinement and incarceration have been used in different contexts to control different kinds of perceived threats to society and social order. Similarly to penal imprisonment, these forms of confinement exclude certain categories of people while simultaneously constructing some behaviour as deviant and morally condemnable. Despite not being presented as punitive, these quasi-penal measures of deprivation of liberty stigmatise and symbolically criminalise the subjects detained.

While criminal forms of incarceration are generally accepted in the population as necessary measures to protect security and public order, these other forms of quasi-penal measures need more work of legitimisation. Bosworth (2013, 2014) has discussed how immigration detention centres suffer from a ‘legitimacy deficit’ due to the lack of a clear, inherent purpose as well as to a gap between their alleged purpose of enforcing migration control and their form that resembles the prison. Legitimation is understood here as a process through which legitimacy is created, or in other words, through which something is made acceptable and normative to a certain group of audience. Active legitimisation work is present wherever a relationship of domination and subordination exists (Weber 1946). As highlighted by Ugelvik (2016b), legitimisation work can take narrative forms, and within an institution such as immigration detention, self-legitimation within the personnel of an institution is more important than legitimisation towards the public.

Immigration detention – at least in the Swiss context – has the legal aim of ensuring the enforcement of deportation. This purpose lends it a first justification since deportation is mostly conceived as a legitimate tool for states exerting their sovereign power to control entry and stay in their territory. It has been argued that deportation is a form of the “international police of population” (Walters 2002: 283) that “serves to sustain the image of a world divided into ‘national’ populations and territories, domiciled in terms of state membership” (ibid.: 282). Through their

mere presence – despite the state decision that they should leave – detained migrants challenge such ‘national order of things’ (Malkki 1995). Detention is then seen as a justified means of facilitating the reallocation of these subjects to their proper sovereign (Walters 2002) with the aim of re-establishing national order. Such justification is not enough, however, when we consider that for this migration-related purpose, non-citizens can be deprived of liberty for up to 18 months.

In this thesis, I argue that the material conditions in which detention takes place play a key role in this work of legitimisation. Blurring the distinctions between migration and crime control, the space of the prison casts on migrant detainees a shadow of constant suspicion that constructs them as potentially dangerous and threatening, exerting a strong criminalising effect on them. As Mountz et al. (2013: 527) note, detention is rationalised through a circular rationale: “migrants *might* be criminals, necessitating detention; migrants *must* be criminals, because they are detained”. As this thesis will show, the fact of using ordinary prisons or subordinating immigration detention to penal facilities reinforces this rationale through the materiality and practices of the prison which symbolise punishment. The (re)production of such representation of migrants as potential criminals contributes to legitimising their exclusion both in terms of confinement and deportation. In other words, detention – especially when it takes place in prisons – produces its own justification as it has a performative effect on the reality in which it intervenes.

Structure of this thesis

This thesis is structured in two parts. The first, composed of Chapters 1 to 4, situates the research in the scientific literature and provides the information that the reader will need to understand the second part, which presents the empirical analyses of the data produced through ethnographic fieldwork in four chapters with different focuses. In the following paragraphs, I summarise the content of each chapter.

Chapter 1 starts with a review of research on migration control and exclusion, focusing on specific practices of exclusion that are tightly related to immigration detention: border policing, exclusionary practices of asylum and deportation of non-citizens. The chapter moves on to address the theoretical framework of the thesis, presenting the main conceptual tools that help me to unpack the nexus between security, criminal law and migration control in relation to immigration detention. More specifically, these tools are related to three lines of research: the *securitisation* of migration, *crimmigration* law and enforcement, and carceral geography. I will argue that these theoretical perspectives can be combined in productive ways to understand the form that immigration detention takes in Switzerland. Finally, I will review the literature on immigration detention, presenting its main questions and findings related both to its logics and functions (1.3.1) and to its internal dynamics (1.3.2). This chapter will enable me to situate my research within this growing field of study.

After this theoretical overview, I address the Swiss context of immigration detention in two chapters. Chapter 2 provides an analysis of the legal framework of administrative detention, starting with its evolution since the two World Wars, to discuss how historically, arguments related to immigration enforcement and to crime control have always intertwined, and how the latter have served to justify every exacerbation of immigration law (2.1). The chapter goes on to explain the stated aim as well as the main legal principles of immigration detention (2.2) and detail the different types of administrative detention that exist under Swiss law (2.3). The chapter continues by providing an overview of the procedural guarantees that accompany such a coercive measure, including the judicial review of detention orders (2.4). Finally, it addresses the legal framework

surrounding conditions of detention and more specifically requirements around the use of specialised facilities and separating immigration detention from penal forms of incarceration (2.5). This chapter will enable the reader to better understand the normative framework of immigration detention in Switzerland.

Chapter 3 starts with an analysis of statistical data provided by the State Secretariat for Migration (SEM) in order to provide an overview of the main characteristics of the population of detainees (3.1.1) as well as a short exploration of the different uses of immigration detention by the various Swiss cantons (3.1.2). It goes on in section 3.2 to describe the territorial and organisational context of immigration detention in Switzerland, showing how sharply this contrasts with much of the legal framework presented in Chapter 2. I show how the decision made by many cantons to use ordinary prisons for the scope of immigration detention has resulted in the institutional embeddedness of immigration detention within the penal system. In the final part of the chapter, I present the two main prisons in which I conducted fieldwork – the RP Bern (3.3.1) and Bässlergut (3.3.2) – in order to provide the reader with the contextual information needed to understand the analyses presented in the second part of the thesis.

In Chapter 4, I detail the different steps of the research process and reflect on the ways in which the ‘crimmigration context’ has impacted on it. The chapter starts by describing access negotiations and arguing that these reveal some of the main issues and tensions inherent to immigration detention (4.1). In section 4.2, I describe the ethnographic approach used and provide details of my conduct of participant observation and qualitative interviews as well as how I analysed the data produced through such methods. Finally, in the last section (4.3) I reflect on my position in the field and particularly on the difficulties of conducting multi-perspective research in a closed institution characterised by co-presence and conflicting roles and interests of the research participants, arguing that in such a context, the researcher has to deal with competing claims and multiple loyalties (Lavanchy 2013).

The second part of the thesis is of an empirical nature, presenting the main findings of my fieldwork research within carceral facilities. Each of the four chapters employs a different angle of analysis and presents a different perspective on immigration detention. While Chapter 5 analyses the carceral facilities as institutions – trying to shed light on the rationalities through which detainees are governed – Chapter 7 takes the detained migrants’ trajectories as a starting point to better understand migration control in general. Chapter 6 and Chapter 8 are concerned with the subjective experiences and points of view of two major groups of the actors involved, namely prison staff and detained migrants.

Starting with Chapter 5, I delve deeper into the daily life of the RP Bern and Bässlergut, addressing the four main rationalities through which detainees are governed within them. The first is a rationality of management through which detainees are conceived as objects to be placed, moved and processed using logistic and bureaucratic technologies (5.1). The second is a rationality of discipline that aims at transforming its subjects into docile inmates through specific technologies such as entry procedures (5.2.1), daily schedule (5.2.2) and work (5.2.3), surveillance (5.2.4) and sanctions (5.2.5). The third rationality, presented in part 5.3, is one of ‘biopolitics’, which conceives of detainees as bodies to be fed and kept alive until deportation is enforced. This is achieved through medical care (5.3.1), protection against self-harm (5.3.2) and the careful calculation of any form of physical violence applied to them (5.3.3). Finally, a humanitarian rationality conceiving of detainees as both suffering subjects and human rights bearers is presented in section 5.4, which focuses on the involvement of NGOs that provide legal support and return advice to detainees. As a

whole, the chapter provides insights into the daily functioning and logics underlying such carceral institutions operating immigration detention.

The focus of Chapter 6 is the subjective experiences of prison staff and their ways of making sense of the ambiguous environment in which they work. The chapter starts with an exploration of the professional identity of staff members as shaped by the institutional embeddedness of immigration detention within the penal system (6.1). It goes on to describe the daily work of prison officers who show a tendency to amalgamate different categories of detainees and detention (6.2.1). I then focus on their temporal experiences of stress and boredom (6.2.2), their dual role of control and care (6.2.3), their different attitudes toward detainees which, incidentally, show that they possess some room for manoeuvre in the ways in which they carry out their job (6.2.4), and their social relations and team dynamics (6.2.5). In the third part of the chapter (6.3), I use Gill's theorisation of 'moral distance' to discuss the relationship of prison staff with detained migrants, focusing on institutional elements and psychological mechanisms which enable their taking distance from the pains of detainees. Finally, in section 6.4, I analyse staff members' discourses about immigration detention, showing how they make sense of it through notions of illegality (6.4.1), undeservingness (6.4.2), non-belonging related to race and culture (6.4.3) and unknownness and threat (6.4.4).

The next two chapters turn to the perspective of detainees. Chapter 7 analyses detainees' trajectories and the ways in which arrest and detention have interfered with their plans. First, I address the trajectories of asylum seekers as strongly impacted by the Dublin system, the process of determining the state responsible for examining asylum claims within Europe (7.1). This will shed light on the state's use of detention for containing and regulating mobility as well as the strategies used by asylum seekers to resist such a system. I continue by looking at the moment of the arrest as a moment of friction between migrants' mobility and the state's attempts to control it (7.2). Finally, in section 7.3 a few individual trajectories are analysed in greater detail in order to show how measures of crime and migration control intertwine. Taken altogether, this chapter shows that criminal and administrative control interweave in many ways in the trajectories of non-citizens, be this in the form of racial profiling, imprisonment on the grounds of immigration offenses or exclusion on the grounds of criminal prosecution.

The last chapter of this thesis, Chapter 8, addresses the experiences of detained migrants, their reactions and their making sense of immigration detention as strongly impacted by the 'crimmigration context' in which they are confined. Starting with a detailed analysis of their spatial (8.1.1), temporal (8.1.2) and social (8.1.3) carceral experiences, it goes on to describe their encounters with state officials, namely prison staff (8.2.1) and migration officers (8.2.2). In the third part (8.3), detainees' feelings of injustice are explored in depth by exploring the different elements which compose these feelings, such as the lack of legitimacy of depriving people of their liberty for immigration goals, the criminalising effect of detention practices, the understanding of detention conditions as punitive, of migration officers' decisions as arbitrary and their treatment as unfair, and of judicial reviews as biased. The chapter ends with a section (8.4) addressing the issue of agency and resistance in the deportation system, including non-compliance and resistance to deportation attempts, acts of bodily resistance as well as more invisible acts of everyday resistance and forms of *resilient resistance*. The chapter highlights overall that the specific conditions in which detention takes place impacts detainees' experiences and reactions and strengthens their feelings of injustice related to exclusion and criminalisation, which they strongly contest.

In the conclusion, I review the main findings of this thesis in a transversal way. I start by recalling how the boundary between migration and crime control becomes blurred in hybrid spaces of confinement such as prisons which take on a function within the deportation system. I continue by

discussing the logics and specificities of immigration detention, the fragmentation of the deportation system and the central role of the prison within such a system, the different functions and uses that migration authorities make of immigration detention, the effects of crimmigration in terms of stigmatising and criminalising detainees, and the punitive nature of detention. I go on to present the main argument of this thesis, namely that the criminalisation inherent in the confinement of migrants in penal institutions has an indirect function of legitimising their exclusion from society and reaffirming the privileges of citizenship. Finally, I put the current context of Swiss immigration detention into perspective, drawing a parallel with past forms of administrative detention that enabled the confinement of citizens who were subject to social exclusion, and discussing recent developments in the legal framework and the consequences they might have on detention practices in the near future.

Chapter 1. Situating immigration detention: theoretical grounds

Migration control and its violent practices such as deportation and militarised border control have become normal features of our contemporary world. This chapter explores the various forms of migration control and its effects in terms of migrants' exclusion and reaffirmation of national sovereignty. It presents a theoretical framework for understanding coercion and punitive measures such as immigration detention in the control of borders and migration. In the first part, I address theories of migration control and how it relates to the production of borders and boundaries through mechanisms of inclusion and exclusion. I especially focus on state practices of excluding migrants through border policing, asylum procedures and deportation. In the second part, I discuss theoretical approaches and concepts that are particularly relevant to understanding immigration detention and its implementation in the Swiss context, starting with research on the securitisation of migration, continuing with literature on crimmigration law and control, and ending with a review of the main contributions of carceral geography. I argue that these approaches can be productively combined to understand immigration detention. In the third part of the chapter, I review research on immigration detention, highlighting their main contributions and debates. In section 1.3.1, I discuss the spatial logics, the drivers and the informal functions of immigration detention at the macro level as well as the rationales behind bureaucrats' and judges' decisions to detain. In section 1.3.2, I present research addressing the internal dynamics of detention spaces, with a particular focus on uncertainty, legitimacy, experiences of confinement and control, categorisation, agency and resistance.

1.1. Migration control and exclusion

Immigration detention is mainly understood and rationalised as an instrument of migration control (Majcher and de Senarclens 2015), forming part of a larger "arsenal" of measures for controlling migration (Bloch and Schuster 2005: 508). In this thesis, I understand migration control as composed of a variety of policies, measures, practices and discourses that operate through the dynamic of inclusion and exclusion. Immigration detention can be conceived as a practice of exclusion. However, as part of a larger apparatus (Feldman 2012), it is intertwined with various forms of inclusion. This apparatus is dynamic as it evolves in constant interaction with the practices and strategies of migrants and other actors.

In the first part of this section, I remind readers how the development of migration control is tightly related to the formation of modern nation-states and their bureaucracies, mentioning some of the most relevant approaches and concepts in this research area. I then describe migration control as a system of inclusion and exclusion, arguing for the need to focus on the interrelation between inclusion and exclusion as it produces forms of illegalisation and differential inclusion. I continue by discussing the intersection between borders and boundaries as productive of categories of exclusion that are gendered, racialised and morally charged. In the second part, I turn to specific practices of migrants' exclusion that are tightly related to immigration detention – namely border policing, asylum procedures and deportation – and review how those have been theoretically and empirically studied, providing useful underpinning for the analysis of immigration detention.

1.1.1. Researching migration control

Migration is a fundamental part of human history and development (Castles 2014). Since the origins of the human species, people have moved across the globe in order to improve their livelihoods.

Attempts to control human mobility have a history almost as long; far before the modern period, despots have asserted control despite lacking the infrastructure to do so effectively (Torpey 1998). Cresswell (2010: 27) describes feudal Europe as a time in which “the vast majority of people had their movement controlled by the lords and the aristocracy”, despite the existence of mobile subjects outside this chain (minstrels, vagabonds, pilgrims). The 19th century witnessed an important change in the regulation of mobility, which passed into the hands of nation-states (Cresswell 2010).

The evolution of modern forms of migration control is tightly related to the formation of modern states in the 19th and 20th centuries, both as nation-states and as bureaucracies. Wimmer and Glick Schiller (2002: 313-314) observed that migration started to be seen as a problem as soon as “[a] concept of ‘ethnic’ and/or ‘racial’ peoplehood began to replace a ‘civic’ conception initially shaped by Enlightenment”. Indeed as ‘imagined communities’ were being constructed through projects of nation-building (Anderson 2006), immigrants started to be “seen to endanger the isomorphism between citizenry, sovereign, and state” (Wimmer and Glick Schiller 2002: 315) that lay at the heart of the foundation of nation-states.

The history of migration control is also related to modern states’ formation in that it was “the creation of elaborate bureaucracies and technologies that only gradually came into existence” that allowed “[t]he *successful* monopolization of the legitimate means of movement by states and the state system” (Torpey 1998: 242). Torpey argues that this has rendered people increasingly dependent on states to obtain the authorisation to move across borders, not least through the introduction of ‘techniques of identification’ such as the passport (see also Torpey 2000). The requirement for a passport to cross borders within Europe was introduced during the First World War, highlighting the link between migration control and issues of national security and securitisation. It was in the period between the two World Wars that “an entire central state apparatus of overseeing, limiting and controlling immigration was institutionalized” (Wimmer and Glick Schiller 2002: 316), with the introduction of visa requirements and other novel forms of border policing.

The development of policies of immigration regulation within host countries has drawn, especially since the 1980s, the interest of researchers focusing on “the rules and procedures governing the selection and admission of foreign citizens” as well as their control once in the country (Hammar 1985: 7)². These studies are mainly comparative (Hammar 1985; Hollifield et al. 2014; Papademetriou and Hamilton 1995), exploring how different countries navigate the interests of market and society. For instance, Zolberg (2006 [1981]) has argued that most industrial societies respond to the conflicting interests of market (maximising labour supply) and society (preserving ‘cultural integrity’ as well as access to welfare) through policies that confine migrants to their economic role, reinforcing barriers against access to citizenship. He notes, however, that such market-oriented policies have been frequently objected to, with liberal and humanist arguments undermining their implementation³.

Despite the value of such macro analyses of immigration policies, in the last decades scholars have increasingly pointed to the ‘policy gap’ (Hollifield et al. 2014) between stated goals and their

² Hammar (1985) distinguishes between ‘immigration regulation’ and ‘immigrant policy’, arguing that together they compose ‘immigration policy’.

³ The *Gastarbeiter* system in place in Switzerland in the second half of the 20th century is a paradigmatic example of this attempt to maximise labour supply and its consequent abolishment.

outcomes⁴, requiring researchers to look beyond policies ‘on paper’ in order to understand migration. Castles (2004) attributes this gap – which he qualifies as ‘policy failure’ – to three factors: social dynamics of migration and migrants’ agency; globalisation and inequality between North and South; and hidden agendas of national policies. Other scholars such as Gary Freeman (1995) explain the policy gap through the hypothesis of ‘client politics’, arguing that the gap is the result of pressure exerted by groups with an interest in migration, especially employers’ organisations. A further way to explain the gap is through the idea of a ‘liberal paradox’⁵ according to which “liberal states are constrained in their capacity to adopt and implement restrictive policies by their liberal constitutions, as well as by the international treaties and supra-national institutions to which they adhere” (Caponio and Cappiali 2018: 115).

Studies in other fields (such as Ferguson 1994; Olivier de Sardan 2011 in the anthropology of development) highlight that the implementation of policies always has unintended outcomes because any reform or policy will be reappropriated both by the people it targets and by those in charge of its implementation. This leads Lascoumes and Le Galès (2007) to argue for the need to study public action from a *bottom up* perspective. Their approach allows us to move beyond a monolithic conceptualisation of the state and toward the study of the state in action. A fruitful corps of literature has arisen in migration studies from this kind of premise, studying the implementation of migration policy and law on the ground. This literature is often based on the work of Michael Lipsky (1980) on ‘street-level bureaucracy’, which Lipsky defines as those agencies “whose workers interact with and have wide discretion over the dispensation of benefits or the allocation of public sanctions” (1980: xi). For Lipsky, in order to understand how the bureaucracy functions, it is essential to look into how those workers experience the rules they are supposed to apply, and the different kinds of pressures to which they are subject. Lipsky understands public policies as the outcomes of “the decisions of street-level bureaucrats, the routines they establish, and the devices they invent to cope with uncertainties and work pressures” (1980: xii).

Several authors have studied migration control through analysing the practices of its street-level bureaucrats, discussing how they make use of their discretionary power, which partly derives from a legal ambiguity that leaves them with some (albeit limited) room for manoeuvre (Miaz 2017b: 27; Spire 2005). Immigration services in charge of making decisions about foreigners have been studied by Alexis Spire (2008) in France and by Tobias Eule (2014) in Germany. Several studies have addressed the practices of border control (Côté-Boucher et al. 2014; Häberlein 2019a, 2019b) and of granting (or not) visas (Infantino 2010; Satzewich 2014; Scheel 2017; Zampagni 2016). A few studies have specifically focused on decision-making over detention (Miaz and Achermann 2021a, 2020b; Weber 2003) and deportation (Achermann 2008, 2013; Ellermann 2009, see also Rosenblum and McCabe 2014). The street-level bureaucracy approach has been widely used in recent works on asylum systems and more particularly on asylum adjudication (Gill and Good 2019; Kobelinsky 2010; Probst 2011), including in Switzerland (Affolter 2017; Affolter et al. 2019; Fresia et al. 2013; Miaz 2017a, 2017b; Poertner 2017).

⁴ Czaika and De Haas (2013: 487) distinguish between three types of gaps: the *discursive gap* (“the discrepancy between public discourses and policies on paper”); the *implementation gap* (“the disparity between policies on paper and implemented policies”); and the *efficacy gap* (“the extent to which implemented policies affect migration”).

⁵ This term is used by Hollifield (2004: 886) to refer to the tension in which states have been finding themselves since the end of the Second World War: on the one hand, “international economic forces (trade, investment, and migration) have been pushing states towards greater openness, while [on the other,] the international state system and powerful (domestic) political forces push states towards greater closure”.

All these studies have analysed the work of those state officials in charge of translating policies and legal provisions into practice, showing that they can vary widely in different contexts and among individual officers. Applied to the field of immigration detention, this perspective can shed light on immigration officers' use of discretion in deciding to order detention (Campesi and Fabini 2020; Miaz and Achermann 2021b). The work of administrative courts in charge of detention orders' judicial control has also been investigated in research that shows how courts differ in their assessment of the risk of absconding, the 'dangerousness' of individuals or in the interpretations of the legal principle of proportionality (Campesi and Fabini 2020; Miaz and Achermann 2021a; Ryo 2016a). Likewise, this focus can also usefully explore the role of detention staff and the myriad of small and sometimes trivial decisions they have to make in their daily work with detainees, for example concerning the use of physical force and coercion (Hall 2012).

Such studies focusing on the work of street-level bureaucrats and their use of discretion are extremely useful for gaining an understanding of how migration policies are implemented and approaching 'the state' as being made of people and traversed by multiple and sometimes contradictory rationalities. However, focusing exclusively on state officials' practices risks underestimating the role of migrants in shaping the system of migration control. Considering the interaction between state officials in charge of enforcing migration control and migrants trying to circumvent such control measures is a productive way of studying migration control, which enables us to highlight how control is co-produced and contested by various actors (Eule et al. 2017: 2, citing Tsianos and Karakayali 2010). This is the direction that this thesis aims to take. Several scholars following this approach prefer to talk about 'migration regime' instead of using terms such as 'migration control' or 'management', in order to incorporate this nuance. Eule et al. (2017: 2) describe the migration regime "as a conflictual field of interests, negotiations, discourses and struggles on inclusion and exclusion between different actors (...) [that] have in common that their border practices and border knowledge contribute to the formation of the European migration regime". Researchers in this field are interested in the interplay between states' attempts to control mobility and migrants' practices of undermining, appropriating and disregarding institutional rules (Eule et al. 2017: 3). Eule et al. (ibid.: 3) "suggest conceptualising migration regimes as being produced within manifold spaces of asymmetrical negotiations and struggles", while paying attention to the actors' positions within power and inequality structures (Horvath et al. 2017).

Scholars have also pointed out the urgency of taking into account migrants' roles in the construction of borders, referring to the concept of 'border regime' in order to highlight this co-construction. These studies have focused on the border as "a site of constant encounter, tension, conflict and contestation" (Casas-Cortes et al. 2015: 69) and argued for the necessity for research that studies "the multifarious struggles and tensions between practices of border crossing and practices of border reinforcing (Vila, 2000) that constitute the border as a social institution" (Mezzadra and Neilson 2012: 64).

In this thesis, I look at the interplay between state practices of exclusion and confinement and migrants' trajectories and experiences. The study of migrants' experiences of border and migration control can be very illuminating of the mechanisms of control (Allsopp et al. 2014; Andersson 2014; Coutin 2005, 2010; Johnson 2014). In this line of inquiry, scholars have shown how migration policies impact on migrants' trajectories (Schapendonk 2012; Schapendonk et al. 2018), rendering those much more dangerous (Collyer 2007) and reliant on smugglers and traffickers (Hyndman and Mountz 2007; Mountz 2010), making migrants wait in transit spaces (Bredeloup 2012; Brekke and Brochmann 2015) or pushing them into a state of (often unwanted) hypermobility (Picozza 2017a). However, studies have also highlighted that migrants are not passive objects of control, but develop strategies of overcoming, resisting or coping with control practices (Ellermann

2009; Engbersen and Broeders 2009; Schweitzer 2017). As argued by Scheel (2018: 269), such strategies are in turn recuperated by the apparatus of control, which tries to “capture” or “recuperate the practices by which migrants try to appropriate mobility to Europe in order to turn them into a driving force for the refinement of the means and methods of regulation and control”. These studies have made more visible the struggles over inclusion and exclusion that shape the current migration regime.

Migration control as a system of inclusion and exclusion

Migration control operates through mechanisms of inclusion and exclusion, both through law (admission regulations, legal categorisations, etc.) and through practices (of bordering, policing, etc.). Despite the terms ‘inclusion’ and ‘exclusion’ being widely used in public and scientific discourse, they are more rarely defined or discussed from a theoretical perspective (Achermann 2013; O'Reilly 2005). In particular, the notion of ‘social exclusion’ covers various (often conflicting) meanings, with “different analytical and moral connotations” (O'Reilly 2005: 80, see also Castel 1995), which jeopardises its theoretical utility. However, some theorisation will render them analytical concepts that enable us to better grasp how migration control works and how borders and boundaries intersect. Indeed, thinking in terms of inclusion and exclusion allows us to articulate different processes and levels of analysis – macro/micro, collective/individual, legal/social – as well as to focus on the relation between states’ policies and migrants’ experiences.

Several authors have highlighted that inclusion and exclusion need to be understood in their dialectical relationship (O'Reilly 2005), as a ‘relational’ or ‘dual concept’ that allows us to identify and analyse simultaneous structures of inclusion and exclusion and their mutual relations (Ataç and Rosenberger 2013: 36). Drawing on Max Weber’s concept of social closure⁶ (Weber 1978), Achermann (2013: 93) defines social exclusion as “both a status and a process by which a person or categories of persons are deprived of access to and participation in opportunities, resources and rights”. This definition attaches great importance to the gradual and dynamic nature of exclusion processes, and calls for a situated understanding of the specific resources and rights from which a subject is (or can be) excluded. In this sense, the definition follows Mackert (1999), who distinguishes between different fields, namely the political, economic, civil, social and cultural spheres. Achermann (2013: 94) proposes to draw attention to the spatial aspect as an additional field of potential exclusion, which can be conceptualised as “territorial closure”.

Authors often distinguish between external exclusion – in which access to a national territory is precluded – and internal exclusion – where people are physically ‘included’ through their presence, but still legally, economically and/or socially excluded from resources and rights (Ataç and Rosenberger 2013). If external exclusion is mainly spatial (while strongly related to legal provisions), internal exclusion is mainly operated through legal categorisations (despite also having spatial consequences) that regulate the distribution of rights, resources and identities according to the status of immigrants attributed through labelling (Zetter 2007). Joppke (2005: 49) argues that immigrants often lie at the “cross-section” of these two forms of exclusion.

This distinction enables us to differentiate the measures preventing migrants’ access to territory – through admission regulations or border control – from those addressed towards migrants who are present in the national territory. However, the shifting of border policing away from national border

⁶ Weber introduces the concept of ‘social closure’ to characterise what he calls ‘closed social relationships’ – as opposed to ‘open’ ones – which are those relationships in which “participation of certain persons is excluded, limited, or subject to conditions” and which “aim to monopolise opportunities and resources” (Weber 1968: 43 and 342, in Achermann 2013: 93).

both towards the exterior (externalisation) and towards the interior of national territories (internalisation) (Menjívar 2014) renders this distinction harder to apply as the inside and outside of the state are increasingly blurred (Coleman 2012; Mezzadra 2013). In fact, practices of spatial exclusion such as detention and deportation can be situated at the intersection of internal and external exclusion, as they attempt to end the state's responsibility ensuing from physical presence in a national territory through the individual's removal from such territory.

Looking at the interplay between inclusion and exclusion has proven particularly productive for understanding processes of illegalisation of undocumented migrants (Düvell 2006). Since borders are permeable even when immigration policy is restrictive, those who succeed in entering national territory despite being legally excluded from entry will be categorised as 'illegal'. De Genova (2013) defines illegalisation as a process of inclusion through exclusion, which is strictly related to border enforcement, and ultimately aims at the subordination of labour. As argued by De Genova on the context of the USA: "The 'inclusion' (...) is finally devoted to the subordination of their labour, which can be best accomplished only to the extent that their incorporation is permanently beleaguered with the kinds of exclusionary and commonly racist campaigns that ensure that this inclusion is itself, precisely, a form of subjugation" (De Genova 2013: 1184). For De Genova (2002), this subjugation is achieved through 'deportability', the condition of being vulnerable to deportation.

Mezzadra and Neilson (2013: 7) make a similar point, arguing that inclusion should be thought of as "existing in a continuum with exclusion, rather than in opposition to it". With a critical view on the dominance of exclusion in border studies, they argue that "borders are equally devices of inclusion that select and filter people and different forms of circulation in ways no less violent than those deployed in exclusionary measures" (ibid.: 7). They propose that we stop thinking of inclusion as an "unalloyed social good" (ibid.: 7) and rather look into processes of 'differential inclusion', while examining how borders' capacity to hierarchise and stratify plays a role in the articulation of capital and political power, through the 'multiplication of labour'.

The asylum system also creates forms of differential inclusion. A good example is the 'regular illegality' of rejected asylum seekers in Switzerland who benefit from 'emergency aid' provided by the cantons (art. 81 Asylum Act), for which they have to register and regularly report to the migration counter (De Coulon 2014). It quickly becomes clear that external and internal exclusion are intimately related: migrants who have overcome external exclusion, for example, will be subject to internal exclusion, which renders them even more vulnerable to external exclusion in the form of deportation.

In summary, we can argue that contemporary, especially Western, states have developed a plethora of legal provisions restricting entry and access to territory and resources, as well as administrative and police practices of enforcing those rules, which together can be thought as an "architecture of exclusion" (Gibney 2004: 3). Those measures and practices, however, are part of a larger apparatus of migration control that functions through mechanisms of inclusion and exclusion, requiring us to think about exclusion in relation to its counterpart – inclusion. As the state legally or physically excludes some migrants, it simultaneously admits and includes others. This differential treatment needs legitimisation, which mainly occurs through resorting to security arguments as well as discourses on abuse (Leyvraz et al. 2020) and undeservingness. Eventually, excluding and including migrants is about redefining yet reaffirming national boundaries.

Borders and boundaries

The development of institutionalised forms of migration control is tightly related to the formation of modern nation-states, which provide both the bureaucratic means and the justification for controlling who enters and exits national territory. Migration control is based on the normative ideas of a world naturally divided into nation-states. The latter claim legitimacy through the supposed existence of a community of value (Anderson 2013), which makes it appear legitimate to exclude those who do not belong. As Anderson (2013: 2) puts it, “the exclusion of migrants helps define the privileges and the limitations of citizenship”, so that citizens and migrants fundamentally define each other. Eventually, states’ efforts to control migration and borders constantly define and redefine the boundaries of citizenship and the nation.

The concepts of borders and boundaries are often handled separately in the scientific literature and with different approaches. Border studies tend to focus on the border as a socio-spatial construct regulating flows of things and people; while studies on boundaries look at processes of constructing and maintaining social difference among groups, or *boundary-making* (Barth 1969; Wimmer 2009). Yet the processes of producing borders and boundaries are highly interdependent: “[b]oundaries produce similarities and differences, which in turn affect the enforcement, performance and materialisation of borders, which themselves contribute to the reproduction of boundaries” (Fischer et al. 2020: 481). Therefore, these two concepts need to be considered within a single common framework (Fassin 2011b, 2020; Fischer et al. 2020). As I have shown in a recent article, the approaches of bordering and boundary-making can be usefully combined for the empirical study of immigration detention (Rezzonico 2020b).

Categories related to gender, race and social class are all very relevant in both processes of bordering and border policing as well as boundary-making between social groups or communities, and thus an intersectional approach is particularly useful to explore such interplay (Fassin 2020; Fischer et al. 2020). Categories of difference are fundamental in the definition of boundaries, especially of who belongs or deserves to belong to a certain community of citizens. At the same time, they are of primary importance when discussing bordering practices, especially given the centrality of the body and its physical markers related to race, gender and class in practices of border policing. An intersectional approach also has the value of digging deeper into questions of inequality, showing how borders and boundaries “are entangled with current structures of inequality and dynamics of inclusion and exclusion” (Amelina and Horvath 2020: 488).

Yet the function of boundary-making as serving, sustaining, reproducing and justifying structures of inequality is often shadowed by moral considerations. Moral categories and values are central to the legitimisation of exclusion and more generally to boundary-making (Barth 1969; Pachucki et al. 2007), particularly when defining and legitimising the boundaries of citizenship and belonging through notions of deservingness (Chauvin and Garcés-Mascreñas 2012). According to Bridget Anderson (2013: 5), the community of value through which states claim legitimacy is defined from outside by the ‘non-citizen’ and from inside by the ‘failed citizen’, both of which are categories of the “undeserving poor”. Deservingness is central to discourses and policies of migration and especially asylum. Distinct from the discourse of rights, which presumes universality and equality before the law, deservingness is articulated in a moral register based on a specific circumstance (Willen 2012). In fact, legal categories that define the status of migrants are often read as if they were neutral, yet “[t]he kinds of people wanted and not wanted are described in graphic and value-laden terms: ‘bogus’ asylum seekers, ‘sham’ marriages, ‘low-skilled’ workers versus ‘genuine’ refugees, ‘genuine and subsisting marriages’, ‘the brightest and the best’” (Anderson 2013: 69).

Besides ‘good’, ‘non’ and ‘failed’ citizens, Anderson introduced the figure of the ‘tolerated citizen’ to explain the contingent acceptance of certain categories of migrants, arguing that they are turned into the guardians of good citizenship. Since they are not full members of society, they can be excluded if they do not comply with social norms and expectations. The exclusion of migrants with criminal records, the ‘foreign criminals’, is the most obvious example of this (Griffiths 2017), yet migrants are also excluded in more subtle ways through the abiding expectation of ‘integration’, a discourse that produces gendered and racialised non-belonging (Korteweg 2017).

1.1.2. Practices of migrants’ exclusion: border policing, asylum procedures and deportation

In this section, I address three main areas of practice in which dynamics of migrants’ inclusion and exclusion are at play. The first is border policing, impacting on who is enabled to enter a national territory through a dynamic of filtering wanted from unwanted people. The second is the field of asylum, which is an example of how legal categories perform inclusion and exclusion through sorting and labelling. Finally, deportation will be addressed as a powerful mechanism of spatial exclusion that has also a function of disciplining migrants and producing differential inclusion. I chose to discuss these three areas of migration control because of their significance and strong relation to immigration detention. The flourishing literature in these fields allows us to understand the nature of detention, which must be understood within a broader “architecture of exclusion” (Gibney 2004: 3).

Border policing and the spatial logics of bordering

While borders are traditionally seen as territorial demarcations between two states, constructivist approaches have prospered in the last decades which study the border as a process, a socio-spatial construct that regulates flows of goods as well as people (van Houtum 2010). In this vein, researchers have focused on processes of bordering (van Houtum 2010; Van Houtum and Van Naerssen 2002), borderwork (Rumford 2008) and border performativity (Wonders 2006). The work of borders has been described as separating the wanted from the unwanted (van Houtum 2010), selecting and filtering people and goods (Mezzadra and Neilson 2013) in a porous way and through a dynamic of inclusion and exclusion which does not aim to stop mobility altogether (Mountz et al. 2013: 526). In this thesis, detention is understood as a bordering practice that reveals the exclusionary work of borders in separating wanted from unwanted migrants and/or mobilities.

At the beginning of the 1990s, some theorists advanced the idea that globalisation would lead to a ‘borderless world’, arguing that a ‘debordering’ of states was occurring (Walters 2006). Nevertheless, Andreas (2000) highlighted that processes of debordering were selective, and “accompanied in many places by a partial rebordering in the form of enhanced policing” (Andreas 2000: 3, cited in Walters 2006: 187). Detention practices are part of this rebordering process. Andreas concludes that “the importance of territoriality [and thus, of borders] is shifting rather than simply diminishing” (ibid.: 3). Drawing on a substantive body of literature on bordering, in the following paragraphs I address the main characteristics of this shifting nature of borders and border policing.

First, borders have been increasingly framed as a security matter since the 1990s and especially after 9/11, in a process that has subordinated labour needs and migrants’ rights “to a discourse of security, order and interdiction” (Casas-Cortes et al. 2015: 67). In this context, the management of borders makes significant use of military actors and practices (Topak and Vives 2020) as well as

digital technologies that largely contribute to the exclusion of migrants from European territory (Broeders 2011; Schuster 2011a).

Several scholars have argued that parallel to such processes of securitisation, practices of border control are also increasingly framed as a humanitarian matter (Aas and Gundhus 2015; Walters 2011), in what has been called a ‘humanitarian-security nexus’ (Andersson 2017). Walters (2011: 138) understands the ‘humanitarian border’ as a way of governing the disturbing situation of border crossing having become ‘a matter of life and death’. The humanitarian border mobilises knowledges “which problematize the border as a site of suffering, violence and death, and a political zone of injustice and oppression” (Walters 2011: 150), particularly through medical and legal expertise. We will see in Chapter 5 that the humanitarian border is also manifest in immigration detention facilities through the biopolitical and humanitarian rationalities of government.

A second fundamental shift which has occurred in border control concerns the diversification of its sites and actors. Scholars have shown that nonstate actors are increasingly involved in migration regulation and border control: these actors include transport and carrier companies, employers, security companies, but also churches, trade unions and other local actors (Lahav 2000). The example of carrier sanctions perfectly demonstrates how private airline companies have been “co-opted in controlling the movement of people across borders” (Guiraudon 2006). Furthermore, Yuval-Davis et al. (2018: 235) argue that in the British context, ordinary citizens and especially employers and landlords have been “legally obliged to become untrained unpaid border-guards”.

The observation that nonstate actors such as employers and landlords have an increasing role in migration regulation goes hand in hand with the idea that the border is being delocalised, its functions being disaggregated away from the geographical border (Walters 2006). On the one hand, border control shifts towards the inside of national territories through increasing policing, as well as through practices of detection, detention and deportation (Menjívar 2014). Besides its actual function in the “deportation machine” (Fekete 2005: 64), “[t]he policing of public spaces (...) serves to discipline undocumented migrants by surveilling their ‘illegality’ and exacerbating their sense of ever-present vulnerability” (De Genova 2002: 438).

On the other hand, scholars have shown how border control has been consistently externalised in recent times (see for example Zaiotti 2016). Externalisation is understood as a process of outsourcing border control, which “involves a series of extraterritorial activities in sending and in transit countries (...) for the purpose of controlling the movement of potential migrants” (Menjívar 2014: 357). This evolution has largely impacted the right to asylum, depriving “asylum seekers of the possibility of accessing the asylum determination procedure” (Andrijasevic 2010: 166).

Maillet et al. (2018) have explicitly theorised the relation between the externalisation of the border and the enactment of migrants’ exclusion. Unlike other studies that describe the phenomenon in terms of ‘deterritorialisation’ or ‘extraterritoriality’, they develop an alternative conceptualisation of the relationship between sovereignty and territory, based on the concept of ‘imperio’ or imperial power. As theorised by Elden (2009), ‘imperio’ is “a form of rule that is fundamentally boundless, limitless and administrative” (Maillet et al. 2018: 4). This concept enables us to conceptualise the ways in which migrant bodies – and not territory – become “the objects to which states produce and apply jurisdiction”⁷, so that “jurisdiction and territory become uncoupled” (Maillet et al. 2018: 5).

⁷ Maillet et al. (2018: 4) follow Elden (2013) who “argues that jurisdiction historically refers to the extent of law, which in practice ascribed authority by determining who operated power, over what, to what extent, and under which rules”.

Maillet et al. base their analyses on three case studies that constitute ‘sites of exclusion’: waiting zones in airports, search and rescue areas in the Mediterranean, and Australian ‘excision zones’ (mainly composed of islands, but also comprising some onshore territory). Focusing on “entanglements of law and geography”, they compare these sites and show how states have used geographical techniques to manipulate jurisdiction (beyond the borders of their territory) so as to pursue their political, exclusionary goals. Through such ‘legal geographies of exclusion’, migrant bodies are constructed as security threats *before* they enter national territory, and consequently “as internal with regard to the exercise of state power” (Maillet et al. 2018: 6). Migrants and asylum seekers who have still not reached national territory are legally *included* in order to exclude them from the legal rights they would have benefitted from under international and domestic law⁸. Thus, these authors argue that states produce new legal spaces of which migrant bodies – and not space – are the primary political object.

While Maillet et al. (2018) have explored processes of spatial exclusion through legal inclusion, De Genova (2013) analysed the process of ‘inclusion through exclusion’ that is at stake in border enforcement. De Genova (2002: 437) observed that the US-Mexico border “couples an increasingly militarized spectacle of apprehensions, detentions, and deportations, with the banality of a continuous importation of undocumented migrant labor”. He explains this phenomenon through what he calls the ‘border spectacle’, the spectacle of border enforcement that renders ‘illegality’ visible and exclusion necessary. But as De Genova (2013: 1181) argues, this “scene of ostensible exclusion (...) (where border enforcement performatively activates the reification of migrant ‘illegality’ in an emphatic and grandiose gesture of exclusion) is nevertheless always accompanied by its shadowy, publicly unacknowledged or disavowed, obscene supplement: the large-scale recruitment of illegalized migrants as legally vulnerable, precarious, and thus tractable labour”. Thus, borders can be seen as “differentially inclusive”, where forms of inclusion can be as violent as measures of exclusion (Mezzadra and Neilson 2013: 7). Tazzioli (2017: 2768) also proposes that we move beyond the opposition between exclusion and inclusion and focus on “politics of containment”, which do not always “entail keeping migrants out or immobile”, but often work through containment that “can involve forms of economic exploitation and incorporation, and can be enacted also by keeping migrants on the move”.

Informed by these empirical and theoretical insights, we can conclude that exclusion is inherent to bordering practices, occurring not only at the physical border, but also external and internal to the state’s territory. Moreover, exclusion occurs in many ways, including through rejection of entry, and through forms of differential inclusion, or inclusion with exclusionary aims (as in the case of the externalisation of control and curtailment of access to asylum).

Exclusionary practices of asylum

Besides practices of border policing filtering and preventing people from entering national territory, the ability of states to control migration is based on regulations on entry and stay that are codified in immigration law. Such regulations operate through categorisations and procedures that affix labels and rights to individuals according to specific norms and produce migrant ‘illegality’. For the scope of this chapter, I discuss asylum procedures as one of many systems designed to sort migrants based on the distinction between ‘forced’ and ‘voluntary’ migration as well as ‘true’ and ‘false’ refugees, which are all constructed categories that need to be denaturalised. Parallel to the introduction of

⁸ This is somewhat opposite to the process theorised by Agamben (1995) in which sovereign power can decide to suspend the law and declare the ‘state of exception’, which is characterised by inclusion through exclusion.

increasingly restrictive conditions of entry for citizens of non-EU or EFTA countries, asylum has become one of the main ways – and for many people the only way – to enter or claim a right to stay in Europe (and Switzerland). As a consequence, it has also become one of the main channels through which the Swiss state actively excludes migrants.

The topic of asylum is strongly related to border policing and especially to the externalisation of borders, as discussed above. Despite asylum being a right under the 1951 Convention relating to the status of refugees, this right is strictly dependent on access to a state territory. Such externalisation serves to keep people seeking protection out of states' territories through policies of detention and return schemes that actually deprive asylum seekers of access to asylum determination procedure (Andrijasevic 2010). Mountz (2011) used the metaphor of the 'specter' to highlight how such practices work "offshore to enact enforcement that precludes the arrival of asylum seekers onshore" (ibid.: 318), so that "potential asylum seekers never enter the empirical register of asylum seekers, remaining instead excluded from policy, practice, protection" (ibid.: 321). Mountz concludes that an 'ontology of exclusion' is necessary to understand asylum, "one that accounts for offshore silences, black holes, and concealment of what happens along the peripheral zones of sovereign territory" (ibid.: 321).

Asylum and refugee status determination procedures are strongly anchored in international law yet there can be significant differences in how they are applied by different states. The definition of 'refugee' has also changed over time. Having been codified in the 1951 Convention relating to the status of refugees as a category that was only applicable to people displaced due to the Second World War⁹, it has been expanded with the adoption of the 1967 Protocol to include people fleeing war and communal violence in the global South. With the high number of arrivals of asylum seekers in the 1980s and the end of the Cold War, the figure of the 'refugee' was reimagined, away from the original conception of a "white, male and anti-communist" (Chimni 1998: 351) and toward the image of "a poor and helpless person from the global South", with no political agency (Scheel and Squire 2014: 194). The 'true' refugee has become to be seen as mainly feminine, vulnerable and passive, resulting in the representation of male rejected asylum seekers as opportunistic and undeserving (Amelina and Horvath 2020; Griffiths 2015). In fact, it is in the context of the 1990s that the figure of the 'bogus asylum seeker' emerged to discern those migrants who were suspected of fleeing their countries for reasons of poverty rather than persecution, and were thus seen as abusers of Northern states' legal systems (Scheel and Squire 2014: 194). As discussed in a recent book focusing on the Swiss context, such discourses on alleged abuses have shaped the way in which asylum law has evolved in Switzerland (Leyvraz et al. 2020).

The emergence of the notion of 'bogus asylum seeker' is also, clearly, related to the process of securitisation that has concerned asylum particularly since the 1980s and 1990s, and this has led to a greater emphasis on the label 'asylum seeker' over that of 'refugee'. Talking of 'asylum seekers' has enabled states to foster a sense of doubt about the person's quality of refugee and his/her right to asylum. The securitisation of migration frames asylum as a security issue and asylum seekers as a 'problem' or 'threat' (Squire 2009; Squire and Huysmans 2009), leading to – and justifying – exclusionary politics of asylum (Squire 2009) focusing more on rejection than admission. Valluy (2011: 113) has argued that such politics have been characterised by "the continuous decline of the

⁹ The 1951 Convention relating to the status of refugees defines a 'refugee' as a person who has "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country" (Article 1(A)(2)).

‘humanist/asylum supporting’ faction and the corresponding strengthening of national-securitarian ideological forces” since the middle of the 20th century.

According to Valluy (2011: 109), the right to asylum has decreased at the same time as an increase in professionalism of its management, leading to the establishment of a community of experts on the right to asylum alongside fewer people achieving such. The prominence of discourses presenting asylum seekers as abusers of the system (Frei et al. 2014) is reflected in the practices of those street-level bureaucrats in charge of approving or rejecting asylum claims. Several scholars have argued that their work is increasingly marked by suspicion and disbelief (see for example Miaz 2017a; Miaz 2017b). An attitude of “radical doubt” develops and increases over the years of performing casework (Probst 2011: 69). This is translated into specific practices of credibility assessment that are based on elaborate strategies and techniques as described by Miaz (2017b: 256-288). In Switzerland, like in other countries, negative asylum decisions are most often justified on the basis of a presumed lack of credibility rather than on the claim itself (Affolter 2018). Caseworkers of the SEM (Swiss State Secretariat for Migration) justify their practices of credibility assessments and the consequent rejection of those claims deemed non credible through the perceived need “to protect the asylum institution from abuse, to preserve the credibility of the system and, finally, to continue to protect ‘those who deserve protection’” (Affolter et al. 2019: 273).

Through such institutionalised and professional procedures, the asylum system sorts migrants into different categories with different levels of access to goods and opportunities. It constructs ‘labels’ such as refugee, (rejected) asylum seeker or ‘illegal’ migrant through “bureaucratic processes which institutionalize and differentiate categories of eligibility and entitlements” (Zetter 2007: 180). Taking the example of Switzerland, the status of ‘asylum seeker’ guarantees accommodation and basic assistance and a temporary permit (N permit), but precludes or limits access to the labour market and measures of integration. After examination of their asylum claim, ‘asylum seekers’ will be re-categorised into new labels: recognised refugee (permit B refugee), refugee with a temporary admission (permit F refugee), or foreigner with a temporary admission (permit F). Each of these categories has differential access to the labour market and family reunification, for example. Even in the case of rejection or dismissal (e.g. in case of a Dublin decision¹⁰), asylum seekers can receive different forms of access to financial, social and legal aid. They can be deported, legally speaking, but deportations are not always enforced, due to logistical or identification obstacles as well as lack of agreements with the countries of origin. The asylum system thus produces irregularity in several forms (Schuster 2011b), including what De Coulon (2014) has called ‘regular illegality’ to point to those cases in which rejected asylum seekers are registered and receive financial emergency aid from cantonal authorities despite the removal decision being entered in force.

Besides excluding groups of migrants through categorisation and labelling, the asylum system also produces exclusion through policies of reception that are based on containment and confinement. Refugee camps across the world have been characterised as sites of containment and exclusion (Agier 2014). With regards to reception conditions in Europe, Fontanari (2015) described how asylum seekers in Germany experience residential reception centres (*Wohnheime*) as places of confinement, arguing that this experience has spatial, temporal and relational dimensions. Campesi (2015b) analysed the Italian reception centres, CARA (Centri di accoglienza per richiedenti asilo), showing “how these centres have become a kind of trap from which asylum seekers are no longer

¹⁰ EU Regulation 604/2013 establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the member states by a third-country national or a stateless person.

able to escape” (ibid.: 401). He uses the term ‘humanitarian confinement’ to designate “a reception system that offers help and hospitality to asylum seekers, while subjecting them to a subtle form of control enacted through humanitarian agents” (ibid.: 415). Tazzioli (2017: 2765) has defined the Hotspot System of migrant arrivals’ registration in Southern Italy as part of a political technology “for disciplining unruly mobility” through strategies of containment. The logic of containment within asylum systems can also take the actual form of detention, which it has been argued poses a real challenge to asylum protection, preventing asylum seekers from filing and pursuing international protection claims (De Bruycker and Tsourdi 2016).

Deportation of non-citizens

Deportation is perhaps the most recognisable way in which states enforce exclusion. It is strongly related to detention which is mainly rationalised as a measure facilitating or ensuring the enforcement of removals. Given the close relationship between these two practices and the many parallels that can be drawn between them, an overview of research on deportation will be useful for understanding immigration detention. This is especially the case concerning research that denaturalises and questions deportation, defining it as a practice that aims to keep the national order of things (Walters 2002), as well as research which addresses the latent functions and performative effects of deportation in terms of ‘deportability’ (De Genova 2002).

Several scholars have observed an increase in the use of deportation since the mid-1990s or early 2000s (Anderson et al. 2013; Gibney 2008). Notwithstanding the significant differences between national contexts (Weber 2015), Gibney (2008) has talked of a ‘deportation turn’ across Western countries. Despite deportation practices having a long history (Walters 2002), until recently deportation was a secondary instrument of immigration enforcement that was relatively rarely used, leading to a large gap between the numbers of migrants deemed to be deportable and those actually deported, named the ‘deportation gap’ (Gibney 2008). This is not to say that deportation was not effective in the widest sense, as it played and continues to play symbolic roles of assuaging public opinion and deterring migrants (Gibney and Hansen 2003), but rather that its concrete use was limited by the complicated and controversial nature of deportation. In particular, deportation embodies the ‘liberal democratic paradox’, referring to the idea that immigration control is fundamental to liberal democracy, which is based on sovereignty, but practices such as deportation “sit uneasily with liberal principles” (Gibney and Hansen 2003: 1).

According to Gibney (2008), the politicisation of the deportation gap is one of the causes of increased rates of deportation in the UK. Gibney’s article shows how the British government has used policy innovations to overcome the constraints stemming from liberal norms. Collyer (2012: 277) also attempts to explain the rise in the use of deportation, and attributes it to three factors: the first is a narrative shift observed “within government and media which has emphasised deportation as inevitable and just”. The second, ensuing from the first, is related to policy changes leading to more restrictive asylum procedures and increased use of detention (which facilitates deportation). The third – which he examines through a case study in his article – is related to the “considerable diplomatic efforts” exerted by Western states to conclude readmission agreements with the states of origin of immigrants and asylum seekers (ibid.: 277).

With the increase in the use of deportation by several states, there has been a rising interest in policies and practices of deportation from scholars with different disciplinary backgrounds (Achermann 2008, 2013; Anderson et al. 2013; Coutin 2014; De Genova and Peutz 2010; Drotbohm and Hasselberg 2014; Ellermann 2009; Kanstroom 2000, 2007). Coutin (2014) goes further to state that a new field of research – deportation studies – has emerged at the intersection of

immigration studies and security studies. Scholars in this field have contributed to historicising, contextualising and critically analysing the nature and effects of deportation, defined as “the compulsory removal of ‘aliens’ from the physical, juridical, and social space of the state” (De Genova and Peutz 2010: 1).

We owe to William Walters (2002) an understanding of the history of deportation and its contextualisation within a genealogy of expulsion practices, leading from banishment in Ancient Greece to corporate expulsions and mass population transfers in the 21st century¹¹. Walters (2002: 275) notes that past expulsion forms were not only directed at foreigners, and that there has been a gradual restriction of expulsion to aliens across history, accompanied by lower legitimacy for ethnic transfer. He goes on to relate this evolution to the creation of an international order made of nation-states, arguing that the deportation of aliens is a form of the “international police of population” (ibid.: 283), where ‘police’ is intended broadly as an art of government (and not as a body of officials). He argues: “seen from an international perspective, deportation represents the compulsory allocation of subjects to their proper sovereigns, or, in many instances of statelessness, to other surrogate sovereigns” (ibid.: 282). Thus, “deportation serves to sustain the image of a world divided into ‘national’ populations and territories, domiciled in terms of state membership. It operates in relation to a wider regime of practices including resettlement, voluntary return, political asylum, temporary protection and so on, which together can be said to comprise a global police of population” (Walters 2002: 282).

We can conclude that deportation has become a global response to a world that is being remade by transnational human mobility, a response that is presented by states as the unique solution, reallocating people to their designated spatial locations and thus reaffirming the ‘national order’ of the world (De Genova and Peutz 2010; Walters 2002). In this context, immigration detention can be understood as an instrument allowing states to put this solution into practice more effectively. However, as discussed later in this thesis, detention has its own logics (Silverman and Massa 2012) and is not used by states as a mere helpmate to deportation, the relationship between these two measures being sometimes inverted (Stumpf 2014).

Several authors have highlighted the mutually reinforcing relationship which exists between deportation and citizenship (Anderson et al. 2011; Anderson et al. 2013; Gibney 2013; Kanstroom 2007; Walters 2002). Deportation practices are seen as “constitutive of citizenship” (Anderson et al. 2011: 548) as they constitute the normative boundary between citizens and non-citizens and “reaffirm smartly the contours and importance of national citizenship” (ibid.: 560). In other words, the deportation of unwanted migrants contributes to the reaffirmation of the cohesion and identity of the excluding actors (Achermann 2013). As argued by Anderson et al. (2013: 1), deportation aims precisely at ending “the relationship of responsibility between the state and the non-citizen by forcing the non-citizen beyond the sphere of the state’s authority”.

The way in which deportation practices redefine and reaffirm citizenship is highly gendered and racialised. In fact these often disproportionately target certain categories of people. Focusing on the context of the USA, Golash-Boza and Hondagneu-Sotelo (2013) have argued that deportation of Latino men is a gendered and racial project. In his book *Deporting Black Britons*, De Noronha

¹¹ These included: exile and banishment in Ancient Greece; policies of expulsion of poor people in early modern Europe; corporate expulsions on the basis of group membership and/or religious faith (e.g. of Christians in the Middle Ages, Jews and Muslims in the late medieval and early modern times, or Protestant Huguenots in the 17th century); the transportation of criminals and/or undesirable citizens to the New World and Australia in the context of colonisation; and mass population transfer in the first half of the 20th century to address the ‘problem of minorities’ in a period of nation-building (e.g. between Greece and Turkey, or the repatriation of ethnic Germans from Romania, Estonia, Yugoslavia and Bulgaria).

(2020) studied the deportation of men of Jamaican origin from the UK, arguing for the need to look at practices of deportation in their historical – in this case, postcolonial – context. Analysing the nexus between citizenship, deportation and race, he shows that deportation is a specific ‘mode of racist exclusion’ forming part of the “longer arc of historical and racial injustice” (ibid.: 29).

Studies of deportation have also addressed the inefficiency and high costs of deportation, arguing that it serves other functions than the one official put forward. These studies are particularly interesting here as many analogies can be drawn with detention. According to Gibney and Hansen (2003), deportation policies have a symbolic role in that they further the myth that states are able to remove all criminal and/or illegal non-citizens from their territories. “This myth (...) serves a three-fold purpose. First, it assuages domestic public opinion (...). Second, it serves as an (unquantifiable) disincentive for those seeking to migrate (...). Third, (...) it allows the state to apply pressure in favour of [voluntary] return” (Gibney and Hansen 2003: 15). These deterrent and symbolic functions have also been underlined by other scholars (Achermann 2013; Bloch and Schuster 2005).

In addition, deportation practices allow states to exercise disciplinary power over migrants through the production of the condition of ‘deportability’ (De Genova 2002) that furthers the vulnerability and tractability of illegalised migrant workers. At the same time, the disciplinary function of the deportation regime works in ways that strengthen ‘soft deportation’ (Kalir 2017; Leerkes et al. 2017) in the form of assisted voluntary return. As de Senarclens and Soysüren (2017) have noted for the Swiss case, the state places different kinds of legal, material and psychological constraints on rejected asylum seekers, which eventually can lead them to accept voluntary return against their will, a phenomenon they call ‘voluntary expulsion’.

Scholars have also highlighted the punitive nature of deportation despite its rationalisation as an administrative measure. This paradox is particularly tangible in the deportation of criminal offenders (Achermann 2008, 2013, 2014; Bosworth and Kaufman 2011; Hasselberg 2014; Kaufman 2013; Soysüren 2013; Wichmann et al. 2010). In these cases, deportation is rationalised as a “measure aimed at protecting public security and order by preventing future violations of law and order” (Achermann 2013: 98). Kanstroom (2000: 1892) has noted that deportation policy is often motivated by the will to “cleanse” society “of those with undesirable qualities, especially criminal behavior”.

Moving beyond this general observation, Achermann (2013) has studied empirically how migration authorities in Switzerland make decisions on the deportation of foreign offenders. While the law has changed since the acceptance of a popular initiative in 2010, prior to that the cantons had larger powers of discretion in the decision as to whether or not to deport non-Swiss criminal offenders. They did so on a case-by-case basis, needing to respect the principle of proportionality by balancing the public interest and the private interest of the condemned (Achermann 2013). Achermann shows how moral arguments used to play a fundamental role in that formally administrative decision. Following the acceptance of the 2010 initiative on the expulsion of foreign offenders, however, a criminal form of deportation (that had already existed until 2007) has been reintroduced. Under this new provision, deportation is mandatory in case of prosecution for certain crimes, which reinforces and makes explicit the punitive nature of deportation (de Senarclens 2017). This example also highlights the convergence between criminal justice and deportation systems pointed out by Kanstroom (2000: 1892). A few scholars have addressed this topic, showing how immigration enforcement agencies and prison services are interdependent (Bosworth 2011; Bosworth et al. 2016), and how prisons have become ‘key sites’ for migration control (Kaufman 2013).

Besides addressing the functions and nature of deportation, scholars have also focused on its business, arguing that an industry of deportation has emerged, with a huge infrastructure and with private companies making money from this practice (Walters 2002). This literature has focused especially on the detention estate (Arbogast 2016; Flynn 2015; Flynn and Cannon 2009; Hiemstra and Conlon 2017), for which reason I will address it later in this chapter. Recently, Walters (2016) has called for greater attention to the infrastructure of transportation means – and particularly of aircrafts – in the study of deportation.

Finally, increasing numbers of scholars are starting to study deportation ethnographically, conceiving it as a process that begins long before and continues long after actual physical removal (Drotbohm and Hasselberg 2014), one that has long-term effects not only on deportable or deported subjects, but also on their families and communities (Barnes 2009; Soysüren 2013). Calling for a processual and transnational approach, Drotbohm and Hasselberg (2014) suggest focusing on what they call the “deportation corridor”, “a spatial, institutional and affective state of transit, which appears permanent and transitory at the same time” (Drotbohm and Hasselberg 2014: 553). The authors highlight the advantages of ethnographic research in this area in order to understand how policies are developed, understood and experienced as well as to consider “deportees and their relatives as active agents that are not only being deported but also reacting to their removal, developing their own strategies, (re)formulating their own aspirations and carrying their own cultural understanding, agency and identity” (Drotbohm and Hasselberg 2014: 558-559).

This approach opens up several possibilities for the ethnographic study of deportation focusing on experiences of irregularity and deportability (Bloch et al. 2014; De Coulon 2014; Johnson 2014), detention pending deportation (Bosworth 2014; Campesi 2015a; Griffiths 2013, 2014a, 2014b; Hall 2010, 2012; Lietaert et al. 2014; Michalon 2015; Turnbull 2014), and life after deportation (De Noronha 2020; Drotbohm 2014; Khosravi 2018; Kleist 2018; Lecadet 2013, 2017; Peutz 2006, 2010; Schuster and Majidi 2014), as well as on the experiences of family members (Drotbohm 2014; Hershberg and Lykes 2012; Hiemstra 2012; Soysüren 2013). This thesis expands on this growing corps of literature, making use of the ethnographic approach to understand immigration detention as a practice of migrants’ exclusion that is strongly related to processes of securitisation and criminalisation that will be addressed in section 1.2.

1.2. Tackling the nexus between security, criminal law and migration control

We have seen that immigration detention is a practice of excluding migrants, at the same time enforcing borders and producing boundaries between citizens and non-citizens. In order to understand its nature and main characteristics, however, we need some additional tools. Immigration detention can be described as an administrative measure ordered by state officers to pursue an immigration-related goal. Because it consists of depriving migrants of their liberty and confining them in closed institutions, it implicitly – and sometimes explicitly – mobilises categories of crime and security. A few conceptual frameworks and approaches that I present in this section will help us grasp this complex.

First, I discuss scholarship on the securitisation of migration to explain how – especially since 2000 – migration has been constructed as a threat through specific institutional discourses and arrangements. This approach allows us to see how the argument of security is used to justify exceptional measures that would not be accepted under normal circumstances. It also provides useful tools to understand that securitisation is reflected in daily practices and discourses and that

immigration detention significantly contributes to reinforce the idea that (at least some) migrants are threatening and that exceptional measures to control them are needed.

The concept of crimmigration and more generally the approaches making up the criminology of mobility will help us describe and understand such measures of control that blur the distinctions between criminal and migration law and enforcement. This conceptual framework, that I will address in the second section, is central to my analyses as it allows us to grasp the hybrid nature of immigration detention in Switzerland and the intricate ways in which these two areas of law intertwine. Finally, in the last section I will discuss the concept of ‘carceral space’ and scholarship of carceral geography. This perspective is particularly relevant given the strong empirical and ethnographic character of this thesis. It provides tools to unpack the subjective experiences of people in spaces of detention, the relation existing between space and (symbolic) meaning, as well as to understand the merging of migration and crime control in their spatiality and materiality.

Despite these approaches tending to evolve in quite separate ways, I contend at the end of this section that they are not mutually exclusive and that they can be productively combined in order to analyse such a complex field of practices as immigration detention.

1.2.1. The securitisation of migration

The securitisation approach focuses on how some specific subjects – in this case, international migration – are framed as security issues. Its origin dates back to the 1990s, when scholars of the ‘Copenhagen school’ pushed a conceptual turn in security studies. Instead of studying specific areas of a pre-defined ‘security’ field, this constructivist approach proposes to direct analysis towards the process through which a certain issue is socially constructed as a threat. The concept was coined by Ole Wæver, who attached high importance to the actual ‘speech act’ through which something is defined as a security issue: “By uttering ‘security’, a state-representative moves a particular development into a specific area, and thereby claims a special right to use whatever means necessary to block it” (Wæver 1995: 55). The concept was further developed by Buzan et al. (1998: 24), who argued that security was “a self-referential practice, because it is in this practice that the issue becomes a security issue – not necessarily because a real existential threat exists but because the issue is presented as such a threat”.

According to these authors, securitisation follows a rhetorical structure composed of three steps: first, an existential threat must be claimed; second, the “need for and a right to treat it by extraordinary means” is claimed; and third, the claim must convince an audience that such rule-breaking – usually on the part of the state – is justified as appropriate action against the threat (Buzan et al. 1998: 26). Wæver (1995) also renders us attentive to the fact that those who hold the power and legitimacy to administer the order can *use* the instrument of *securitisation* to gain control over political change. In this sense, securitisation is an extreme form of politicisation (Buzan et al. 1998).

Migration has been increasingly considered as a security issue since the end of the Cold War. As argued by Bigo (2002), with the progressive merging of internal and external security, the immigrant has become the object of securitisation *par excellence*, incarnating both external and internal threats. An exploration of the history of migration would show that the relationship between migration and security in political discourses was not a new phenomenon, since particularly during the two World Wars, several categories of foreigners were considered to be a threat by European states. However, the image of migrants as threatening became more popular in the 1990s, and was reinforced with the events of 9/11, fostering the so-called ‘migration-security nexus’ (Faist 2004). The intensification of discourses linking terrorism with cross-border mobility

and the presence of foreigners (Atak and Crépeau 2014) has clearly contributed to the growing securitisation of migration over the last decades. In fact, the use of 'immigration' as a catchword covering various forms of mobility and foreign statuses catalyses different fears related to the social, economic and political fields, and facilitates the constitution of a 'security continuum' that encloses immigration as well as other issues such as terrorism and organised crime.

Critical analyses of the securitisation of migration have studied the process by which migration is reified as a force that endangers Western societies and constructed as a security issue (Huysmans 2000). They mainly focus on discursive practices and how problems and solutions are framed and justified within and through the migration-security nexus. As Squire and Huysmans (2009: 9) underline, however, such "a cognitive approach underplays the social materiality of the securitising processes". In order to include this material side of the process of securitisation, scholars have increasingly looked at security *as a practice*, analysing specific "sites, agencies and technologies at the intersection of migration and security" (Squire and Huysmans 2009: 10).

Drawing on the work of Foucault on neoliberal government, which works through the association of freedom with risk and (in)security, Bigo (2002: 65) has argued that the securitisation of migration is "a transversal political technology, used as a mode of governmentality by diverse institutions to play with the unease, or to encourage it if it does not yet exist, so as to affirm their role as providers of protection and security and to mask some of their failures". Without discarding the role of politicians and their 'speech acts', Bigo argues that it is necessary to understand discursive practices together with non-discursive practices, as part of the same 'dispositif' of security. In particular, he focuses on the role of security professionals and their habitus in the 'management of unease' as well as in the redefinition of the threats from which they claim to protect citizens.

In a similar vein, Jef Huysmans proposes that we move away from an analysis of securitisation focused on the framing of a threat and referent objects (as in the original work by the School of Copenhagen), to rather consider the 'modulations of insecurity domains', a concept that he claims addresses the complexity of the political and social construction of insecurity. The analysis must then focus both on discursive and institutional *modulating practices* that construct (in)security. To illustrate this point, Huysmans uses an example relating to the UK Home Office, which in 2004 announced its five-year plan with a number of priorities that included asylum issues together with security and criminal measures. The act of including asylum in a plan that was largely a security response to social problems and crime frames it as a security problematique according to Huysmans (2006: 4): "even when not directly spoken off [sic.] as a threat, asylum can be rendered as a security question by being institutionally and discursively integrated in policy frameworks that emphasizes [sic.] policing and defence".

The consideration of institutional dynamics is particularly interesting for this thesis since it applies in a very direct way to the field studied. Drawing partly on Bigo's concept of a 'security continuum', Huysmans (2006: 4) argues that discursively or administratively linking immigration and asylum with "more traditional security phenomena" facilitates "a transfer of insecurity from the latter to the former". By way of example, "[a]ssociating immigration and terrorism by listing both of them as reasons for the introduction of identity cards without establishing a logical or empirical connection between them" contributes to the framing of immigration as a security issue (Huysmans 2006: 4). We will see that the same occurs with the institutional embeddedness of immigration detention in the penal carceral system in Switzerland.

Besides the consideration of institutional factors and administrative routines, Huysmans proposes a technocratic understanding of securitisation processes. Claiming that technologies and experts play a fundamental role in the modulation of insecurity domains, he deduces the importance of analysing

the discourses, routines and political role of security experts, as well as the “development and implementation of technological artefacts and knowledge” which, he argues, “often precede and pre-structure political framing in significant ways”, and that “are not just developed in response to a political decision but often already exist in one form or another within professional routines and institutional technology” (Huysmans 2006: 8). These routines and technologies can contribute to orientating political decisions on the basis of the available solutions. The reliance on the prison as a model for immigration detention can be easily understood in this light, since it is an already existing solution for the control of bodies and deprivation of liberty. Huysman’s focus on technical, technological and expert practices and knowledges will be fundamental in this thesis in order to understand how immigration detention contributes to framing immigration and mobility as security problems and immigrants as a threat.

The securitisation approach is helpful when it comes to understanding the multiple logics of immigration detention in various contexts and especially the detention of incoming migrants and asylum seekers for identification purposes. Focusing on the Italian context, shaped by its geographic position and EU pressure to control the external EU border, Campesi (2014b) argues that detention responds to a double logic of securitisation: risk management in the case of detention pending deportation and emergency when it comes to managing incoming migrants at the southern border. While the first logic justifies preventive measures incapacitating migrants from committing crimes and exerting social control on them, the second calls for humanitarian measures to deal with the emergency and human tragedy occurring in the Mediterranean. Although framed in a different way, practices of holding incoming migrants are detentive in nature as much as pre-removal detention. They are presented as a way of providing assistance to those arriving but also to ensure their identification and registration, even if it has to occur against their will. The securitisation approach fits well into understanding such forms of detention to prevent entry, including offshore detention that constructs migrant bodies as security threats before they even enter national territory (Maillet et al. 2018; Mountz 2011).

As seen above, the rhetoric of securitisation starts by claiming the existence of a security threat and continues by stating the need to use extraordinary means to fight against it and justifying their use. In other words, defining something as a security issue allows politicians to create and invest in measures to fight against it. According to Campesi, the adoption of exceptional measures is one dynamic through which securitisation can take place, leading to a sudden fracture in the normative order. He argues, however, that another dynamic of securitisation can be observed, consisting of the “progressive institutionalization of control measures that act below the threshold of exceptionalism in security bureaucrats’ everyday practices, without dramatic fractures in the normative order but through a slow erosion of existing legal standards” (Campesi 2014b: 145). While the first dynamic is more visible, the second tends to go unnoticed. The evolution of immigration detention in Switzerland and Europe can be understood as alternating these two dynamics.

Risk management, preventive control and criminalisation

The notions of risk and risk management are central to processes and theories of securitisation. Didier Bigo (2002, 2008) argues that over the last few decades, state surveillance has tended to become more individualised and focused on groups considered to be risky. Inspired by Foucault’s use of Bentham’s ‘panopticon’ – the ideal architecture of a prison in which a single watchman can observe all the inmates – to characterise modern forms of disciplinary power, Bigo coined the term ‘ban-opticon’ to describe contemporary forms of surveillance that sort out those whose surveillance is considered necessary. The author argues that the ban-opticon is characterised by three main elements: “practices of exceptionalism, acts of profiling and containing foreigners, and a normative

imperative of mobility” (Bigo 2008: 6). Profiling works through the definition of populations that are deemed ‘dangerous’ and therefore need to be sorted out and kept under control to protect society from the risks they can pose (Bigo 2008; Campesi 2020; Campesi and Fabini 2020). While profiling constructs categories of excluded people in the name of their future potential behaviour, Bigo argues that the non-excluded are normalised through the production of normative imperatives of mobility such as free movement.

Using technologies and shared databases, states are increasingly proactive in their modes of surveillance (Bigo 2008; Broeders 2011). Profiling can be understood as a preventive mode of control as it aims at defining ‘risky’ populations in order to subject them to heightened control. Detention can also be seen in this light, as proposed by Campesi (2020) within the Italian context. He argues that immigration detention and its increased role in migration policies can be best understood as an indication of the shift occurring from reactive models of control based on retribution and responsibility – the ‘penal’ state – toward proactive models based on a preventive approach – the ‘preventive’ state. The ‘preventive’ state aims at defending society by controlling ‘dangerous’ individuals posing risks to society. It allows the use of coercive intervention *before* an offence is committed, its focus being on individuals considered as risk bearers rather than on the punishment of acts. Based on the construction of abstract typologies of ‘dangerous individuals’, it makes extensive use of police powers and preventive policing to identify them and neutralising the risks they pose (Campesi 2020).

Such preventive policing is based on profiling activities that can be either codified or not, as police officers have a certain amount of discretion in deciding whom they approach or control. It has been shown that police corps employ discriminatory practices (Parkin 2013) based on positive and negative stereotypes (Palidda 2011). Furthermore, police corps are increasingly required to perform tasks outside the realm of traditional crime control, especially in relation to migration control. As a result, the practices of police agents often conflate suspects related to crime, immigration and terrorism (Shamir 2005).

Negative stereotyping tends to focus on marginalised and ‘othered’ people, including migrants (Palidda 2011). More specifically, ‘ethnic profiling’ constructs categories of risky subjects based on physical traits and stereotypes. Ethnic profiling is understood as “the police practice of stopping someone for questioning or searching on the basis of their ethnic or ‘racial’ appearance and not because of their behaviour or because they match an individual suspect description” (Goodey 2006: 207). As a consequence of profiling, certain categories of migrants become the target of heightened control through their skin colour and racial and social markers (how they speak, dress, where they stay, and so on). This tendency has been observed in several contexts including European countries and in particular Switzerland (Häberlein 2019a; Naguib et al. 2017; Schwarz 2016).

According to Palidda (2011), practices of profiling and stereotyping lead to the over-criminalisation of migrants. This author defines criminalisation as “the process leading a person or group of people to be the object, first, of repressive action by police forces, and then of judicial proceeding” (Palidda 2011: 12). This sociological approach is useful when it comes to analysing criminalisation both as a practice and as an outcome (Lacey and Zedner 2017). However, the legal dimension of criminalisation cannot be understated. In particular, as we will see in the next section, the last couple of decades have seen the creation of an increasing range of punishable crimes based on immigration conduct. This, together with other aspects that will be further discussed, have led criminal law and immigration law to be increasingly interconnected.

1.2.2. Crimmigration: the merging of crime and migration law and enforcement

The criminalisation of migrants is not only visible in police and border practices, but also has a fundamental legal dimension. In the last couple of decades, migrants have increasingly become punishable under criminal law in several national contexts. A number of scholars have pointed out that turning acts related to migration into criminal offences could be understood within a process of ‘criminalisation of immigration law’, in which criminal categories, processes and techniques were being imported from criminal into immigration law (Miller 2003). Both focusing on the context of the USA, Miller (2008) and Chacón (2009) have argued that in this way, the state has been trying to govern migration through crime while eluding the constituting principles of criminal law. This last aspect deserves more attention. For Chacón, in several criminal cases involving migration-related offences, the protective features of criminal investigation are eroded. As a consequence, Legomsky (2007: 469) has found that US immigration law had “been absorbing the theories, methods, perceptions, and priorities associated with criminal enforcement while explicitly rejecting the procedural ingredients of criminal adjudication”.

Miller (2003) argues that besides a ‘criminalisation of immigration law’, a process of ‘immigrationization of criminal law’ could also be observed in the USA, which imported regulatory, administrative and discretionary practices typical of immigration control into the criminal justice system. These remarks show that it is precisely at the intersection between these two areas of law that we find the most interesting dynamics taking place. In fact, for Miller the ‘criminalisation of immigration law’ concept “fails to capture the dynamic process by which both systems converge at points to create a new system of social control that draws from both immigration and criminal justice, but (...) is purely neither” (ibid.: 618).

Palliating this shortcoming, Juliet Stumpf (2006) coined the term ‘crimmigration law’ to point precisely at the merging and intertwining of migration and criminal law, which – she explains – has taken place on three fronts in the United States: i) at the level of the *substance* of law, criminal grounds for deportation have multiplied, immigration violations have become criminal offences, and immigration law is used as a tool against terrorism; ii) at the level of *enforcement*, immigration enforcement agencies have become very similar to those of criminal law; and iii) at a *procedural* level, immigration procedures resemble criminal processes, the decisions taken concern physical liberty, and detention is increasingly used for immigration-related goals.

Despite the merger of the two legal fields, it is precisely their separation and distinction which make crimmigration law productive. Following other scholars, Stumpf (2006) has noted that the most important distinction is that the criminal justice system guarantees further constitutional rights than immigration law. Indeed, the same individual – with the same status – has more procedural guarantees and more constitutional rights if s/he undergoes a criminal procedure than if s/he is detained in order to be removed¹². Stumpf explains this by the fact that criminal law is conceived upon the presumption of membership of those it addresses (Stumpf 2006), as opposed to immigration law. As seen above, importing criminal law aspects into immigration law allows states to rid themselves of some of the procedural guarantees that criminal law requires, and the same can occur when immigration categories are used within criminal law (Chacón 2009), as in the case of deportation ensuing a criminal proceeding.

¹² By way of example, legal assistance in Switzerland is guaranteed after ten days of remand custody, but only after three months of immigration detention (see section 2.4).

In order to explain why crimmigration has emerged, Stumpf (2006) draws on membership theory. She argues that both systems function as gatekeepers of membership in society through mechanisms of inclusion and exclusion. Both areas of law have witnessed an evolution toward more exclusive membership in the US, which resulted in harsher ideologies of punishment that are clearly manifest in practices of the mass incarceration and detention of undocumented workers. Ex-offenders and immigrants are both seen as ‘outsiders’, and the two figures become almost synonymous. Overlaps and easy slippage from one label to the other “makes it possible for a noncitizen to experience both a criminal law consequence like incarceration and an immigration law consequence like detention or deportation, both resulting from the same act” (ibid.: 243).

Studying the ways in which migration and criminal law intertwine is important because crimmigration has significant consequences for our society. In an article entitled *Deconstructing crimmigration*, García Hernández (2018) argues that crimmigration law inflicts consistent harms on people, institutions and law. While the pains of crimmigration for people are obvious (see also Turnbull and Hasselberg 2017; Ugelvik and Damsa 2018), let us consider the two other points briefly. Regarding institutions, García Hernández argues that both local and federal institutions in charge of enforcing crimmigration law in the USA must carry the costs, particularly federal courts that are obliged to spend much time and energy in those procedures, and which chip away “at their pursuit of equal treatment under the law” (García Hernández 2018: 233). At the level of law, it is argued that crimmigration jeopardises its legitimacy in general, while threatening “to tread on well-established norms of international humanitarian law” (ibid.: 229). Zedner (2013: 50) also discusses the ways in which the “trend toward criminalizing breaches of immigration law (...) results in the creation of offences that breach fundamental principles of the criminal law”¹³.

Furthermore, crimmigration harms society at large and puts social cohesion at risk as it impacts the public perception of immigrants (Stumpf 2006). As argued by Vázquez (2015: 599) in her study of Latinos’ detention in the USA, it also plays a considerable role in perpetuating the marginalisation of racialised minorities, representing a “mechanism for continued racial subordination”.

Despite being coined in the USA context and being frequently and productively used by scholars active in that country, the concept of ‘crimmigration’ also applies to other national contexts (Guia et al. 2013; van der Woude et al. 2014; van der Woude et al. 2017), providing a useful approach for understanding measures that are situated at the intersection between the two fields, such as immigration detention. Rather than a theory or a general explanation for the processes observed, I suggest using ‘crimmigration’ as an analytical concept or an analytical lens that leads our attention toward the manifold and intricate ways and sites in which these two areas of law and state practice intertwine or interlace.

Crimmigration under study: three main aspects of crimmigration

Almost a decade after her seminal article on crimmigration, Stumpf (2015) summarised the three aspects which she considered the most significant of crimmigration law. First, ‘traditional’ crimes increasingly have consequences that relate to immigration, particularly in terms of deportation. Second, a series of crimes based on conduct related to migration regulation have been introduced in criminal law. Third, government police powers are increasingly used for the purpose of controlling unlawful migration, and criminal enforcement tools are adopted to detect unauthorised migrants and

¹³ In particular, they breach the following requirements of criminal prosecution: fair warning (being given notice of legal requirements), culpability (as opposed to many immigration offences being of ‘strict liability’) and the need for the offender to have significantly harmed or risked to harm someone (Zedner 2013).

exert physical control over them. In the following section, I present some studies which shed light on those three aspects and show how immigration detention relates to each.

Regarding the first point, de Senarclens' study on the deportation of foreign offenders in Switzerland is a perfect example of how crimmigration can be successfully used as an analytical concept to shed light on specific mechanisms in the evolution of legal regulations. It will also enable us to present one of the pillars of Swiss crimmigration law. Criminal deportation is deportation ordered by a judge as a consequence of criminal proceedings. It is also called expulsion in the Swiss context and it differs from other forms of removal as a consequence of immigration proceedings. Criminal deportation existed in Switzerland before 2007, when it was suppressed from the Criminal Code. The year after, however, the legislative introduced new criminal grounds to order the administrative deportation of foreign nationals within immigration law. As argued by de Senarclens, "the punitive function of deportation did not disappear, but was rather transferred and reinforced within administrative deportation" (de Senarclens 2017).

Criminal deportation was eventually reintroduced – just a few years later – following a popular initiative accepted by Swiss voters in 2010. Originating from the right-wing Swiss People's Party, the initiative proposed the measure of 'mandatory expulsion' of criminal foreigners (which was even anchored in the Constitution) once they had committed one in a series of offences listed in the Criminal Code¹⁴. As de Senarclens points out (2017: 114), "the reintroduction of criminal deportation together with the principle of automatic deportation might be interpreted as an attempt to bypass the main rights and protection included within criminal law, that is precisely encompassed through the concept of 'immigrationization of criminal law' described by Miller (2003)". This attempt of the Swiss People's Party was only partly successful as the legislative subsequently introduced the clause of hardship cases, requiring judges to examine the proportionality of such a measure before ordering it. This was necessary because a totally automatic expulsion mechanism would have been unconstitutional. Nevertheless, the measure leaves very little discretion to the judges. Showing how deportation on criminal grounds was transferred from criminal law to immigration law and back to criminal law again – this time attempting to bypass its procedural guarantees through mandatory deportation – de Senarclens' study demonstrates the productive manner in which crimmigration operates.

Immigration detention in Switzerland can be analysed under this first aspect of crimmigration law. The introduction of criminal grounds for the administrative detention of asylum seekers and irregular migrants – which we will discuss in Chapter 2 – is an example of how 'traditional' crimes can have immigration consequences, legally justifying detention and facilitating deportation.

Although some research, like that presented above, focuses on the immigration consequences of crime, most studies on crimmigration law have focused on the second aspect pointed out by Stumpf, namely the criminalisation of conducts related to immigration regulations. In this context, the work of Ana Aliverti (2012a, 2012b) is particularly interesting, since it is based on empirical research. Aliverti (2012a) analysed the process of decision-making guiding the evaluation as to whether or not to criminally prosecute immigration-related offences, showing how criminal law is used instrumentally to pursue objectives of immigration enforcement. Aliverti (2012b) argues that there are two main reasons for relying on criminal law for immigration offences: the first is the symbolic function of appeasing the electorate and media by showing that something is done to cope with irregular migration. The second reason is of a practical nature: the possibility to resort to criminal law multiplies the options in the hands of the Border Agency in their attempt to enforce

¹⁴ This list not only includes violent crimes, but also "unlawful claims for social insurance or social assistance benefits" (Art. 66a, par. 3 Criminal Code).

immigration law, supporting their goal. According to Aliverti, criminal prosecution of immigration offences is used rarely, but functions in all the other cases as a threat to induce compliance.

In Switzerland, illegal entry, stay and exit can be criminally prosecuted under Article 115 FNIA and sanctioned with a custodial sentence of up to one year. Despite being sometimes confused with immigration detention, this form of incarceration is ordered and is enforced within the criminal justice system. However, it sometimes intertwines in the trajectories of migrants with administrative detention, as we will discuss in Chapter 7. Furthermore, the violation of an entry ban represents grounds for ordering administrative detention, so the two first aspects of crimmigration discussed to this point are in fact closely related in this respect.

Yet immigration detention has mainly been addressed as a practice of crimmigration in relation to the third aspect, that is, as a criminal enforcement tool adopted to control irregular migration and enforce migration law. According to Stumpf, immigration detention is “a ubiquitous part of crimmigration enforcement” (Stumpf 2015: 242), “one of the mainstays of crimmigration law” and one of its “most extreme manifestations” (Stumpf 2014: 85). Indeed, immigration detention is “a criminal-civil hybrid” that operates in the chasm between the two legal systems, which eventually results in enabling restrictions of liberty at a lower threshold of justification than the criminal justice system (ibid.: 86). Accordingly, Majcher (2013) has shown how legal provisions in the field of immigration detention have incorporated criminal justice objectives while rejecting the procedural guarantees of criminal processes.

Like other scholars, Stumpf has observed that migrant detention shares many features with pre-trial and penal incarceration, and often takes place within the same infrastructure (Stumpf 2015). When immigration detention is operated in prisons or jails, its experience “becomes indistinguishable from that of criminal punishment” (Stumpf 2014: 87). Similar observations led García Hernández (2014) to argue that immigration detention actually *constitutes* penal incarceration.

Expanding the study of crimmigration: the ‘crimmigrant other’

I have discussed above the emergence of the ‘crimmigration’ concept to explain a phenomenon taking place at the legal level, but with significant social consequences. We have seen that Stumpf explains the emergence of crimmigration law through membership theory, arguing that both migration and criminal law act as gatekeepers of membership and have witnessed an evolution toward more exclusive membership in the US, which has resulted in harsher ideologies of punishment. Van der Woude and van Berlo (2015) provide a more contextualised explanation for the emergence of crimmigration in the European context, arguing that political discourses and policies in which crime and migration overlap have formed the basis for the development of crimmigration law.

Focusing on the Dutch case, van der Woude et al. (2014) analyse how political and public discourses have developed in a way that has increasingly linked migration and crime, establishing the basis for the emergence of crimmigration at the level of law, but also of procedure and enforcement. Indeed, these authors argue for the consideration of “crimmigration as a process transcending the purely legal realm, since legislative changes do not evolve in a vacuum and cannot be studied isolated from the social and political context in which they take place” (van der Woude et al. 2014: 562).

As a consequence, they suggest a broader definition of crimmigration as “the intertwining of crime control and migration control” (van der Woude et al. 2014: 562), which includes not only the legal field, but also the social context. They also propose to include in the study of crimmigration

both the analysis of the discursive framing of crime and migration issues in public and political discourses and the “law in action, meaning the ways in which crimmigration laws and policies are being enforced by individual law enforcement officials as well as the ways in which these policies and regulations are perceived by the immigrants themselves” (ibid.: 575). This thesis makes use of this broader definition of crimmigration and is an example of how it can be used as an analytical lens to study such intertwinements.

This broader approach is in line with some work that has been done in Europe and especially in the UK making use of the crimmigration concept but expanding its focus. Under the label of ‘criminology of mobility’, criminologists and scholars of related disciplines direct their critical look toward processes of criminalisation and systems of control in the realm of migration, as well as the nature of punishment within them (Bowling 2013). They address “the processes of inclusion and exclusion at the borders of and within states which draw from and extend arsenals usually reserved for the criminal justice system, law enforcement and the military without their usual protections” (Pickering et al. 2015: 382-383).

This stream of research has produced many studies on immigration detention, especially in the British context (Bosworth 2013, 2014; Bosworth and Turnbull 2015). They highlight the many links between detention and imprisonment and at the same time the importance of highlighting the distinctiveness of administrative detention and the productiveness of the relation between these forms of confinement. The context of the UK is fertile soil for this line of research since discourses about migration control and deportation are much framed by the figure of the foreign criminal and deportation as a consequence of criminal offences, even for those minority members without British citizenship who have grown up in the UK (De Noronha 2020; Griffiths 2017). Furthermore, immigration detention in the UK has no time limit, which renders it even more punitive than in other countries.

Within this scholarship, Katja Franko has provided a few concepts that expand on the crimmigration theory in a very productive way (Franko 2020, see also Aas 2011 and Aas 2013). She discusses the figure of the ‘crimmigrant other’ and argues that he is subjected to a specific type of penal power that she terms ‘bordered penalty’. Bordered penalty “represents the intertwining of two forms of state sovereign power: the power to punish and the power to banish” (ibid.: 54). In other words, it matches the state’s project “of creating an ‘ordered society’ through penal intervention (...) and the project of creating a ‘bordered society’” through border control (ibid.: 55). For Franko, it is the figure of the crimmigrant other that conflates these two projects. The ‘crimmigrant other’ is not only a non-member whose claim to membership can be revoked through penal power; he is “poor, racialised, and gendered” (ibid.: 14). Thus, the analysis of the figure of the ‘crimmigrant other’ provides the opportunity to bring back categories of race, gender and class and look at how they intersect in this figure of exclusion.

A key contribution of Franko to this thesis is that she relates the crimmigration theory to questions of morality and the legitimacy of exclusion. We have seen that the inventor of the ‘crimmigration’ concept, Stumpf, explains the emergence of crimmigration law in the USA with membership theory and the development of harsher policies in both immigration control and criminal justice. The work of Bridget Anderson can help us to expand the discussion of how crimmigration law relates to citizenship. In her book *Us and Them? The dangerous politics of immigration control*, this author argues that the exclusion of migrants helps to define the privileges and the limitations of citizenship. Legitimacy of states is gained through reference to a presumed ‘community of value’ that is represented by the Good Citizen, which is defined from outside by the non-citizen and from the inside by the ‘failed citizen’, incapable of liberal ideals. Anderson proposes to consider how

migrants and citizens define each other rather than being simply competitors for the privileges of membership.

Drawing on Anderson's work, Franko suggests that the 'crimmigrant other' plays a constitutive role in defining the nation and its social and moral boundaries through otherness that places him or her outside the community of value and through reference to criminality that justifies penal intervention. Besides reinforcing the boundaries of the national community, the 'crimmigrant other' also functions as a 'constitutive other' that serves the EU's integration, justifying the deployment of joint efforts and measures of exclusion at the EU border. Franko (2020: 19) concludes: "the social production of the crimmigrant other serves to turn issues of global privilege into issues of morality and the maintenance of the moral order. He or she emerges as a symbolic representation of justified social exclusion". The work of Franko connects theories of crimmigration with a broader understanding of borders and boundary-making discussed earlier in this chapter.

1.2.3. Carceral spaces and landscapes

We have seen that studies of crimmigration originally focus on the legal realm, and can be expanded to analyse the intertwinements between crime and migration control more broadly. For their part, studies of securitisation mainly analyse discourses and practices, especially of security 'experts'. Despite this thesis being interested in both of these aspects, immigration detention is rather approached as a social reality that ensues from legal provisions, but is actually made of spaces, materiality, as well as people (with different roles), their practices and experiences. Carceral geography provides some tools to investigate spaces and experiences of detention. In particular, two fundamental contributions of this geographical sub-discipline are retained here: the concept of carceral space and the need to focus on carceral landscapes as carriers of meaning.

In recent times, there has been a growing interest of geographers in spaces of incarceration (see for example Martin and Mitchelson 2009; Mountz et al. 2013). This interest has led to the recent creation and nascent institutionalisation of 'carceral geography' (Moran 2015, 2017; Moran, Gill and Conlon 2013) which views "carceral space as a type of institution whose distributional geographies, and geographies of internal and external social and spatial relations, should be explored" (Moran 2017: 89). Studies of carceral geography focus on the nature of carceral spaces and experiences as well as on spatial geographies of carceral systems and mobility within them (Moran 2015, 2017; Moran and Jewkes 2015). The empirical groundedness of these studies is accompanied by an ongoing effort to further conceptualise carceral spaces and carcerality – as well as their relationship with an increasingly punitive state – in order to better define the object of study (Moran et al. 2018).

The concept of *carceral space* as not exactly a synonym of *prison space* is actually the premise for the development of carceral geography. Carceral space is a broader (and less descriptive) concept which allows for the consideration of spaces and experiences of incarceration that exceed or happen beyond the walls of 'classic' prisons:

"... it is here, at this confluence [between prison and non-prison space], that we would locate carceral spaces rather than simply prison spaces. The former includes not only traditional prisons but all the grades and varieties of confinement that are possible outside formal prison systems. This includes spaces of confinement that fall under civil law, such as immigration detention, as well as the forms of confinement that burst internment structures and deliver carceral effects without physical immobilization, such as electronic monitoring, surveillance and securitized public spaces" (Gill et al. 2013: 239).

This understanding of spatial dynamics allows us to see that, contrary to a traditional view of the prison as a total institution with thick boundaries (Goffman 1961), prisons' boundaries are actually porous and permeable (Cunha 2014; Gill et al. 2013; Martin and Mitchelson 2009; Moran 2014, 2017; Turner 2016). In this light, carceral geography has looked into in-between, liminal spaces such as visitation rooms (Moran 2013) or prisoners' transportation (Moran, Piacentini and Pallot 2013) to show such porosity, as well as the embodied experiences of incarceration of released inmates, the spatiality of which transcends the apparent physical boundaries of the prison (Moran 2014). Another set of scholars have focused on mobility within the carceral system (Gill 2013; Hiemstra 2013; Martin and Mitchelson 2009; Michalon 2013; Moran, Gill and Conlon 2013), challenging "the assumptions both that confinement necessitates immobility, and that mobility is inherently connected with freedom and autonomy" (Mountz 2013: 4). This literature has indeed shown that mobility can be used punitively in carceral spaces, as in the case of prisoners' transfers studied by Michalon (2013) or electronic monitoring systems investigated by Gill (2013), who argues that mobility is used as a source of discomfort, visibility and exposure. Furthermore, these studies have highlighted that detainees' forced mobility is a form of governmentality (Michalon 2013) that serves "a centrally important function in shoring up and performing the symbolic power of the prison, especially in terms of induction and initiation" (Gill et al. 2013: 241).

As well as drawing inspiration from this line of research – particularly when it comes to analysing the trajectories and experiences of detainees – this thesis also relies on carceral geography to study the characteristics of detention spaces and the experiences of detainees. Consistent with a longstanding tradition within human geography which looks at the social production of space and investigates how human beings inhabit, appropriate and experience space, carceral geographers have addressed the spatial and embodied experiences of prisoners as well as the ways in which space can affect detainees' agency (Jewkes 2013; Moran and Jewkes 2015). These studies focus on the impact of spatial arrangements on detainees' lives (Michalon 2015; Milhaud and Moran 2013), but also the impact on staff members and their relationships with detainees (Enjolras 2010; Michalon 2015). Scholars have also shed light on detainees' tactics to appropriate the space of the cell (De Dardel 2013) or to carve out private space and find solitude in prison (Milhaud and Moran 2013).

Besides taking into account liminal and transcarceral spaces, the notion of 'carceral space' also recognises spaces that are not formally prisons – such as detention centres – as pertaining to carceral spaces, which is fundamental for this study. Integrating immigration detention "into a holistic carceral framework" is explicitly one of the aims of the book *Carceral spaces* edited by Moran, Gill and Conlon (2013), as stated in its conclusion (Gill et al. 2013: 239). Indeed, Moran, Gill and Conlon argue that imprisonment and migration detention overlap "in complex and intriguing ways, both in terms of the discourses applied to them, the functionality of their institutions, and the experiences of detained individuals" (Moran, Gill and Conlon 2013: 1). The authors of the book do not limit themselves to observing these overlaps, they go further to argue that precisely the interface between these two institutions is central to the understanding of carceral spaces (Gill et al. 2013).

Scholars in other disciplinary fields have also highlighted the importance of analysing this interface, focusing on the analogies between spaces of penal and immigration detention, as well as on their fundamental distinction, which is both salient and substantive (Kaufman 2013). The similarities between imprisonment and immigration detention are evident as they both operate through confinement and exclusion from society, while depriving people of their right to liberty. The infrastructure of immigration detention is often built with prison standards (Ugelvik 2016b), the staff are sometimes employed by the prison service (Hall 2012) and often have work experience in

prisons (Bosworth 2014). The conditions of detention are comparable, and the experiences of both staff and detainees are very similar in several aspects (Bosworth 2014; Hall 2012; Moran 2013). Despite these similarities, immigration removal centres have been described as having their own specific logics (Silverman and Massa 2012; see also Bosworth 2014; Campesi 2015; Fischer 2013).

In her ethnography of immigration removal centres in the UK, Mary Bosworth (2013, 2014) found considerable confusion and ambivalence in the discourses of staff and detainees, and argued that they both relied on the prison to make sense of their experiences in immigration detention. According to Kaufman (2013), such reliance on the prison to make sense of immigration detention is highly productive, as she explains:

“the prison serves as a conceptual foil to the detention centre and as an aspirational model of incarceration (...). The prison and the detention centre are related by (...) an imperfect analogy that elides the differences between administrative and criminal incarceration. The detention centre is a replica of the prison devoid of the criminal law. The prison is a symbolic representation of the criminal sanction. In practice, these two regimes often look and function similarly. In principle, they exist in contrast to one another. Ultimately, there is a conceptual gap between the prison and the detention centre, and that gap works to legitimate the existence of both incarceration regimes (Bosworth 2011b; Kaufman and Bosworth 2013)” (Kaufman 2013: 176).

The productivity of this ‘imperfect analogy’ is particularly relevant for this thesis, as it looks at spaces and institutions in which both regimes of incarceration are functioning at the same time and are used to make sense of each other, forming a hybrid institution. Related to this aspect, carceral geography also provides a useful ground for thinking about the materiality of carceral spaces and the meanings they carry. In particular, studies of prison architecture, design and technology (ADT) provide essential insights into the state’s ideologies of justice and punitivity (Moran 2017). ‘Carceral landscapes’ can be ‘read’ as texts, according to Moran (2017: 93), who proposes that we look at “prison buildings as textual sites of meaning, symbolic of intentions and imperatives”. In a similar vein, Wener (2012) has argued that “prison environments represent both an ‘overt’ agenda that provides measurable quantities of space for accommodation, training, therapy, education and so on, but also a ‘covert’ agenda that reflects what or who inmates ‘are’ in the minds of planners, designers, and those who commission them to design and build prisons” (Moran and Jewkes 2015: 179, citing Wener 2012: 7).

Such an approach was used in a study comparing two British prisons built in different historical contexts – a Victorian and a contemporary prison – which revealed much of the political intention behind their construction and the society’s attitudes toward offenders (Jewkes et al. 2017). While the Victorian house of correction was built as an expression of the state’s authority and retribution – aiming to deter crime – the prison of Oakwood (opened in 2012) is “a physical manifestation of the bureaucratic preoccupation with ‘efficiency’ (i.e. cost efficiency) and ‘effectiveness’” (2017: 298), a design which might be interpreted as “symbolically imbued with the loss of public compassion for, or even engagement with, the excluded offender” (2017: 302). This is just one example of the theoretical interest of such an investigation into carceral design, as it reflects how the goals of incarceration are materially expressed and considerably impacts on how they will be experienced (Moran and Jewkes 2015: 164).

The analysis of “the ways in which meanings and significations are manifested within fluid and ever becoming carceral landscapes” (Moran 2017: 90) seems particularly relevant for the current thesis since the facilities used to confine migrants in Switzerland – at least those in which I conducted fieldwork – have a clear prison design. The statement according to which prisons “are more powerfully imbued with meaning and less open to polysemic reading than many other types of

buildings” (Jewkes et al. 2017: 293) seems particularly salient for the ways in which both prison staff and detained migrants understand the practice of immigration detention. This approach, then, proves to be very valuable to study the relation between carceral spaces that one can observe and their meaning for different stakeholders traversing them.

1.2.4. Combining approaches through ethnography

The two approaches of the securitisation of migration and crimmigration have different geneeses and have been developed within different geographical and disciplinary contexts. They are rarely discussed together, yet they share some characteristics. Both aim to describe and explain phenomena that have been observed and provide specific tools for study. Despite the phenomena and tools not being exactly the same, they are intimately related, which is why I argue that these approaches are complementary rather than mutually exclusive when addressing such a complex field as immigration detention. The securitisation approach devotes its efforts to explaining the migration-security nexus, intended as an increasing reference to security when discussing migration and of migration when discussing security issues. When originally developed in the 1990s, it focused on discourses and ways of framing migration as a security issue, but has been expanded to include other forms of institutional framing and fields of security experts’ knowledge and practices. The crimmigration approach tries to explain the nexus between migration control and crime control, including the criminalisation of migration-related behaviours, the migration consequences of criminal offences in terms of deportation and the increasing use of police forces for controlling migration. Focusing on the legal level, it analyses and discusses how migration law and criminal law and enforcement increasingly intertwined and merged in the USA as well as in many other national contexts.

The migration-security nexus and the migration-crime nexus are clearly related since crime control and prevention is usually the main focus of a state’s security policies. In fact, the framing of migration as a security issue is grounds for the development of crimmigration. The use of punitive measures borrowed from criminal law for the purpose of migration control needs justification. The uttering of a security threat related to international migration and incarnated by migrants, from which citizens and citizenship must be protected, legitimises the convergence of immigration and criminal law. Such a threat is not clearly defined and conflates fears related to the social, economic and political fields, whereby the association with criminality gives it a strong moral dimension. In other words, securitisation is grounds for developing crimmigration, while crimmigration reinforces the migration-security nexus and the framing of migration as a security issue.

If the phenomena these approaches try to explain are related and even interdependent, I argue that the tools they provide can be combined. The analysis of a space such as an immigration detention centre in fact needs both approaches. Securitisation is useful to understand the political framework in which the resort to immigration detention has become normalised and its regime increasingly restrictive since the 1990s. At the same time, it allows us to see how detention practices contribute to frame migration as a security problem needing urgent solutions (Bourbeau 2019). On the other hand, crimmigration allows us to analyse those solutions in greater depth when those rest on the merging of criminal and migration law.

Since this thesis is grounded on an ethnographic approach, I decided to take the detention centre as a lived space and institution as a starting point for my research. I found that the notion of ‘carceral space’ and the tools provided by human and especially carceral geography were particularly useful to understand immigration detention given the fundamental importance of space and mobility for

deprivation of liberty. Starting from the carceral space, I observed and analysed its materiality, the practices and interactions it frames, and the experiences it gives rise to.

In this context, I use crimmigration as a lens of analysis that allows me to pay particular attention to how the criminal justice system and immigration control system interact in productive ways, giving rise to hybrid institutions that straddle the two. Using crimmigration as an analytical concept – not as a theory – enables me to shed light on such intertwining occurring in the legal framework, in the daily practices of staff members, in their discourses and ways of understanding incarceration, as well as in the trajectories of detained people and their experiences of injustice and feelings of punishment. Research on crimmigration being focused on legal processes and rather scarce in empirical studies, I will show that ethnographic methods can help us to better understand how such merging occurs in practice and with what consequences for the actors involved.

As said before, some tools from the securitisation approach will also be useful to analyse how detention contributes to frame or modulate an insecurity domain and to understand the role of technologies and techniques in such framing. As a lens of analysis, it will enable us to better understand some practices based on a preventive mode of control and rationality, as well as some discourses of staff members displaying the fear of detainees represented as ‘unknown’. Securitisation is also used to shed light on the broader context in which immigration detention is presented as a legitimate measure of governments enforcing border control.

Being highly empirical, this thesis does not aim to prove or test a specific theory. It aims rather to understand this particular social practice by using analytical frameworks and ultimately to shed light on the broader processes of which immigration detention is a part and to which it contributes.

1.3. Understanding immigration detention: a literature review

Reflecting its increasing use around the world, scholars have drawn significant attention to spaces and practices of immigration detention, particularly over the last decade. Research has addressed detention in a variety of manners, focusing for example on its historical evolution and transformations (de Senarclens 2013; Silverman 2010; Wilsher 2012), on its legal implications (Cornelisse 2010; Costello and Mouzourakis 2016), and analysing policies across different countries (Ceccorulli and Labanca 2014; Nethery and Silverman 2015). In particular, these studies have highlighted the inherent tension of detention practices that aim at maintaining territorial sovereignty while also being obliged to respect human rights (see for example Wilsher 2012).

In this section, I review the scientific literature on immigration detention, focusing on work that I consider particularly relevant for this thesis, either because of a strong empirical anchorage, or because of useful theoretical conceptualisation. In the first part, research is presented that addresses immigration detention from a macro perspective, analysing its spatial logics, its drivers and functions as well as the immigration officers’ use of discretion when having to decide on individual cases. In the second part, I review research that focuses on the internal dynamics of detention centres and examine experiences within them.

1.3.1. The logics and functions of immigration detention

Immigration detention is formally aimed at preventing entry or enforcing removal from a given territory. However, scholars have pointed at several informal functions of detaining migrants related to preventive crime control, deterrence and punishment. This section starts by discussing the spatial logics of immigration detention as a practice of bordering and exclusion, goes on to address its informal functions as well as the rationales that lead decision-making in individual cases, and

finishes with a discussion of the ‘detention industry’ (Flynn 2015) as a driving force of detention and deportation regimes, and of the drive to normalise its violence through the humanitarian discourse.

Spatial logics and different types of immigration detention

Whereas this thesis focuses on detention pending deportation, there are other forms of immigration detention which aim at precluding entry to a given territory or at managing asylum seekers during the asylum procedure (Guild 2005). In fact, as we will briefly discuss in Chapter 2, Art. 5 of the European Convention on Human Rights allows states to detain foreign nationals both to prevent unauthorised entry and to enforce deportation. The form that detention systems take in different countries depends not only on political will but also on geographical location and characteristics. For example, Australia makes extensive use of offshore detention centres on Christmas Island, Nauru and Manus Island, precluding migrants from reaching the mainland, excluding them from protection and hiding them from view (Mountz 2011). On the other hand, being located in the middle of Western Europe and away from the external EU territorial border, Switzerland makes very little use of detention to prevent entry, which is only possible at Zurich and Geneva international airports. Encampment is used in the asylum system but in the form of liberty restriction rather than full deprivation, although federal asylum centres have been qualified in the past as immigration detention centres (Global Detention Project 2011).

The use of remote islands for operating immigration detention in countries such as Australia but also in Italy has been described as instrumental not only because of their literal isolation, which renders detainees less visible and more difficult to access, but also due to their ‘grey’ political status and the consequent legal ambiguity that is reflected on those detained (Mountz and Briskman 2012). On the other hand, Fischer (2013) highlights the inherent tension of detaining immigrants *within* a national territory: despite French deportation centres being aimed at excluding and removing non-citizens from the French legal order and territory, detainees are on French soil, which means that they “are still entitled to legal and medical care, and may activate certain forms of protection in order to challenge [...] their deportation order” (Fischer 2013: 1165).

Whether it takes place on islands or the mainland, immigration detention operates through spatial logics of enclosure, exclusion (Bloch and Schuster 2005) and isolation, dispersing individuals in remote locations, separating them from family and community networks, concealing and controlling information about them (Mountz 2012). The study of detention can thus highlight broader spatial processes of the encampment and exclusion of unwanted populations. Mountz et al. (2013) have engaged in a vital effort to conceptualise detention through highlighting its contradictory spatial logics of mobility/containment and bordering/exclusion. The first refers to the aim of detention to ‘regulate’ mobility through technologies of exclusion, identification and immobilisation, but resulting in the production of “new, highly mobile identities” (ibid.: 527). Mountz et al. argue that “even as detention contains migrant bodies, it simultaneously makes those same bodies more mobile in controlled ways through dispersal, transfers, and deportation” (Mountz et al. 2013: 528, see also Gill 2009 for an analysis of detainees’ transfers). They argue: “Detention, in its mobile and fixed moments, immobilizes migrants only to move them elsewhere, and moves migrants only to ensure their future immobility” (Mountz et al. 2013: 528).

In a similar vein, Tazzioli (2017: 2765) has examined the Hotspot System of migrant arrivals’ registration in Southern Italy as part of a political technology “for disciplining unruly mobility” working through strategies of ‘containment through mobility’. This refers “to the fact that migration movements are obstructed in their autonomy not only by generating immobility and conditions of

strandedness, nor through constant surveillance but through administrative, political and legal measures that use (forced) mobility as a technique of government” (ibid.: 2765).

The second contradictory logic according to Mountz et al. is that which exists between bordering and exclusion, and refers to the reconfiguration and relocation of national borders through practices of detention that affix borders to migrants’ bodies. Immigration detention “blurs the boundaries between inside and outside the national state by reifying boundaries between migrants and citizens. In other words, detention produces paradoxical processes of deterritorialization, externalization, and internalization of borders through the deliberate bordering and marking of migrant bodies” (Mountz et al. 2013: 534). As we will see in this thesis, immigration detention ensues from bordering practices affixing borders to migrants’ bodies and results in the further stigmatisation of those bodies, which renders migrants more vulnerable to detention and deportation.

Informal functions of immigration detention: deterrence, punishment, crime control

It has been argued that as well as suffering from a ‘legitimacy deficit’ (Bosworth 2013), immigration detention is a very expensive and often inefficient policy. For instance, Leerkes and Broeders (2013) have observed that the number of expulsions from the Netherlands is relatively independent of the number of detentions. Starting from these premises, scholars have attempted to analyse the informal functions of immigration detention besides the explicit aim of facilitating the enforcement of removals. In their analysis, Leerkes and Broeders (2013) found three such implicit functions. First, immigration detention is meant to deter illegal residence, both among detained and detainable migrants, through deprivation and punitive conditions. However, Leerkes and Kox (2017) found that only a minority of migrants detained developed a preference to leave the host country and return to their country of origin. Second, detention serves to manage popular anxiety by symbolically asserting state control over irregular migration (Leerkes and Broeders 2013). Finally, they argue that detention is intended to incapacitate marginalised migrants from committing crimes, relieving public order disturbances and controlling pauperism through confinement. In line with this third function, Campesi and Fabini (2020: 65-66) argue that in Italy, detention “has become a surrogate crime prevention measure used by the police for the purpose of managing allegedly ‘dangerous’ populations in urban areas” and for “*banishing* them from public spaces” [italics in the original].

Moving these multiple arguments forward, Majcher and de Senarclens (2015: 15) contend that detention “constitutes a disciplinary and punitive instrument designed to shape the conduct of a category of migrants in terms of both immigration and crime control objectives” and, as such, should “be considered not only as a measure to enforce removal but more generally as an apparatus designed to ‘discipline and punish’ migrants considered ‘unwanted’ while they cannot be expelled”. Indeed, detention is often used with the intent of destroying migrants’ resistance to their removal and compel them to collaborate with their own deportation, transforming immigration detention into ‘de facto punishment’ and “detention centres into the battleground of their daily resistance against the deportation machine” (Campesi 2015a: 448).

Such apparatus of control also operates through the production of the condition of ‘detainability’ in the sense of vulnerability to detention (De Genova 2016) – that is similar to ‘deportability’, but encompasses also those migrants who are currently ‘undeportable’ – playing a key role in the (re)production of migrant precarity (Martin 2015). Enacted within preventive logics of policing and incapacitation, detention is used to contain and neutralise those migrants “whose mobility is perceived as inherently dangerous” (Campesi 2020: 542).

Rationales determining detention decisions

As mentioned above, the decision to detain migrants in individual situations has been the focus of a few studies. Within the same research project from which my thesis stems, Miaz and Achermann (2021b) have investigated the practices of Swiss cantonal immigration officers in charge of that decision. Based on interviews with such state officials, they found great discretion and diversity of practices both between cantons and individuals. The authors explain such divergence through contextual factors and implementation rationales. Among the former, they consider the geographical location of the canton (particularly important for border cantons or cantons situated on main routes through Switzerland) and the level of urbanisation; the political context and level of social mobilisation; the financial situation of single cantons which affects their propensity to use or not use detention; and the infrastructure and capacity of detention at their disposal.

Miaz and Achermann found that certain cantons use formal or informal lists of priorities to lead their choices regarding whom to detain, especially when the number of places is insufficient to cover their needs¹⁵. They found four main rationales leading those choices, which are more or less prominent depending on the canton. The first is a security rationale according to which priority has to be given to those detainees who pose a security threat or have criminal records. A second rationale is named ‘legalist-rigorous’ and refers to a strict implementation of detention – which can become quasi-systematic – whenever the criteria for ordering it are filled. Criteria such as proportionality and risk of absconding, however, need a thorough assessment in which migration officials try to anticipate judicial control (Miaz and Achermann 2021a). The third rationale is a financial one, referring both to the cost of immigration detention and to the cost of the non-enforcement of removals, which in the case of Dublin transfers can even trigger a financial sanction imposed by the State Secretariat for Migration. Finally, the moral-humanitarian rationale leads decisions not to detain based on the ‘integration’ or ‘vulnerability’ of a person, or on the more rigorous application of the rule according to which detention must be applied as *ultima ratio*.

Such rationales combine in various ways in the practices of migration officers working for different cantons (Miaz and Achermann 2021b). However, Miaz and Achermann (2021a) call for an understanding of the work of migration decision-makers as occurring within a web of relations composed by a diversity of state and non-state actors, including police corps stopping and arresting individuals. In particular, they argue that judicial control exerted by cantonal administrative courts strongly affects the work of officials deciding upon detention in that they need to find legal justifications and anticipate the courts’ decisions to avoid being reprimanded by them. Even with regard to the work of the courts, Miaz and Achermann found great diversity, with judicial review being only a ‘formality’ in some cantons in which bureaucrats’ decisions are very rarely challenged by a judge, and providing for high requirements and limiting the power to detain in others.

In Italy, the role of judges in limiting bureaucrats’ discretion has been said to be rather inefficient and above all based on the formal correctness of the administrative decision. Only rarely, usually when lawyers intervene by moving beyond a merely formal opposition, judges question the assessment made by immigration officials (Campesi and Fabini 2020). Based on an analysis of decisions made by Justices of the Peace of Bari and Bologna, Campesi and Fabini (2020) have shown that a rhetoric of ‘dangerousness’ is used to justify the detention of individual migrants, referring to categories of criminal danger but also of ‘unreliability’ and ‘social marginality’. Such rhetoric contributes to stigmatising and exerting control over those perceived as ‘dangerous’ through a logic of proactive, preventive policing, as discussed in section 1.2.1.

¹⁵ At the beginning of the COVID-19 pandemic, a few cantons have communicated that they had released those immigration detainees without, but not those with, criminal records.

The detention industry as a driver of detention and deportation systems

We have seen before that besides its formal aim of enforcing removals, immigration detention serves informal functions of deterrence, incapacitation and assertion of the state's control (Leerkes and Broeders 2013). Stumpf (2014) has also questioned the assumption that in the context of the USA, deportation drives detention, despite the latter being legitimised as a 'helpmate' to deportation:

"Today's detention practices have come unmoored from the justification that they are necessary as an adjunct to deportation. The fragility of that traditional justification is reflected in several facets of modern detention law: the use of detention as a tool of crime control, the evolution of the means of confinement towards carceral choices and the expansion of mandatory and prolonged detention" (Stumpf 2014: 90).

Stumpf considers two main factors that have encouraged the expansion of detention in the USA while separating it from deportation: one is related to the growing infrastructure (and the interests of the private prisons companies), while the other is related to the use of immigration detention in the war on drugs (see also García Hernández 2014). These factors have also contributed to the approach of immigration detention to the criminal justice system, while inhibiting the imagination of policy-makers about alternative forms of confinement than prison. But "[t]he decision to largely confine detention to carceral facilities opened a wide gap between the detention framework and its traditional deportation justification" (Stumpf 2014: 92).

If we assume that facilitating deportation is no longer the main justification for immigration detention, Stumpf (2014) has questioned what these justifications now are. She argues that potential alternative rationales are four: incapacitation (of crime), deterrence (of irregular migration), social condemnation (of irregular migrants) and the imposition of an additional sanction to foreign national criminal offenders. The problem with considering these (informal) justifications is that they construct immigration detention as "a form of punishment", which is "constitutionally questionable" (Stumpf 2014: 94). If detention is punishment, then it must be accompanied by greater procedural protections than those provided by civil law (Majcher 2013).

Stumpf (2014) argues that the relationship between detention and deportation has been inverted, with detention currently *driving* deportation. As already mentioned, this is partly a consequence of the growing infrastructure of detention, which enabled and encouraged its expansion while establishing detention "as a creature separate and apart from deportation" (2014: 91). Stumpf suggests that in the USA, mass detention fosters mass deportation by exerting pressure on deportation levels and figures, while creating the conditions for erroneous removal as it "increases the likelihood that meritorious cases never reach the courtroom" (2014: 97) because of the fear of prolonged detention.

This argument relates to the increasing privatisation of prisons in the USA and the broader emergence of a detention industry that implies a series of actors who have an interest in (expanding) immigration detention (Flynn 2015), including humanitarian actors (Morris 2017) as I will go on to discuss in the next section. Research has tackled the processes of privatisation that immigration detention has gone through in many countries (Arbogast 2016). In the UK, private prisons and security industries have been argued to exert "an undue influence on the building, staffing, and operating of UK detention centres" (Bacon 2005, in Silverman and Massa 2012: 679). According to Flynn and Cannon (2009), privatisation is not only driven by neoliberal policies searching for efficiency, but represents for governments a way to share the burden and responsibility for the treatment of irregular migrants. Flynn and Cannon argue that the privatisation of immigration removal centres is used as a first step towards the broader privatisation of prisons.

Despite acknowledging the interest of these approaches, Hiemstra and Conlon (2017: 125) have argued for the “need to move past a narrow focus on *privatisation* as the principal driver of the growing detention estate, to a broader consideration of ways in which detainees are *commodified*” [italics in original] (ibid.: 125). Hiemstra and Conlon examined the micro economies that operate within detention centres in the USA, where detainees are turned both into ‘captive consumers’ (through commissary systems of purchase) and ‘coerced labourers’ (through ‘voluntary’ work programmes). Analysing ‘circuits of dispossession’ through which private companies and local governments make profit on the backs of detainees, the authors illustrate “the multiple scales at which circuits of exploitation and wealth accumulation exist within the US detention system” (2017: 124). This inspiring paper is a chapter of a recent book edited by the same scholars, on the ‘intimate economies of immigration detention’, which they define as “the complex systems of micro and macro relationships that enmesh in the realisation of detention and lived experiences of being detained” (Conlon and Hiemstra 2017: 1). This approach allows them to relate the intimate experiences of detention with macro processes such as privatisation and global capitalism.

The humanitarianisation of detention

Researchers of immigration detention have also looked at processes of humanitarianisation within detention regimes and how they involve the interests of a growing corpus of organisations called to ‘humanise’ detention practices. In his book *Nothing personal?*, Gill (2016) provided an example of how humanitarian actors have been co-opted in the management of a detention centre for families, with the justification that families would need a higher level of care than individuals. Morris (2017) understands the involvement of international humanitarian organisations in detention regimes under the lens of ‘moral capitalism’, showing how a veritable industry has emerged out of the emphasis on ‘humane’ detention.

Campesi (2015a) has analysed the involvement of humanitarian agencies in the daily management of pre-removal centres in Italy, arguing that their work “appears to be compromised by the same structural conditions within which it takes place, turning into a disciplinary and normalizing tool” (Campesi 2015a: 443, referring to Harrell-Bond 2002). He shows that humanitarian workers within this context are “called to normalize the violence that the deportation machine exercises, trying to convince migrants that an uncooperative attitude can only worsen their position” (Campesi 2015a: 443). Commenting on the case mentioned in the previous paragraph, Gill (2016) also argued that the involvement of NGOs results in “what Weizman calls ‘humanitarian violence’, according to which a measure of violence is understood as normal and necessary even among those concerned to minimize violence” (2016: 149).

Drawing on analyses of humanitarianism as a form of government (Fassin 2010; Walters 2011), scholars have shown that discipline does not only take the form of surveillance and control in detention, but also of assistance and care (Bosworth 2014; Gill 2016; Khosravi 2009). Fischer (2014) has shed light on the paradoxical management of detainees’ acts of self-harm which involve the humanitarian treatment of the suffering body, while at the same time aiming at regaining control over such undisciplined bodies. On a slightly different note, Khosravi (2009) has discussed how efforts to ‘rationalise’ and ‘humanise’ the detention regime operate as a disciplinary mechanism. Focusing on the Swedish detention and deportation system, he shows how caseworkers – hired under a policy of ethnic diversity – are expected to engage in ‘social conversation’ with detainees, encouraging and motivating them to cooperate while emphasising concern for their well-being through a discourse of ‘caring’ and ‘saving’.

1.3.2. Internal dynamics, daily life and experiences of detention spaces

Although empirical research focusing on immigration detention has grown rapidly over the past two decades, detention spaces remain difficult to access (Maillet et al. 2017) and consequently, we still know very little about them (Bosworth 2014). Despite immigration detention policies being common in most immigrant-receiving countries, empirically grounded researches have focused on a handful of countries: many of the studies in this review were carried out in the UK (Bosworth 2014; Gill 2016; Griffiths 2013, 2014b; Hall 2010, 2012; Hughes 2016; McGregor 2012; Turnbull 2014, 2017), although research has reached spaces of detention in most European countries, such as France (Fischer 2010, 2013, 2014, 2017; Makaremi 2008, 2009a, 2009b; Tassin 2016), Belgium (Lietaert et al. 2014), Germany (Darley 2014), Italy (Campesi 2014a, 2014b, 2015a), Greece (Alberti 2010; Fili 2013), Romania (Michalon 2013, 2015), Sweden (Khosravi 2009), Finland (Kynsilehto and Puumala 2017; Seilonen and Kmak 2015), Norway (Ugelvik and Ugelvik 2013; Ugelvik 2016a, 2016b), and Austria and the Czech Republic (Darley 2009, 2010). Significant research has also concerned the Australian system of detention (Briskman 2013; Browning 2007; Coddington and Mountz 2014; Rajaram and Grundy-Warr 2004), as well as Canada (Bourbeau 2019; Kronick et al. 2015) and the USA (Hiemstra 2012, 2013; Hiemstra and Conlon 2017; Martin 2011, 2015; Martin 2013), but also Malaysia and Thailand (Rajaram and Grundy-Warr 2004).

Despite being mainly empirical, this field of research is based on different levels of access to detention facilities. While some scholars have gained full access, including keys to move through the carceral space (Bosworth 2015), others have accessed detention spaces through external organisations (Darley 2014; Fischer 2013, 2017; Griffiths 2013, 2014b; Hughes 2016). In some cases, detention institutions remain so closed and inaccessible that scholars need to find alternative ways of studying them without entering, for example through document analysis and freedom of information requests (Hiemstra and Conlon 2017: 128) or through interviews with former detainees (Klein and Williams 2012). Among those scholars who have been granted extensive access to detention institutions, Mary Bosworth (2014) and Alex Hall (2012) have presented the results of their researches in the UK in two monographs that deal with a number of issues essential to our understanding of those institutions. For this reason, I will address them frequently throughout this thesis and this review, organised thematically.

Experiences of ambiguity, uncertainty and insecurity

Studies focusing on the internal dynamics of detention spaces have often pointed at the high levels of uncertainty and insecurity that characterise such spaces on both institutional and subjective levels. Detention centres feature institutional uncertainty in the form of frequent changes in the labelling, internal organisation and leadership of the offices in charge of them, in the alternation of different private contractors, and in the regular opening and closing of detention facilities (Bosworth 2014). More importantly, detainees experience daily uncertainty, which has severe consequences on their well-being and mental health (see for example Bosworth 2014; Bull et al. 2013; Griffiths 2013).

Griffiths (2013) has identified four sources of uncertainty for immigration detainees: a) enforced mobility related to entry into detention, transfers and, obviously, deportation; b) ‘incidents’ such as suicide attempts, riots, fires or fights; c) temporal uncertainty related to the indefinite time of detention in the UK as well as to the alternation of times of waiting with sudden and dramatic changes; and d) the lack of information and knowledge about their situation and the possibilities for accessing legal support. The temporal dimension is further developed in an article addressing the temporalities experienced by detained and non-detained rejected asylum seekers (Griffiths 2014b).

According to Griffiths, detainees experience a lack of control over time and a “tension between anticipating constant change and fearing indefinite stasis” (2014b: 2001).

This dimension has also interested Turnbull (2014), who has focused on the temporal and emotional experiences of waiting in the context of indeterminate detention in the UK. Turnbull argues that detention becomes a space of waiting, in which neither possible outcome – deportation or release – solve the situation of uncertainty and precarity. Indeed, even though most detainees hope to be released, in the high majority of cases, they remain ‘stuck’, as they are still undocumented and under authorities’ surveillance, while not being allowed to work in a legal frame. This observation joins work by Klein and Williams (2012), who have explored the experiences of released detainees, finding that many continue to feel incarcerated after release.

While the indeterminacy of detention is clearly a source of uncertainty and anxiety for detainees, Bosworth and Vannier (2016) challenge the view according to which the longer detention lasts, the more uncertainty it provokes. They offer a comparison between the British and French immigration detention systems with a focus on duration. These systems differ importantly in this respect, as detention has no time limit in the UK, while it has an internationally comparatively short maximum duration of 45 days in France. Bosworth and Vannier show that while indefinite detention in the UK has clear harmful effects on detainees’ well-being, it is precisely the brevity of detention in France that exacerbates uncertainty, making it difficult to access due process and legal protections in good time.

While uncertainty has mainly been addressed with regard to its temporal dimension, it is also related to space and mobility, as highlighted by Hiemstra (2013), who has focused on the ‘chaotic’ movements of detainees across the detention system in the USA. Other researches on detainees’ transfers have shown how such movements can be destabilising for detainees, removing them from their social networks and supporters, and can be used with punitive aims by the authorities in charge of detention (Gill 2009a, 2013; Michalon 2013).

Being central to detainees’ experiences, as highlighted above, uncertainty and insecurity also characterise staff members’ daily work and experiences. According to Fischer (2014), staff members have to manage two kinds of anxieties: the anxiety felt by detainees as a consequence of the uncertainty of their situation and their own anxiety, which he relates to the contradictions inherent in their work. Enjolras (2010) and Bosworth (2014) also talk about the experiences of staff members as being shaped by the ambiguity and contradictions of both detention institutions and their role within them. Mary Bosworth describes a situation in which detention officers are unsure about the purposes of detention as well as their day-to-day responsibilities, finding “the incoherence of their role and responsibilities uncomfortable” (2014: 188).

The feeling of insecurity is addressed through the lens of emotions in an article by Alex Hall (2010). The author shows how fear and mistrust arise among staff members partly as a consequence of the perception of the unknownness of detainees (who according to staff members ‘could be anyone’, as quoted in the title of the article), and is supported by sporadic events of violence that give “tangible shape to the nebulous anxiety that pervades detention” (2010: 890). This representation of detainees produces an atmosphere of suspicion (see also Campesi 2014a), and calls for a pre-emptive, hypervigilant way of dealing with them (Hall 2010, 2012). Bosworth (2014: 183) also points at the pervasive effect of uncertainty, which diminishes staff and detainees’ capacity for trust and alienates them.

In these accounts, uncertainty appears not as a mere accidental consequence of detention practices, but as a “mode of governance” (Bosworth 2014: 185), linked to the fragmentation of the deportation

system. This results in ‘the state’ being both highly present in theory and distant in practice, acting through intermediaries (Griffiths 2013). This is particularly true where private companies are contracted to manage the centres, but it is generally observable when the case-workers who are in charge of making decisions over detainees’ fate are based outside the centre, being hardly accessible by detainees, and “sequestered from the potentially destabilizing effects of facing up to those they wish to remove” (Bosworth 2014: 18). These conditions facilitate moral distance and the consequent indifference of decision-makers, as well as the dilution of responsibility among the different actors in the system (Enjolras 2010; Gill 2016), and contribute to the uncertainty of daily life in detention (Bosworth 2014: 18). Reflecting on the importance of uncertainty in the ways in which detainees are governed, Griffiths (2013: 280) argues that “uncertainty is not only an accidental aspect of the immigration detention system, but is critical to its functioning. Governing through uncertainty (...) has become a fundamental part of governmentality (...), serving to keep people insecure, passive and pessimistic and to reiterate the indifference and power of the state”.

Legitimacy deficit: making sense of immigration detention

Bosworth (2014: 85) has noted that removal centres “have no clear, inherent purpose or legitimacy” and that they are characterised by a strong ambivalence in terms of justification (Bosworth 2013). Throughout her research, she found confusion about the nature of immigration detention at all levels of the institution – from high-level administrative staff to detention officers, and to detainees – partly deriving from the similarities observed with penal institutions. Indeed, she notes that both staff and detainees relied on the prison to make sense of immigration detention spaces. They compared their experiences in detention to prison, and used the vocabulary of the prison. According to this author, these are evidence of the ‘legitimacy deficit’ with which detention centres work (Bosworth 2013).

Bosworth relates such ‘legitimacy deficit’ to what she defines as a ‘gap’ between the operation of these institutions and their purpose, which – she argues – “troubles the assumption inherent in much criminological literature that we can understand what custodial institutions are *for* by examining what they are *like* (Crewe 2009)” [italics in original] (Bosworth 2013: 158). Bosworth (2013: 161) concludes that “the constant comparison with the prison can be better understood as an attempt at legitimisation”. She warns about the productivity of such institutional blurring, that inhibits institutional imagination about any alternative to detention, and casts removal centres as “‘hybrid spaces’ of sovereign and disciplinary power” (2013: 162).

Thomas Ugelvik (2016a, 2016b) has explicitly addressed how immigration detention institutions and staff cope with such a ‘legitimacy deficit’, resulting both from external (public) criticism and internal criticism deriving from the detainees (2016b). In one article, he analysed how the detention centre of Trandum in Norway has responded to external criticism promoting a series of changes, borrowing from the prison system to increase its legitimacy. Indeed, the previous low-control regime has been transformed into a high-security regime – in which detainees are held in individual cells – in order to decrease the risk of a human rights scandal (Ugelvik 2016a). In another inspiring article, Ugelvik (2016b: 216) shifted the focus onto detention staff, exploring how they “make sense of their work and construct their activities as justified, rational, and legitimate”. Drawing on scholarship of narrative criminology, he analysed the stories told by detention officers and identified four different techniques of legitimisation that will be further discussed in Chapter 6.

Just as staff members struggle to find coherence in their work and role, detainees struggle to make sense of their experience of incarceration. Griffiths (2013) has noted, for example, that detainees try to rationalise their situation and find explanations for their incarceration, attributing economic,

financial and political interests to the state or designating migration officers as incompetent and unprofessional. The author also found that many migrants “used religion to give detention meaning and reassure themselves that someone was in control and aware of their plight” (Griffiths 2013: 277). This finding is consistent with McGregor’s (2012) research that described detention centres as spaces of religious revival, where faith becomes a fundamental ‘coping mechanism’ to endure and make sense of their detention experience, representing a source of energy, strength and hope.

Several authors have highlighted the ambiguity arising from a measure that is administrative in its legal nature but punitive in its content. It has been argued that detainees experience detention as punishment, and their incarceration as an injustice (Bowling 2013; Campesi 2014a; Lietaert et al. 2014). According to Emily Ryo (2016b), these feelings have important consequences for the legal attitudes of detainees, as immigration detention functions as a site of legal socialisation for detained migrants. Ryo argues that immigration detention fosters legal cynicism, which results from a series of factors such as detainees’ experience of administrative detention as (criminal) punishment, the view of the law as ‘inscrutable’ – made inaccessible and incomprehensible by design – and of legal outcomes as arbitrary. Ryo’s analysis is particularly inspiring since she addresses detainees as moral agents who make normative judgments about the legal system and authorities. Furthermore, she discusses the negative consequences of such consolidation of legal cynicism among detainees, arguing that it undermines legal protection, acts as a sort of ‘education in anticitizenry’ and has a high potential for diffusion.

Materiality, spatial arrangement and practices

While most scholars researching detention centres empirically provide accounts of the spatial arrangement of the facilities they have studied, only a few focus specifically on the materiality and spatiality of detention. Michalon (2015) provides a thorough analysis of the internal organisation of space in a Romanian detention facility, arguing that space plays a fundamental role in producing the condition of confinement and the categories of the detainee and the guard. Michalon shows that all spheres of the staff’s activity have very spatialised modalities: surveillance takes the form of locking or keeping visible, for example, while sanctions are applied through isolation. It is argued that the spatial characteristics of detention centres shape the work and experiences of detention as well as limit the agency of both staff members and detainees. Finally, Michalon shows how detainees reappropriate the space of the cell when they personalise it, for instance through layout and decoration.

Kynsilehto and Puumala (2017) have analysed the materiality of a Finnish detention centre, and its impact on how bodies move and interact in that space. They look into how the “spatial organisation of the centre creates distinctions between detainees and the staff through the multiply locked doors and hallways” and how “[t]he whole facility, in fact, relies on separating bodies from one another, and inscribing power on certain bodies while other bodies are stripped of it” (2017: 209-210). In a similar vein, Enjolras (2010) has drawn particular attention to the spatial arrangement of a detention facility in France that creates specific ‘modalities of relation’ between staff and detainees, while Campesi (2015a) has pointed at security as the decisive criterion in shaping the space and living conditions of detainees in an Italian removal centre, while also highlighting the consequences for the relationship between staff and detainees.

Hall’s inspiring book *Border watch: cultures of immigration, detention and control* provides a thorough ethnographic account of a British immigration removal centre, examining how control is exerted over detainees’ bodies, and how the ‘secure regime’ of immigration detention “is produced and reproduced within daily practices and interactions”, while at the same time creating

“populations of insecurity, undesirability and illegality” (Hall 2012: 2, 7). In this sense, she understands detention as a technique of government in Foucauldian terms, that is, as a form of power which brings problems into being through targeted action meant to intervene upon them. With this conceptualisation, Hall is able to tackle both the daily regime of detention and its broader productive and performative functions. The author pays particular attention to staff members’ practices and everyday decisions (for example in the use of force), which she relates to the emotional field, arguing that these “emerge from physical sensations of risk and emotional states of anger, from disorientation and frustration related to a desire to punish, from normative pressures and obligations to colleagues” (2012: 15). Hall (2010: 895) also discusses staff’s emotions such as fear and contempt, but also empathy which she defines as a “disruptive emotional project” that can challenge the boundary between citizens and others that the detention centre reifies.

Authors who have focused on control practices have drawn particular attention to the use of technology, showing not only its fundamental role in efforts to control detainees, but also the significant consequences of denying detainees access to technology in terms of hindering communication with family and friends and access to useful information about their rights and possibilities (Briskman 2013). Briskman (2013) shows how in the Australian context, detainees find alternative means of communication, such as using smuggled mobile phones or organising protests to gain media attention. Technology can enable migrants detained on remote islands such as Christmas Island, Manus Island or Nauru to overcome isolation, facilitating advocacy and constructing support networks (Coddington and Mountz 2014).

Gender, race and the (re)production of categories

Spaces of detention impose normative categories of (il)legality and (il)legitimacy on detainees (Darley 2010; Mountz et al. 2013), and work with racial and gendered representations that shape how detained people are institutionally governed (Turnbull 2015). Processes of categorisation serve to make the social diversity intelligible and manageable, but they confine those categorised, implying significant power relations and inequalities between those who categorise and those who are categorised (Michalon and Bruslé 2016). According to Michalon and Bruslé (2016), categorisations should be studied not only in their institutional dimension, but also in their concrete production and experience by several actors in the context of confinement.

Of particular interest to this review are the categories of gender and race. Gender has been described as an important element in the rationale for detaining migrants as well as in the modalities of protest and resistance that they deploy (Browning 2007, see also Alberti 2010). Many scholars have highlighted the need to consider gender intersectionally with race, ethnicity and/or class, as suggested by Darley’s (2014) research on chaplains in German detention centres. She explores how gender and race intersect when it comes to deciding whether or not detainees qualify for legal support. Darley finds that the categories of mother, wife and pregnant woman were particularly significant in that decision, along with more particular, racialised figures of the ‘victim’, such as the ‘rom’ female victim of domestic abuse and the ‘African’ female victim of sex trafficking.

Griffiths (2015) also discusses gendered constructions of the ‘genuine refugee’ as a feminised, suffering and passive victim, which result in the representation of male rejected asylum seekers as deceptive, opportunistic and even criminal, in accordance to the image of the ‘bogus’ asylum seeker. She shows, however, that parallel to such demonisation, detained men are also emasculated and infantilised in many ways in the daily life of the prison, which encourages passivity and dependency (see also Browning 2007; Griffiths 2014a).

While analyses of race and gender in detention mainly focus on detainees and the rationale for detaining them, Tassin's (2016) analysis of the dynamics of producing categories and hierarchies within the staff – and the implications for how they deal with detainees – constitutes an inspiring approach. The author shows that the division of labour among staff is gendered and ethnicised in the French detention centre she observed, with the roles of social and medical assistance being mainly covered by women, and security tasks by men. Also, the 'private agents' who are situated lower in the hierarchy are mainly women of ethnic minorities, while higher in the hierarchy, the majority of police staff are white men. She shows that the presence of those 'private agents', who play the role of mediators with detainees, blurs the (ethnic) boundary between staff and detainees and recomposes social relations in the detention centre. Tassin (2016) also addresses the constructions of masculinity of police staff working in detention centres, who tend to overexpose their virility, compensating for the frustration caused by the scarcity of physical interventions in their work, which they often consider of little reward.

Research has also focused on the racialised nature of immigration detention practices. Drawing on ethnographic data collected in several detention centres in the UK, Turnbull (2017: 149) argues that "immigration detention operates as a racialized strategy of governing illegality" where categories of 'legal' and 'illegal' are strongly racialised. Looking at the intersections between race, gender and class, she highlights that detention mainly concerns poor and racialised people, "reflecting the unequal access to regularized migration channels as well as the outcomes of racialized policing practices" (ibid.: 149), and working to reproduce Britishness as white (see also Bosworth and Turnbull 2015; De Noronha 2020). Also focusing on the UK context, Bhui (2016) has pointed to the need to look at immigration detention with a post-colonial lens, addressing the influences of British colonial history on policies of migration control and detention. This approach requires the adoption of a broad historical conception of racism, encompassing 'old' forms of colonial racism with the new 'xeno-racism' that links race with class to create a new category of people targeted for exclusion.

Scholars in the USA have also focused on questions of race, particularly on the detention of Latinos (García Hernández 2012; Hernández 2008), highlighting that immigration detention plays a considerable role in perpetuating the marginalisation of this racialised minority, representing a "mechanism for continued racial subordination" (Vázquez 2015: 599).

Agency and resistance in immigration detention

Prisons and detention centres are often conceptualised as spaces of biopolitical and disciplinary power in Foucauldian terms, meaning that "detainees' bodies, health and physical state become thoroughly invested by politics – the responsibility of the institution and the site for multiple battles for control" (Hall 2012: 11). Giorgio Agamben (1995) developed the concept of 'bare life' as a biopolitical state in which a person is stripped of legal and political status. For the Italian philosopher, sovereign power is the power to decide to suspend the validity of law and declare the 'state of exception'. The camp (particularly the concentration camp) becomes the material manifestation of such a 'state of exception' that produces 'bare life' through 'inclusive exclusion': "[t]he camp is the place where people are 'taken outside' yet governed more tightly, where sovereign power intervenes directly on bodies and individual lives which do not have the normal protection of law, and where people become reduced to 'bare life'" (Hall 2012: 13). The decision to exclude is thus constitutive of sovereign power.

It is not surprising that Agamben's theories – and particularly the relevance of the 'camp' as producing 'bare life' – has drawn significant attention from scholars working on immigration

detention. In most cases, however, the reference to Agamben is made in order to challenge what is mainly considered as a reductive view of the social, political and emotional life of the detention centre. Critiques of the application of Agamben's theory to immigration detention have included the risk of falling into historiographical misunderstandings (Rigo 2017), of oversimplifying people's experiences (Bhui 2013), of failing to acknowledge the diversity of actors involved in immigration detention (Flynn 2017) and their emotional worlds (Hall 2010). Another major critique – although rarely made explicit – concerns the reductive nature of this theory when applied to specific, empirical contexts. It is argued indeed that the “camp apparatus (...) cannot be reduced to the single rationality of the production of bare life”, but should be understood as invested with multiple and sometimes contradictory logics (Fresia and Von Känel 2015: 251, talking about refugee camps). In detention centres, this point has been made by highlighting the contradictory nature of the involvement of humanitarian actors and logics in an apparatus aimed at the physical removal of those detained (Campesi 2015a; Fischer 2014). Moreover, Fischer (2013) has highlighted that as long as detainees are held within national territory, they are still entitled to legal protection, a view that challenges the concept of bare life.

The major critique that has been addressed with regards to the application of Agamben's theories to the detention centre, however, is the following: analyses of detention as producing ‘bare life’ do not enable a profound analysis of power mechanisms and resistance in detention spaces (Bailey 2009; Puggioni 2014a; Rigo 2017). Based on a Foucauldian conception of power relations, authors such as Alex Hall (2012) and Giuseppe Campesi (2014a, 2015a) argue for the need to study the “micro-physics of power” in spaces of detention and look at how “[t]he detention centre regime as an apparatus of control is constantly being undone and contested by staff and detainees alike” (Hall 2012: 11). This approach also draws on the notion of ‘tactics of the weak’ developed by De Certeau (1990)¹⁶ and Scott's (1985) conceptualisation of ‘everyday resistance’. In this light, scholars have studied resistance in detention in its various forms, from collective protest (Bailey 2009) to minor acts of sabotage and critique (Hall 2012), including forms that operate without and beyond intent (Hughes 2016).

A significant amount of research has concerned bodily forms of resistance which are particularly relevant in immigration detention since detainees' agency is highly reduced. Acts of self-harm and hunger strikes produce undisciplined bodies that have the potential of disrupting the general control exerted over detainees (Fischer 2014; Hall 2012). Such acts can be conceptualised as acts of ‘bodily resistance’ through which detainees act politically despite attempts to render them silent and powerless through the politics of the camp (Conlon 2013; Puggioni 2014b).

This chapter has explored practices of migration control that have become naturalised in the contemporary world, and how their inherent violence has become normalised. The securitisation of migration, especially since the 1990s and even more after 9/11, has played a crucial role in this process, justifying restrictive practices in the name of national and international security. Migration – especially migration from the South of the globe – has been politically used as a scapegoat to assuage fears related to terrorism, criminality and the deterioration of social welfare. Securitisation allows the use of measures that would otherwise be considered illicit. The use of detention for

¹⁶ Michel De Certeau opposes the notion of ‘tactic’ to that of ‘strategy’: “The space of a tactic is the space of the other. Thus it must play on and with a terrain imposed on it and organized by the law of a foreign power. (...) it is a maneuver ‘within the enemy’s field of vision’ (...) and within enemy territory” (De Certeau 1984: 37).

immigration-related purposes is a clear example of this. As a measure borrowed from the criminal justice system, immigration detention is also one of the pillars of crimmigration law and enforcement. Its administrative character makes it possible to bypass some of the procedural guarantees of the criminal justice system, operating within preventive logic and leaving a large margin of discretion in its ordering and implementation. Despite its formal non-punitive aim, it is based on deprivation of liberty and is therefore fundamentally punitive.

Immigration detention is not only an example of how criminal and migration enforcement converge and such convergence is not a mere collateral effect of immigration detention. It is also a privileged site for the creation of the image of 'crimmigrant other', a potential criminal defined by his otherness and representing a threat. Through the association with crime, the figure of the 'crimmigrant other' helps to legitimise forms of violent exclusion with arguments related to security and morality. The definition of social boundaries based on categories of belonging and deservingness actually hides a much more rigid 'national order of things' based on global inequalities and hierarchies of citizenship, in which citizenship is itself a privilege (Franko 2020).

An ethnographic approach to spaces of immigration detention allows us to shed light on the daily construction of the 'crimmigrant other'. The situation of the facilities studied in the context of this thesis, which are formally defined as 'prisons' and hold people with a criminal sentence under the same roof as immigration detainees, is productive of such representation. Immigration detention spaces appear as complex social worlds with their own internal logics and systems of representations and legitimisation which mostly derive from their inherent ambiguity. They are inhabited, interpreted and experienced in a wide variety of different ways, giving rise therefore to a range of specific forms of resistance.

Chapter 2. (Cr)immigration detention in Switzerland: the legal framework

Understanding how immigration detention is put into practice by Swiss cantons and gives rise to specific spaces, institutional and social realities presupposes an analysis of its legal bases. This chapter retraces the legislative history of immigration detention since its introduction in Switzerland and describes the resulting legal framework. By addressing how this framework has evolved over the last century and especially over the last three decades, this research highlights its constructed and politically contested nature. In fact, the legal bases of immigration detention today are the result of political and legislative debates between different parties over the desire to restrict access to territory and membership on the one hand and the need to respect international human rights law and constitutional principles of equality and proportionality on the other.

Throughout the chapter, the concept of crimmigration (Stumpf 2006) is used as an analytical tool to investigate how the merging of migration and crime control underlies such debates and is intrinsic to immigration detention's legal framework. In fact, it will be shown how this framework effectively combines elements of migration and crime regulation and results in a structural organisation that largely incorporates immigration detention into the criminal justice system. One obvious example is seen in the use of ordinary prisons for detaining immigrants despite the administrative, rather than penal, nature of this deprivation of liberty, further analysed in Chapter 3.

The chapter starts with an overview of the historical evolution of coercive measures in Switzerland to show how migration control is discursively and legally interwoven with crime control in a way that has enabled the justification of immigration detention and its progressive expansion in terms of types and grounds for detention and the extension of its duration. It will demonstrate how political debates have focused on foreign criminals, imposing harsher measures for non-citizens who did not comply with a removal decision (de Senarclens 2013). After this historical overview, I present the current legal framework for immigration detention, starting with the main legal bases and principles (2.2), describing the eight different types of administrative detention that exist under Swiss law (2.3), and highlighting the procedural guarantees provided by the law (2.4). Finally, the legal framework concerning the conditions of detention, and particularly the need to distinguish and separate this from forms of criminal detention will be discussed (2.5).

2.1. The introduction and evolution of immigration detention: an historical overview

The entry and stay of foreign nationals in Switzerland was regulated by the cantons until the First World War, when this task was passed to the Confederation. This shift of competence, which motivated the creation of a federal foreigners' police in 1917, took place in a period in which the Federal Council had been given full power to take the necessary measures providing for Switzerland's security, integrity and neutrality. The first form of deprivation of liberty based on the status of foreigner dates back to 1917 with the entry into force of the federal *Ordinance on border police and alien control* (de Senarclens 2013). Federal authorities had already held the power to order expulsion for security reasons since 1874. During the First World War, however, they could not enforce such expulsions. With the arrival of thousands of soldiers fleeing the war, considered a significant threat to national security, the Federal Council introduced the measure of 'internment' to protect this population yet submit them to surveillance. Shaped by the context of the war, the 'internment' took place in specific camps that were run by the army. This first form of confinement

of foreign nationals was therefore strongly related to security concerns in an international context characterised by conflict and fear.

After the end of the war, Swiss authorities wanted to repatriate these foreign nationals who had taken refuge in Switzerland. In this context, their internment became a means of compelling them to collaborate to obtain travel documents and leave the country (de Senarclens 2013). The measure of internment was included in the 1931 first federal immigration act¹⁷, which came into force in 1934. Despite the change of context and the new use as a facilitator of deportation, the pre-existence of this measure contributed to provide legitimacy (de Senarclens 2013).

A few years later, however, saw the beginning of the Second World War and it was again not possible to remove foreigners. In this context, internment was again used as a substitute for deportation (de Senarclens 2013; Tognina 2001). During the Second World War, two different forms of internment existed: labour camps for refugees; and the detainment of other categories of foreigners including communists, spies, criminals and deserters, as well as others who had violated immigration law. This second form of internment had a clear punitive aspect and mainly took place in penitentiaries such as Witzwil and Bellechasse (Tognina 2001: 142)¹⁸. Human rights associations, such as the Swiss League for human and citizens' rights, criticised the confinement of non-criminals in penal institutions; a feature that continues to characterise the immigration detention regime today. In a letter dated 1939 concerning the exiled antifascist Italian Antonio Nappi, the Swiss League wrote to the Federal Department of Justice and Police: "it seems that he is treated like the other detainees condemned for penal offences" (cited in Tognina 2001: 137).

The FNA (Foreign Nationals Act¹⁹) was modified in 1949, according to which the notion of internment was no longer a synonym for confinement, as it would not necessarily involve the deprivation of liberty. Instead, the term took on a meaning that was semantically vague. It was used to describe and regulate all the situations in which a foreigner could neither receive authorisation, nor be deported. Indeed, according to the 1968 *Ordinance on the internment of foreigners*, internment could take place either in an open or closed setting, or in the form of a forced residence imposed by the authorities. Moreover, internment could also take the form of 'free placement' in order to 'regulate' the stay of those foreigners who could neither receive an authorisation nor be removed²⁰ (de Senarclens 2013).

Although the measure of internment was originally created to control the presence of exiles and refugees resulting from the two World Wars, the international and national context of asylum changed quite significantly in the 1980s. When the number of asylum claims increased, just after the introduction of the first national asylum act in 1981, the topic triggered a public debate on the difficulty of enforcing removal orders (de Senarclens 2013). In 1986, an amendment to the FNA considerably changed the legal landscape of confinement, explicitly restricting the internment of up to two years to those who represented a threat to security and public order. At the same time, a new form of confinement was introduced, enabling the detention of foreign nationals whose removal was enforceable, in cases where a risk of absconding was perceived. This new measure, termed 'detention pending deportation', could not exceed 30 days. At that time, the law distinguished

¹⁷ Federal Act on the Residence and Permanent Settlement of Foreign Nationals. The internment was regulated in Art. 14(2).

¹⁸ In January 1940, out of approximately 50 interned refugees in this second category of internment, 44 were held in Witzwil and Bellechasse (Tognina 2001: 142, cf. chapter 5.1 for much more information on these penitentiaries and how was organized the internment).

¹⁹ The name was changed to the Foreign Nationals and Integration Act (FNIA) in 2019.

²⁰ This form of internment was suppressed in 1986 and replaced by the status of 'temporary admission' (de Senarclens 2013).

between a measure directed at undeportable foreigners posing a security threat on the one hand, and a measure aimed at enforcing removal orders on the other.

Subsequently, however, these two objectives of preserving security and public order, and ensuring the enforcement of administrative decisions of removal, would merge in the 1990s with the introduction of the Law on Coercive Measures (LCM) (de Senarclens 2013). The perceived necessity of introducing new regulations in this area was related to an important media and political debate on the involvement of asylum seekers in the Zurich ‘drug scene’, which was viewed as a major problem at that time (de Senarclens 2013). In 1993, the Federal Council used an accelerated legislative process to pass this new law that came into force in 1995 after a popular vote. Some 73% of the population favoured such a law²¹ that led to several significant changes in the national landscape of immigration detention.

First, the measure of ‘internment’ was suppressed to comply with the European Convention on Human Rights (ECHR), ratified by Switzerland in 1974, according to which foreigners could be deprived of their liberty only in the case of an on-going removal procedure. Second, a new form of ‘detention in preparation for departure’ for up to three months was introduced. This form of detention was directed at foreigners who did not collaborate in the asylum procedure, failed to comply with orders given by the authorities, or had been prosecuted for threatening or endangering the integrity of others. Third, the maximum length of ‘detention pending deportation’ was extended to nine months, making a total of 12 months if this was cumulated with detention in preparation for departure. Fourth, the new law broadened the grounds for detention pending deportation to include certain forms of non-compliance as well as criminal prosecution for threatening or endangering the integrity of others. Finally, with the introduction of the LCM, detention could be enforced from the time of the removal decision, even when an appeal was pending (de Senarclens 2013).

In their analysis of the parliamentary debates that resulted in this new law, Achermann and de Senarclens shed light on the various arguments used by MPs either to legitimise or criticise the new measures. In particular, they observe that “the argument of the insecurity due to criminality was used, not only to justify the adoption of the coercive measures, but also to legitimate their introduction through an exceptional legislative process” (Achermann and de Senarclens 2011: 11). While the necessity to fight against drug-related criminality was acknowledged by all members of Parliament, the introduction of criminality as grounds for administrative detention encountered some criticism. The objections came mainly from left-wing MPs who were worried about creating a dual system of penalty as well as reinforcing xenophobia among the population by confusing immigration and asylum with insecurity and criminality. This criticism led to a reframing of the goal, that was no longer presented as a matter of fighting criminality, but rather one of combatting abuses within the realm of asylum through the inclusion of criminal behaviours and non-compliance with orders (Achermann and de Senarclens 2011; de Senarclens 2013; Rezzonico 2020a).

Indeed, the need to enforce removal decisions and fight ‘abuses’ was agreed upon even by opponents of the law. It was understood as a means of guaranteeing the integrity of the asylum system, and “to maintain the Swiss humanitarian tradition of protecting ‘real’ refugees” (Achermann and de Senarclens 2011: 14). If detention was perceived as a means to reach this shared goal, its maximum length was one of the most debated issues in Parliament. While some MPs argued that a longer period was necessary in order to enforce removal orders – given the difficulties in obtaining travel documents – many left-wing as well as several centre-right MPs argued that detention longer than six months would stand against the principle of proportionality

²¹ See the results of the popular vote online: <https://www.bk.admin.ch/ch/f/pore/va/19941204/det417.html>. Accessed on 18 April 2019.

(ibid.). The result of these debates, pondering the need to enforce removals and the respect of the principle of proportionality, was an increase in the time limit of detention pending deportation to nine months.

Undoubtedly, the introduction of the LCM changed the nature of administrative detention. Going “beyond the necessary and preventive measures aimed to ensure the presence of the person concerned for the removal”, it became “a disciplinary tool for forcing the cooperation of persons suspected as having no legitimate motives for seeking asylum in order to accelerate their removals” (Majcher and de Senarclens 2015: 10).

This trend continued with further regulations in the new Foreign Nationals Act of 2005 that came into force in 2008, which incorporated the coercive measures previously contained in the LCM. In accordance with the proposition of Federal Councillor Christoph Blocher of the Swiss People’s Party, this new law significantly tightened the regulations on administrative detention. It did so by extending the maximum length of this form of detention to 24 months, and by introducing new grounds for detention based on criminal conviction (Majcher and de Senarclens 2015), as well as defining a new form of short-term administrative detention – up to three days – called ‘temporary detention’. In addition, Blocher succeeded in creating a further type of detention that would allow the confinement of those foreigners whose removal was unenforceable due to their uncooperative behaviour. Termed ‘coercive detention’, there was no ambiguity about its goal, which was to force foreigners to collaborate in their own deportation. In fact, Blocher’s political argument for extending the maximum length of detention consisted of the psychological pressure this was expected to put on detainees. In his own words: “The purpose of the exercise is not that they stay here until the end [of the maximum term of detention]. The goal is instead that they leave as soon as possible because they know that otherwise they will be held for such a long period” (Federal Councillor Blocher, National Council, 17 of March 2005, cited in Majcher and de Senarclens 2015: 10-11).

In 2004, the Swiss government reinforced the collaboration with the EU by signing the Association Agreements to Schengen and Dublin, which became operational in 2008. Within the Schengen acquis, to which Switzerland was now bound, was the EU Return Directive. The adoption of this directive resulted in certain modifications in Swiss immigration law, most notably in the maximum term of administrative detention, which was reduced from 24 to 18 months in accordance with Article 15(5) and 15(6) of the Directive.

The association agreement with the Dublin Regulation also led to the introduction of a new form of detention applicable to those asylum seekers awaiting transfer to the member state deemed responsible for examining their asylum claim, according to the criteria of the Dublin system in determining this responsibility. A new provision under Article 76, designed to regulate detention pending deportation, provided a systematic legal basis for detention of up to 30 days in case a Dublin decision had been issued (Art. 76(1)(b)(6) FNA). Other articles allowing for longer detention were also applicable to such Dublin cases, although in a more restricted manner. On 1 July 2015, a new modification of the FNA entered into force and introduced Article 76a, which aimed at regulating detention under the Dublin procedure within the limitations included in the Dublin III Regulation. Accordingly, detention can no longer be ordered systematically in a case in which a Dublin decision is issued. Instead, detention can only come into effect when it is evident that the person intends to evade removal, and where no alternative, less coercive measures can be applied effectively. The article also lists criteria for evaluating the risk of absconding, and provides for specific delimitations of time, as will be outlined in section 2.3.

At this stage, we can highlight two general trends that are pertinent to the arguments contained in this thesis. First, the varying measures of deprivation of liberty imposed on foreigners since the First World War have historically acted to control those unwelcome foreigners who could not be deported in the same way as other unwanted or ‘deviant’ populations. These populations were controlled through other forms of administrative confinement such as administrative detention within social welfare that existed until 1981 and was recently the focus of a commission of experts concluding that its use by cantons was largely arbitrary (Independent expert commission on administrative detention 2019). Conceived as a measure used either as a substitute for deportation during the two World Wars or to facilitate the enforcement of removal of undesirable foreigners when this was possible, the aim of confinement has always oscillated between the control of these foreigners while on the territory and – whenever possible – the enforcement of their removal. Its use as a tool to achieve compliance between the two World Wars and the formal introduction of grounds related to non-compliance point clearly at a disciplinary function of immigration detention.

Second, we can read how, across the historical evolution of coercive measures, the government’s goals related to immigration control and crime control merged together in political debates and in the laws that resulted, leading to the emergence of crimmigration law (Stumpf 2006). Originally, the measure of ‘internment’ was closely connected to concerns of national security in the context of the two World Wars. Later, in 1986, the internment of foreigners who represented a security threat, and the detention of migrants pending deportation, were seen as two distinct measures. With the introduction of the LCM, however, immigration and crime control objectives became intermingled. The two categories, especially now that criminal prosecution as well as non-compliance were legal grounds for ordering immigration detention, appeared inextricably mixed. This merging – not to say confusion – of immigration and crime control objectives has contributed to the process of legitimising immigration detention ever since the introduction of this measure. As underlined by de Senarclens (2013: 40) regarding the introduction of the LCM, “the fact that these measures target the removal of offenders as well as people under risk of absconding justified the establishment of particularly coercive measures for the former as well as for the latter. Thus, by focusing on people involved in illegal activities in a particular context considered as representing a serious problem of public security, long-term detention has also been legitimised for people who were not complying with a removal decision”²². Furthermore, “the introduction of criminal type sanctions and of criminal motives into civil immigration legislation lead to the *de facto* criminalisation of irregular migrants”, a process that “has its roots already in the first version of the FNA” (Achermann and de Senarclens 2011: 25) and that will be further analysed in this thesis.

2.2. Legal bases and the main principles of immigration detention in Switzerland

Having outlined in the previous section the processes through which the legal framework has developed over the last century, the following pages will delineate the essential characteristics of this framework, starting with the legal bases. According to the European Convention on Human Rights (Art. 5(1)):

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into

²² Author’s translation from French.

the country or of a person against whom action is being taken with a view to deportation or extradition.”

As provided by this article, the ECHR allows immigration detention to prevent unauthorised entry into a national territory, or to facilitate the enforcement of deportation or extradition. In order to prevent the arbitrary use of this measure, however, the ECHR requires: (i) a legal basis for such detention; (ii) that the detainee is “informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him” (Article 5(2) ECHR); and (iii) that s/he is able “to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful” (Article 5(4) ECHR). Furthermore, in order for detention to be lawful, detention conditions need to meet the minimum standards laid down in European and international human rights law. Otherwise, according to Article 3 ECHR, detention constitutes inhuman and degrading treatment (Guild 2005: 6).

Other legal bases at the European level that are relevant for Switzerland are the Return Directive²³ and the Dublin III Regulation. On the contrary, Switzerland is not bound to the Reception Conditions Directive, which regulates certain aspects of immigration detention in European Union member countries.

At the national level, the main legal basis for immigration detention is the Foreign Nationals and Integration Act (FNIA)²⁴, which regulates the detention of both irregular migrants and asylum seekers at Articles 73 to 82²⁵. As, according to the law, the cantons are in charge of enforcing removals, and consequently of ordering immigration detention, some cantons have developed additional cantonal legislation regulating the implementation of detention. The following sections present the main principles of administrative detention, beginning with its stated aim.

2.2.1. Aim of ensuring the enforcement of removals

The stated purpose of the administrative detention of foreign nationals is to ensure the enforcement of a removal order. This is the only lawful aim, except for two types of detention that have different purposes: detention at the airport (Art. 22 of the Asylum Act) aims to prevent entry into the national territory in the first place; while temporary detention (Art. 73 of the FNIA²⁶) can be ordered to notify foreign nationals of a decision in connection with their residence status, or to determine a person’s identity or nationality. Furthermore, detention under Article 75 can be ordered during the preparation of a decision with the aim of ensuring deportation but also to ensure the conduct of criminal proceedings. The Return Directive also clearly states that detention is allowed only in order to prepare the return and/or to carry out the removal process when there is a risk of

²³ Directive 2008/115/EC on common standards and procedures in member states for returning illegally staying third-country nationals.

²⁴ The only exception is Art. 22 of the Asylum Act, providing for a legal basis that allows the detention of asylum seekers who are denied entry at the airport.

²⁵ Art. 73, 75, 76, 76a, 77 and 78 detail six specific types of detention and the grounds on which they can be ordered, as outlined in section 2.3. Art. 74 concerns ‘restriction’, another kind of confinement that confines the individual to within a certain area, as well as the ‘exclusion order’, requiring that a person does not enter a specific area. Art. 79 sets the time limits of detention, while Art. 80 and 80a regulate the judicial review of detention orders. Finally, Art. 81 defines some basic detention conditions, and Art. 82 addresses financial questions between the Confederation and the cantons, concerning both the construction of detention facilities and the daily allowances due by the Confederation for the detention of asylum seekers still within the procedure.

²⁶ The name of this act was changed in 2019 from the Foreign Nationals Act (FNA) to the Foreign Nationals and Integration Act (FNIA). When talking about the legal framework, I use the new name despite the research having been conducted prior to this change.

absconding or when the person avoids or hampers the preparation for return (Art. 15(1) of the Return Directive).

The fact that the only possible purpose of detention is to facilitate removal – with the exceptions just mentioned – entails two main legal consequences. The first is that detention is lawful only if deportation is possible and foreseeable. In fact, according to Article 5(1)(f) of the ECHR, detention can be ordered for “a person against whom action is being taken with a view to deportation or extradition”, is interpreted in this way by the Federal Supreme Court, as explained in the FNIA Directives:

“In practice, this implies that detention is aimed at a possible and lawful removal of the foreign national. Where it is established that removal is impossible or unlawful, the purpose of the detention cannot be achieved and detention must not be ordered. Whether the removal procedure is formally closed or the foreigner has been notified of a removal decision is irrelevant. It only matters that the short-term execution of a potential removal decision is sufficiently likely in material terms” (ATF 127 II 168, consid. 2b with references) (FNIA Directives: 327, author’s translation).

The second consequence is that, legally speaking, detention is a purely administrative measure. It is neither a punishment nor an instrument to force cooperation or to persuade detainees to leave the country voluntarily. Its purpose is clearly stated in a decision issued by the Federal Supreme Court on 30 January 2004:

“The purpose of detention, according to Art. 13b ANAG [currently Art. 76 FNIA], is to ensure [the enforcement of] forced deportation, but not primarily to push the foreigner to leave the country voluntarily through a coercive detention, even if this result may be a desired side effect of the detention” (ATF²⁷ 130 II 56 of 30.01.2004, consid. 4.2.3, author’s translation).

The conditions of detention must therefore avoid being punitive in nature, aiming to be more liberal than conditions for those imprisoned on criminal grounds (see section 2.5).

2.2.2. Proportionality and alternatives to detention

While ordered to facilitate the enforcement of a removal order, detention must be proportional to the aim and be necessary – where a measure that is less coercive would not be effective or has already proven ineffective – in order to be lawful (see Costello and Mouzourakis 2016: 72 for an analysis of EU law in this respect). These principles are clearly stated in the Return Directive, which underlines:

“The use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient” (Recital 16 of the Return Directive).

The principle of proportionality, stated in the Federal Constitution (Art. 5(2), Art. 36) as well as in the FNIA (Art. 96²⁸), represents one of the pillars of the rule of law, ensuring that the state does not abuse its discretionary power. In order to examine the proportionality of detention, the judge must balance the interests of the state and the foreigner. Not only should the use of detention be proportional to the aim of ensuring removal, but the length and conditions of confinement must also be proportional.

²⁷ ATF is the French abbreviation for ‘*arrêt du Tribunal Fédéral*’, meaning Decision of the Federal Supreme Court. This abbreviation is used in this chapter.

²⁸ “In exercising discretion, the competent authorities shall take account of public interests and personal circumstances as well as the integration of foreign nationals”.

Another consequence of the principle of proportionality is that a measure entailing the deprivation of liberty as a fundamental right can only be used when other less coercive measures are insufficient. This means that the authorities in charge of enforcing removals have to consider the alternatives before ordering detention as a last resort. This principle is clearly stated in the Return Directive (Art. 15(1)) as well as in the Dublin III Regulation (Art. 28(2)). Additionally, these questions are thoroughly examined by the Federal Supreme Court when required to rule on the legality and adequacy of a detention order (Chatton and Merz 2017). Meanwhile, the FNIA does provide alternative measures to facilitate removal proceedings, namely in obliging the foreigner to regularly report to an authority, to provide appropriate financial security or to submit travel documents (Art. 64e FNIA), as well as the restriction and the exclusion orders (Art. 74 FNIA). These last two measures, which both require a person to remain in the area allocated in the former case, or conversely, to avoid entering a specific area in the latter, were explicitly introduced into law as alternatives to detention (Businger 2015).

2.2.3. The principle of celerity and the length of detention

Article 15(1) of the Return Directive states that “any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence”. Furthermore, according to Article 76(4) of the FNIA, authorities must make the required arrangements to enforce removal without delay. Detention should be as short as possible, and take no longer than the time it takes to enforce removal, strongly implying that immigration authorities should proceed to obtain travel documents and organise return as soon as possible. This principle of celerity is considered violated when authorities fail to take any concrete measure towards deportation within any two months, except in cases where the delay is caused by the authorities of another state (Chatton and Merz 2017: 793).

Currently, administrative detention can be ordered for a maximum of six months but can be extended with the consent of the cantonal judicial authority to a maximum of 18 months (12 in the case of detainees aged between 15 and 18). Detention under the Dublin procedure is an exception, however, and will be discussed in section 2.3. Detention periods ordered according to different articles must be counted within the total duration, except for temporary detention under Article 73. Article 79 of the FNIA provides a legal basis for the extension of detention beyond six months in two cases: if the person fails to collaborate or if obtaining the required documents is delayed.

When calculating the duration of detention, every day of detention should be taken into consideration, regardless of any breaks between one detention period and another (ATF 143 II 113 of 23.12.2016, see also ATF 140 II 1 of 9.12.2013). It is possible to release a person and detain him or her again if there has been a determinant change in circumstances (e.g. there are new grounds for detention or new possibilities for return, cf. ATF 140 II 1, consid. 5.2), but the days must be summed and cannot exceed 18 months (Chatton and Merz 2017: 850). A duration period of detention can count as new only when it takes place within a new removal procedure, which can occur if the person has been removed or has left Swiss territory and later re-entered, or if an authorisation obtained through marriage has been revoked following separation from the spouse (Chatton and Merz 2017: 851). In a recent judgement, the Federal Supreme Court also considered a removal procedure stemming from a penal expulsion as different and separate from a removal procedure ensuing from a negative asylum decision, stating that the durations in that case must not be added together, although the duration might still violate the principle of proportionality if the procedures take place within a short period of time (judgement of the Federal Supreme Court 2C_135/2019 of 18.11.2019).

If the time limit of 18 months is reached, a release must immediately ensue. However, there is no legal provision for preventing a sentence to be issued for illegal stay (Chatton and Merz 2017: 852), and so the person concerned is not necessarily released but in the case of conviction, they can be transferred to a penal prison or section of a prison at that point in time.

2.3. Types of administrative detention and grounds for detention

As seen at the beginning of this chapter, since the introduction of the measure of ‘internment’ during the two World Wars and since the creation of the first form of detention pending deportation in 1986, immigration detention has evolved into a diversified measure with a very complex legal framework that is barely grasped by detainees or even by detention staff. Seven different types of detention can be ordered under the Foreign Nationals and Integration Act, to which we should add the retention of asylum seekers at airports in accordance with the Asylum Act. Table 1 gives a summary of the purpose and grounds for each type of detention. A few more details will be given in the pages following the table, which follow the same order for reasons of clarity, and will be complemented with statistical analysis conducted within the framework of this research project²⁹. More statistical analyses regarding the characteristics of detained people and their detention will be presented in the next chapter (section 3.1).

Table 1: Types of detention

Detention type	Max. length	Aim	Grounds
Art. 73 Temporary detention	3 days	Determine identity or notify foreigner of a decision.	Either a foreigner must be notified of a decision, or personal cooperation is required in order to determine identity or nationality (e.g. going to an embassy).
Art. 75 Detention in preparation for departure	6 months	Facilitate the conduct of removal proceedings or criminal proceedings (before a removal decision).	Refusal to disclose identity, failure to comply with authorities or with restriction and exclusion orders (Art. 74); entering Swiss territory despite a ban on entry; requesting asylum with the intention of avoiding enforcement of a removal order; being prosecuted for threat to other people or for endangering their life and limb; being convicted of a felony ³⁰ .
Art. 76 Detention pending deportation	18 months	Ensure the enforcement of a removal or expulsion decision.	Same as Art. 75, where specific indications of the risk of absconding are seen (e.g. in case of non-cooperation or related to previous conduct). A maximum

²⁹ This data was provided by the SEM on 9 October 2017 to the National Centre of Competence in Research ‘*nccr – on the move*’. The data was analysed in the framework of the research project ‘Restricting Immigration: Practices, Experiences and Resistance’ by Anne-Laure Bertrand in collaboration with the research team comprised of the author, Christin Achermann and Jonathan Miaz. The data covers the period from 1 January 2011 to 30 September 2017. Part of the results are presented in a policy brief (Achermann et al. 2019).

³⁰ A felony is understood as a crime that can receive a sentence of three years or more imprisonment. This provision does not require an actual conviction of three years, but defines the category of crime punishable with such a sentence (Chatton and Merz 2017: 772).

			of 30 days' detention, if the removal decision is issued in an asylum reception centre and the enforcement of the removal is imminent.
Art. 76a Detention under the Dublin procedure	7 weeks in preparation for decision + 5 weeks in case of negative answer + 6 weeks to enforce removal + 3 months in case of flight refusal	Ensure removal to the Dublin state responsible for the asylum proceedings.	Specific indications that the person intends to evade removal, detention is proportional, and less coercive measures cannot be applied effectively. The indications of the intention to evade removal include: non-compliance with the duty to cooperate in the removal, or with restriction and exclusion orders; previous non-compliant behaviours in Switzerland or abroad; entering Swiss territory despite a ban on entry; requesting asylum under different identities or with the obvious intention of avoiding enforcement of a removal order; being prosecuted for threat to other people or endangering their life and limb; being convicted of a felony; denying holding or having previously held a residence document and/or visa in a Dublin state or having submitted an asylum application there.
Art. 77 Detention pending deportation due to a lack of cooperation in obtaining travel documents	60 days	Ensure the enforcement of a removal or expulsion.	The person has not left Switzerland by the appointed deadline and the cantonal authority has had to obtain travel documents for them.
Art. 78 Coercive detention	1 month (extendable for 2-month periods up to 18 months)	Ensure that the foreigner complies with the obligation to leave Switzerland.	The legally enforceable removal or expulsion order cannot be enforced due to the personal conduct of the foreigner.
Art. 65(3) Stay in the transit zone in preparation for departure	15 days	Accommodating people to whom entry is refused while they prepare for the onward journey.	Entry into Swiss territory has been refused at an international airport and a removal order is issued.

after a removal order			
Art. 22(3–5) Asylum Act: Retention at the airport	60 days	Prevent entry into Swiss territory and provide accommodation.	The person has applied for asylum at a Swiss airport and entry has been denied in accordance with Art. 22 of the Asylum Act.

The first type of confinement is ‘temporary detention’³¹. This is different from the other types of detention because it is much shorter – it cannot exceed three days – and has a different aim. Rather than to facilitate the enforcement of removals, it can be ordered either to prepare and notify the foreigner of a detention or removal decision³², or to determine the identity and nationality of a person, for example to conduct a foreign national to the State Secretariat for Migration (SEM), to a linguistic examination or to a meeting with consular authorities (Chatton and Merz 2017). An automatic judicial review is not a legal requirement, but can be requested after detention has ended.

In the period under review in our statistical analysis (between 1 January 2011 and 30 September 2017), temporary detention was ordered 3,421 times, representing almost 8.6% of all detention orders. In some cantons – including Basel Stadt, Uri and Schwyz – this type of detention is used much more often (representing 46% of the detention orders in each of the three cantons). This frequent use of Article 73 can be explained through the geographic position of these cantons, since persons who are detected on the train while crossing the country from South to North can be detained for identification or to be notified of a removal decision (Miaz and Achermann 2021b).

The second type of detention is termed ‘detention in preparation for departure’ and can be ordered during the preparation for a decision regarding the right to stay, including during an asylum procedure. It becomes unlawful once a removal is ordered (at that point, another type of detention must be ordered, or the detainee has to be released). While its main grounds are non-compliance with orders, criminal prosecution and conviction, the aim of detention is not to sanction the detainee, but rather to facilitate the enforcement of removal or, since 2016, of criminal proceedings that could lead to ordering criminal deportation. This means that detention is lawful only if removal is legally and materially possible within the time limit of detention and that it is proportional to the aim being pursued (Chatton and Merz 2017: 756). This type of detention is somewhat contradictory since it aims at facilitating a removal that has not yet been ordered. In practice, it provides state officers with a form of detainment outside the criminal justice system that is mainly used as a means of preventing criminal offences.

Detention in preparation for departure was ordered 1,072 times in the time period covered by our data, representing only 3% of the detention orders. We observed a rather steady decrease in the period under study, with 250 cases (4%) in 2011 and 94 (2%) in 2016.

³¹ This type of detention can concern foreigners who do not possess an authorisation of stay, including asylum seekers who are still involved in the procedure, and even people temporarily admitted under Art. 83 of the FNIA (Chatton and Merz 2017: 715). In French, German and Italian, it is not called ‘detention’ but ‘rétention’, ‘Festhaltung’, ‘trattenimento’.

³² According to Chatton and Merz (2017), if ordered to notify of a removal decision, detention should be very brief and take place in an office rather than a cell, while the option to leave voluntarily must be proposed to the foreigner. Otherwise, temporary detention is often executed in a police station.

The third type is largely the most common and is called ‘detention pending deportation’. This can be ordered only after a decision of removal has been issued, and the foreign national notified (see decision D-4881/2009 of 10.08.2009 of the Federal administrative Court). However, if the foreigner has disappeared or refused to accept the letter containing the decision, they can be notified at the moment of incarceration (Chatton and Merz 2017: 780). The decision must not necessarily be enforceable in order for detention to be lawful, but removal must be possible within the time limit of detention. The removal decision will include a deadline for departure and detention will be imposed only after this date in order for detention to be proportional, except where the person is already detained (Chatton and Merz 2017: 782).

Detention pending deportation is the most frequently used type of detention (79% of detention orders during the time period under study³³) as it allows detention due to the risk of absconding, in addition to most of the grounds foreseen by Article 75 on ‘detention in preparation for departure’. Indeed Article 76(1)(b)(3) and (4) provide that authorities can detain a person (or leave them in detention) when “specific indications lead to the belief that they are seeking to evade deportation, in particular because they fail to comply with the obligation to cooperate” and if “their previous conduct leads to the conclusion that they will refuse to comply with official instructions”. According to case law, a risk of absconding exists if a foreign national has already disappeared underground, if they hamper removal proceedings by providing false or contradictory information or if they state an unwillingness to return to their native country (ATF 140 II 1 of 9.12.2013, consid. 5.3).

The mere fact that a person has not left national territory within the given deadline is, however, insufficient to justify detention (ATF 140 II 1, consid. 5.3, see also FNIA Directives). In the case 4691/06 Jusic v. Switzerland of 2 December 2010, the ECtHR condemned Switzerland for violating Article 5(1)(f) of the ECHR by detaining a rejected asylum seeker in view of deportation although there were no concrete indications that he would try to evade deportation. Furthermore, even when a risk of absconding exists, the authorities must consider the principle of proportionality and the possible use of less coercive measures, factors that are also examined by the Federal Supreme Court when it has to pronounce the legality of detention orders (Chatton and Merz 2017: 788).

Until 2015, these types of detention could also be used to confine asylum seekers subject to a Dublin procedure. As grounds for detention, it would be sufficient that the applicant had hidden that they had already claimed asylum in another Member State while their fingerprints had been registered. A specific form of detention up to 30 days could be ordered in other cases as well if the applicant was still residing in a federal asylum centre and the Dublin decision was enforceable (Contrôle parlementaire de l'administration 2017). Following the adoption of the Dublin III Regulation, a new article regulating ‘detention under the Dublin procedure’ came into effect on 1 July 2015³⁴, providing a more restrictive framework for the ordering of Dublin detention. In accordance with the Regulation, stating that “Member States shall not hold a person in detention for the sole reason that s/he is subject to the procedure established by this Regulation” (Art. 28(1)), this can be ordered with the aim of enforcing a Dublin transfer, but only if a risk of absconding can be asserted. Paragraph 2 provides an exhaustive list of elements that can lead to the assertion of the risk of absconding and that must be examined on an individual basis. This is the only article which explicitly states that detention must be proportional and necessary, meaning that “less coercive

³³ It should be noted that until 1 July 2015, when ‘detention under the Dublin procedure’ was introduced into the law, detention to facilitate Dublin transfers was also ordered under ‘detention pending deportation’, which impacts on this high rate.

³⁴ Before that date, Article 75(1bis) and 76(1)(b)(6) contained a specific legal basis providing for a possible systematic detention of 30 days in all Dublin cases.

alternative measures cannot be applied effectively” (Art. 76a(1)(c) FNIA), as provided by the Dublin III Regulation (Art. 28(2)). Like the other types of detention, its aim is to ensure removal, be it after a decision is issued or during its preparation.

In fact, paragraph 3 sets different time limits for detention during each phase of the Dublin procedure. A person can be detained for a maximum of seven weeks during preparation for the decision and the submission of the ‘request to take charge’ to another Dublin state, five more weeks if the Swiss authorities request the re-examination of a negative reply and six weeks after the foreigner is notified of the removal decision. Furthermore, paragraph 4 allows for an extension of up to three months “if a person refuses to board the means of transport being used to effect the transfer to the competent Dublin State, or if they prevent the transfer in any other way through their personal conduct”. This detention for non-compliance, as well as the detention during a re-examination procedure, both contradict the Dublin III Regulation. The latter sets a limit of one month for sending a request to take charge and two weeks for receiving the reply (slightly shorter than the period set by Swiss law). Furthermore, according to Hruschka and Nufer (2017), detention for non-compliant behaviour according to Art. 76a(4) transgresses both the Dublin III Regulation and the ECHR, and should therefore not be used by immigration authorities.

At the time of this research, detention under the Dublin procedure could be ordered either by the SEM if the asylum seeker was still accommodated in a federal centre, or by the cantons³⁵. A series of sentences by the Federal Administrative Court³⁶ in Spring 2016 concluded that the SEM was systematically violating the right to be heard because the decisions were not sufficiently motivated and well-founded (Hruschka and Nufer 2017). Indeed, in order for detention to be lawful, it is not only necessary to fulfil at least one of the indications listed in paragraph 2, but the authorities issuing the detention order must also examine whether, in the individual case, these ‘concrete indications’ justify the assumption of an actual and considerable risk of absconding (ibid.). In this respect, Hruschka and Nufer (2017) observe that at the beginning of 2017, detention orders often failed to meet the new requirements under Article 76, and that a high number of asylum seekers had been illegally deprived of their liberty since the introduction of these new provisions.

Before the introduction of Article 76a FNIA incorporating the principles of the Dublin III Regulation, detention in Dublin procedures was very frequent. Between 2011 and 2014, it was ordered 10,429 times. This number represents 39% of the cases in which a Dublin decision had been issued (Contrôle parlementaire de l’administration 2017). Between July 2015 and September 2017, the newly introduced ‘detention under the Dublin procedure’ was ordered 3,691 times, representing almost one third (31%) of all detention types. The authorities used this type of detention more often in 2016, with 1,922 orders, after which the number of Dublin detentions started to decrease, with 999 orders during the first nine months of 2017, 1,213 detention orders in 2018 and 994 in 2019. The decrease in the use of this type of detention is thought to be a consequence of the above-mentioned case law of the Federal Supreme Court. However, the number of Dublin decisions and Dublin transfers has also decreased in the last years. In 2019, there were approximately half the number of detention orders (994) but also of Dublin-transfers (1,724) (AIDA 2020a; SEM 2017, 2020), meaning that approximately half of the Dublin-transfers were carried out from detention.

³⁵ This changed on 1 March 2019. Only the cantons can order detention at present.

³⁶ See for example D-2925/2016 of 17 May 2016, E-2850/2016 of 13 May 2016, D-2484/2016 of 27 April 2016 consid. 7.2, D-2310/2016 of 19 April 2016 consid. 7.4, D-1626/2016 of 22 March 2016, D-1963/2016 of 1 April 2016, D-1623/2016 of 4 April 2016, D-2006/2016 of 5 April 2016, D-2011/2016 of 5 April 2016, D-2009/2016 of 6 April 2016 and D-2065/2016 of 11 April 2016, cited in Hruschka and Nufer (2017).

Another possible type of detention that is very rarely used is ‘detention pending deportation due to lack of cooperation in obtaining travel documents’. This can be ordered only after the deadline for leaving Switzerland mentioned in the removal decision, and if the cantonal authorities needed to obtain travel documents for the person because of their lack of collaboration. Confinement in this case cannot exceed 60 days, and can only take place once travel documents have been obtained (FNIA Directive). This type of detention is hardly ever used because Articles 76 or 78, which give more leeway to the authorities, can usually be ordered instead (Chatton and Merz 2017). In the period under study for our quantitative data, this latter detention type was ordered only 55 times (representing only 0.1% of detention orders).

The last type of detention for foreigners on national territory is ‘coercive detention’, which can be ordered when removal cannot be enforced due to uncooperative conduct. It is initially ordered for one month and can be extended by two-month periods with the consent of the cantonal judicial authority if the person remains unwilling to change their conduct. As opposed to the other types of detention, this type is explicitly aimed at persuading “the person to change his or her behaviour in those cases in which, after the expiry of the deadline for leaving, and despite the efforts of the authorities, it is not possible to execute removal without his or her cooperation” (ATF 133 II 97 of 2.04.2007, consid. 2.2, author’s translation). The Federal Supreme Court therefore argues that coercive detention can be used only as a last resort, and in cases where the conditions for other types of detention are not met (ATF 133 II 97, consid. 2.2). It is also necessary that removal is objectively possible in a foreseeable time period with the cooperation of the detainee, a condition that was clarified in the context of the COVID-19 pandemic (judgement 2C_408/2020 of 21 July 2020). A further condition is that the deadline for departure has passed and the person must have had the possibility to leave the country on her own (which is not the case, for example, if they were detained at the time of the removal decision) (Spescha et al. 2019). Despite these limitations, coercive detention lies in contrast with Article 15(4) of the Return Directive, stating that when a reasonable prospect of removal no longer exists, detention ceases to be justified and the person concerned shall be released immediately.

There are two main constellations in which coercive detention can be used to achieve the detainee’s compliance, namely when removal is impossible due either to lack of cooperation in the establishment of identity and travel documents or due to lack of consent (FNIA Directives). The latter situation can occur when the state of origin only receives voluntary returns, which is currently the case of Algeria and Eritrea, for example. In these cases, ‘detention pending deportation’ cannot be ordered because forced removal appears impossible (Chatton and Merz 2017). The legislator therefore introduced this specific type of detention as a way to compel foreigners to collaborate in their own deportation. Despite being ordered in the context of a removal procedure according to Article 5(1)(f) ECHR, coercive detention should thus be rather understood as a form of deprivation of liberty deriving from Article 5(1)(b) ECHR, motivated by “noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law”. Several legal analysts have highlighted the absence of any equivalent measure to secure compliance in other legal fields, especially given its potential length of up to 18 months, which raises fundamental questions about its proportionality (Chatton and Merz 2017; Spescha et al. 2019). The Federal Supreme Court considers this measure proportional in some cases since the detainee can put an end to it at any time by collaborating with the authorities (judgement 2C_81/2019 of 29 January 2019, c. 2.1).

In the period under statistical review, coercive detention was ordered only 209 times (0.5%), and led to a removal only in 20% of the cases (while the overall removal rate of detention orders was 81%). Given this complex and controversial legal context and the low removal rate, some cantons avoid making use of coercive detention.

In addition to the six types of detention outlined so far, we must also take into consideration two other types of detention taking place at airports. These types represent further measures for the deprivation of liberty, despite not being termed ‘detention’ in text law. When a person arrives at a Swiss international airport without the authorisation to enter the national territory, they can receive a refusal of entry accompanied by a removal order. In such cases, Article 65 of the FNIA provides the possibility that they are obliged to remain for a maximum of 15 days in the airport’s transit zone during preparation for departure. In case a foreigner arriving by plane applies for asylum, it can also occur that they are temporarily denied entry, either because another state bound by the Dublin Association Agreements is responsible for their demand, or because it appears that they are not at risk in the country from which they have directly arrived. In those cases, the SEM can hold them in specific holding centres at the airport up to 60 days under Article 22 of the Asylum Act (AIDA 2020a). These two kinds of confinement take place within the airport transit area instead of in detention centres within national territory, but can be followed by another type of detention already mentioned (Art. 75 to 78 of the FNIA) in a detention facility outside the airport.

Excursus: penal incarceration for immigration-related offences

Swiss immigration law also provides cantonal authorities with a criminal justice type of confinement, which operates as another crimmigration measure that is a corollary to immigration detention. In fact, the FNIA not only provides for administrative types of detention, but also allows for the possibility of ordering a prison sentence as a consequence of violating immigration regulations. The criminalisation of conducts related to migration regulation is one of the major elements of crimmigration (Stumpf 2006), and can be analysed as an attempt to govern migration through crime (Chacón 2009; Miller 2008) while eluding the constituting principles of criminal law. Following this tendency, Article 115(1) foresees the possibility of a custodial sentence of up to one year (or a monetary penalty) for foreigners who violate the entry regulations, who stay unlawfully in Switzerland, work without authorisation or leave the country illegally³⁷. The FNIA also considers it a criminal offence for anyone to encourage the illegal entry, exit, stay or work of a foreigner (Art. 116)³⁸.

As we will see later in this thesis, administrative detention and criminal justice types of sanctions can sometimes enchain (see section 7.3), and transfers between the two regimes are frequent. However, despite being sometimes confused, administrative detention for immigration enforcement and penal sanctions for violating immigration law are two distinct measures with different legal natures. As regards criminal provisions against irregular stayers, following adherence to the Return Directive, the Federal Supreme Court has clarified the necessity of following the case law of the EU Court of Justice, which considers that Articles 15 and 16 of the Directive “must be interpreted as precluding a Member State’s legislation [...] which provides for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period” (case C-61/11 PPU El Dridi of 28.04.2011). It follows that the criminal prosecution of illegal entry or stay is subsidiary to the administrative procedure of removal (decision of the Federal Supreme Court 2C_992/2014 of 20.11.2014). In practice, criminal imprisonment on the grounds of immigration regulations is only possible if the removal procedure has been carried out without

³⁷ If the offence has been committed through negligence, a fine can be inflicted (Art. 115(3)) but not a prison sentence, which can reach up to 10,000 Swiss francs (Art. 106 CP, cited in Sauthier 2017).

³⁸ The prison sentence for this offence can reach five years if such facilitation is intended to produce an unlawful financial gain (Art. 16(3)), and three years in the case of unauthorised employment (Art. 117) or bogus marriage (Art. 118).

success and if coercive measures have proven ineffective. This rule applies both to foreigners who resist deportation and remain in Switzerland and to those who were deported but later return despite an entry ban (Sauthier 2017).

2.4. Procedural guarantees and judicial review of detention orders

According to Article 15(2) of the Return Directive, states shall “either provide for a speedy judicial review of the lawfulness of detention [...] or grant the third-country national concerned the right to take proceedings” to request a revision of the lawfulness of their detention. Swiss migration law requires that a judicial authority reviews the legality and appropriateness of a detention order within 96 hours on the basis of an oral hearing (Art. 80(2) FNIA). The same occurs when authorities decide to extend the duration of detention. Detainees also have the right to submit a request for release from detention one month after the detention review, which must be examined on the basis of an oral hearing as well as within eight working days (Art. 80(5) FNIA).

An oral hearing grants the detainee the right to be heard, and offers an occasion for the judge to gain a personal impression of the situation, hearing both the authority having ordered detention and the detainee (Chatton and Merz 2017). However, there are a few exceptions in which no opportunity of an oral hearing is provided. These exceptions include detention under Article 77, which provides only for a written control procedure. They also include detention under the Dublin procedure, which does not provide for a systematic judicial review. The review is only conducted upon request and in written form (Art. 80a). These limitations are particularly problematic because access to a judicial review depends on the quality of information received by detained migrants and asylum seekers from the authorities ordering detention. Furthermore, according to Article 80(3), the judicial authority may dispense with an oral hearing if deportation can be executed within eight days from the time of the detention order and the person concerned has given written consent, which also requires that detainees understand in detail the document they are signing.

When reviewing the legality and appropriateness of a detention order, the judge must establish that: (i) a legal basis for detention exists; (ii) the conditions and deadlines fixed by the law are respected; (iii) the aim and motives of detention are lawful; (iv) the principles of proportionality and celerity are respected; and (v) there has been no abuse of discretionary power (Chatton and Merz 2017). While the control of the removal decision is not part of this judicial review, the examination of the *possibility* to enforce the removal must be part of it, as detention is lawful only if removal is possible and foreseeable (ATF 128 II 193, consid. 2). For example, recently the Federal Supreme Court has ordered the release of detained people because they considered the enforcement of removal to be impossible in the foreseeable future due to the situation created by COVID-19 (judgements 2C_386/2020 of 9.06.2020, 2C_414/2020 of 12.06.2020, and 2C_312/2020 of 25.05.2020). The family situation, the circumstances and the conditions in which detention takes place must also be considered, in accordance with Art. 80(4). If the conditions of detention are judged insufficient, the judicial authority will set a deadline for the administration to organise a transfer to another facility, and if the transfer does not take place before the deadline, the detainee is required to be released (Chatton and Merz 2017).

Swiss law does not offer a systematic right to free legal assistance during the first three months of administrative detention (cf. ATF 122 II 49 of 2.05.1996, consid. 2c, see also ATF 134 I 92), although this right is guaranteed after ten days of confinement in remand custody (Businger 2015: 287). Certain cantonal legislations (in the canton of Geneva, for instance) do provide for such a right, however. The FNIA only provides for the right to communicate with legal representatives (Art. 81(1)), but this guarantee seems relevant only for the minority of detainees who already have a

legal representative at the time of incarceration³⁹ or who succeed in finding one whilst detained. Detainees also have the right to contact recognised humanitarian organisations (Businger 2015: 312), but the scarcity of such organisations in the area of detention and lack of information about them can prevent detainees from such contact. This is a critical point, particularly in those carceral facilities in which only a few places are reserved for immigration detention with the remainder being dedicated to penal imprisonment. Access to legal information and advice appears to be particularly restrained in such facilities.

The judicial review of detention is made by a cantonal judge specifically in charge of this task. The judge's decision can be challenged through an appeal to the designated cantonal Superior Court⁴⁰. If that court confirms the detention, the detainee can make an appeal to the Federal Supreme Court. Once all the national instances have been exhausted, it is legally possible to submit an appeal either to the European Court of Human Rights.

A detention order is revoked if the reason for detention ceases to apply, or if the removal order proves to be unenforceable (Art. 80(6)(a)). This scenario can occur if, for instance: the removal violates the principle of non-refoulement; it is not possible to obtain travel documents; no flights are available to the required destination; the detainee's health condition prevents removal from being enforced for a long period; or an illness cannot be treated in the country of deportation (Chatton and Merz 2017). The detention order is also revoked if the detainee becomes subject to a custodial sentence or measure (Art 80(6)(c)).

As already mentioned, judicial control of the legality of detention under the Dublin procedure is made only upon the detainee's written request. Such a request can be made at any time (Art. 80a(3)), and entails only a written procedure, not an oral hearing. Despite not being stated in the FNIA, the Federal Supreme Court has specified that the judicial authorities must carry out such judicial control within 96 hours of request (ATF 142 I 135 of 2.05.2016). According to Chatton and Merz (2017) the detainee must be actively informed of this possibility in a language they know well, and the person should be assisted by a migration officer, a social worker or a lawyer to formulate their request. Hruschka and Nufer (2017) also argue that the detainee must be informed that such a procedure would be free of charge, and would not result in any disadvantage for them. These authors ascertain that detainees' access to a judicial review of the legality of their detention is in practice hindered by insufficient information and the difficulty in accessing legal advice, as mentioned above.

The FNIA also provides for the possibility of submitting a request for release one month after a detention review (Art. 80(5)), or at any time in the case of detention under the Dublin procedure (Art. 80a(4)). The judicial authority must decide on the application within eight working days. Failure to respect these deadlines, as well as the deadlines for the transfer, lead to a revocation of detention.

³⁹ With the introduction of free legal assistance for all asylum seekers within the new asylum procedure in force since 1 March 2019, this has become more relevant. However, in many cases, the mandate has ended when detention is ordered.

⁴⁰ Until 1 March 2019, the SEM could order detention of up to 30 days in the case of asylum seekers who were still residing in federal reception centres (Art. 80(1) FNA, before the modifications). In those cases, an appeal could be made to the Federal Administrative Court. Unlike for other types of judgements – for example those on asylum – the judgements of the Federal Administrative Court concerning immigration detention could be challenged at the level of the Federal Supreme Court (ATF 142 I 135 of 2.05.2016).

2.4.1. The detention of minors and families

According to Articles 80(4) and 80a(5), children under the age of 15 cannot be detained; having said that, so-called ‘temporary detention’ – that is formally not called ‘detention’ in German, French or Italian – is not explicitly excluded from this prohibition. Minors aged between 15 and 18 can be subject to a maximum of 12 months’ administrative detention (Art. 79(2)) unless the cantonal legislation refuses to allow it, as is the case in the cantons of Geneva and Neuchâtel (Businger 2015). Despite the Return Directive requiring the detention of minors to occur separately from adults, Swiss case law reviewed by Businger (2015) finds it admissible that minors aged 15 or over are detained in the same facilities as adults, unless those adults have a criminal record. The detention regime for minors, however, should be more liberal and, according to the Return Directive, should include the provision of leisure and play activities, as well as educational opportunities in the case of long-term detention. As argued by Businger (2015: 322), the placement of minors in a normal detention centre – and even more so in an ordinary prison – is questionable since the ECHR “sets the threshold for the infringement of Article 3 ECHR for inhuman treatment significantly lower than for adults when minors are detained in an inappropriate institution” (author’s translation).

Even where removal concerns a whole family, children under the age of 15 cannot be detained. According to case law, it is unreasonable to detain both parents and place the children in an institution (Businger 2015: 46), although it is legally tolerable to detain the head of the family while the mother and children remain in an asylum camp (Chatton and Merz 2017). The authorities must always consider the specific situation of the family before making a decision. In one such example, the ECtHR condemned Switzerland for detaining the father of four children whose mother was seriously ill (*Jusic v. Switzerland* of 2.12.2010). In cases of single parent families, the detention of a woman with a small child seemed to be tolerated until recently, as this would allow her to spend sufficient time with the child. Formally, only the mother was detained, while the child was placed with her in the cell (Businger 2015: 322). This solution is highly problematic, nonetheless, and was recently criticised by *Terre des Hommes* (2018) as well as by the National Council Control Committee, which recommended ending this unlawful practice (Commission de gestion du Conseil national 2018). Those critiques have provoked some concrete reactions, such as the decision of the Thun prison’s director who was reported by the media to have stopped receiving these cases. However, it is unknown whether this practice continues in some cantons.

Concerning the detention of families under the Dublin procedure, the Federal Supreme Court has clarified that when detention represents interference in a detainee’s family life, a comprehensive and careful examination of the balance of interests is needed. As the best interests of the child must be taken into account, their detention or separation from their parents can be considered only in the most exceptional cases (Hruschka and Nufer 2017).

In 2017, the Federal Supreme Court dealt with a case concerning an Afghan family who had been separated by the authorities during the process of their transfer to Norway, in accordance with the Dublin Regulation. The migration authorities of the canton of Zug decided to detain both parents separately – the mother together with a four-month-old baby – and to place the three other children, aged three to eight, in two different institutions. They were all deported by special flight three weeks later. According to the Federal Supreme Court, in doing so, the cantonal authorities violated the right to family life (Art. 8 ECHR) and made use of disproportionate measures (ATF 143 I 437, sentence of 26.04.2017).

2.5. Conditions of detention and separation of detention regimes

In order for detention to be lawful, certain fundamental conditions have to be met (see for example a recent case dealt with by the Federal Supreme Court, 2C_384/2017 of 3.08.2017). The conditions of detention must be proportional and must reflect the non-punitive nature of confinement. This is best accomplished by dedicated facilities for immigration detention, according to the FNIA. However, the law leaves some room for exceptions. As we will see, these exceptions were, in fact, rather the rule at the time this research was conducted. The law also omits to give any further detail on the exigencies in terms of detention conditions, probably due to the fact that the conditions of detention are primarily a matter of cantonal regulation (Chatton and Merz 2017; Künzli et al. 2013). Relevant case law of the Federal Supreme Court that will be reviewed shortly specifies some requirements for this special type of non-punitive detention. Furthermore, Article 81 of the FNIA must be read together with Articles 16 and 17 of the Return Directive and with Article 28 of the Dublin III Regulation – these are explicitly cited in the FNIA – and the conditions of detention must also comply with the minimum standards as fixed or recommended by international human rights law (Chatton and Merz 2017)⁴¹.

This section focuses on the type of facilities and level of separation from criminal forms of detention first, and then on the restrictions of liberties that are admissible, setting the minimal conditions for detention to be lawful under Swiss law.

2.5.1. Specialised facilities and the separation from detention under criminal justice

At the time of my field research, and until 1 June 2019, Article 81(2) of the FNIA stated that detention should take place on ‘appropriate premises’, without providing any details about what such ‘appropriate premises’ would look like. Article 81(2) went on to state that “accommodation with people in pre-trial detention or who [were] serving a sentence must be avoided if possible and may only be ordered as a temporary measure and to overcome shortages of accommodation in administrative detention”. Despite such vagueness of formulation, it was clear that the most appropriate facilities in legal terms were those specifically designed to meet the needs of administrative detention (ATF 122 II 49 of 2.05.1996, consid. 5), which has become a requirement in the new formulation of the article. This interpretation was also in line with the Return Directive, to which Switzerland is bound, which clearly states that detention should take place in specialised detention facilities (Art. 16(1), see also Recital 17).

Furthermore, the Federal Supreme Court specified that in case of accommodation within the same facilities, a separation between detention regimes must be guaranteed, and administrative detention must take place in a separate section, in which the detention regime is more liberal than the regimes for other categories of detainees:

“A separation at the level of the cells does not satisfy the legal requirements, while accommodation in separate departments of the same establishment does, provided that the solution adopted takes into account the purpose of separate accommodation and allows for a more liberal detention regime (communal premises, visits, leisure activities)” (ATF 122 II 49, consid. 5a, author’s translation).

⁴¹ According to Chatton and Merz (2017), these legal standards include the recommendations of the Committee of Ministers of the Council of Europe regarding the conditions of detention in Europe (including the European Prison Rules), the UN Covenant II, the ECHR, the UN Convention against Torture and its 2002 Protocol, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.

Such separation from other detention types is also “intended to show externally that the detention was not ordered on suspicion of a criminal offence, but has a purely administrative background” (ATF 122 II 49 of 2.05.1996, consid. 5). The provision according to which the detention of immigration detainees together with custodial detainees or detainees serving a sentence might be ordered “as a temporary measure and to overcome shortages of accommodation in administrative detention”, such as was formulated in Art. 81(2) FNIA, violated the Return Directive⁴² (Businger 2015: 308).

In fact, the Court of Justice of the European Union (CJEU) has clarified that Article 16 of the Return Directive “lays down the principle that the detention of illegally staying third-country nationals for the purpose of removal is to take place in specialised detention facilities” and that “a derogation from that principle [...] must be interpreted strictly” (cases C-473/13 and C-514/13, Bero and Bouzelmate, of 17.07.2014). In this judgement, concerning a case from Germany, the Court highlights that this principle also strictly applies to federal states such as Switzerland:

“Article 16(1) of Directive 2008/115/EC [...] must be interpreted as requiring a Member State, as a rule, to detain illegally staying third-country nationals for the purpose of removal in a specialised detention facility of that State even if the Member State has a federal structure and the federated state competent to decide upon and carry out such detention under national law does not have such a detention facility”.

In order to align with the EU Return Directive, Article 81(2) was reformulated as follows:

“Detention shall take place in detention facilities intended for the enforcement of preparatory detention, detention pending deportation and coercive detention. If this is not possible in exceptional cases, in particular because of insufficient capacity, detained foreign nationals must be accommodated separately from people in pre-trial detention or who are serving a sentence” (Art. 81(2) FNIA, new formulation since 1 June 2019).

A few months after this amendment, the Federal Supreme Court was called to interpret the new law text in a case concerning a rejected asylum seeker who had been detained for four days in the RP Bern before being taken to the airport for the enforcement of his deportation (judgement 2C_447/2019 of 31.03.2020). In the case under examination, the Court considered that detention in a regional prison had not violated Art. 81(2) since it had been short (four days) and motivated, since the transfer to another facility would have complicated the enforcement of removal and transportation to the airport. However, recalling the above-mentioned case law of the CJEU, the Court reminded the parties that administrative detention must take place in facilities specifically dedicated and conceived for this type of confinement. Detention in non-specialised carceral facilities must be exceptional, short and motivated, even when it occurs in a separated section of a prison (consid. 6.2.2).

The use of prisons for immigration detention is advised against by the UN High Commissioner for Refugees (UNHCR) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) that consider it “fundamentally flawed” (19th General Report 2008–2009, par. 79). This principle is also stated in the first draft of the Codifying Instrument of European rules on the administrative detention of migrants (B.8). The confinement in specialised facilities, on the other hand, should enable those responsible to better consider the detainees’ specific needs, as appropriate to the administrative rather than penal nature of their

⁴² “Detention shall take place as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners” (Art. 16(1) of the Return Directive).

detention. In addition, the distinct nature of this type of confinement should be clearly noticeable to detainees (Hugi Yar, in Chatton and Merz 2017: 918). Judgement 2C_447/2019 states that “detention must take place in specifically designed facilities whose conditions of detention and architectural elements underline the fact that detention is of an administrative nature and has no connection with a prison sentence or pre-trial detention” (consid. 6.2.2). Most of the facilities used for immigration detention by Swiss cantons do not conform with Art. 81(2) and the respective case law. Despite some changes currently occurring which indicate some increased use of specialised facilities, most facilities used for immigration detention are still ordinary prisons, as will be discussed in Chapter 3.

2.5.2. Restrictions of liberty and specific conditions

The conditions of detention in immigration detention must first and foremost meet the minimum standards provided by international law that apply independently from the type and aim of incarceration. For instance, the European Prison Rules of the Council of Europe⁴³ regulate the minimum standards in terms of hygiene (19), provision of clothes (20), meals (22) and medical assistance (39 and following), and they guarantee the right to spend at least one hour in the open air every day (27.1). However, according to the Federal Supreme Court, the administrative detention of foreigners requires the application of more liberal conditions of detention than those granted to remand or convicted prisoners:

“The detention regime must be fundamentally different from that for prisoners on remand and convicts, especially with regard to security standards and accommodation. [...] The accommodation of administrative detainees must in principle allow a freer detention regime deviating from other categories of detainees (community rooms, visiting, leisure activities, etc.)” (ATF 122 I 222 of 12.07.1996, consid. 2, bb, author’s translation).

Judgement 122 I 222 defines two further principles for the conditions of detention in immigration detention. First, that contact with the outside and with other people in administrative detention should not be restricted (consid. 2, bb) and detainees should have the right to unlimited visits without surveillance (consid. 5, see also ATF 122 II 299 of 16.08.1996, consid. 6). Second, that the restriction of detainees’ rights and liberties should not exceed those necessary to ensure the aim of detention or the proper functioning of the facility (ATF 122 I 222, consid. 2, aa). In this respect, the enclosure of detainees in their cells during the day is unnecessary, and is justified only at night (Businger 2015: 306). In 1996 the Federal Supreme Court had already considered the enclosure of a detainee for 23 hours a day unlawful (ATF 122 II 299, consid. 5b, see also case law cited in Businger 2015: 306).

Detainees should be provided with work opportunities should they request it and if the facility can provide it. Although this rule was deleted from the FNA in 2014, facilities are still required to offer work to detainees (Chatton and Merz 2017 see also ATF 122 I 222, consid. 7, and ATF 123 I 221, consid. II.3). Certain cantonal legislations are more precise in this respect. In the canton of Bern, for example, adequate work opportunities must be offered to every person detained for more than two months (Art. 15. OMCo). Leisure activities should also be provided according to national case law (see for example ATF 122 I 222, consid. 2bb, ATF 122 II 49, consid. 5a) and leisure rooms should

⁴³ Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d8d25. Accessed 18 January 2020.

be at the disposal of detainees⁴⁴. In fact, according to a manual edited by the Association for the Prevention of Torture (APT) and the UNHCR, “the absence of purposeful activity is one of the most pervasive and damaging aspects of immigration detention. It stems from the view that immigration detention is a practice that needs only to focus on ‘containment’, and where the future well-being of the immigration detainee is not recognised to be a compelling social responsibility” (APT et al. 2014: 143).

Furthermore, according to the FNIA, the needs of vulnerable people, unaccompanied minors and families with minor children must be taken into account within detention arrangements (Art. 81(3)).

The adequacy of the conditions of detention is also assessed depending on the length of detention and the specific characteristics of detainees. Indeed, when a person is detained for a long period, the conditions need to meet higher standards than for a short period (see ATF 122 II 299 of 16.08.1996, consid. 4, decision of the Federal Supreme Court 2C_169/2008 of 18.03.2008, consid. 4). Conversely, specific security measures, which could be seen as constituting tougher conditions, can be taken towards dangerous detainees on the basis of an individual case evaluation (see for example judgement 2C_37/2011 of 1.02.2011).

As we will see in Chapter 3, the reality of the conditions of detention on the ground clashes in many respects with the standards provided by regulations and case law that were presented here.

The legal framework of administrative detention directed at foreigners has historically evolved into a framework of significant complexity. This is especially seen in the differentiation between at least eight different forms of immigration detention. Except for those forms aimed at holding foreigners at international airports to prevent unlawful entry, all other detention types take place in the same facilities, which can be either specialised facilities or can combine administrative and criminal forms of detention as in the case of the facilities under scrutiny in this thesis. The slight differences between each type of administrative detention, however, are only relevant at the time of ordering or extending the length of detention as well as reviewing its lawfulness. Few detention staff members or detainees can differentiate between these detention types, and such differences do not matter much in the daily work and life of detention facilities. In fact, the rights and conditions of detention are the same whether one is detained pending deportation, in preparation for departure or even in coercive detention.

The way in which this legal framework has evolved over the last century can be analysed through crimmigration theory. In fact, we have seen throughout this chapter how arguments relating to crime control and to migration control have always intertwined in political and legislative debates leading to such evolution. In particular, this framework reflects the three fronts on which crimmigration has taken place: substance of law, procedure and enforcement (Stumpf 2006), as briefly discussed here.

At the level of the *substance* of law, we have seen that criminal prosecution and conviction can constitute grounds for immigration detention in Switzerland (see Table 1). Majcher and de Senarclens (2015: 14) consider the introduction of criminal grounds for ordering immigration detention “as a means of deterring asylum seekers from committing crimes by providing authorities

⁴⁴ This is also clear in Art. 15j to 15o of the *Ordinance on deportation and expulsion*, which regulates the conditions under which the Confederation subventions the construction of immigration detention facilities. Accordingly, these facilities should contain specific spaces designed for work and leisure activities.

with administrative tools that are more flexible and more severe than the one existing in criminal law and that can be used for specific categories of foreign nationals” (see also Campesi and Fabini 2020). In other words, this introduction of criminal grounds is a way of controlling crime through immigration control measures. At the same time, the inclusion of grounds for detention related to several forms of non-compliance with orders, transforms detention into “a disciplinary tool for forcing the cooperation of persons suspected as having no legitimate motives for seeking asylum” (Majcher and de Senarclens 2015: 10, see also Campesi 2015), which tends to punish behaviour for foreigners in a different way than for Swiss nationals.

The second level at which crimmigration is manifest – the *procedural* – presents some similarities between immigration detention and the criminal justice system, but it is also where the most significant differences can be found. First of all, the decision to detain is taken by administrative rather than judicial authorities. A judicial review of the decision – establishing among other things whether detention is lawful and proportional – occurs within 96 hours of the detention order. However, this judicial review is only systematic for certain types of detention, whereas in the case of detention ordered as part of a Dublin procedure, the detainee must explicitly request the review, which is done in writing. Moreover, as already mentioned, Swiss law does not provide for a systematic right to free judicial assistance for people in administrative detention except in the case of extension of the duration after three months. By comparison, this right is guaranteed after ten days of confinement in remand custody (Businger 2015: 287-290). The FNIA only provides for the right to communicate with legal representatives (Art. 81(1)), but this right is undermined by the fact that many detainees have no legal representative at that time, and legal support is difficult to access in detention. These procedural aspects differ from the usual process of justice within the criminal justice system in a way that does not systematically protect detained migrants from potential abuses of state power resulting from an arbitrary use of discretion.

Finally, at the level of *enforcement*, we see that agents and practices are similar to those of criminal law if not identical in many cases. Migrants are arrested by the police and are transported – handcuffed – in police cars or prisoner-transfer vans. Moreover, as immigration detention in Switzerland mainly takes place in ordinary prisons, detainees are handled by institutions that are part of the criminal justice system, and hence detainees are watched and assisted by prison officers on a daily basis. This occurs despite immigration detention being an administrative measure which formally aims not at punishment but rather at enforcing deportation.

The administrative, non-punitive nature of confinement is supposed to be reflected in the conditions of detention, best achieved through specialised institutions being architecturally different from penitentiaries. This allows for the shaping of everyday routines which leave detainees with freedom of movement within the facility and ease their mutual contacts as well as contacts with the outside world. In the next chapter, I will approach the reality of the field by addressing the structural and institutional organisation of immigration detention by Swiss cantons. This will enable me to show how such implementation differs from the requirements of the law, further blurring the distinctions between migration and crime control through the use of ordinary prisons for the purpose of immigration detention and through the production of hybrid spaces of confinement.

Chapter 3. When immigration detention takes place in ordinary prisons: context of study

This chapter will move from the legal framework of immigration detention into the lived reality of the field. Under Swiss federalism, cantons have a certain room for manoeuvre in terms of how they organise and implement immigration detention on their territory in accordance with federal law. This leads to a diversity of practices among cantons with regard to the decision to detain individual foreigners on the one hand (Achermann et al. 2019; Guggisberg et al. 2017; Miaz and Achermann 2021b) and the type of facility used for this purpose as well as the material conditions of detention on the other. The discretion which is left in the hands of cantons concerning the concrete implementation of this legal measure has led most cantons to dedicate space for pre-removal detention within already existing, ordinary prisons. This normalised practice gives rise to an environment within detention facilities that I call the ‘crimmigration context’, as the same institution simultaneously serves functions of crime and migration control. Such hybrid use of carceral facilities strongly affects their daily functioning as well as the understandings of those working within them.

This chapter starts with statistical analyses that provide an overview of the characteristics of detainees and of the use of immigration detention by cantonal authorities. It then describes how detention is organised and managed by the cantons, presenting the different types of solution and the different kinds of facilities that are used across Swiss national territory. Short descriptions of a few facilities visited within the framework of this research are provided in order to reflect the diversity of material and detention conditions. Finally, in the last part of the chapter, I will present the two facilities in which I conducted my core field research, addressing their respective histories and specificities, describing their architecture and internal organisation as well as the conditions of detention that they provide. Such descriptions will be indispensable for understanding the analyses that follow in the second, empirical part of this thesis, which is mainly based on ethnographic research carried out in these two carceral institutions.

3.1. Who is detained? A brief analysis of statistical data

Data about immigration detention in Switzerland are not easily accessible and not completely reliable, following a global tendency (Global detention project et al. 2015). When this project started in 2014, the only data available were those provided in the yearly SEM migration reports, but these included only the total number, the three main nationalities of detainees and the average stay in detention (SEM 2015). For this reason, we decided to submit a request to the State Secretariat for Migration to obtain statistical data that we could analyse. Although the process lasted over a year, the SEM was very open and finally provided us with a large amount of raw data. The data are based on entries submitted by the cantons into the centralised migration information system called ZEMIS/SYMIC. Caution is needed in the reading of data, however, since cantonal authorities may not always make the entries in a systematic manner (Guggisberg et al. 2017).

The data provided by SEM includes all detention orders recorded between 1 January 2011 and 30 September 2017, and were analysed within our research team with the help of Dr Anne-Laure Bertrand. An overview of the results are presented in a policy brief published by the National Centre of Competence in Research ‘*nccr – on the move*’ (Achermann et al. 2019). In this section, I present some of these analyses with the aim of giving the reader context on the numbers and characteristics of people detained, as well as on the type and length of detention. This is, however, not intended as an exhaustive analysis of the different use of immigration detention by cantons,

which would require a much deeper analysis outside the scope of this thesis. Instead, my main concern is to analyse practices and experiences within detention spaces, and not those of migration officers who decide on the detention orders.

3.1.1. Individual characteristics

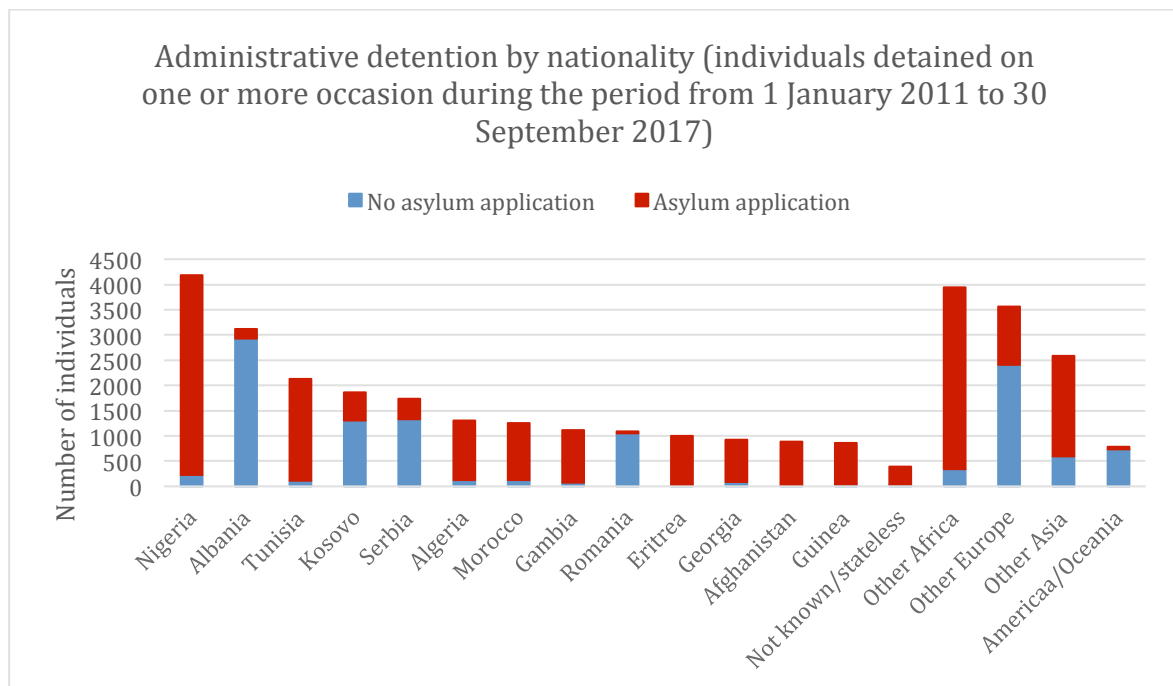
As we presented in the policy brief mentioned above, immigration detention in Switzerland applies to a strong majority of men (92% of detainees). Although the number of women in the migrant population is lower, this cannot fully explain such a low rate of women in detention. In fact, in 2017, 34% of the people who applied for asylum, 47% of the permanent foreign population and 29% of those receiving emergency assistance were women. The low rate of women's incarceration might be explained through higher levels of compliance among women, but there is no evidence for this hypothesis. The lack of detention places dedicated to women in immigration detention can also partly explain why women are detained much less often than men. However, this fact can also be analysed as evidence that the detention of women is not considered a priority and sometimes is not considered necessary at all because women are more readily perceived to be vulnerable and deserving, but also as passive subjects within the context of international migration. Coercive measures such as immigration detention are rather tailored to the image of young, racialised non-white men who are often perceived as willing to abuse Swiss hospitality through non-compliance and sometimes even criminal behaviour.

Among those people who were detained one or more times in the period under study⁴⁵, almost two thirds (65%) had applied for asylum at some point during their stay in Switzerland. Among those who had received an asylum decision, the majority (86%) had seen their asylum application dismissed without entering into the substance of the case, which can occur in case of a decision of transfer according to the Dublin III Regulation, when the person can travel to a safe third country, or when the asylum request has been exclusively made for economic or medical reasons (Article 31a of the Asylum Act). This data points at the more frequent use of immigration detention to enforce removals to third countries rather than to the country of origin when it comes to asylum seekers. Only 14% of the detainees who had applied for asylum had received a negative material decision. Among the women detained, the rate of asylum seekers was lower (42%) than among men (67%), and the percentage of negative asylum decisions was higher (at 20%) than among men (13%).

Approximately 50% of detainees came from seven countries, namely Nigeria (13%), the North African countries of Tunisia (7%), Algeria (4%) and Morocco (4%), and the Western Balkan countries of Albania (10%), Kosovo (6%) and Serbia (5%). However, the detainee population displays a high diversity of nationalities, with the remaining 52% of detainees coming from 144 other countries. Those also include members of the European Union, particularly Romania (3%). Graph 1 shows detainees by nationality and the proportion of each who have applied for asylum.

⁴⁵ For the purpose of our statistical analysis, we decided to differentiate between three levels. When discussing the personal characteristics of people detained, the analyses are based on the individual level, meaning that a person who was detained several times or with several detention orders is counted only once. When discussing the detention types, each detention order is counted, since one period of detention can be composed of several detention orders. When presenting analyses on the length of detention, subsequent detention orders are summed up where there has not been a release between them.

Graph 1: Administrative detention by nationality



Source of data: SEM (data provided for this research project)

As we can see from the graph, the ratio of detainees who have applied for asylum differs significantly depending on nationality. Parallel to that, the main nationalities differ when we consider immigration detention used within or outside the asylum system. The majority of detained asylum seekers come from Nigeria (19%), Tunisia (10%), Algeria (6%) and Morocco (5.4%), but also from Gambia (5%), Eritrea (5%) and Afghanistan (4%). As regards people who have not applied for asylum, the vast majority of those detained come from the Western Balkans (Albania 25%, Serbia 12%, Kosovo 11%, Macedonia 5%) as well as Romania (9%) and Brazil (3%).

Detainees' nationalities also differ according to the sex of detainees. Among women, who constitute 8% of the people detained (and of the detention orders) in the period studied, the highest represented nationalities are Serbia (11%), Eritrea (7%), Romania (6%), Brazil (6%) and Nigeria (5%), as well as Bosnia (4%), Bulgaria (4%) and Asian countries such as Thailand (4%), China (3%) and Mongolia (3%). It should be noted that despite the total rate of detained men being much higher, more women than men were detained from a few countries, namely Brazil, Bulgaria, Thailand and Mongolia.

The average age of detainees was 29 years old. According to the data provided by SEM, in the period under study, detention was ordered against minors between 15 and 18 on 1,952 occasions, comprising 5% of the total number of detention orders. Furthermore, the data contains 308 entries concerning minors lower than 15 years old, the detention of whom is prohibited by law. While more than half of those children were detained only for one day, the average length is of ten days, which points at some children being detained for longer periods.

According to information provided at the time of my visit to the RP Thun – which was equipped with a cell for mother and child – as well as an NGO report (Terre des Hommes 2018), children below 15 could be detained together with their mother in order to avoid separation. Often those detentions would even not be registered, since only the mother was formally detained, and thus the true figure is assumed to be higher than the data reported. Following critique by the Parliamentary Control of Administration, the SEM has explained that there had been systematic errors of cantons

in the entering of data about the detention of children below 15, so this data seems to be biased (Contrôle parlementaire de l'administration 2017). Following the recommendation of the Parliamentary Control to end the detention of children under the age of 15 as provided by law, the Federal Council has agreed that such detention must be avoided and has tasked the SEM to work with the cantons to seek alternatives⁴⁶.

3.1.2. Use of detention

The data provided by SEM also allow us to analyse – at least to some extent – what use Swiss authorities, and particularly the cantons, make of immigration detention. First of all, the data give us a hint about the general evolution of incarceration numbers. In Table 2, I have compared data provided by SEM for this project to that contained in the SEM yearly migration reports and found that these are not equivalent⁴⁷. Since the data provided in the reports is available for a longer period of time, I have used it in Graph 2 to show the evolution of detention orders from 2008.

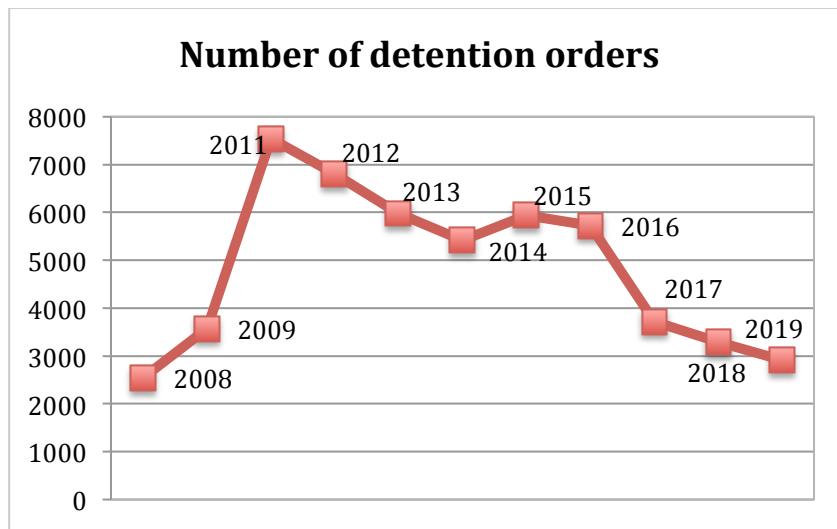
Table 2: Evolution of total immigration detention orders

	SEM yearly migration reports	Data provided by SEM for this project	Percentage of asylum seekers (data provided by SEM)
2011	7,540	5,957	72%
2012	6,804	7,051	73%
2013	5,982	6,616	72%
2014	5,417	5,580	65%
2015	5,935	5,700	60%
2016	5,732	5,636	63%
2017	3,724	3,155* (only until 30.09)	63%
2018	3,284	-	-
2019	2,921	-	-

⁴⁶ Press release of the Federal Council of 2 October 2018, <https://www.ejpd.admin.ch/ejpd/fr/home/aktuell/news/2018/2018-10-02.html>. Accessed on 22 January 2020.

⁴⁷ The little information I have on the nature of this data does not allow me to explain the difference between the two sources.

Graph 2: Evolution of detention orders 2008-2019



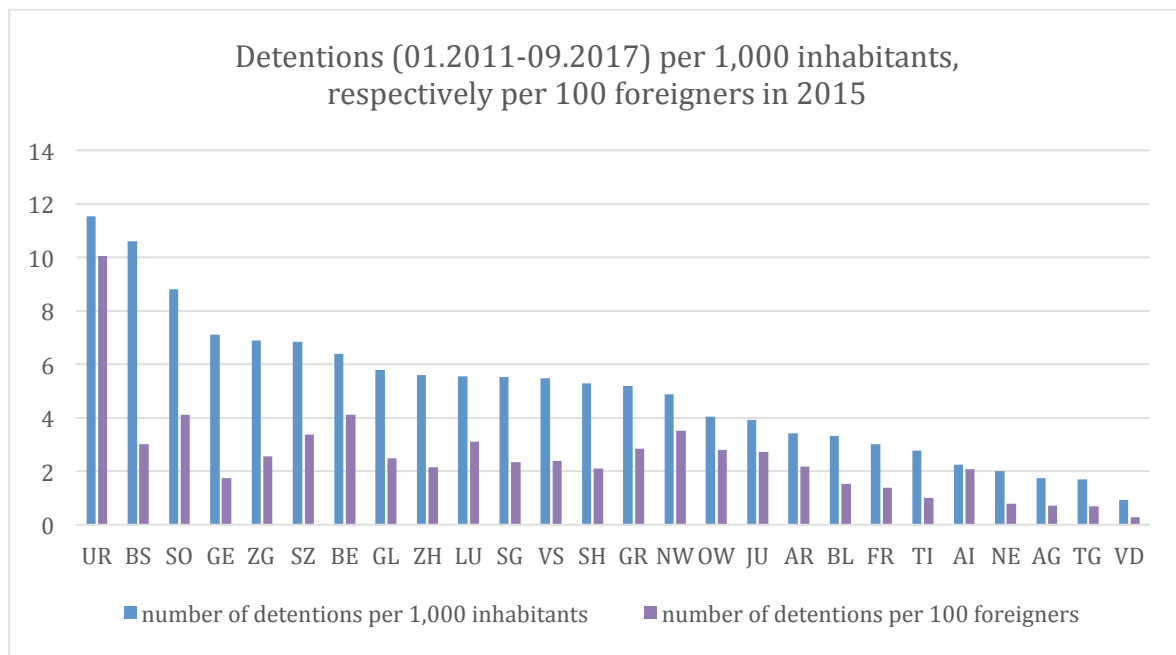
Source of data: SEM, yearly migration reports (not available for 2010)

Although this might be explained by a more cautious use of detention by cantonal authorities and a wider use of alternatives to detention, continued calls for further capacity within the system also raises the question whether the number of detentions has decreased for logistical reasons. The decrease is also not explainable by the number of asylum applications or asylum dismissals, since those have fluctuated over the same period. The 2015 peak in asylum applications during the so-called ‘migration crisis’ is also not reflected in the number of incarcerations, which only slightly increased in that year. Interestingly, 2015 displays the lowest percentage of asylum seekers within those incarcerated. It is also worth noting that the rate of asylum seekers decreased from 72% in 2011 (4,281 individuals) to 63% in 2016 (3,568 individuals). Again, this decrease cannot be explained by the number of asylum applications, which was lower in 2011 (22,551) than in 2016 (27,207).

The number and type of detentions in the period observed varies greatly from one canton to another. The cantons detaining the highest number of migrants are Zurich (8,209), Bern (6,493), Geneva (3,443) and Basel-Stadt (2,033). However, these are also relatively densely populated cantons with large urban areas. In order to compensate for this, the number of incarcerations is presented with respect to the total population of the canton as well as the number of foreigners residing in the canton in Graph 3⁴⁸. The two cantons in which the facilities studied are located, namely Basel-Stadt (BS on the graph) and Bern (BE), remain among those cantons most frequently ordering immigration detention even after having considered the size of the (foreign) population.

⁴⁸ The high number of detentions in the small canton of Uri can be partly explained by its location on the main railway crossing Switzerland from South to North (Miaz and Achermann 2021b).

Graph 3: Number of detentions in relation to population



Source of data: SEM (data provided for this research project)

As mentioned in section 2.3, detention pending deportation is the most frequently used detention type (78% of detention orders). However, it should be noted that until 1 July 2015, this detention type allowed the detention of asylum seekers subject to a Dublin decision as well, while from that date on, a new detention type has been introduced in the law for this purpose (Art. 76a). Detention under the Dublin procedure makes up 31% of all detention orders since that date. Again, the use of detention types differs across cantons. Table 3 presents the national rates as well as specific data on the cantons with which this study is mostly concerned. While the use of detention by Bern (BE) and Basel-Land (BL) is largely in line with national rates, those of Basel-Stadt (BS) are particularly interesting since they display a large use of temporary detention. This might be partly explained through the fact that Basel is a border city so most temporary detentions might be ordered following border control. The cantonal migration office explained that this type of detention is used when a person is controlled in the night, or when another canton is competent for a person (a transfer is then organised to that canton) or to notify an entry ban.

Table 3: Number of detention orders per type in the cantons of main concern for this thesis

	Art. 73	Art. 75	Art. 76	Art. 76a	Art. 77	Art. 78	Total
National (total)	3,421 8.6%	1,072 2.7%	31,247 78.7%	3,691 9.3%	55 0.1%	209 0.5%	39,695 100%
BE	367 5.7%	152 2.3%	5,229 80.5%	719 11.1%	6 0.1%	20 0.3%	6,493 100%
BL	21 2.2%	32 3.4%	811 86.2%	71 7.5%	1 0.1%	5 0.5%	941 100%
BS	925 45.5%	47 2.3%	912 44.9%	144 7.1%	1 0.0%	4 0.2%	2,033 100%

Source of data: SEM (data provided for this research project)

Cantons also differ in the rate of women detained, who represent 11-12% of the detainees in Solothurn, Bern and Zurich, while they are hardly ever subject to detention in cantons such as Vaud, Geneva, Aargau and Ticino (1-2%). Basel-Stadt reflects the national rate of 8%, while Basel-Land is slightly below with 6%. The proportion of detainees having applied for asylum at one point of their trajectory also differs greatly across Switzerland, lying at only 38% in Geneva and 53% in Zurich, while it is 98% in Ticino and Basel-Land. As for Bern and Basel-Stadt, the proportion of asylum seekers is closer to the national average of 65%, with 66% and 69% respectively.

In Table 4 and Graph 4, I have compared the number of detentions ordered within the Dublin procedure to data about Dublin decisions and transfers. Between 2011 and 2014, detention was ordered following 37% of Dublin decisions. While the number of Dublin decisions has risen in 2015 and 2016 following the so-called migration crisis, the number of detentions has not reflected this peak, having decreased in 2015 and only slightly increased in 2016 (corresponding to 19% and 22% of Dublin decisions). While the number of detentions has had a tendency to decrease over the past few years, the proportion with respect to the number of transfers has always remained high. In fact, as appears from Table 4, most Dublin transfers are enforced from detention: the rate was about two thirds of removals enforced from detention between 2011 and 2015, it decreased during 2016-2017 and then increased again reaching almost 70% in 2018. Interestingly, despite this high number of detentions in 2018, the rate of enforcement was lower (42%) than in 2019 (63%), the year in which the number and rate of Dublin detentions had decreased (58%). This data shows how detention has become a normalised instrument to enforce Dublin transfers from Switzerland and sustain the Dublin system.

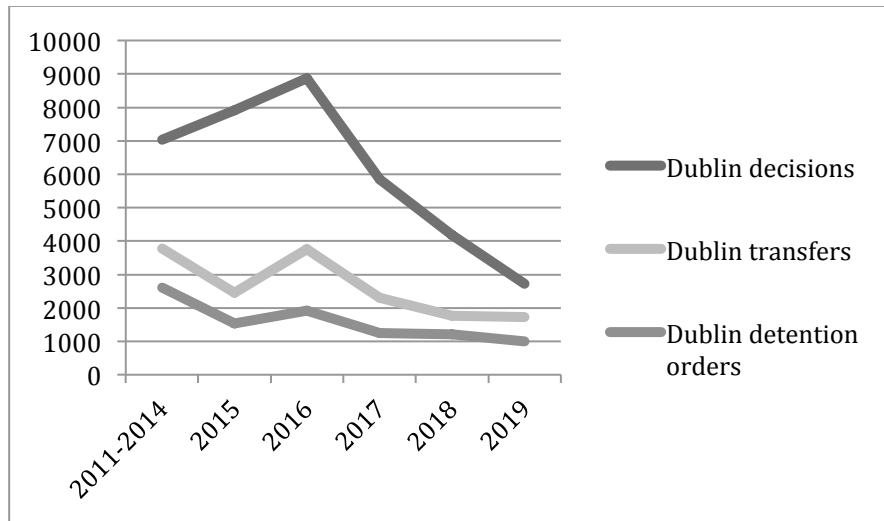
Table 4: Evolution of Dublin detention 2011-2019 with respect to Dublin decisions and enforced transfers

Year	Dublin decisions	Dublin transfers	Enforce-ment rate	Dublin detention orders	Dublin decisions followed by detention	Dublin transfers preceded by detention
2011-2014	28,151	15,071	54%	10,429	37%	69%
2015	7,915	2,461	31%	1,540* (estimate)	19%	63%
2016	8,874	3,750	42%	1,922	22%	51%
2017	5,843	2,297	39%	1,249* (estimate)	21%	54%
2018	4,185	1,760	42%	1,213	29%	69%
2019	2,720	1,724	63%	994	37%	58%

Source of data: SEM (public statistics, yearly migration reports and data provided for this research project)

* For 2015 and 2017 the number of detention under the Dublin procedure is not available. The numbers are estimates based on available data provided by SEM (1540 has been calculated on the basis of 770 detentions ordered in the first half of the year; 1249 on the basis of 999 detentions ordered until 30 September 2017).

Graph 4: Evolution of Dublin detention orders compared to Dublin decisions and transfers

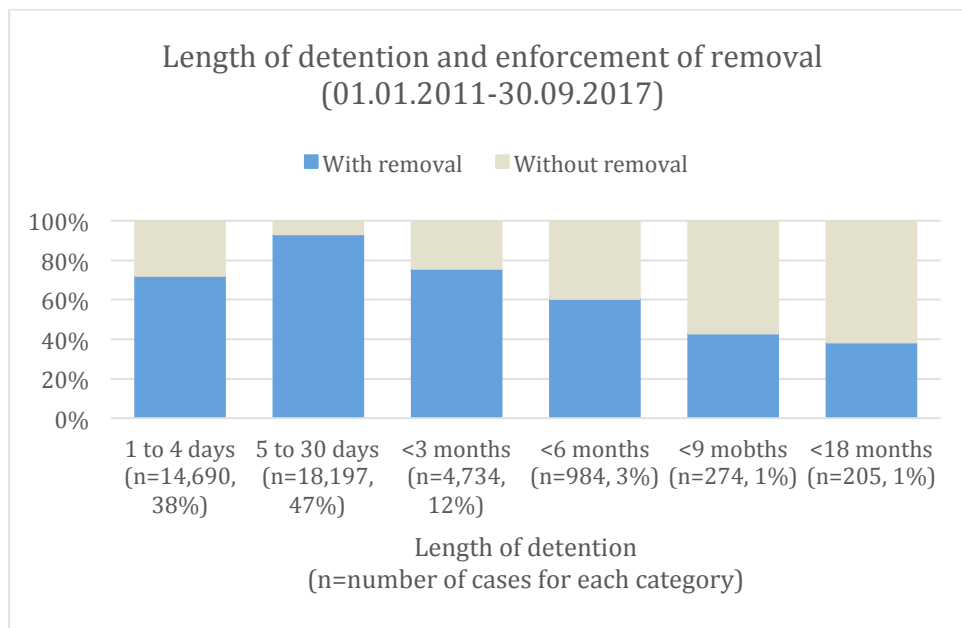


Source of data: SEM (public statistics, yearly migration reports and data provided for this research project)

Moving on to analyse the length of stay in detention, this lies at an average of 22 days over the whole period under scrutiny, with little variation from one year to another. The median is nine days, meaning that half of the detentions last less than ten days. The average hides a high variety of situations, however, with 32% of the incarcerations lasting between 11 days and one month, and 16% for more than one month (see also Graph 5). Among those 6,197 people whose detention lasted more than three months, the rate of asylum seekers significantly increases, reaching 85%. The percentage of negative decisions also increases to 32%. The length of detention differs from canton to canton, with the average length of detentions in Basel-Land being well over the national level at 33 days (and a median of 22). On the other hand, detentions in Basel-Stadt are much shorter (15 days on average, with a median of four), which is explainable through the high number of temporary detentions that cannot last more than three days. The length of detention in the canton of Bern follows approximately the national levels (with an average of 20 and a median of eight days).

Graph 5 also reports the deportation rate in relation to the length of detention. Since immigration detention according to Articles 75 to 78 FNIA is aimed at enforcing removals, this rate can be read as pointing at the effectiveness of the detention ordered. 81% of the detentions ordered in the period of study have ended with deportation. As presented in the policy brief mentioned above, this proportion is lower for detainees having applied for asylum (77%) than for those who have not (88%), and varies according to the type of detention. While detention pending deportation and under the Dublin procedure succeeded in 89% of the cases, detention in preparation for departure only ended with deportation in 40%, coercive detention in 20% and temporary detention in 12% of cases (Achermann et al. 2019). In accordance with these analyses, detentions ordered from Basel-Stadt have a low deportation rate (49%) since they present a high proportion of temporary detentions, while the cantons of Bern and Basel-Land have average rates (respectively 86% and 80%).

Graph 5: Length of detention and enforcement of removal



Source of data: SEM (data provided for this research project)

As I will also mention in Chapter 7, the deportation rate can be relativised by post-deportation returns, which occur with high frequency when removals take place within the Schengen space and in Eastern Europe. The fact that our analyses have found a high number of cases in which one person has been detained several times supports this theory, since some have probably been removed and have returned between different detentions. According to the data analysed, 3,112 people were detained twice (9.5% of all the people detained in the period under study), 670 people (2.0%) three times and 182 people (0.6%) four times. Furthermore, 98 people were detained between 5 and 7 times, 15 between 8 and 11 times, and one person 18 times.

The statistical analysis carried out within our research project, part of which I have presented in this section, sheds light on the differential use of detention made by the authorities of different cantons. This is the consequence of a federal system of migration enforcement in which the cantons have the competence to execute deportation orders and can follow different strategies to do so, including ordering detention. The same diversity of cantonal practices can be found at the level of infrastructure and detention conditions, as will be discussed shortly. Despite the autonomy of cantons being one of the main principles of Swiss federalism, leaving cantons a large room for manoeuvre in many areas of government, this kind of inconsistency in the ways in which different cantons handle migration control can lead to inequality of treatment that is hardly justifiable. This point has been underlined by the Parliamentary Control of Administration, which has observed significant differences in the use of immigration detention in the field of asylum.

3.2. Institutional organisation and conditions of immigration detention

Until the 1990s, immigration detainees were confined in prisons, often without being separated from other inmates. The need for separation from other types of detention was introduced in 1995 with the Law on Coercive Measures. The following year, the canton of Zurich was the first canton to open a facility dedicated to immigration detention. Adjacent to a penitentiary and managed jointly, it was built with high security standards and a strong carceral character (see Box 3). In

2000, two other facilities were opened to serve the sole purpose of immigration detention: Bässlergut (canton Basel-Stadt) and Frambois (canton Geneva). The first was a new building planned specifically for immigration detention, but again with penal standards, which later allowed for the partial conversion of the building to accommodate the detention of criminal convicts (see section 3.3.2). The second was originally a closed institution for minors which was later converted into an immigration detention centre, with a different character and more lenient conditions of detention (see Box 1). Besides these facilities, many cantons continued to detain people under immigration law in ordinary prisons, while mostly creating a separated space for their confinement to conform to national law and jurisprudence.

This situation is illustrative of how the problem of enforcing removals was framed in the 1990s and 2000s. Arguments related to crime and ‘abuse’ of the asylum system have not only impacted the legal development of immigration detention, as seen in section 2.1, but also the political choices made by Swiss cantons regarding the practical and institutional organisation of immigration detention (see also Rezzonico 2020a). This context explains the conception of new facilities such as the Zurich airport prison and the detention centre of Bässlergut taking the penal prison as an architectural and institutional model – both of them are also part of a larger carceral institution comprising penal forms of detention. This also partly explains why many cantons have converted parts of existing prisons for the use of immigration detention.

The resort to prison may not be surprising given that it is the institution of liberty deprivation *par excellence*: the transposal of a measure to deal with a different problem than the one for which it was conceived is a recurrent feature of policy development (see also Huysmans 2006). It is interesting to note, however, that the will to distance such institutions from penal models was more tangible in other national contexts such as the French or Italian ones, than in Switzerland. For example, in these countries the choice of wording does not recall the prison and criminal context – *rétenion*, *trattenimento* (holding) rather than detention – and daily management can be delegated to NGOs to stress the administrative and humane character of confinement (Campesi 2015a; Fischer 2017).

In 2021, confinement under immigration law in the same institutions as remand prisoners and criminal convicts is still the most common solution across the country. Among approximately thirty institutions used for the purpose of immigration detention, only four are exclusively dedicated to immigration detention. This is not in line with European standards and especially with the Return Directive, which is binding for Switzerland and requires the use of specialised facilities for the administrative detention of foreigners. Even at a national level, this situation does not conform to the law, especially since the reformulation of article 81(2) FNIA which now explicitly provides that detention shall take place in dedicated facilities⁴⁹. As seen in Chapter 2, even by the time of this research, confinement in the same facilities as criminal offenders was allowed by law only in exceptional cases, in separated areas, and only if it was possible to differentiate the detention regimes, providing more freedom of movement and possibilities for social contacts within immigration detention.

Besides the explanation outlined above relating to the national political context, the use of ordinary prisons can be also explained by reasons of practical character. Switzerland has a federal form of

⁴⁹ In 2020, the Federal Supreme Court has clarified this provision and the fact that confinement in non-specialised facilities can be lawful only in exceptional cases, and must be short and motivated (see section 2.5.1).

government⁵⁰ in which several competences in the matter of immigration control are allocated to the cantons, leaving them a certain room for manoeuvre regarding the implementation of national law. Among other tasks, the cantons are in charge of enforcing removals, both where they have been ordered by SEM (for asylum cases) or by the cantons themselves (for non-asylum cases). In their attempt to enforce deportation, the cantons can order detention when they consider it necessary and proportional. The resort to coercive measures by the cantons is not mandatory but discretionary, and this factor accounts for the important differences between cantons regarding detention and deportation practices.

In line with federal principles, every canton is also responsible for organising its detention capacity and places with regard to immigration detention in the same way as with criminal forms of detention⁵¹. They can do so by creating specialised facilities (sometimes inter-cantonal, as in the case of Frambois, see Box 1 below), by signing bilateral agreements with other cantons to be granted a number of places in an appropriate facility or by using already existing cantonal carceral facilities. The latter solution is often considered the most practical and flexible since it does not involve inter-cantonal arrangements and allows the quick conversion of detention places from one regime to another according to need. Furthermore, confinement within cantonal territory makes it easier for cantonal authorities to organise hearings or meetings with the detainee.

3.2.1. Levels of separation from criminal detention

Given the changeable and flexible use of detention facilities by many cantons, it is not easy to obtain an accurate number of facilities used for immigration detention. A short piece of research conducted online by the author in 2015 – and again in 2020 – revealed more than 30 facilities used for this scope. This is in line with the findings of the Global Detention Project, which found 32 facilities used for the administrative detention of foreigners (Global Detention Project 2011). In 2017, a report monitoring capacity in the field of liberty deprivation identified some 23 facilities that were regularly used for immigration detention (see Table 5). However, in the 2019 Catalogue of penitentiary establishments redacted by the Federal Statistical Office, fifteen additional facilities are said to be used for immigration detention⁵². Among these, only four were used exclusively for immigration detention (Bazenheid, Widnau, Favra and Frambois, see Table 5); all the others being ordinary prisons confining convicted prisoners and those on remand, and sometimes even individuals held for reasons of public protection⁵³. In addition, migrants are sometimes detained in police jails for the first days of their detention, as occurs in Zurich, for example.

⁵⁰ Swiss federalism is based on the distribution of power between the Confederation, the cantons and the municipalities, and according to the principle of subsidiarity (Art. 5a Constitution), meaning that “the Confederation only undertakes tasks that the cantons are unable to perform or which require uniform regulation by the Confederation”, and “nothing that can be done at a lower political level should be done at a higher level” (<https://www.ch.ch/en/demokratie/federalism/federalism/>).

⁵¹ In the area of criminal law, “the Cantons are responsible for the organisation of the courts, the administration of justice in criminal cases as well as for the execution of penalties and measures, unless the law provides otherwise” (Art. 123(3) of the Federal Constitution). The fact of being in charge of the execution of penalties means the cantons must make arrangements to obtain the necessary capacity for the purposes of incarceration. In order to fulfil this task and facilitate inter-cantonal coordination in this matter, the cantons constituted three regional *concordates* in the years 1956 to 1963.

⁵² Federal Office of Statistics, “Catalogue des établissements pénitentiaires”. Last update on January 2019. <https://www.bfs.admin.ch/bfs/fr/home/statistiques/criminalite-droit-penal/execution-penale/etablisements-penitentiaires.assetdetail.8126301.html>. Accessed on 11 August 2020.

⁵³ The penal code provides that a ‘measure’ is issued when the sentence itself is insufficient to prevent the offender from committing another offence, when a person is deemed a danger to the public and/or needs psychiatric treatment (Criminal Code, Art. 56(1)). A measure differs from a sentence as it does not aim to

The carceral facilities used for immigration detention in Switzerland are extremely diverse. They differ in size, in the ratio of immigration detention capacity to total capacity, in building-type, security levels, geographic location, conditions of detention, and in many other characteristics. This section focuses on the coexistence of different types of detention and the level of separation between immigration and criminal detention. I draw mainly on my one-day visits to four facilities, as well as the two main facilities in which I conducted longer fieldwork. Details of these additional four facilities will allow the reader to place the other two – which will be presented in detail in the last part of the chapter – within the broader landscape of Swiss immigration detention conditions.

As already mentioned, only four facilities are used exclusively for immigration detention without being part of or annexed to a prison. Two of these (Frambois and Favra) are run within a *concordate* established by the French-speaking cantons of Geneva, Vaud and Neuchâtel in 1996 – one year after the Law on Coercive Measures came into force (see section 2.1) – with the aim of jointly managing immigration detention in the region⁵⁴. The other two are located in the canton of St Gallen (Bazenheid and Widnau). These facilities are all small in size (with between eight and 20 places), and the conditions of detention are very different. Among them, Frambois (see Box 1) is certainly the one that provides the most open detention regime, while the others and particularly Bazenheid and Widnau were criticised in 2016 by the National Commission for the Prevention of Torture for providing conditions that were far too restrictive⁵⁵.

punish the detainee. People subject to a measure should be placed in a specialised carceral institution and receive appropriate psychiatric support and treatment according to the Criminal Code (Art. 58(2), Art. 59(2)). Due to the serious shortage of space within such institutions, however, the Swiss carceral system detains many of these people in ordinary, non-specialised prisons, together with other inmates without psychiatric problems.

⁵⁴ Concordate for the execution of administrative detention of foreigners (*Concordat LMC*).

⁵⁵ According to the report of 17 March 2016, these two facilities provide freedom of movement inside the facility only from 9-11am and from 2-4pm. See *Bericht an den Regierungsrat des Kantons St.Gallen betreffend den Besuch der Nationalen Kommission zur Verhütung von Folter in den Gefängnissen der Kantonspolizei St.Gallen vom 5. und 6. Oktober 2015*, accessible online: <https://www.nkvf.admin.ch/dam/nkvf/fr/data/Berichte/2015/st-gallen/bericht-kafo-st-gallen.pdf.download.pdf/>. Accessed on 30 March 2021. Favra was also criticised and found to be not adapted for immigration detention. See *Visite de suivi de la CNPT dans l'établissement de détention administrative de Favra*, 8 April 2020, also accessible online: <https://www.nkvf.admin.ch/nkvf/fr/home/publikationen/newsarchiv/2020/2020-05-07.html>. Accessed on 11 August 2020.

Table 5: Facilities used for immigration detention (2017)

North-West and Central Switzerland	Canton	Total places	Places in imm. det.	% out of total places
JVA Grosshof	LU	114	2	2%
JVA Wauwilermoos	LU	78	14	18%
JVA Witzwil	BE	184	18	10%
Strafanstalt Zug	ZG	45	12	27%
Gefängnis Bässlergut	BS	73	30	41%
Gefängnis Stans	NW	32	7	22%
Regionalgefängnisse Kanton Bern (Bern, Thun, probably includes Witzwil)	BE	405	72	18%
Kantonalgefängnis Schwyz	SZ	33	8	24%
Untersuchungsgefängnisse Solothurn + Olten	SO	88	10	11%
Untersuchungsgefängnis Waaghof	BS	148	4	3%
Zentral- und Bezirksgefängnisse AG	AG	233	14	6%
JVA Realta	GR	120	16	13%
JVA Sennhof	GR	57	20	35%
East Switzerland				
Flughafengefängnis Zürich	ZH	200	106	53%
Gefängnis Bazenheid	SG	12	12	100%
Gefängnis Widnau	SG	8	8	100%
Latin Switzerland				
Crêtelongue/Granges	VS	61	18	30%
Favra	GE	20	20	100%
Frambois	GE	20	20	100%
Prison centrale de Fribourg	FR	79	4	5%
Total		23	415	

Source of data: Report of the Technical Group 'Monitoring of capacity in deprivation of liberty', concerning data from 2017.

Box 1: Frambois: A less carceral atmosphere⁵⁶

Previously a facility for minors, Frambois⁵⁷ (canton Geneva) opened as an immigration detention facility managed by the *Concordat romand LMC* in 2004. When entering the detention centre through an ordinary door in a small unimposing entrance, I was struck by the very different character of this place compared to the prisons I had visited previously, where imposing gates, cameras and barbed wire were the norm. From the outside, the facility looked like a family house, in spite of its being surrounded by a fence. Despite the age of the infrastructure and some visible deterioration, the place feels much more friendly and welcoming than the more modern carceral buildings I had had the opportunity to visit elsewhere. Furthermore, the prison director and staff had a different attitude from those in the other facilities visited, and the atmosphere among the detainees seemed more relaxed – a few of them greeting me with a “Welcome” when I walked through the facility.

The director of Frambois explained that when the facility was conceived in the early 2000s, there was a political will to avoid hiring staff with a prison background in order to avoid the establishment of an institutional penitentiary culture. The director, for example, was hired – at that time not in a head position – as a sociologist with solid experience in the migration field and in humanitarian organisations. From the beginning, the facility allowed for long hours of free movement within the detention area, and also provided detainees with cooking facilities as well as work opportunities.

Within the carceral space – consisting of seven sections with two or three individual cells in each – there is large freedom of movement. The doors of the cells and sections are closed only between 9pm and 8am. Detainees can nevertheless lock the door of their own cell during the day if they wish to, as each cell has two locks, one for staff and one for the detainee. During the day, detainees can move freely within the carceral space and make use of a large common area that includes a kitchen, a room for leisure activities, a secure courtyard and a fitness room. All these areas are accessible throughout the day. During lunch and dinner periods, detainees can obtain the food items needed from the grocery, cooking their meals in a common kitchen. They can also keep the cooked food in the fridge provided in each cell. Detainees can work, either by assisting in housekeeping tasks or by taking duties in the workshops. Furthermore, there is a certain degree of autonomy in how they structure their days, and this results in a more casual and relaxed atmosphere of coming and going. Unlike in other facilities, the physical environment does not continually make you think that you are in prison.

Another distinguishing feature of Frambois is the composition of the staff. Described as ‘multicultural’ by the director, this factor is considered a source of richness by the staff. Staff members are required to get to know the detainees and listen to their personal stories. The staff should shake hands with the detainee and show empathy, the director explains. Detainees are called ‘*pensionnaires*’ (‘residents’) by staff who avoid the use of ‘detainee’ or ‘inmate’. Although this approach can be interpreted as a way of hiding the carceral nature of the facility, it also shows an effort to differentiate immigration detention from penal incarceration related to punishment.

Aside from the facility of Frambois, there are only a small number of dedicated immigration detention centres, and so most immigration detainees are confined in local prisons or jails, as shown in Table 5. The Swiss carceral system differentiates between facilities for long-term sentences

⁵⁶ The information provided in this box refers to the situation in 2017.

⁵⁷ The facility was the subject of a documentary 2011 film entitled *Vol spécial* (‘Special flight’), directed by Fernand Melgar.

(*Justizvollzugsanstalten*⁵⁸), usually managed at the inter-cantonal level, and cantonal facilities for pre-trial detention (*Gefängnisse*⁵⁹). While the first are oriented towards rehabilitation and reintegration, focusing on work and education activities, the latter are mainly focused on security in the short term. These types of prisons house a very diverse population, often made up of women as well as men – held separately – and sometimes of minors. Usually there is also a mix of remand and convicted prisoners (either with a short sentence or awaiting transfer to another facility), held separately under different regimes.

Using local jails for immigration detention is a practical solution for the cantons as these jails are often situated in urban areas, next to the offices of cantonal authorities, and can manage wide fluctuations in the number of detainees as well as in the differing terms of detention. However, the conditions of detention are often very restrictive, a situation that reflects on the conditions of immigration detention. The Regional Prison of Bern (RP Bern), which will be described in more detail towards the end of this chapter and in the rest of this thesis, clearly illustrates how the institution's original use as a remand prison impacts the entire structure and conditions of detention.

The prisons of Bern, Bässlergut, Thun and Zurich airport – all examples of this type of local prison – are used only partially for immigration detention. The degree of separation from penal detention varies largely from one facility to another, however. Whereas in the RP Bern, a person can be detained under immigration law in a cell right next to another holding a remand detainee, the prison of Thun (see Box 2) operated immigration detention in a separate section, the prison of Bässlergut on a separate floor and the prison of Zurich airport (see Box 3) in a separate building. In these kinds of facilities, security measures and conditions of detention are often designed for criminal imprisonment, thereby limiting the chances of offering adequate conditions for immigration detention. At the same time, many jails and local prisons allocate only a few places for immigration detention (see Table 5), which means that staff members are often ill-prepared and inadequately informed about this peculiar type of detention, having little or no knowledge of detainees' rights or opportunities in terms of judicial review or legal advice. Furthermore, because of their low numbers within such facilities, detainees undergo the risk of being de facto isolated, especially if they are the sole person held in immigration detention. This could occur, for example, in the Regional Prison of Thun (see Box 2), which used to have a small section dedicated to women in immigration detention, as well as in the immigration detention women's section of the Regional Prison of Bern (see section 3.3.1).

Box 2: Regional Prison of Thun: Female immigration detention section⁶⁰

The Regional Prison of Thun (canton Bern) was opened in 2001 with 77 places. A few years later, in 2005, it already needed some renovation work and was expanded to house up to 98 detainees. As with most regional prisons, it is used mainly for pre-trial detention (at the time of my research, approx. 60%), but the institution can be used for almost all detention types and regimes. A section dedicated to immigration detention was opened in 2008 providing for 14 places for males, and was operated on behalf of the canton of Aargau, as a temporary solution during the renovation of its local prison. This section closed in 2013. Two years later, in 2015, a new immigration detention section for women opened, with four places and two emergency beds. Since 2015, women were transferred there after a first short period in the Regional Prison of Bern. The RP Thun was also

⁵⁸ Or *établissements d'exécution des peines* in French.

⁵⁹ There are several names for this type of prison: *Kantonsgefängnis*, *Regionalgefängnis*, *Bezirksgefängnis*, *Untersuchungsgefängnis*. In French, these prisons are usually called *prison régionale* ('regional prison' – the term I use in this thesis).

⁶⁰ The information provided in this box refers to the situation in 2017.

equipped for the detention of mothers with small children, regardless of the type of detention regime. However, as a consequence of criticism raised by the Parliamentary Control of Administration in 2017 (see *Contrôle parlementaire de l'administration* 2017), the prison director decided not to accept these cases anymore and this practice has stopped. Today, the RP Thun is not used for immigration detention.

The coexistence of a multitude of detention types and regimes as well as populations – male, female, minors – comprises an important challenge in the arrangement of the detention space and placing of the detainees in accordance with the principle of the separate detention regimes. The director of the RP Thun explained that in order to guarantee such separation, half of the detention places should be kept empty. The case of minors is particularly difficult to manage, as only a small number of detention orders concern them. The same is true for women in the RP Thun: an average of three women were held at any one time in immigration detention, so they could easily end up in *de facto* isolation, as also occurred with pre-trial and criminal detention. Hence in some cases, the director explained, they preferred to hold women in immigration detention alongside female convicts to avoid isolation⁶¹. Although this solution can be seen as a necessary compromise from the point of view of the institution, and may be favourable for detainees too, it is also a problematic practice both in legal and in symbolic terms, demonstrating as it does that cantonal authorities organise detention according to practicality rather than an adherence to legal rules and respect for detainees' rights.

At the material level, the situation in Thun is similar to that in the RP Bern. Despite the infrastructure being much more recent, it aims to meet high security standards. Specific outside areas on the roof are used for exercise. These 'yards', covered with concrete and secured by bars across the top, appear very grey and unwelcoming despite a mural on one of the walls, and the sun hardly ever reaches these areas. The immigration detention section consists of two double cells, showers and a leisure room with a sofa, TV⁶² and table football. Sports equipment and a phone were available in the corridor. The cell windows were milk-glass (except for a small part that allows one to see outside) and cannot be opened.

Another problem that emerges in such small sections is that information-sharing among detainees is less effective than in prisons with larger sections and a more open regime, such as Bässlergut where long-term and experienced detainees can pass on useful information and give advice to new detainees. The three women who were detained in Thun on the day of my visit were barely informed of their legal situation and opportunities. One was convinced she was still in criminal detention, although she had actually been transferred to immigration detention at the end of her criminal sentence. Meanwhile, the staff members with whom I spoke were confused about the roles of the various organisations providing support and legal or return advice to detainees. Furthermore, these three inmates, who had been placed in prison by other cantons, found it very difficult to gain access to the authorities that had ordered their detention. This hurdle resulted in even more uncertainty and insecurity than was experienced by detainees in the other prisons researched.

⁶¹ When I visited the prison, a woman serving a prison sentence was accommodated alongside three immigration detainees. She left the same day so I was unable to meet her.

⁶² The TV was not functioning when I visited the prison.

Box 3: Zurich airport prison: A separated building⁶³

Zurich airport prison (*Flughafengefängnis Zürich*) is located in Kloten (canton Zurich), close to the international airport of Zurich-Kloten. This proximity to the airport, motivated by practical reasons related to the enforcement of removals by plane, is striking. The runways are visible from most of the prison area and from some of the cell windows, and the noise from the planes is very loud. This proximity to the airport, from which detainees are meant to be deported, frightens some of the detainees when they first arrive, as the head of the immigration detention section explained.

Zurich airport prison, built in the 1990s, is comprised of two buildings connected by a corridor. The first building, which was opened in 1995, initially confined both remand and convicted prisoners, but since 2004 only convicted prisoners (formally, with sentences up to 18 months, but this was not always the case) are placed here. In 1996, shortly after the Law on Coercive Measures came into force, the second building was opened for the sole purpose of immigration detention. As such, it represented the first immigration detention centre in Switzerland. As already outlined (see section 2.1), the political context of that period was greatly influenced by the media and public debates on the involvement of asylum seekers in the Zurich drug scene (de Senarclens 2013). In this context of the criminalisation of asylum seekers, and without any facility apart from the penitentiaries serving as models, the Zurich cantonal authorities imposed the high-level security standards of remand prisons on the new detention centre (Rezzonico 2020a).

The resulting infrastructure is a rather imposing grey building, with the capacity to house up to 94 penal prisoners and 106 immigration detainees (of which 20 places were reserved for women⁶⁴). In the immigration detention building, the cells – mainly double – are spread over four floors, with three wings on each, separated by doors made of bars, continuously reminding detainees of their incarceration. Also, the windows have thick bars that give a strong impression of oppression and enclosure. Conscious of the unsuitable infrastructure, the director has in recent years made some efforts to render the place a little more welcoming. The doors have been brightened with a coat of paint, and following some renovation work, the three exercise yards now appear more colourful and well-finished. Detainees can freely move within the limited space of the wing from 8am to 5pm, and they are given the opportunity to work for four hours, four days a week. They earn 15 to 18 Swiss francs per day, and if there is not enough work, they receive 5 francs unemployment pay.

The two buildings – one used for criminal and the other for immigration detention – are connected through a closed corridor. There are two separate entrances, but the buildings form a single institution with one prison director. However, two distinct teams run the two sections, each with a different head. Although, according to a staff member, the detention spaces – cells, courtyards, etc. – are very similar (I visited only the one used for immigration detention), the two buildings are kept separate. Each has its own yards and visitors' rooms, for instance. Only the entrance where the detainees first enter the facility is common to the two buildings (there are separate waiting cells, however). There is only one command centre and one technical service for the whole institution. Having said that, when I visited the prison in November 2017, the situation was exceptional due to the recent renovation work. Two floors of the immigration detention building were closed; thus some immigration detainees were held in a separate section of the other building. The women's section was also closed at that time due to the renovation work, so I was unable to visit it. This temporary situation is an example of how – despite a clear will to separate the two types of incarceration – the fact that they are part of the same institution normalises the use of criminal

⁶³ The information provided in this box refers to the situation in 2017.

⁶⁴ The airport prison also holds mothers with children under the age of two, usually for a maximum of two weeks.

detention spaces for immigration detention, blurring the line, if only temporarily, between the two parts of the institution.

The usual separation between the two buildings and teams was also reflected in the comments made by the head of the immigration detention section, who emphasised the importance of keeping the two regimes separate, and of running them quite differently. He also stressed the different roles of the two teams, and how this factor ruled out any collaboration. He underlined the fact that the profiles of the staff members working in immigration detention were quite different, and how their relations with detainees were much closer. At the same time, despite this higher level of involvement with detainees, and the specialised character of the team, the head of immigration detention clearly stated that the carceral institution played no part in the deportation process itself; its role being more like a ‘hotel’ that provides appropriate accommodation to people prior to their departure.

Besides specialised facilities and local jails, a third type of facility is used for detention under the FNIA, consisting of carceral facilities that provide for an open regime for prisoners serving a criminal sentence, who can work outdoors during the day in one of the workshops or in the fields. When immigration detention is operated in such open facilities, however, it is done separately in a closed section or building. I was able to visit one of these facilities (JVA Realta, see Box 4), while Wauwilermoos (LU) and Witzwil (BE, no longer used for immigration detention today) are also examples of such prisons. The overall level of security is lower than in other prisons, as prisoners under an open penal regime could escape during the day if they wished. Indeed, only prisoners who are not considered dangerous are placed in this kind of institution⁶⁵. These facilities are managed with a different philosophy than remand or local prisons, and are directed more at the resocialisation of prisoners than at security. Although this philosophy might sometimes have a positive impact on the section of immigration detention in terms of freedom of movement and activities, this is often not the case, and people detained under immigration law may actually find themselves much more enclosed and restricted than the criminal convicts held in the same facility, which is contrary to the law (see section 2.5 and Box 4).

Box 4: Correctional facility of Realta: Locked up in an open facility⁶⁶

The correctional facility of Realta (JVA Realta) is situated in the canton of Graubünden, half-an-hour’s drive from Chur. Although this facility is somewhat isolated, there is a railway station ten minutes’ walk away. Mountains surround the prison buildings, and there are a few houses nearby that were originally inhabited by prison staff, as well as a psychiatric clinic. From the exterior, the building does not appear to be carceral, but a large, closed prison was being built next to it during my visit. The new building opened in 2019 and is surrounded by a seven-metre wall.

Detainees serving a criminal sentence are able to freely move around the carceral area between 6.30am and 9.45pm. They work for eight hours per day in the kitchen or butchery, in the garden or farming area, or in woodcutting or carpentry work. Additionally, an integration workshop is provided for those with work difficulties. The detainees are free to spend the rest of this time in the

⁶⁵ When convicting a person to a prison sentence, the judge needs to evaluate the risk of absconding or evading, as well as the level of danger the prisoner represents to the public, in order to decide on a sentence in an open or closed regime. This decision is unrelated to the length of the sentence, as the director of Realta explained. Prisoners in Realta, for example, stay between one day and five years (with an average of three months).

⁶⁶ The information provided in this box refers to the situation in 2017.

courtyard, in their cells or in the large leisure room, which is equipped with table football, darts and a pool table. Lunch is served in the canteen.

The layout of the building, as well as the whole concept of the prison, is much more open and accessible than a closed facility, and prisoners go out during the day to work in the fields or on the farm. Members of the public can enter the facility to buy meat from the butcher's shop or furniture from the carpentry workshop. The larger shop beside the prison offers a wider variety of produce from the prisoners' work (fruit, vegetables, meat, jam, noodles made from local crops, etc.). The carceral space is diffused, consisting of two main buildings with several prison wings composed of cells, a common football field and external space between the two buildings. The workshops are found in several smaller buildings. The surrounding landscape is visible from within the prison, giving a sense of orientation. For all these reasons, I found my visit to this place a very positive experience.

The immigration detention section, however, is different from the rest of this otherwise rather free carceral space and open regime. It is situated on the fourth floor of the second building, and is recognisable from outside from the thicker bars on the windows. To access this section, one has to pass through two secured doors. This floor was converted in 2009 to an immigration detention section for men, and separated from the rest of the prison space⁶⁷. The security was tightened at the same time. The section has a capacity of 16 places, most of which were rented to the canton of Ticino at the time of my visit⁶⁸. Consisting of 16 individual cells, there is also a large entrance hall serving as a leisure room equipped with several games in this section, a medical room and staff office, and a small exercise yard and fitness room that are both available during the open-cell hours.

The cells are the same as those in the open penal regime, the only difference being the windows. As well as having thicker bars, there are extra bars in the form of a grid, added in order to prevent or at least limit contact with other prisoners. The outcome is paradoxical as these extra security measures that were meant to protect immigration detainees from criminal prisoners penalise the former instead, by blocking much of their view and limiting the light. Although the windows can be opened, these cells are much darker and the atmosphere in them is heavier than in the cells in other prison wings. The exercise yard is rather small but is accessible by detainees during the open-cell hours as it is situated within the prison wing. It features a mural on one wall and the other walls are painted white. There are bars across the top, but these appear less oppressive than the ones in Thun and Bern. Part of the yard is covered by a roof, which is useful on rainy days. The sky and mountains are within view. Table tennis, table football and several plastic chairs are provided here.

Detainees can move freely in the detention section, the courtyard and in the fitness room as well as in the kitchen from 7.30 to 11.30am and from 1.15 to 4.30pm. Except when they receive a visit – which takes place in the visiting room – they never leave their floor. A few years ago, detainees had access to kitchen facilities, but now can only boil water to make hot drinks. Detainees have the chance to work if they wish to, and if enough work is available. They earn 12 francs per day regardless of the number of hours worked or three francs as a sort of unemployment payment. Two staff members specifically appointed to the immigration detention section are present from Monday to Friday. These staff members know the detainees better than their counterparts in other similar facilities, but try to maintain a certain distance from them nonetheless, and avoid becoming involved in immigration cases.

⁶⁷ According to the prison director, this change in the use of detention space was due to a lower requirement for places in the open regime and an increase in the prison sentences to be served in closed facilities, a tendency that continues today.

⁶⁸ In 2017, the number of places rented fluctuated between 12 and 16.

The separation between prisoners serving a sentence and administrative detainees is much stricter here than in other facilities, which has the negative consequence of tighter security measures and a regime that is more punitive for immigration detainees than for criminal offenders. This fact does not go unnoticed by detainees, who are very aware of how criminal prisoners benefit from more freedom than themselves, from better conditions and more freedom. When watching from the window, they see the other detainees going to work, walking and enjoying sporting activities in the big yard. They feel this is unjust, and that it possibly forms a demonstration of Swiss racism against migrants. During a group conversation in the detention area, a detainee said: “It’s obvious; it’s because we’re from the Third World, and detainees from the penal area are from the Second or First World. They can only treat people from the Third World like this. [...]. They think we come from the jungle, that we are not human. Only non-humans can be held here. They think we’re all terrorists!”

This review of the different types of facilities enables us to summarise the reality of immigration detention in Switzerland at the time this research was conducted. Despite the law implicitly (and explicitly since 2019) foreseeing the use of specially designed facilities, and case law requiring at least the allocation of a separate section for immigration detention when a penal facility is used, allowing for freer and more open detention conditions (see section 2.5), this aim was – and still is – rarely realised. As immigration detention appears to be largely embedded within the criminal justice system, the large majority of immigration detention facilities are placed in ordinary prisons. When prisons are used for this purpose, the degree of separation between the two groups of penal and immigration detainees can differ in important ways, and in some prisons the need for immigration detainees to be housed in a separated area is not respected. This is even more problematic since the recent modification of Art 81(2) FNIA and recent case law presented in section 2.5.1, requiring that placement in a non-specialised facility must be well-motivated and can be admissible only for a few hours or days.

Beyond the degree of separation in prisons, it is inevitable that the conditions of detention are strongly impacted by the criminal justice context. Furthermore, it is difficult to avoid contact between immigration detainees and prisoners without further limiting the freedoms of detainees. In the prison of Bässlergut, for example, such contact was regularly made from windows or during the exercise period when other detainees crossed the yard to reach a workshop, although accompanied by detention staff.

The European Committee for the Prevention of Torture has argued that the conditions in immigration detention in Switzerland are often too close to those of penal imprisonment and criticised the fact that people are held in prisons while in immigration detention (CPT 2016). This matter is seen as a priority issue on the Committee’s visits to Switzerland’s carceral facilities. At the national level, the National Commission for the Prevention of Torture (NCPT) has also criticised the conditions of immigration detention on several occasions⁶⁹. Nevertheless, the cantons are not bound by the recommendations of these organisations and cannot be practically obliged to implement them. The above-mentioned changes in law and case law are more likely to trigger a change of practice.

This short overview has also shown the diversity of the conditions of detention across facilities. The conditions in the six facilities considered in this thesis at the time of my research are summarised in Table 6. In the next section, the two facilities in which I conducted fieldwork are presented in detail.

⁶⁹ All the reports are accessible on the webpage of the NCPT, under ‘Publications’.

Table 6: Conditions of detention in immigration detention (2016-2017)

Prison	Building type	Freedom of movement	Exercise	Visits & phone	Work	Leisure	Assistance/ advice
Frambois	Non-carceral, fence around.	8am–9pm in the whole facility; detainees can lock cell door.	One hour in big yard, day-long in small yard.	Visits 5 days per week; 2–4pm, open space, without surveillance. Can make and receive calls.	Workshop, kitchen, cleaning, laundry. Paid 3 CHF per hour.	Large leisure room, cooking facilities, fitness room, Bibliobus (mobile library), Info-AIDS.	Social assistant, chaplain, human rights org. (in common space).
Flughafen gefängnis Zürich	Carceral, high security, bars between wings.	8am–5pm in the wing, shower accessible.	3-hours' exercise, well-equipped yards (women: daylong access).	4 x 2½ hours per week, open space, without surveillance. Pay phone accessible during opening hours.	4 hours on 4 days, 15 to 18 CHF per day. If no work, 5 CHF unemployment payment.	Fitness room (twice weekly), leisure room.	Visitors group, cantonal social assistant/return advisor, chaplain/imam.
JVA Realta	Low security vs. more enclosure in immigration detention	7.30–11.30am and 1.15–4.30pm, in the wing and courtyard.	Exercise area accessible all day.	Once per week, up to 3 hours, large open space. Pay phone accessible during opening hours.	Work opportunities, 12 CHF per day, otherwise 3 CHF unemployment	Fitness room always accessible, ping pong tournament, small library.	Chaplain.

				Up to 3 hours per week, no visits at weekends, without surveillance.		courses.	advice (limited presence).
RP Bern	Old, carceral, high security.	Men: either 7.30–10.45am and 6.30–8pm in the section, or no freedom of movement at all (enclosure 23/24h). Women: 7.30am–6.30pm, in the section.	One hour per day, small roof-yard, enclosed.	Up to 3 hours per week on 3 weekdays, 2–4pm; surveillance, glass screen. Phone during opening hours or on demand; free phone card (5 CHF) per week if no money.	No work opportunities except cleaning.	Books from the library on demand, leisure room only in women's section.	Chaplains and imam, returns advice (SRC), legal advice, volunteer visitors' group for women.
Bässlergut	Carceral, medium security.	7.15am–5pm, in the section.	Yard accessible 3 hours per day.	Up to 12 hours per week, including weekends, open space.	2½ hours per day, 6 CHF per day, workshop or housekeeping.	Leisure room with table football, library books on demand, cooking activity once a week (rotation).	Chaplain, legal advice, (volunteer visitors' groups).

Source of data: participant observation, information provided by the institution during my visit and/or in their official websites and reports on the visits of the National Commission for the Prevention of Torture to the facilities. The conditions described here correspond to those in 2016-2017. Several changes have occurred in the facilities since then.

3.3. The two prisons under study

As already mentioned, the two prisons in which I conducted most of my fieldwork are interesting and contrasting cases. Built in the 1970s with the purpose of confining remand prisoners, the Regional Prison of Bern (RP Bern) began to accommodate immigration detainees approximately a decade later, when coercive measures were introduced into law. The number of detainees increased over the years, and the prison in 2016 provided 27 places for immigration detention, partly located in a separated wing, and partly outside it, in an area mainly used for remand prisoners. The prison of Bässlergut on the other hand, was planned as a specialised immigration detention centre, benefitting from the financial contribution offered by the Confederation for the building of this type of specialised facility. The prison opened in the year 2000 and was operative as an immigration detention centre for a decade before also starting to confine criminal detainees in 2011. Another aspect differentiating the two prisons is that the RP Bern is integrated in a cantonal carceral system, according to which detainees are regularly transferred to other facilities after a few days or weeks, while the prison of Bässlergut is the only male immigration detention facility in the cantons of Basel-Stadt and Basel-Land. This means that detainees usually stay there for the whole period of incarceration. Moreover, the RP Bern is a mixed-gender institution, while Bässlergut is a male-only prison with male officers only.

Since the time in which I conducted fieldwork (2015-2017) and wrote the majority of this section (2018) the situation has significantly changed in both facilities. In the canton of Bern, immigration detention was reorganised, the immigration detention section of Witzwil has been closed and the Regional Prison of Moutier has been devoted to immigration detention both for men and women. The Regional Prison of Bern, however, is still active in the confinement of immigration detainees and continues to function as a hub for immigration detention in the canton. In the case of Basel, a new building has been built next to the existing one in Bässlergut, and now the two buildings compose the prison of Bässlergut. Consequently, the prison building described in this thesis has been completely reallocated to immigration detention as originally planned while criminal offenders are now confined in the new building. This shows how frequent are changes in the organisation of immigration detention.

In this chapter, I describe these two institutions as they presented themselves in 2015-2016, with some elements of their historical evolution, as well as descriptions of their architecture and internal organisation of space and people, the material conditions and the possibilities offered to detainees. For the RP Bern, it will be necessary to overview the whole cantonal carceral system before presenting the facility more in detail, since immigration detention is organised through a collaboration of different facilities in the canton.

3.3.1. The Regional Prison of Bern

Besides being the capital city at the national level, Bern is also the capital of the canton named after it, that is the second largest Swiss canton both in terms of surface area and population⁷⁰. Unlike other cantons, which usually have one cantonal authority in charge of migration control, in the canton of Bern there are four immigration authorities. The cantonal migration office (*Migrationsdienst*) is in charge of people whose stay depends on asylum law⁷¹, while the files concerning regular and irregular migrants that are not asylum cases can be managed either by the

⁷⁰ The city has a population of around 140,000, while the whole canton has more than one million inhabitants (out of 8.5 million in the country).

⁷¹ Except for the asylum determination procedure that is conducted at the national level by the State Secretariat for Migration (SEM).

Migrationsdienst or by the city migration offices (*Fremdenpolizei*) of Bern, Biel, and Thun⁷². Each of these four authorities can order the detention of people whose removal is their responsibility.

The centre of the cantonal carceral system

The canton has several detention facilities, of which four are penitentiaries for the execution of prison sentences and measures (Thorberg, Witzwil, St. Johannsen, Hindelbank) and five are local jails (Regional Prisons of Bern, Biel, Burgdorf, Moutier, Thun). In 2016, three of these facilities devoted part of their cells to holding immigration detainees: Witzwil (with 18 places for men), the RP Bern (with 22 places for men and five for women) and the RP Thun (with four to six places for women). Until 2015, the new prison of Burgdorf, opened in 2012, also provided a section for immigration detention, which was subsequently closed and reappointed to other types of detention in 2017. The following description is based on the situation in 2016, however, in the meantime, the section devoted to immigration detention in Witzwil was closed and 28 places were devoted to immigration detention in the Regional Prison of Moutier (24 places for men and four for women)⁷³.

The Regional Prison of Bern is the largest regional prison in the canton (the largest penitentiary being Thorberg). Situated in the city centre of Bern, a five-minute walk from the railway station, this prison is the centre of the cantonal carceral system. In fact, detainees held under administrative as well as under criminal law were usually confined there for the first days of their incarceration before being transferred to other facilities, according to the availability of cells. It was precisely the central location – adjacent to the criminal prosecution office, and not far from the other administrative offices – that rendered this prison convenient both for the criminal justice and immigration authorities to hold detainees during the first phase of incarceration, which usually involves judicial hearings. Hearings can apply in the case of criminal proceedings as well as for immigration detention orders that need to be judicially controlled by the cantonal Court of Coercive Measures.

The canton of Bern organised immigration detention following a system of progression levels. For male detainees, the first phase of incarceration was usually spent in multiple cells outside the ‘living group’ (*Wohngruppe*) in the RP Bern, where detainees were enclosed for 23 hours per day. After a few days, and according to availability of places, detainees were transferred to the ‘living group’, where they benefitted from a slightly more open regime that enabled them to freely move within the section for 3¼ hours in the morning and 1½ hours in the evening. Finally, as soon as a place was available in the prison of Witzwil (today Moutier) – which would allow for more freedom of movement and the opportunity to work – the detainee would be transferred there. This transfer usually occurred after a couple of weeks, but sometimes took longer, meaning that many immigration detainees spent their entire period of detention in Bern. Detainees were generally transferred back to the RP Bern for a day or more before deportation was due. Female detainees were normally transferred after only a few days to the RP Thun (today Moutier), where the separate women’s section was more spacious and provided better conditions than the RP Bern. This system, made up of phases – particularly for men – not only gave detainees the opportunity to progressively benefit from more freedom of movement and better conditions, it also gave the authorities the

⁷² The three main cities of the canton – Bern, Biel/Bienne and Thun – have maintained their own local police immigration offices (*Fremdenpolizei*) which are in charge of regulating the stay of foreign nationals residing in these three municipalities as well as the cases of irregular migrants who are controlled within their territory. The *Migrationsdienst* is in charge of foreign nationals residing in the remaining cantonal territory – including undocumented people who are controlled in the area.

⁷³ Information available on the official website of the prison : <https://www.pom.be.ch/pom/de/index/freiheitsentzug-betreuung/gefaengnisse/regionalgefaengnismoutier.html>. Accessed on 2 January 2020.

possibility to retrograde detainees who misbehaved, using transfers as punishment (see Gill 2013; Michalon 2013).

Referring to the high turnover of detainees, many of the staff members at the RP Bern described the place as a ‘beehive’ or an ‘anthill’. According to one staff member, up to 6,500 people moved through the prison every year, with up to 80 entering or leaving each day. In 2015 there were 5,039 entries and 5,041 exits. This high turnover of detainees is due to the fact that the RP Bern is the first stop in the carceral itinerary of criminal justice as well as for immigration detainees, as already mentioned. Additionally, this prison provided a transit space for individuals, mostly detainees who needed to attend a meeting in Bern with the SEM or with consular authorities. This high rate of movement to and from the RP shapes the daily work of staff, which was very dynamic and varied, and stood in sharp contrast to the daily life of detainees, characterised by tediousness and a lack of activities.

History and description of the RP Bern

The Regional Prison of Bern (see Figure 1) opened in 1975, replacing the old prison on the same site that was demolished in 1972. The new prison provided 100 places for pre-trial detention and 20 places for convicted prisoners⁷⁴ and also included a section for females. The prison subsequently saw several small changes and renovations over the years until some major work to tighten security was undertaken in 2013. These extensive renovations involved the complete renewal of the entrance and administration areas (including the offices and command centre).

According to my interviewees, until 1998 the prison was controlled by the cantonal police department, and the prison director was a police commander. Typically for prisons of that time, he lived in the establishment with his wife, who took charge of the female section. Incidentally, prison officers did not wear a uniform at that time.

It is difficult to define the exact time when immigration detainees began to be held in the RP Bern. It is assumed to

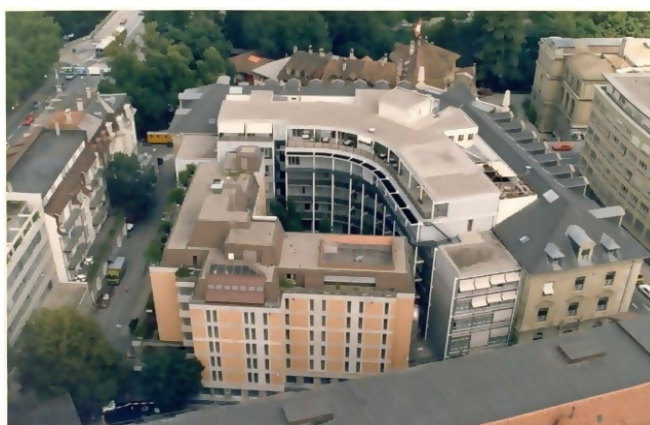


Figure 1: The regional prison of Bern. www.pom.be.ch

have happened when detention pending deportation was introduced into the law in 1986. However, detention pending deportation was originally not separated from other types of incarceration, as a prison officer working there for over 25 years explained:

“We did not have this separation between the different types of detention in the past. The separation was not so rigorous. And at that time, we did not know much about immigration detention [...]. In the past [when there was no separation], people were simply quartered where there was room” (Frank, prison officer, RP Bern).

According to this prison officer, the separation between different types of detention – particularly of immigration detainees – was only introduced at the end of the 1990s or in the early 2000s. Staff members were largely unaware of which detainee was under which type of detention, and the

⁷⁴ Webpage: <http://www.pom.be.ch/pom/de/index/freiheitsentzug-betreuung/gefaengnisse/regionalgefaengnisbern/portrait/geschichte.html>. Accessed on 27 February 2018. The same webpage in 2015 stated: “The prison was originally planned for approx. 80 detention places” (author’s translation).

detention regime was the same for all inmates in any case. In fact, the decisions of the Federal Supreme Court that clarified the minimal conditions needed for immigration detention to be lawful are dated 1996 (see section 2.5.2).

According to several long-standing staff members working in the RP Bern, immigration detention cases were rare at the beginning of the 2000s, but have increased since then. Between 2005 and 2010, some of the prison wings were converted into 'living groups' (*Wohngruppen*) to include several cells that could be opened during the day in order to allow more social contact, and a leisure room. Out of three 'living groups', two were – and are still – allocated to convicted criminals, who need lower security standards than remand prisoners, and one to immigration detainees. Furthermore, a small 'living group' for women in immigration detention is located on the first floor, which is wholly reserved for women. This arrangement of 'living groups' allows for some freedom of movement within the section for a few hours every day. However, since the leisure rooms were converted into cells in 2012 or 2013 approximately – except the one in the female section – detainees can only move in the corridor and in the other cells during the cell open hours.

Besides creating the need to convert the leisure rooms, the increased numbers of detainees has also strongly impacted the atmosphere of the prison, leading to a greater likelihood of conflict among detainees and a higher level of stress for staff, as a few staff members explained to me.

Detention types, capacity and occupation rates

As already mentioned, the RP Bern combines a diversity of detention regimes for men and women, including pre-trial detention, serving of sentence, half-detention and police custody, immigration detention and detention of minors⁷⁵. The prison respects the necessary separation of regimes at the level of the cells – in principle, an immigration detainee is never held in the same cell as a criminal prisoner – but there is no structural separation between the different regimes. Having said that, recently the Cantonal Administrative Court has dealt with a case in which an immigration detainee in the RP Bern had been held for six days in the same cell and together with prisoners detained under penal law⁷⁶.

When I embarked upon this fieldwork in 2015, the prison had a capacity of 126 (plus nine beds in so-called 'emergency' regime), half of which (63) were allocated to pre-trial detention (58 male, 5 female), 36 to the serving of sentences (33 male, 3 female), and 27 to immigration detention (22 male, 5 female)⁷⁷. The statistical data provided by the prison director for 2015 reveals how the effective days spent in prison by detainees in pre-trial detention amounted to only 38% of the total days, despite half the total places being earmarked for this type of detention. When calculating the potential capacity of each section over a year (number of places * 365 days) and comparing it to the actual days spent by detainees in these three different types of detention, we obtain some interesting results. These are summarised in Table 7 and Graph 6:

⁷⁵ Minors in different detention regimes can be confined there, and must be held separately from detained adults.

⁷⁶ Decision of the Verwaltungsgericht des Kantons Bern of 12.07.2019 (100.2019.219U).

⁷⁷ The situation seems to be the same in August 2020 according to the official webpage, https://www.pom.be.ch/pom/de/index/freiheitsentzug-betreuung/gefaengnisse/regionalgefaengnisbern/vollzug_haftarten.html. Accessed on 12 August 2010.

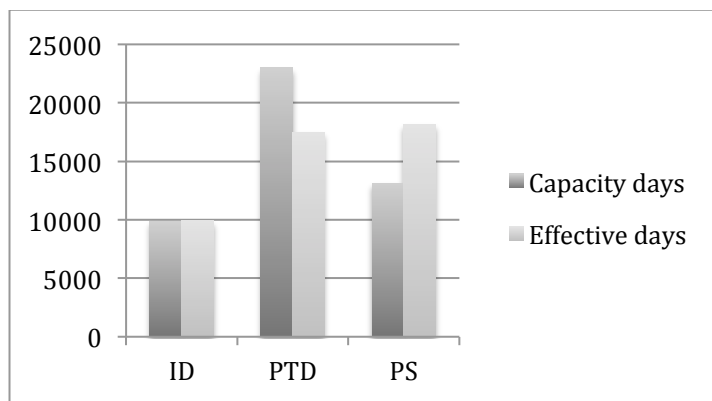
Table 7: Capacity and occupation rate for different regimes in the RP Bern in 2015

	Nr. of places	Estimated yearly capacity*	Effective days 2015	Occupation rate
Immigration detention	27	9,855	9,904	100.50%
Pre-trial detention	63	22,995	17,506	76.13%
Serving of prison sentences	36	13,140	18,163	138.23%
Total	126	45,990	45,573	99.09%

Source of data: RP Bern (data provided for this research project)

* number of places multiplied by 365 (days of the year).

Graph 6: Capacity and use of different regimes in the RP Bern (2015)



Abbreviations : ID = immigration detention; PTD = pre-trial detention; PS = prison sentence

Source of data: RP Bern (data provided for this research project)

In 2015, remand detainees occupied only 76% of the places that were theoretically allocated for pre-trial detention. As Table 7 shows, the total occupancy rate, however, was 99%⁷⁸ with convicted prisoners occupying 138% of the places allocated to them and immigration detainees, 101%. At the same time, the latter rate is underestimated – with five of the 27 places from which I calculated the ‘capacity days’, being used for women only but these are rarely occupied. Although we have no access to the necessary data in order to calculate the occupation rates in male and female sections separately, my estimations⁷⁹ show an occupancy rate in male immigration detention of over 112%. Consequently, these data can be interpreted as follows: convicted prisoners were regularly detained in cells that are actually allocated for pre-trial detention, and the same occurred with immigration detainees. Additionally, the prison is often overcrowded, holding more people than its capacity allows in principle. Such was the case in 2016 especially. According to an employee, the prison had

⁷⁸ According to the Monitoring Group of Detention Capacity mandated by the Conference of Cantonal Justice and Police Directors (CCJPD), the ideal occupation rate is 75% for immigration detention and 85% for remand prisons (Groupe technique Monitoring des capacités de privation de liberté 2018).

⁷⁹ Unfortunately, I have no access to the data on the number of days of occupation disaggregated per sex. However, I estimate that, based on the percentage of women detained (9%), the occupation rate in female immigration detention would be 47% and in male immigration detention, 112%. Given that women spend shorter time periods in Bern before being transferred to other facilities, the occupation rate in male immigration detention in 2015 probably exceeded 112%.

continually housed more than 126 detainees that year, particularly due to immigration detention, the numbers having reached a peak of 57 people (on a single day) in that year.

As previously mentioned, the average stay of immigration detainees in the RP Bern is short compared to other facilities, due both to the number of people only transiting through the prison and to the fact that longer-term detainees were transferred to Witzwil (currently the RP Moutier). As a consequence, the average stay in immigration detention here was six days, compared to 23 days for the whole country in 2015 (SEM 2016). The wing allocated to immigration detention had the highest turnover, whereas the average stay for remand prisoners in 2015 was 17 days, and eight days for convicted prisoners.

Spatial and institutional internal organisation

The RP Bern is very centrally located in the city of Bern, just a five-minute walk from the railway station. In the middle of a block, and accessible through a path that crosses that block, the prison building is hardly recognisable as such from the exterior (see Figure 1). Adjacent to the cantonal prosecution building, the prison is connected to its neighbour by a suspended corridor leading from the prison roof. Built in an L-shaped form, the prison is comprised of eight floors, two of which are underground. The command centre, situated on the ground floor, contains three different counters. Next to that is the reception area for visitors and external stakeholders, which is equipped with a locker room for depositing personal items. The reception area leads into a security control room for visitors and goods, and to a visitors' waiting room. Staff members use a different entrance.

After entering the carceral area through a double door, one finds a corridor that leads to the visiting rooms, a few rooms for the use of external stakeholders and a staff cafeteria. This corridor eventually meets with another to form the L-shape, in the other arm of which the offices for the administration of entries and exits (*Aufnahme*) are located.

Most detainees are brought to the prison by car and enter the building from underground, without seeing it from outside. After the first control checks, they are held in one of the five waiting cells situated on the first underground floor. Next to these cells, there are two secure cells (used both for disciplinary sanctions and to prevent detainees from self-harming, see section 5.3.2) and a room used to prepare detainees for 'special flights'⁸⁰. The second underground floor contains the kitchen, the fridge room and a room used for waste disposal and recycling. A few extra cells are also located on this floor, and these are allocated to penal detainees who work in the kitchen. The other cells are distributed over the first to the fifth floors in the two wings that compose the L-shape, along both sides of a central corridor. One wing of the first floor houses women in several detention regimes. The other wing is utilised by the cantonal police-records department, which is separated from the prison space by secure doors. Male detainees occupy both wings of the second to fifth floors. A medical room is also situated on the second floor. On the sixth floor there is a meeting room for staff, an office and two small and enclosed exercise yards that are barred across the top, allowing only a partial view of the sky. Both yards can be observed by staff, both directly and through video surveillance, from the surveillance room on the same floor.

The cells and spaces on each floor are almost identical, allowing the same cell to be used for different detention regimes when necessary. Detainees in pre-trial detention can be found on every floor, and the three areas of 'living groups', where free movement is allowed during certain fixed hours, are placed on the second and third floors for prisoners serving a sentence, and on the fourth

⁸⁰ The enforcement of removals in Switzerland is divided into four levels. While the three first foresee the use of scheduled flights (unaccompanied in level 1, with police escort in levels 2 and 3), level 4 is executed on so-called 'special flights', allowing the use of higher degrees of coercion.

floor for immigration detainees. Each floor has an office for the staff members taking their turn in the rota on that floor. A prison officer in charge of the floor is always present during the day, and is sometimes supported by another person, usually a civilian servant⁸¹.

The staff consists of 60 employees, one third of whom are women⁸². These employees are organised into four main teams: (i) the *Admission/Command Centre (Aufnahme/Loge)* team, which is in charge of the command centre as well as of administrating the entries, exits, transfers, transport and personal effects of the detainees; (ii) the *Surveillance/Assistance (Aufsicht/Betreuung)* team, responsible for the direct surveillance and assistance of detainees on the different floors; (iii) the logistics and housekeeping team; and (iv) the medical service (see Figure 2).

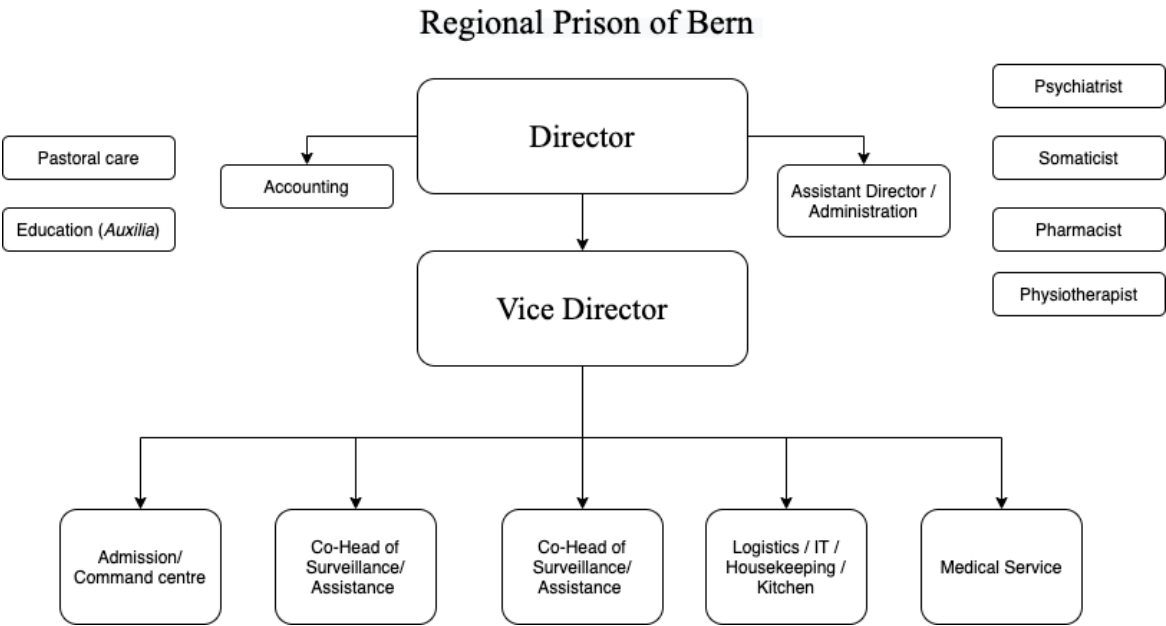


Figure 2: Organisation chart of the RP Bern, prison website⁸³, 2017

While administration staff work set hours, the schedules of prison officers follow a rota to combine the different shifts of morning, afternoon, night and weekend. Staff members of the *Surveillance/Assistance* team are assigned to each floor, and are responsible for the surveillance and assistance of the detainees held on that floor. They follow a rota system and usually change to a different floor every week, or sometimes more often. These staff members regularly take over the functions of the *Admission/Command Centre* team as well for a few days – such as the work in the command centre or the escorting of detainees. Likewise, the *Admission/Command Centre* team are also trained to take on the duties of the *Surveillance/Assistance*. These team exchanges are made in order to ensure a measure of flexibility in the organisation of work, and also to provide employees with a more diverse range of tasks (see section 6.2.1).

The heads of the different teams hold a coordination meeting every morning, and then another daily meeting at 13.30 gathers all the employees working in the morning and afternoon shifts in order to

⁸¹ There are up to six people undertaking civilian service at any one time, assigned to the prison for a minimum of four months as substitute for military service (*Zivildienstleistender*).

⁸² More information on the demographics is not available. Based on my personal observations, the age was diverse, with most of staff members aged between 30 and 50. A minority of staff members were of foreign nationality or foreign origin, notably from South Europe or the Western Balkans. During my fieldwork, I did not see a single black staff member.

⁸³ <https://www.pom.be.ch/pom/de/index/freiheitsentzug-betreuung/gefaengnisse/regionalgefaengnisbern.html>. Accessed 10 October 2018.

exchange information and update those starting the afternoon shift as to what has happened in the morning. This coordination is also facilitated by the internal database on which all relevant information about detainees should be entered.

Conditions of detention and contact with outside

Detainees in immigration detention can be subject to different detention conditions depending on the cell they are assigned to. Detainees held in the *Wohngruppe* ('living group') are given single cells and can move freely within the corridor and cell areas between 7.30 and 10.45am and between 6.30 and 8pm. If they are accommodated outside the *Wohngruppe*, they are usually in multiple cells (up to six people), which are locked for 23 hours a day. All detainees have the right to one hour of exercise daily. The prison offers no leisure or work activities (with the exception of one person who can assist in cleaning the wing, see section 5.2.3). The meals are served at 6.30am, 11.30am and 5.30pm.

The single cells contain a bed, a table and chair, a toilet and hand basin, a shelf and a TV. Each cell has a window made of milk glass that cannot be opened, and which gives a view outside only through a small portion of translucent glass. The cells are not very well-lit, and the walls are covered with notices and signs. The doors have a porthole that can be opened only from outside, used to deliver meals and other materials. Detainees in the *Wohngruppe* can shower during cell open-hours. Outside the *Wohngruppe*, only one six-bed cell has its own shower. Those detained in the other cells can shower in a communal shower room three times per week.

Mobile phones are not allowed in the prison but detainees can buy phone cards from the staff. Those with no money can request one phone card worth five Swiss francs every week.

Detainees can receive visits up to three hours per week. Visitors are allowed to enter from 2 to 4pm on three different weekdays but not on weekends, which constitutes a significant

hurdle in practice. Visitors must provide an identity document and can announce themselves on the day of their visit. Visits take place in a visiting room with a separating glass screen that is meant to prevent the exchange of contraband goods, but physical contact is possible above the screen. The room does not provide much privacy, as other visits take place in the same rather small room with staff members remaining in the vicinity.

Some opportunities are available for detainees to have contact with organisations providing advice or assistance. In common with all other inmates, those detained under immigration law can receive visits from a Catholic or Reformed chaplain, or from an imam. Moreover, the Swiss Red Cross provides advice on return and future perspectives. Detainees can also contact the Kirchliche Anlaufstelle Zwangsmassnahmen (KAZ), a church organisation providing legal support, although usually acting without direct contact (via phone or written communication, see section 5.4.1). KAZ also organises a visitors' group for detained women, who, as mentioned earlier, often find themselves in near-isolation due to their low numbers.



Figure 3: A cell in the RP Bern
©Photo Marco Zaroni

3.3.2. The prison of Bässlergut

The prison of Bässlergut is situated on the outskirts of the city of Basel, next to the German border and adjacent to one of the six Swiss federal asylum centres. The prison is used by the cantons of Basel-Stadt⁸⁴ and Basel-Land⁸⁵ for the immigration detention of men, while women can be detained in the remand prison of Basel (Waaghof), which has four places devoted to female immigration detention. The two facilities are formally part of the cantonal office for criminal justice (*Amt für Justizvollzug*) of Basel-Stadt and are managed as such. On the other hand, the authorities who can order immigration detention and are in charge of enforcing removals are the migration offices of both cantons (*Migrationsamt Basel-Stadt* and *Amt für Migration und Bürgerrecht Basel-Land*, the latter being situated in the municipality of Frenkendorf). Basel-Land rents a number of places in Bässlergut for its own use. As we will see, the migration office of Basel-Stadt disposes of some space inside the carceral building that is also regularly used by the migration office of Basel-Land.

Figure 4: Prison of Bässlergut (source: author)



History of the prison of Bässlergut

According to one member of the management team, the prison of Bässlergut opened in 2000 with a capacity of 48 places. It was divided into four sections ('stations') of 12 places each. Planned in the late 1990s by the canton of Basel, construction began in 1999 and cost

12 million Swiss francs. Some 90% of the funds came from the Confederation, as foreseen by the FNIA for facilities that are built with the aim of serving the purpose of immigration detention exclusively⁸⁶. Although intended as a pre-removal centre, the building has a clearly carceral character, having been planned to meet rather high security standards. This focus could be explained by the public and political debate on the criminality of asylum seekers and their alleged abuses of the asylum system that were prevalent in the 1990s (Rezzonico 2020a, see also section 2.1), or by the intention to make it suitable for penal incarceration as well, as a reconversion actually happened in the following decade.

In 2004, due to the closing of the old criminal facility of Schällemätteli and the need to employ the staff who had worked there, it was decided to increase the capacity of Bässlergut from 48 to 72 places, by replacing the single beds with bunk beds. According to one member of the management, collaboration with several other cantons began at this time. These included Bern, Ticino, Geneva, Jura, Vaud, Solothurn and Aargau, which all started sending detainees to Bässlergut. The increased number of detainees led to certain organisational adjustments. It was no longer feasible for detainees to eat in the leisure room, for example; and so meals were served in the cells instead. Furthermore, the opportunity for detainees to work for the whole day was no longer viable, so the period of work was reduced to half a day. As one employee related, the atmosphere became very

⁸⁴ The canton of Basel-Stadt is of urban character (it is composed of the city of Basel and the much smaller municipality of Riehen) and has approximately 200,000 inhabitants, of whom 36.4% are of foreign nationality. Data (2018) provided by the canton: <https://www.statistik.bs.ch/haeufig-gefragt/basel-kompakt.html>. Accessed on 21 September 2019.

⁸⁵ Basel-Land has approximately 290,000 inhabitants. It is composed of smaller municipalities and includes rural areas. The chief town is Liestal.

⁸⁶ Art. 14e (19) of the old Federal Act on the Residence and Permanent Settlement of Foreign Nationals; now regulated by Art. 82(1) of the FNIA.

tense at that time, due to overcrowding. The general atmosphere in detention worsened again with the legislative changes brought by the 2005 Foreign Nationals Act, extending the maximum length of detention. In 2007, the year before these modifications came into force, detainees caused a series of fires in order to express their frustration, according to that employee. One large fire completely destroyed one wing. Following this episode, the political authorities began to limit the capacity of the detention centre to 60 places.

Due to strong demographic pressure in the area of incarceration and the lack of capacity in the canton of Basel, it was decided in 2011 to allocate one wing in Bässlergut for the serving of prison sentences. The co-existence of two different regimes that had to be kept separated led to the need for readjustments. In 2012, there was still a need for more places for the serving of short sentences, so it was decided to construct an outbuilding beside the main prison building to serve as a production workshop. This innovation made it possible to convert the space that was previously used for detainees to work into a fifth ‘station’, thereby allowing the prison to house additional prisoners. In 2013, an additional ‘station’ that had been used for immigration detention was reallocated for the serving of sentences. Following these changes, in 2016 (and until 2019) there were three stations for the serving of prison sentences located on the first floor, with a total of 43 places, whereas immigration detention was limited to two wings on the second floor with 15 places each.

The progressive reallocation of carceral space to criminal detention led the facility to end the collaboration in immigration detention with the other cantons (Ticino, Geneva and Bern), except for Basel-Land, which continued to rent 15 places in 2017. Furthermore, the prison name was changed from *Ausschaffungsgefängnis* (‘removal prison’) to *Gefängnis* (‘prison’). With the expansion of the prison having recently been concluded, the original building is again used exclusively for immigration detention since 2020.

At the time of my fieldwork, the prison of Bässlergut provided 43 places for convicted prisoners and 30 for immigration detainees. According to the data of the cantonal office for the execution of sentences and measures (see Table 8), 7,483 days of incarceration were spent in immigration detention in 2016, which means that on average, 20 out of 30 places were used. The numbers increased in the last two years, as is visible in Table 8.

Table 8: Days of occupation in Bässlergut (2014-2019): serving of sentences and immigration detention

	2014	2015	2016	2017	2018	2019
Execution of prison sentences	15,578	15,528	15,339	15,519	15,167	15,283
Immigration detention	9,125	7,373	7,483	7,814	8,364	7,392

Source of data: *Justizvollzug Basel-Stadt: Zahlen und Fakten 2018*. <https://www.bdm.bs.ch/Ueberuns/Organisation/Amt-fuer-Justizvollzug/Gefaengnis-Baesslergut.html>. Accessed on 19 April 2019.

Description of the carceral space

Lying only 200 metres away from the German border, the prison of Bässlergut is located in a non-residential area called Bässlergut, next to one of the six federal asylum centres in which asylum applicants are accommodated during the first steps of the removal procedure (see Figure 5)⁸⁷. The white carceral building is surrounded by a high fence and is well recognisable from outside, and in good sight of the asylum centre next to it. Entry to the prison is via a large portal and reception desk. The portal is in view of some cells, and as a visitor I was sometimes greeted by detainees shouting from the windows. After providing identity documents to the staff working in the command centre – uniformed employees of a private security agency – external visitors are usually asked to lock their belongings in the lockers provided and stay in the waiting space, which is equipped with seats. Before entering the prison space, one has to pass through a metal detector.

Once inside, on the right there is a corridor with the administration and management offices, as well as a large room for personnel, including a segregated smoking area. Two exercise yards as well as the visiting room are also on the ground floor. The latter is a rather large space equipped with several tables with chairs, and provides access to two smaller rooms that are usually used by lawyers. The area for processing the entries and exits of detainees is also on the ground floor. It is organised as a separate wing composed of several rooms with different functions: a multiple room used for the storage of detainees' belongings; a room for the registration and security check of detainees, equipped with a camera for taking a picture of incoming detainees and a shower that can be used when staff members consider it necessary; and two so-called 'waiting cells' where detainees wait to pass the security checks and be assigned a cell. In the corridor, there is a metal detector for checking detainees' clothes.

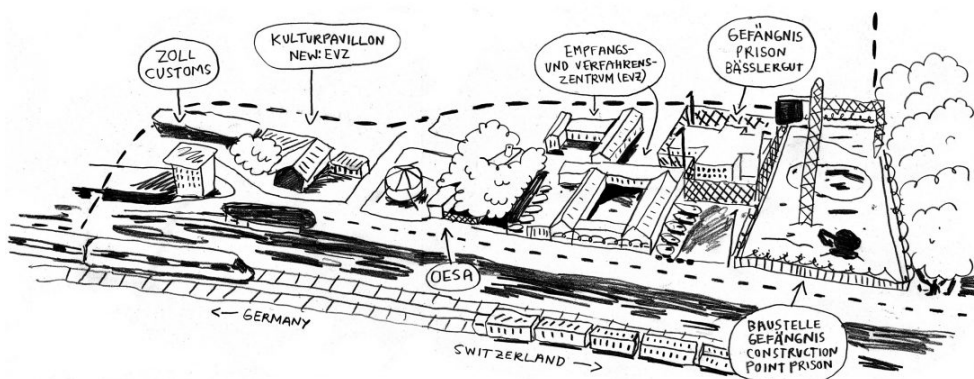


Figure 5: Plan of the Bässlergut area (2017) ©fiasko-magazin.ch, posted on 7 September 2017

The other cells are located on the first and second floors, forming five sections that are called 'stations' (*Stationen*). As already mentioned, at the time of my research, three of these 'stations', on the first floor, were used to hold inmates serving a prison sentence, whereas the other two on the second floor were used for immigration detention. In a similar way to the first floor, the second floor consists of a central hall and a corridor giving access to the medical room and the guards' office. The latter is a large room equipped with two desks with computers and several shelves and

⁸⁷ At the time of this research, the centre was formally a Centre for registration and procedure (*Empfangs- und Verfahrenszentrum, EVZ*), but since asylum reform entered into force in March 2019, it has been called a Federal asylum centre (*Bundesasylzentrum, BAZ*). It is also called Bässlergut informally, due to the name of the area. The part of this centre dedicated to unaccompanied minors is called 'Villa Bässlergut'. The centre has been almost completely rebuilt in 2021. With the new federal asylum centre and the new prison building having been opened in 2020, the area now looks quite different. The distance between the asylum centre and the prison has been reduced and both are well visible from both sides.

closets as well as a bathroom. The office has two glass walls that enable you to look outside and vice versa, but detainees only go through that area accompanied by staff.

From the central hall, it is possible to access the two ‘stations’, numbered 3 and 4, that are secured by an iron gate that is always kept closed and can only be opened by staff with their badge. The ‘stations’ consist of a corridor with cells on both sides, as well as a leisure room at the end of the corridor where a large table, a football table, and a screen are provided (although the TV wasn’t working at the time of my visit). A colourful mural on one of the walls – painted by detainees some years ago – renders the atmosphere here a little warmer than other areas. Most cells are double or multiple occupancy and are composed of beds made of wood and iron, a table with chairs, a shelf, a TV and a safe for each detainee, where they can lock any belongings of value. Every cell is equipped with a bathroom with toilet and basin that is separated only with a curtain.

In both stations, a door at the end of the corridor opens onto stairs that lead to one of the two exercise yards. This door is open for three hours per day, allowing detainees to freely move between the station and the yard. The two yards are very similar: the ground, the benches and the four walls are built of concrete, which gives a very ‘grey’ atmosphere. Colourful murals decorate one of the walls in each yard. Both courtyards have two or three benches attached to the floor, a concrete plant container holding a few small plants, table tennis, an exercise bike secured by a rope, a basket for basketball practice and an outside shower for use in the summer. One of the two courtyards has football goalposts as well, with usually a few soft balls around it. Part of the courtyard is roofed, while the rest is covered with bars. When the sun shines, it produces the shadows of bars on the ground. The yards are visible from some of the cells while the waiting cells and the disciplinary cell also have a window looking over one of the courtyards, while the administration offices overlook the other.

From the central hall on the second floor, a securitised door gives access to a space used by the cantonal migration service, composed of several offices. Staff members lead detainees directly to those offices for meetings with migration authorities. Between the carceral space and the migration offices, there is a courtroom used for the hearings that are provided in the framework of the judicial review procedure (see section 2.4). Migration officers and detainees enter the courtroom from two different doors. The room is composed of a desk where the judge and clerk sit, and tables with chairs for the other people present (usually the detainee, a migration officer, a translator and sometimes a lawyer).

Organisation of the prison and staff

The prison of Bässlergut hires a total of 28 people for a total of 26.5 fulltime positions⁸⁸. The prison management is composed of four members and a part-time assistant: the prison director, who is in charge of the whole institution; the vice director, who is in charge of the security and of all services provided within the prison; the head of the department ‘Inmates and Authorities’; and the ‘Group leader’, who coordinates and is responsible for the command centre, staffed through a private security agency. A secretary assists the work of the management team, which is also in charge of hiring procedures in collaboration with the human resources of the cantonal Justice and Security Department.

As represented in the organisation chart (Figure 4), the employees are divided into two main categories. On one hand, under the leadership of the *Head of Department Inmates and Authorities*, the *Surveillance/Assistance (Aufsicht/Betreuung)* team is composed of approximately 12 prison

⁸⁸ Data provided by the prison management in January 2017.

officers who work in the wings, in direct contact with detainees. The same employees are also in charge of processing entries and exits in the wing allocated for these tasks, as well as operating control checks of visitors and goods. The team follows a system whereby they rotate through different areas of the prison and work different shifts, including weekends. There is no regular team coordination meeting, as information is exchanged either through the internal informatics information system or on an informal basis.

On the other side of the organisation chart, under the lead of the *Head of Department Security and Services* are found all those employees who work to provide internal services: a person in charge of accounting and managing the Kiosk; another working in the storage of detainees' personal effects; a professional cook in charge of the kitchen and housekeeping service; two nurses comprising the medical team; the production team providing occupation in the workshop for detainees; and a person in charge of the technical service, whose position was not covered at the time of my field research.

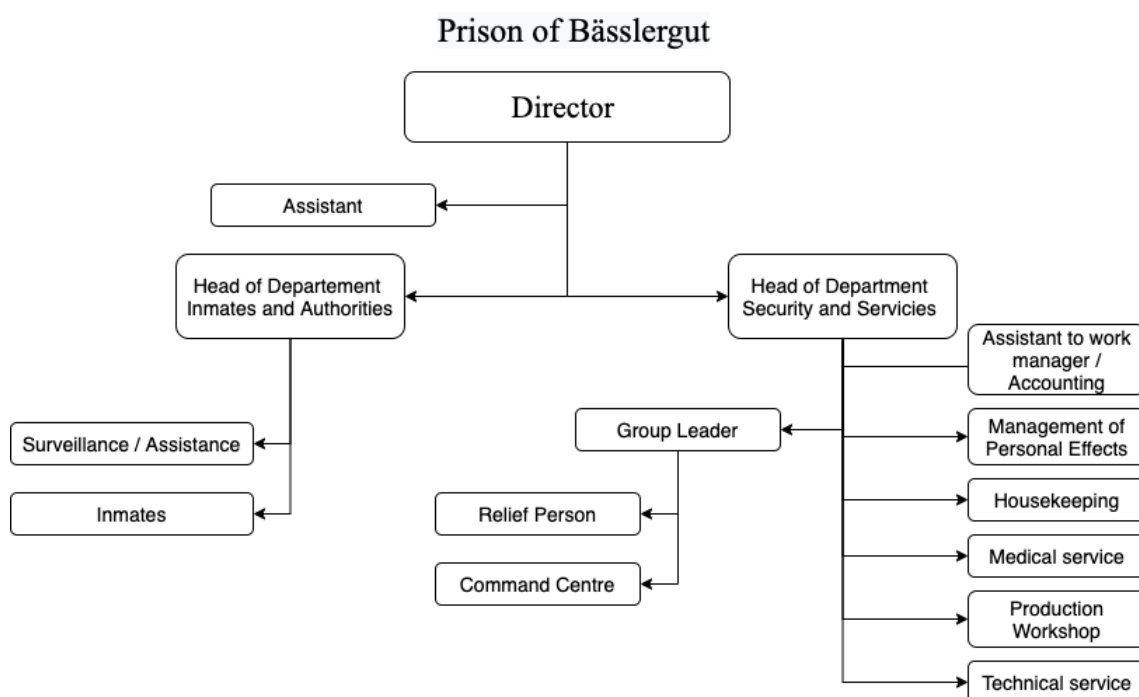


Figure 6 : Organisation chart of the prison of Bässlergut (before the expansion), prison website⁸⁹, 2017 (translated from German)

Staff members are almost exclusively male, with the only exceptions being a secretary, a nurse and a cleaning person. Despite demographic data not being available, from my personal observation I can say that most of staff members were in their late thirties or forties. Some members were second-generation migrants (especially from Italy), one had been born in an Arabic-speaking country, and a few were cross-border workers from France or Germany.

While most of the employees working at Bässlergut are directly hired by the canton, the staff working in the command centre are employed through the private company Securitas AG, although work under the authority of one state-employed officer (listed as 'Group leader' in the chart). At any time, there must be two members of Securitas staff in the command centre, so there are in total 14 employees rotating according to the prison director. This delegation of tasks to private actors has to be understood as partial privatisation driven by financial considerations. Despite their work

⁸⁹ <https://www.bdm.bs.ch/Ueber-uns/Organisation/Amt-fuer-Justizvollzug/Gefaengnis-Baesslergut.html>. Accessed 30 October 2017.

conditions being worse than those of state-employed prison officers, these employees, employed by Securitas, carry much responsibility, as they work as gatekeepers of the prison and are the only staff members present at night (see section 6.1.1).

Conditions of detention and contact with outside

When compared with the national landscape of immigration detention, the prison of Bässlergut provides better conditions of detention than most other prisons. These have also evolved into greater freedom of movement and opportunities for detainees since the time of my fieldwork⁹⁰. However, the following description corresponds to the situation encountered in 2017. Detainees are free to move within their ‘station’ from 7.15am to 5pm. This means they can walk along the corridor, enter other cells and enjoy the leisure room. For three hours a day (usually one hour over lunch and two hours either in the morning from 8 to 10am or in the afternoon from 2 to 4pm), they also have access to the exercise yard. The freedom to move to and from the exercise yard gives additional flexibility to detainees. By comparison, detainees in most other prisons have to decide whether or not to take advantage of this exercise period, which means remaining outside for an hour even in winter or on rainy days.

Detainees in this prison have the chance to work every weekday for 2½ hours in the production workshop and earn 6 francs per day. Housekeeping in the station is another work opportunity that involves helping staff to deliver the meals and cleaning the communal areas. Apart from this work, the prison was not offering any other activities such as sports or leisure activities during my field research, except for one cooking activity per week for one ‘station’ on rota. The facility does not provide a fitness room or exercise equipment except for the exercise bike and an exercise bar in the yard. At the time of my visit, a few posters on the yard wall showed images of exercises that can be done without any specific equipment. As a matter of fact, I saw many detainees jogging or doing other exercise, sometimes in small groups. Detainees can, in addition, borrow books from the library, although this service may sometimes be difficult to access⁹¹. A few German-language newspapers are also at the detainees’ disposal every day in the wings.

Bässlergut detainees can receive unsupervised visits for up to 12 hours a week. Visiting hours are on weekdays (except Wednesdays when the criminal justice detainees have visits) from 8 to 10am, and at the weekends from 2 to 4pm. Visitors have to provide an identity document and go through a metal-detector check before being accompanied to the visiting room, a large and spacious room with about ten tables and chairs. Detainees can also make calls from a phone that is available in each wing. While calls to consular authorities or lawyers are free of charge, a phone card can be purchased from the weekly kiosk for private calls.

The main difference in conditions for immigration detainees and criminal convicts is that the daily exercise period is three hours for the former group, and only one hour for the latter. The prison management decided to differentiate the two regimes in this respect following a report from the NCPT (National Commission for the Prevention of Torture) which criticised the fact that little differentiation existed between the regimes. Convicts have the option (but not the obligation they should have, according to the Criminal Code) to work, and they do so under the same conditions as immigration detainees.

⁹⁰ According to information provided by the prison management in October 2021, detainees can now freely move within their wing from 7.15 until 19.30; they can receive visits up to two hours a day; they can use Skype to make calls; they can access a fitness room and can borrow books. The capacity of each ‘station’ has also been reduced to 10 places, providing for more living space for the detainees.

⁹¹ At the time of my fieldwork, I found that the library was not functioning very efficiently and detainees had to wait several days before being able to borrow a book. This seems to have improved since then.

At the time of my observations, the *Beratungsstelle für Asylsuchende der Region Basel (BAS)* was active in the prison of Bässlergut through a contact point for detainees (see section 5.4). A member of this organisation was present twice per week to offer legal advice and support for immigration detainees. This service included providing information, mediating with migration authorities and writing appeals against detention orders. It was provided in partnership with the prison and was partly financed by the cantonal authorities. A few volunteers from another local migrant support organisation (*Solinetz*) also paid regular visits to detainees without entertaining a formal relationship with the prison administration. The volunteers involved provided legal and material help and supported detainees by making contact with lawyers. In addition, an informal group of visitors was active in the prison at the time of my fieldwork, providing support to detainees in various forms. The two latter volunteering groups made contact with detainees through word of mouth among co-detainees.

In this chapter, we have seen how the relative autonomy of cantons under Swiss federalism has led to a scattered landscape of immigration detention with a diversity of practices, spaces and conditions of detention being observed across the country. This decentralised character has resulted in the institutional embeddedness of immigration detention within the penal system, with cantonal, ordinary prisons utilised for the purpose of immigration detention – such as in the case of the RP Bern – or with the production of hybrid spaces of confinement which can be used for both immigration and criminal detention – such as the detention facility of Bässlergut. On one hand, this tendency can be explained through practical reasons, most cantons opting for the use of existent carceral facilities within their territory, which allows for a more flexible use of detention space and facilitates access to detainees for the purpose of meetings, hearings or deportation attempts. On the other hand, the resort to prisons and penal models for designing immigration detention is related to immigration detention being presented as measure to fight against alleged abuses of the immigration and asylum system and handle cases in which foreign nationals do not comply with the state's order to leave. The underlying assumption is that, despite deprivation of liberty within migration law not being intended as punishment, the people detained have violated the law and thus punitive conditions are implicitly justified.

These factors also explain the reticence of Swiss cantons to conform to national and international standards. In fact, according to EU law as well as to the FNIA – especially following the new formulation of Art. 81(2) since June 2019 – immigration detention must take place in specialised facilities except under exceptional circumstances. The incongruence of Swiss practice with these legal standards has brought about the criticisms of human rights associations and the National Commission for the Prevention of Torture, and has also led to Switzerland being an object of critique by the European Committee for the Prevention of Torture after its 2015 visit (CPT 2016). Such embeddedness in the penal system has concrete consequences in terms of the regime of detention. In fact, the conditions offered to immigration detainees and to penal prisoners held in the same facility are often very similar, if not identical or even more restrictive – the prison of Realta (see Box 4) is an eloquent example of this. It also has the clear symbolic effect of criminalising detained migrants. Their confinement in ordinary prisons poses an appropriate context for the securitisation of migration through what Huysmans (2006) calls the ‘modulation of an insecurity domain’, legitimising, crystallising and ensuring “a high degree of continuity in thinking about migration through the lens of security” (Bourbeau 2019: 6).

According to the Federal Supreme Court, the separation from criminal forms of confinement and the different shape of daily life in immigration detention is meant to reflect and show detainees that they are held for administrative and not for criminal, punitive reasons. In the facilities under scrutiny, however, the carceral architecture, the penal nature of the institution and the employment of prison staff, and the confinement of remand or convicted criminals under the same roof and in similar conditions, fails to signify this distinction from penal sanctions and strongly contributes to merging and blurring categories of immigration control and crime. In the next chapter, I will address how this ‘crimmigration context’ and the securitised nature of the spaces in which I conducted fieldwork affected my research process and methods. This will serve as a contextualisation of the empirical data that will be analysed in detail in the second part of this thesis in order to show how the blurring of migration and crime in spaces of confinement affects the rationalities, practices and experiences that take place within.

Chapter 4. Researching securitised spaces: methods and reflections

In this chapter, I describe how I planned and conducted this research. This account is crucial to situate and contextualise the data analysed in the following chapters. My thesis has been developed as part of a broader research project investigating practices of exclusion in the realm of Swiss migration control and focusing on how those are experienced and resisted by the various actors involved. Immigration detention was identified as one key practice through which Swiss state agents perform the exclusion of migrants. Given my former interest in carceral spaces and experiences – I had been volunteering in penitentiaries organising activities for detainees – I decided to focus on this topic in accordance with the research team.

There are various ways of undertaking research on the subject of immigration detention, some of which do not involve receiving the formal consent of institutions. For example, scholars have addressed this field of research by interviewing released detainees (Klein and Williams 2012) or family members, or entering detention centres through connections with NGOs (Boe and Fischer 2010; Fischer 2013; Griffiths 2013, 2014b). However, this project was designed as a piece of multi-perspective research (Achermann 2009a) aiming at understanding exclusion practices from different points of view, especially those of the authorities and employees performing exclusion and the migrants undergoing it. As a consequence, we decided to try to gain formal access to the facilities through their administration with the aim of being able to carry out ethnographic research inside carceral institutions. This raised a series of ethical questions related to my participation in the daily life of an institution that aims at confining and deporting migrants and clearly causing them harm, and to the difficulty of obtaining informed and genuine consent given the closed and captive nature of that space.

In this chapter, I start with an account of the way in which I negotiated access with several facilities, showing how such negotiations formed a fundamental part of the research and analysing what they revealed about my field of study. These negotiations with the RP Bern and Bässlergut are also described in greater detail for reasons of research transparency. In the second part of the chapter, I explain my choice of facilities and describe how I produced the data that constitute this thesis, mainly through participant observation and qualitative interviews, but also through document and statistics analyses. I also provide an overview of how I coded and analysed such data to produce the arguments and conclusion that compose this thesis. In the third part, I reflect on my own position in the field and particularly on the challenges posed by a multi-perspective research design that required me to manage competing claims and multiple loyalties (Lavanchy 2013). Throughout the chapter, I draw particular attention to the role of emotions in the research process as, following Drake and Harvey (2014), I consider them to be an important source of data in such emotionally charged spaces as prisons.

4.1. What negotiating access reveals about the field

In this section, I present my strategy to gain research access to detention facilities, focusing on negotiations with several institutions and the adjustments that I needed to adopt throughout the process. Besides this account seeming necessary for reasons of transparency, I consider access negotiations to be a fundamental part of the research which, as I show at the end of this section, revealed important aspects of the field of research, helping me to sharpen the focus of this thesis.

4.1.1. An account of negotiating access to several facilities

Even when it fails, negotiating access can produce interesting data on the institutions we aim to study and the field of study (see also Kalir et al. 2019). For that reason, I start this chapter with an account of how access to the first facility was negotiated, despite my not being able to conduct research there in the end.

A first attempt (Prison 1)

The efforts of our research team to secure access to detention facilities started in 2015 when we contacted the first prison director whom my supervisor personally knew and who had shown an interest in our research during previous informal conversations. We sent him a two-page description of the research proposal and asked for a personal meeting. The first phone and e-mail exchanges took a very friendly and cooperative tone. The director immediately discussed the issue with his hierarchical superior within the Department of Justice and Security, who said that despite the research sounding interesting, it raised several questions related to the time investment needed for staff and the institution, and the security of the researchers. For these reasons, it was necessary for the Cantonal Department of Justice in charge of prisons to approve the research. The prison director remained positive about the possibility of carrying out the study and we fixed a date of the first meeting.

I attended this first meeting with my supervisor. The prison director asked me several questions about the research and my personal motivation as well as my professional and research background. I explained that despite knowing that it would be a difficult piece of research, I wanted to shed light on this topic and on the situation of administratively detained people. Finally, the director said that he thought I was the right person to do this research, which gave me confidence in the possibility of including that facility in the research. Despite that, our interlocutor was very sceptical about participant observation in the prison. He said it would not be possible for me to spend time alone in the detention area for security reasons – my own security – and that I would be able to observe the daily life of the prison only in the company of staff, which, however, was problematic due to limited human resources. On the other hand, he was open to the idea of my interviewing staff and detainees. Again, for security reasons I would have to adapt my original plan, as he would require that interviews with detainees take place in the presence of a third person – a colleague or a student for instance – in order for me not to be alone with a detainee. Despite the topic of gender not being addressed explicitly, worries were presumably raised – at least in part – due to me being a woman in a men-only prison.

Some days after that meeting, we received an e-mail from the director. The tone was a little more formal. He said that his superior had discussed our research with the head of the Cantonal Department of Justice, who was ‘generally positive’ about it but who also saw risks, particularly related to (presumably my) security. Access to the institution could be granted only if a uniform agreement was passed with three other detention facilities, which should detail the rules and conditions of the research with respect to security and responsibilities. Although it was not clear to

me what such an agreement would change for them, this was probably seen as protecting them in case something went wrong. It was perhaps also a way to frame and control my research and my relations with the research participants, or at least this is the way I perceived it at that time. The director suggested that we start to draft documents defining how we would handle questions of anonymity and data protection, as well as “the question of the respect of directives and guidelines towards detainees and staff”. This last point was clarified by the documents sent us ‘as an example’, which defined how staff should behave with detainees (e.g. not address them with the informal pronoun ‘*du*’ or not talk with them about private issues).

After some days of reflection and discussion with my team, we decided that we would try to gain access to other facilities. The conditions set by the management in this particular facility were strict, reflecting a general reluctance on the part of the political hierarchy, and we were keen to explore whether this would be the case elsewhere. This prison appeared to require a long process of further negotiation without any guarantee of success. We argued that a uniform agreement did not seem appropriate because it could not take into account the differences between the facilities and we highlighted that an ethnographic approach required flexibility and possibility for adaptation during the research process. The prison director understood our arguments and the negotiations were dropped.

Gaining access to other facilities

Although I was a little discouraged, I soon developed a new strategy for negotiating access to other detention centres and sent new requests to four facilities selected with the aim of diversifying the geographical location, type and size of facility and the conditions of detention. The idea was to see how they would react to our requests and then to choose two facilities for more intensive fieldwork and possibly use the two other for less intensive, short fieldwork. We sent a two-page description of the project (Annex 1) accompanied by a letter (Annex 2) in which we introduced ourselves, expressed our interest in including that facility in our study, and asked for a meeting in order to discuss the project. Some days after sending the request, I attempted to contact the four prison directors by phone.

The first facility (Prison 2) – a prison presenting several detention regimes and a minority of places for immigration detention – answered in a very formal way. Both in written form and by phone (although I was never able to talk directly with the prison director), they argued that they could not answer our questions. Instead, they stated that the migration office could help us with our request, and sent us their contact details. When I argued that my research questions were based around the daily life and work *in* detention rather than the decision to detain, they answered that doing research in the prison was ‘impossible’ and that they only had a small section for immigration detention, where detainees usually stayed for three or four and a maximum of 30 days. I was not able to arrange a meeting with the management of this prison.

When I succeeded in talking to the director of another facility (Prison 3) – a small detention centre with only immigration detainees – she immediately said that she did not understand why I chose this facility. She explained that the detention centre she oversaw was characterised by very short detention stays and high turnover, which would render the research less insightful than a facility in which detainees stayed for longer periods of time. She was open to discussing the issue further, but ultimately I decided to exclude that detention centre from the core research as another facility had similar conditions (high turnover and short-term detentions) and had already shown openness to discussion.

The other two requests I sent were those to the Regional Prison of Bern (RP Bern) and Bässlergut, which both accepted our request. In the following pages, I provide further details on the process of access negotiations with these two facilities and what kind of access resulted from them. Although the initial research design foresaw the inclusion of a third institution in the core study, I ultimately decided, together with my supervisor, to complement the data collected in those two facilities with a few shorter observations in several additional facilities. We contacted five facilities in September 2017, and obtained four positive answers, so I was able to visit four additional prisons (see boxes in section 3.2.1). This allowed for a more thorough understanding of the diversity of infrastructures and conditions of immigration detention on a national level, as well as a better grasp of the specificities of the institutions I studied in depth.

Access to the Regional Prison of Bern

Upon reception of my request, the director of the RP Bern agreed to plan a meeting to discuss the possibility of including their institution in our study. This meeting took place in her office in the presence of her and her deputy, my supervisor and myself. The director started by saying that she had carefully read the documents we had sent and she saw both opportunities and hurdles. My supervisor presented our broader project and I continued by presenting my PhD and our methodological approach. I explained that I was interested both in the everyday life of detention and in the subjective experiences of the various actors involved, underlining the importance of participant observation along with individual interviews for my research. We described ideal fieldwork as daily participation in the prison life (e.g. access to common rooms, courtyard, staff room and other areas) over the course of approximately two or three months, followed by a second stage of interviews, but we highlighted our openness to discussion and the possibility of finding alternative ways of undertaking research that would meet the aims of the research proposal.

During the meeting, the director insisted on showing us the prison space before we discussed the feasibility of the study. This tour was short and included the male and female detention areas as well as the two courtyards, situated on the roof. We then returned to her office and received more information about the prison, understanding that it mainly confined people for short periods of time and was characterised by a high turnover. The director and her deputy also pointed out the poor conditions of the infrastructure and non-optimal conditions of detention, highlighting that this would make it impossible for me to do observation in the detention area or in the courtyards. Nevertheless, she said that it would be possible for me to follow the staff in their daily work. Moreover, I would be able to interview staff members and external actors. On the other hand, interviews with detainees were a sensitive point: it was suggested that interviews could render detainees more aware of the deficient detention conditions to which they were subject, and could exacerbate cases of resistance to deportation, ‘damaging the system’.

The meeting occurred with a positive, collaborative tone and two days later we received formal approval by e-mail. Despite access conditions not being optimal for conducting ethnographic work, we decided that it would be an interesting institution for carrying out research given its specific conditions and the general difficulty of accessing that kind of institution. We quickly organised a second, practical meeting to further discuss the modalities of the field research and it was proposed that I would start with two days of so-called ‘stage’, a form of job shadowing of a staff member. At the same time, an information sheet was circulated amongst the staff which described my work (Annex 3) and gave them the opportunity to volunteer for an interview.

Access was negotiated step-by-step as the prison director preferred this way of proceeding. She was my contact person in the institution, and I organised observation days and interviews directly with

her. Over the following months, I conducted 12 interviews with staff members, five interviews with 'partner organisations', and despite the initial scepticism, I was finally able to interview 11 detainees under positive conditions (in a closed room, without cameras and without being disturbed). On the other hand, I was only able to undertake participant observation following staff members in their work during seven days – although these were very intensive. When I attempted to obtain permission for more days of observation, the answer was that I could do two or three additional days, 'and then we will see'. After a few more requests, it became clear that longer observation time was not going to be granted and I stopped insisting. With hindsight, it would have been useful to have made more effort to explain the value and the needs of the ethnographic method. Indeed, the daily presence of the researcher in an institution can be felt to be intrusive at first, and the reason why a sustained and prolonged presence is necessary is not easy to understand for someone not familiar with qualitative research methods. Prison work is seen as repetitive and staff members were surprised to see that I was doing what they conceived as a 'stage' for the seventh time. Usually, new employees or employees of partner institutions do a 'stage' for one day as this allows them to see which tasks comprise the work of prison officers.

Access to the prison of Bässlergut

As with the other facilities, we first contacted the prison of Bässlergut by sending a description of the project with a cover letter. After some e-mail exchange and a phone call, the prison director wrote an e-mail in which he agreed to participate to our study although in a narrower form – which did not include participant observation – because of limited human resources at the prison. We arranged a meeting and decided that we would discuss this critical point then. The meeting took place two months afterwards, in September 2015, in the office of the director, who welcomed us at the entry and behaved in a very friendly manner. This meeting was attended by the director, another member of the management, my supervisor and myself. We presented our project and said that we were conscious that our plans and wishes would need to be adapted to their conditions.

During the meeting, they did not comment in great detail about our proposal but reacted to some specific points. First, they underlined the masculine nature of the space and revealed their concern that a woman would create disarray. Second, they were sceptical about detainees showing interest in participating in the research, arguing that they were often not cooperative in 'this kind of thing' (in my understanding, they were referring to journalists who had recently visited the prison). They saw participant observation to be particularly problematic because in their view there would always be one detainee disagreeing with my presence, 'just because they want to disagree'. After this discussion, we had a tour of the prison. They promised to discuss our proposal further and give us feedback over the next few days.

A few days afterwards, the management accepted our proposal of in-depth fieldwork, although this could start only several months afterwards. They proposed that I conduct a first day of observation – again, a 'stage' – before the official start. The 'stage' took place in October 2015 and provided a good general idea of the functioning of the prison and of the different functions and tasks of staff members. This was also an opportunity to discuss the modalities of participant observation and interviews with the management. The management of the prison informed us that I could spend time in the courtyard unaccompanied by the staff but that unaccompanied visits were not possible in the cells' area because there was no camera surveillance system in the cells. Interviews, individual conversations and possibly group activities could take place in the visitor room, which is controllable through cameras. We agreed that I would send a detailed proposal including how much time I would like to spend in which space and when. Over the following months, we discussed the details of my fieldwork. The management was increasingly open to my work and agreed on the vast

majority of my proposals (except for the taking of photographs), setting only some basic security rules (such as not leaving anything with detainees without informing the staff).

My proposal was to separate the fieldwork into two phases: in the first phase, I would focus on detainees' points of view, conducting participant observation in the exercise yard and organising interviews with some detainees. In the second phase, I would focus on the work of prison staff and complete the observation with some interviews. Between May and September 2016, I participated 25 times in the daily two-hour walk. I also conducted seven interviews with detainees and two additional interviews with released detainees I had met during the observations. In the second phase, which lasted from October 2016 to January 2017, I spent 16 days following staff members in their daily work and interviewed nine of them. Finally, I conducted an interview with the chaplain and two interviews with NGOs intervening in the prison. In total, I visited the prison around sixty times. Although the research could have benefitted from a longer period of fieldwork, I spent a significant amount of time in that institution, if we consider its particular nature and the initial scepticism towards participant observation. I should add that the fieldwork was emotionally very hard, so that I sometimes needed to spend some days outside the prison to recover.

The fact that I was granted access to the institution did not mean that I had access to every space, moment, person and experience of detention. As I did not have a badge – which is necessary to open doors and move independently through the prison space – my movements around the prison were always dependent on staff members. In the courtyard, I spent most of the time conversing with detained men about their situations and impressions, individually as well as collectively, which was very instructive. At the same time, however, I was not able to observe daily life in the detention area apart from moments when I accompanied the staff. My access to the daily life of detainees was limited to specific spaces and times and was mainly mediated through the presence of staff or through camera surveillance.

Furthermore, a couple of times prison officers prevented me from observing interventions that entailed the use of physical force. Once I was explicitly asked to interrupt my observation and wait in the pause room during a forced removal by the police to lead a detainee to a 'special flight'. This requirement was motivated and justified by management by the fact that other actors – the police – were involved who had not given their consent to my research. Although I was relieved not to have to watch the scene, I was aware that something was hidden from my view, and precisely the most violent form of exclusion that takes place under circumstances of detention: forced deportation.

4.1.2. What access negotiations tell us about the field

Although not all negotiations were successful, even the unsuccessful attempts were not a waste of time. On the contrary, the rather unsuccessful negotiations in Prison 1 represented my first actual contact with the field, giving me insights into its underlying logics and the methodological challenges that this research would entail.

In particular, I was struck by the omnipresence of security in all discussions about immigration detention. Security risks for the researcher, and more in general the institution (in terms of escapes and smuggling items, for example), were mentioned early in our discussions and were always the first priority, taking precedence over the needs of the research or the detainees. That spending time with detainees would threaten my security was presented as taken for granted and was not problematised. It could be argued that this is not surprising since we were discussing carrying out research in prisons. However, my research was clearly intended to be conducted with immigration detainees only, and not with people suspected or convicted of crimes, so there was no evidence to suggest possible violent behaviour on the part of detainees. This was particularly interesting in

Prison 1, where the director explained to us that migrants with a criminal past would generally not be detained. Furthermore, many detainees were asylum seekers awaiting a transfer under the Dublin III Regulation, according to the director, meaning that their protection need had not yet been examined, and that their detention was mostly due to practical reasons – detention makes it easier for cantonal authorities to implement the transfer – and not to their lack of cooperation⁹². Despite this background, the director was seriously worried about my security, and he even mentioned hostage-taking as a risk.

This approach was rather surprising for me, as in previous contexts related to my academic and NGO background, I had generally been exposed to the view of detained migrants and asylum seekers as vulnerable subjects. In this new context, they were turned into dangerous subjects, and it was taken for granted that spending time with them would imply a risk to my safety. Such prominence of security concerns made me conscious of the concrete effects of the securitisation of migration (Huysmans 2006; Squire and Huysmans 2009) in general and of the specific mechanisms of securitisation inherent in the fact of detaining migrants in prisons that are conceived and meant to confine people who have committed crimes. Such convergence of crime control and migration control quickly became one of my main research interests: what effects does this embeddedness in the penal system have on detention practices and experiences?

These discussions about security frightened me a little and affected my own view and position. In fact, after the meeting in Prison 1, and although I had discussed the issue critically with my supervisor, I wrote in my field notes: “Even if they may exaggerate the danger, I think that it does make some sense and this is not because of the people who are detained here but because of the conditions in which they are stuck! To be maintained ‘in captivity’ (cf. Campesi 2014) can render people violent and forced deportation can bring to extreme acts (see suicide attempts or self-harm)!”. It was the fact that I had not been able to enter the space of detention and meet the persons detained that left space for imagination and fear, which I hardly ever felt again.

Although security issues were discussed seriously in Prison 1, I think that they were also used to avoid mentioning other problematic aspects, such as potential media attention raised by my research or possible resistance to my presence by some employees. Although the director implicitly touched on these issues, he did not mention them as obstacles to the research, and the official version always focused on questions of security and responsibility in case something bad happened. Reflecting with hindsight on the different paths that negotiations took in different prisons, I think that in Prison 1 my research was seen from the beginning to be problematic or threatening at the political level. In fact, it very quickly reached the highest political level in the canton as it was discussed with a member of the State Council. At this level, the distance from the everyday experience of detention is the furthest and preoccupations with the media increase. In fact, anxiety related to the media (Gill 2016) is particularly challenging when trying to access institutions in a sensitive and contested field such as immigration detention. My assumption remains that the prison director and his superiors in Prison 1 were concerned about the sensitivity of the topic and of the data I would be able to collect, but that the security argument was easier to raise, as it did not need further justification.

The question remains open therefore as to what led the Regional Prison of Bern and the prison of Bässlergut to grant me access to their institution. In my understanding, the two prison administrations accepted being part of the study because they were convinced that they were doing their work well. This was manifest in both managements’ comments that they had nothing to hide. This might have to do with negative representations of prison work (see section 6.1.2) that the

⁹² This conversation occurred before the modification that introduced ‘detention under the Dublin procedure’ as a new detention type (Art. 76a FNIA). See Chapter 2.

directors of both institutions are keen to fight, putting forward an image of a modern institution that provides for security while respecting the rights of the inmates. To counter representations of violence and obscurity of the closed prison world, a certain amount of openness to civil society is necessary. In Bässlergut, the management had also agreed to a few media reports in the facility and proudly referred us to them. The management considered that as opposed to other facilities situated in other cantons, the conditions of detention here followed the national regulations and they had also been adapted following the recommendations of the National Commission for the Prevention of Torture. In the RP Bern, on the contrary, the management and the staff were aware that the prison space and the conditions of detention were not ideal and in some respects did not even conform to the law. However, they were also persuaded that this was not under their control and that they were doing the best they could do under difficult conditions. The decision where to hold people in immigration detention being a political one, the director might have had an interest in our study in terms of its potential to illuminate the difficulties – both for detainees and for the institution – of operating immigration detention in such a regional prison. And in fact, the prison director was pleased with my research showing that the situation of the RP Bern was not able to conform to immigration detention standards and had negative consequences on the daily life of detainees and the daily work of prison staff. This provided support for the plan of the cantonal prison service to create a new section of immigration detention in the regional prison of Moutier, which would allow use of the RP Bern only for short-term, initial stages of detention.

The two managements of the RP Bern and Bässlergut also highlighted several times that they were not responsible for the decision to detain individuals in the facilities they were managing. They were only responsible for detainees' survival and well-being in the time they spent there waiting for deportation. In fact, by operating immigration detention, the prison service takes over tasks of migration control despite not having direct impact on individual file-based decisions. This separation from the decision-making process relating both to detention and deportation also quickly became one of my main research interests. The reaction in Prison 2 is revealing here: by suggesting that I contact the migration office, it was made clear that the prison had nothing to do with immigration and deportation procedures, although they happened to confine a small number of immigration detainees. At the same time, the point that was raised in the RP Bern that interviews could provoke awareness and reinforce resistance of detainees thus 'damaging the system' gives another insight into the ambiguous role of prison staff, who are de facto part of the 'deportation machine' (Fekete 2005). Furthermore, the reaction in Prison 3 suggests that cantonal authorities may not consider short-term confinement as a deprivation of liberty, but rather as a trivial migration management tool.

4.2. Research design and methodology

This thesis is grounded on an ethnographic approach that seeks to understand the complex topic of immigration detention through immersion in the field of study and the attempt to grasp the points of view of the people involved. Ethnography is intended here as an approach that "involves the researcher participating, overtly or covertly, in people's daily lives for an extended period of time, watching what happens, listening to what is said, and/or asking questions through informal and formal interviews, collecting documents and artefacts – in fact, gathering whatever data are available to throw light on the issues that are the emerging focus of inquiry" (Hammersley and Atkinson 2007: 3).

More precisely, the thesis has a multi-perspective research design "that aims at understanding a given phenomenon and the intertwining agency of a variety of actors (...) [t]hrough triangulation of

a variety of perspectives and of different kinds of data”, including legal texts, statistics, newspaper articles, as well as first-hand data produced through interviews and participant observation, and including as well the researcher’s emotions and reactions to what she observes (Achermann 2009a: 52-53).

Although participant observation and qualitative interviews compose the core of my data, other sources need to be mentioned here, namely a series of written documents such as legal texts, prison regulations and newspaper articles. I did not conduct a systematic analysis but rather used them as a complementary source of information about the legal framework, and about the institutions and their daily functioning. Furthermore, within the broader research project, we requested quantitative data on immigration detention from the State Secretariat for Migration (SEM) and analysed them statistically. A small portion of those analyses are included in section 3.1.

In this part of the chapter, I explain the choice of facilities in which fieldwork took place and describe how I produced and analysed my ethnographic data. I focus particularly on the two main methods I relied on – participant observation and qualitative interviews – and discuss the specific conditions under which I carried those out. Finally, I explain how I analysed my data.

4.2.1. Choice of facilities

As mentioned, the strategy for gaining access to immigration detention facilities needed to be readjusted a few times on the basis of responses encountered in the facilities. The final choice of the two facilities in which I conducted the core ethnographic study is partly due to this process, but is also the result of a conscious choice made on the basis of the information at my disposal before the start of the project. The two facilities chosen have a significant number of places devoted to immigration detention and are geographically easily accessible, which facilitated intensive fieldwork. They are both representative of the Swiss tendency to use ordinary prisons for the scope of immigration detention. Despite that, they have experienced a rather different – or even opposite – historical evolution. The RP Bern is a remand prison that was increasingly used to house immigration detainees as a practical solution, due to its central location in the city of Bern. The prison of Bässlergut, on the other hand, was originally built as an immigration detention centre with the financial support of the Confederation, but was subsequently turned into a prison holding both immigration detainees and inmates serving a prison sentence (see section 3.3).

One reason to include the RP Bern for the core study was that it also held female detainees. However, this turned out to be less relevant during the field study as the women’s immigration detention section was often empty, and women would only spend a few days there in any case, making it difficult to plan my presence as far in advance as was required. In the end, I only met one young woman in immigration detention once, and I was not able to interview any women. Despite that, the gender difference between the two prisons turned out to be very interesting. Bässlergut is a men-only prison hiring practically only men (the only exceptions being a secretary, a nurse and a cleaning person), while the RP Bern is a mixed prison, holding and hiring both men and women. The director is a woman, and she replaced another woman who was managing the prison before her. The higher presence of women in management and security positions has a significant impact on the daily work and atmosphere in the prison, as we will see in Chapter 6.

As I already mentioned, the initial plan was to include a third institution in the core study, but after the two first field studies, we opted for including a higher number of facilities through a series of one-day visits. Since the intention was to gain an overview of the diversity of the detention infrastructures and conditions, we selected five facilities with different sizes, locations, detention regimes and conditions. A visit was possible in four of these (see also boxes in section 3.2.1): the

Zurich airport prison which has the largest section for immigration detention in Switzerland, both for men and women; the facility of Frambois, which is one of the only dedicated detention centres in the country and provides for the best detention conditions nationally; the prison of Realta, which is a facility for the serving of sentences in an open regime, but has a closed section for immigration detention; and the prison of Thun (in the canton of Bern), to which women are transferred from the RP Bern since at the time of my research it had a small section specifically for the immigration detention of women. These visits were brief but allowed me to collect useful data through participant observation⁹³, formal and informal conversations.

4.2.2. Participant observation

Participant observation aims at producing first-hand data, based on the notion that the researcher both observes and participates in the lives of those people that s/he wishes to study. The extent of involvement of the researcher in ethnographic studies has been debated for decades. With this in mind, Gold (1958) provided a typology of four types of possible roles of the researcher: the complete observer, the observer as participant, the participant as observer and the complete participant. Due to the specificities of the spaces I studied – characterised by enclosure and security measures – as well as to ethical questions, my level of participation during fieldwork remained limited. However, my presence was never that of a passive observer, as I walked through the carceral space with staff members, sat in the courtyard with detainees, always talking to people and asking questions.

According to Bernard (2011: 258), one of the main characteristics of participant observation is that it “involves immersing yourself in a culture and learning to remove yourself every day from that immersion so you can intellectualize what you’ve seen and heard, put it into perspective, and write about it convincingly”. This process of entering and leaving the field can be particularly difficult for the researcher when it involves leaving behind the sorrows of the people encountered and returning to their own personal life. Indeed, I experienced the most intensive periods of the research as emotionally hard and had to manage some level of guilt about the lack of direct relevance of my work for those who were the most affected by my topic of study: detained migrants.

As I outlined in the first part of this chapter, access negotiations were an important part of my participant observation. Other unofficial moments of participant observation included further meetings with the prison administration, the process of entering and exiting the prison space, as well as coffee or lunch breaks in the pause room with staff members. The formal periods of participant observation were of one of two kinds: shadowing staff members and participating in the daily walk of detainees. In the first case, at arrival in the facility, I was assigned to a staff member who I was meant to follow in their daily work and movements during the whole day or during their turn. This occurred in both prisons, while the second form of participant observation was only possible in Bässlergut, when I was accompanied to the exercise yard a few minutes before the start of the walk and I waited for detainees to arrive. Every time, I introduced myself and the research to those I had not met before, saying that they were free to talk with me or not. I always tried to act in a way that would not make detainees feel that they were forced to interact with me. Fortunately, the yard was big enough to allow persons who preferred not to talk with me to take their walk in another area, which happened several times. Detainees could also return to the detention area at any time, while I was not allowed to take that staircase.

⁹³ Every visit was different, but they always included a non-recorded conversation with one member of the management, a tour of the facility and some informal conversations with staff members. In Zurich, I could not make contact with detainees, while in Thun and Realta, I was able to stay alone with them in the section and in the courtyard.

As the fieldwork in Bässlergut involved both kinds of observation, I organised it in two phases in order to better grasp both perspectives (Achermann 2009a) and to avoid the same detainees seeing me in these different positions. In the first phase, I focused on detainees, participating in the walk and later organising individual interviews, while in the second, I focused on staff's work and points of view. As I will discuss in section 4.3, however, it was not easy to navigate this space of asymmetrical power relations between staff and detainees and the multiple loyalties that I felt, which directly followed from my multi-perspective research design.

Informing the research participants in a systematic way of my presence as a researcher and gaining their informed consent was challenging and in some cases not possible at all due to the specific characteristics of the prison as a closed institution. An information sheet that I provided to the management of the facility was circulated among staff members in both prisons, explaining who I was and the modalities of my research (see Annexes 3 and 4). In Bässlergut, information sheets in German, English, French, Italian, Arabic and Farsi (see Annex 5) were hung on the wall of the two wings of the immigration detention section, so that detained migrants were generally informed of my role as a researcher. A few times, however, sheets were removed, a circumstance that was out of my control. In the RP Bern, where I conducted a few days of observation in the wings, I had to inform detainees orally, which was not possible in a systematic way. Some time later, I provided information sheets that the management allowed me to circulate among detainees, providing for the opportunity to make an appointment for an interview (see Annex 6). Again, it is not totally clear to me how accessible these sheets were and few detainees volunteered for an interview this way.

During my participant observation, I tried to observe the carceral space in its materiality, including objects and furniture, but also in terms of sounds, temperature and general atmosphere. I paid particular attention to staff practices and processes, to their attitudes and interactions with detainees, as well as to the movements and actions of detainees. In general, interactions were at the core of my observations, including those among staff members and among detainees, but also informal conversations including myself as an interlocutor. My language skills allowed me to talk to many detainees, with whom I spoke in English, French, Italian, German and Spanish. Furthermore, some detainees were happy to help with those conversations by translating for others. Language was, however, a limitation in many cases: not only was it hard to communicate with some detainees in the absence of a common language, but I was also unable to fully understand some of the informal conversations occurring between staff members, which most of the time took place in the regional dialect which I did not fully understand.

During the different phases of observation, I took notes on what I was observing. However, I found it difficult to take these in real time or during the time allocated to the observation. Most of the time I instead wrote some keywords that later would remind me of my observations. After exiting the prison, I would usually find a place where I could write down and transcribe notes on my laptop as soon as possible. I tried to follow Becker's advice to write down everything without much selection (Becker 2008). I wrote as much as I could and with all the details that were still in my mind. I found this exercise rather exhausting, particularly after a day spent in prison and the related sorrow and emotional charge. After each session of writing and transcribing notes, I wrote down methodological minutes, first interpretations and remarks on my personal feelings and emotions before, during and after the fieldwork. The latter was both a way to express the emotional tension in a sort of auto-debriefing, and the production of a different sort of data that would elucidate some methodological questions but would also contribute to explaining the heavy atmosphere of confinement and its emotional consequences for those people living or working there.

Observing while being observed: the paradoxes of prison ethnography

Just as security discourses of prison administrations limited my access to certain spaces and times of detention, the surveillance system impacted my participant observation in prison. Regarding participant observation in the exercise yard, the management at Bässlergut approved this only since it was possible to watch me through cameras. Surveillance staff working at the command centre were asked to keep a special eye on me when I was in the courtyard. Moreover, I was given an internal phone, using which I could call the staff as well as trigger the emergency alarm. While I was in the courtyard conversing with detainees, I more than once received a call on this internal phone and I was asked to move out of a blind corner so that they could see me, as in the following example:

“At some point, while we were conversing on the bench, I am called on the internal phone by the command centre, they ask me where I am, I say in the courtyard 2, they say they don’t see me, and they ask me to move to another bench where they can see me. I say ok, I stand up. Obviously I don’t want to make everyone move to another bench. P. asks why they called, I say that they did not see me through the camera, he looks around (maybe he never noticed the cameras?) and he jokes by saying ‘she is here, she is here!’. Then, however, he feels a bit offended and says ‘do they think we are criminals?’” (Field notes, Bässlergut).

This discloses a fear felt by the administration that something could happen to me with consequences for the institution, a fear strongly related to the questions of responsibility that were also raised in some access negotiations. Again, detainees were seen as potentially dangerous and undeserving of trust, as will be discussed in section 6.4.4.

Although these measures were allegedly for my security, they also allowed a certain degree of control over my movements and behaviours, as staff members would know with whom I was talking and for how long. Despite my attitude towards detainees never having been codified in any official document or agreement with the institutions as the negotiations in Prison 1 would have required (see section 4.1), I did feel a certain will of the authorities to control what I was doing when I was spending time with detainees. Although it was never explicit, I had the impression that some staff members perceived me as a young and naïve woman who wanted to help detainees despite their often not deserving such help, someone who could violate security rules. In their view, being a woman also made me more vulnerable to detainees’ attempts to manipulate me, which was implied in a couple of comments I overheard.

In Bässlergut, even when I conducted interviews with detainees in the visitors’ room, I was observed through cameras, which was not the case in the RP Bern. One day, I discussed the possibility of conducting interviews in a closed room because in the visitors’ room there were often people walking through and disturbing the conversation. A member of the management told me: “oh, those rooms are not for you, they are very small, and furthermore, there are no cameras. I won’t leave you in such a room with a detainee, that’s out of the question”.

Although feeling observed might have affected my spontaneity to some extent, it also made me experience one of the characterising features of incarceration, which affects life and work in detention. In fact, this form of ‘Big Brother’ is not only strongly felt by detainees, but also by staff members, one of whom told me that the work in detention had crucially changed with the introduction of cameras that not only control detainees but also prison officers. Prison staff can be sanctioned for their behaviour if they are seen through cameras. This produces a sort of *panopticon* effect on all those who are observed, including myself. During fieldwork, I sometimes became anxious about being reprimanded over something that would have been observed through cameras. An example from my field notes reveals this. I was on my way to the prison and I took the

opportunity to take a few pictures from a distance, but then wrote down: “I feel like I am doing something illegal although I really don’t think it is illegal to take pictures of prisons from outside. I feel like I’m observed...”⁹⁴.

If this atmosphere of surveillance affected my behaviour, a larger control over the research was manifest in the ways in which these institutions imposed their timing, their rules and their detachment from detainees’ private problems (as in the case discussed in section 4.3.2 where a detainee asked me a favour and I was not allowed to help). In summary, despite there being no official contract or agreement that was passed with the institutions⁹⁵, the carceral institutions maintained a certain level of control over the research through hierarchy, inaccessibility of space and surveillance. This control was facilitated by the closed and securitised nature of the prison space and made me particularly dependent on the institution. On the other hand, neither prison management tried to control what I would produce on the basis of my observations or demanded that I anonymise their institutions.

4.2.3. Qualitative interviews

Interviews have been a fundamental method of data production for this research, complementing the data gathered through participant observation. The interviews I conducted were conceived as ‘ethnographic interviews’ in the sense that they were not isolated from the research situation but rather inserted in a broader ethnographic fieldwork (Beaud and Weber 2003). They allowed me to ask questions based on my observations as well as to delve into the subjective experiences, personal trajectories and understandings of my interviewees. In this section, I provide some details relating to the sampling of interviewees and the conditions and modalities under which they were conducted (for an overview of the number of interviews carried out, see Table 9).

Interview sampling did not aim to be fully representative but I tried to follow principles of variation and saturation (Glaser and Strauss 1967). However, I had to proceed realistically given the difficult research field and the complexity of ensuring interviewees’ consent. In particular, I was not able to plan and organise interviews myself and with the needed flexibility, but interviews needed to be previously arranged with the prison management, which would define timing and location. In order to ensure informed consent, in the RP Bern the sample was mainly built through voluntary enrolment for interviews. The management informed all staff members of this, sending them the information sheet I had prepared for this purpose (Annex 3). Staff members would announce themselves if they were interested and the interviews took place during working hours. This procedure aimed at preventing staff members from feeling obliged to undergo an interview, but it had the consequence of partly selecting the most motivated staff members and those who were more sensitive to the issue of immigration detention. In an institutional context characterised by an internal division between ‘the nice ones’ and ‘the bad ones’ (see section 6.2.4), most staff members I interviewed considered themselves as part of the first group. Toward the end of the research period, a few staff members were directly asked by me or by the director whether they were interested in an interview in order to diversify the sample based on criteria such as age or seniority.

The same concept was followed with detainees. They were informed of the opportunity for an interview through sheets that theoretically circulated in the ‘living group’ area. I also visited the section once, directly informing detained men about this possibility, and several expressed their will

⁹⁴ In fact, I discovered later that there are cameras from which security staff can zoom in on people walking on the pavement or entering the area around the prison.

⁹⁵ In the RP Bern, I was asked to sign a confidentiality paper on the first day of fieldwork, on which it was only mentioned that I would not disclose any personal data of detainees without anonymising them.

to be interviewed on that occasion. When a detainee volunteered for an interview, the director would contact me and we would plan an interview over the following days. Although I expressed my interest in interviewing some women, and the management confirmed that they were informed of this, no women volunteered for an interview. This is presumably related to the low numbers of women held in the RP Bern and the short periods of time they usually spend there, but it might also result from a lack of information about or interest in the study. Personal contact with the female detainees would probably have facilitated their participation.

In the RP Bern, interviews with detainees took place in closed rooms that are also used for meetings with chaplains and lawyers. These are somewhat neutral spaces and are equipped with a table and chairs, but do not give any view of the outside, since if they have a window, it is milk-glassed. The conditions were very good as there was privacy and no interruption. The rooms are not under camera surveillance. This was also the space used for some of the interviews with staff members, while others took place in a large meeting room, which was less ideal as other staff members might be using the room for short periods of time as well. After each interview with a detainee, I gave a ten-franc phone card as a thank-you gift in agreement with the management, but I did not tell the detainees about this in advance, as I did not want to use it as an incentive to gain more interviewees.

In Bässlergut, I conducted fewer interviews, as I was able to carry out more participant observation. Also, the fact that I was already more familiar with the research participants allowed me to progressively select a number of interviewees and directly ask them whether they were interested in an interview based on my personal feeling that those interviews would provide interesting insights and be complementary to each other. Both in the case of staff members and detainees, I favoured those people with whom I thought that I had built a certain level of trust. I tried to diversify the profiles of staff members on the basis of their different attitudes and points of view as I had observed them during observations, and those of detainees according to their specific backgrounds and situations.

Interviews with detainees took place in the visitors' room, which was far from ideal as there would often be staff members walking through that space. As in the RP Bern, I was permitted to provide phone cards to thank detainees for their participation, but again I did not announce these beforehand. Interviews with staff members took place either in their personal offices (for the administration, production and medical staff), in the visitors' room or in the tribunal room, which was quieter and there was no reward given to staff members for their participation.

Besides interviews with staff members and detainees, in both institutions I also conducted a few interviews with other actors such as chaplains, NGO representatives and visitors' groups, most of which took place outside the prison. Furthermore, five interviews were organised with migration authorities of the three cantons involved (Bern, Basel-Stadt and Basel-Land).

The interviews I conducted were in-depth, ethnographic interviews and were conceived as an integral part of my ethnography (Beaud and Weber 2003). Most of them taking place in the prison space, they allowed me to observe specific spaces and situations. They allowed me to clarify things I had seen during observations, to ask about things I was not able to observe, and to delve into the subjective and emotional world of research participants. I focused on questions that asked the interviewee to describe things: for detainees, it was mainly their trajectory and daily life in detention; for staff members, it was rather about their role and tasks and how they would conduct them.

Table 9: Number of interviews and information on interviewees

Interviews	RP Bern	Bässlergut
Members of management	2	2
Staff members	8	7
<i>of which medical staff</i>	1	1
<i>of which women</i>	5	1
Chaplains	2	1
NGOs/volunteers	5	2
Migration authorities	3	2
Detainees (male)	11	9
<i>of which Dublin cases</i>	9	3
<i>of which North African nationality</i> ⁹⁶	3	5
<i>of which South-Saharan nationality</i>	6	2
<i>of which East European nationality</i>	2	1
<i>of which Middle Eastern nationality</i>	0	1
Total	31	23

I always started the interview with an introduction (see Annex 7) in which I explained my research topic and approach, as well as the modalities of the interview. I said that my goal was to understand how immigration detention functions, what daily life in prisons is like, and the different points of view, perceptions and experiences of the people involved, including detainees, staff members and other actors. I explained that the aim of the interview was for me to understand what their work consisted of and/or the experiences they had had in immigration detention. I added that the data would be treated in an anonymous and confidential way, and that I would do my best to render them unrecognisable should I use their quotations in my thesis or other products. In cases where this would be difficult given the specific position of the person (for example member of management or legal advisor), I warned the interviewees and received their permission. They were also invited to explicitly state when some information was particularly confidential, so that I would stop the recorder and subsequently not use that information in a direct way. I always asked in the introduction whether the interviewee agreed to be recorded and started to record afterwards. Most interviewees agreed, while one staff member, four detainees and one migration authority preferred not to be recorded.

Following the introduction, I usually started with an open question that would allow the research participant to become confident with the interview situation and myself to delve into their universe and better know their style of narration. The interviews were semi-structured, meaning that I followed an interview guide, but in a flexible way, remaining open to new topics or questions arising in the conversation. The interview guides for each type of actor (examples in Annex 7) were built based on previous observations and were constantly adapted both on the basis of the interviews conducted and of my previous knowledge of the person and his/her role or situation. I followed the interview guide only in part, rather trying to follow the discourse of my interviewees, asking for clarification and details. I tried “to follow the interviewee’s talk, to follow up on and to work with them and not strictly delimit the talk to (...) [my] predetermined agenda” (Rapley 2004: 18). This means that in some interviews, I did not touch on all the topics I had planned. Interviews

⁹⁶ Precise nationalities are not mentioned for anonymity.

with detainees usually started with the question: “how did it happen that you found yourself detained?”. I asked some questions about their time of arrival in Europe and subsequent mobilities, but deliberately avoided asking about their motivation to leave their country and about their journey to Europe. I made this choice both for ethical and methodological reasons, for I wanted to avoid reproducing the asylum interview and inducing re-traumatisation. During the interviews with detainees, I usually asked them to sketch their cell so that they could better describe and discuss that space. The interviews with staff members and with detainees lasted two hours on average. Most interviews were recorded and then fully transcribed. At the end of the interview, I wrote methodological notes and first interpretative thoughts, and usually also a summary of the interview contents.

Most interviews with staff members took place in German, which posed an additional challenge as my German skills were limited and this required the interviewees to speak in so-called ‘high German’ instead of Swiss German, which is the language used in most informal conversations in German-speaking Switzerland. I also conducted a few interviews in French and Italian when that was the participant’s mother tongue. With detainees, I used all the languages that I could: French, German, English, Italian and Spanish. In two cases I hired an interpreter, which did not happen more often because those detainees who would not understand any of the languages of the information sheet would usually not be informed of the possibility to volunteer for an interview either. I personally translated all quotes used for this thesis.

As promised to the interviewees, their names have been changed for reasons of anonymity. I have also removed information such as the date and time of the interview and nationalities when necessary (in some cases I mentioned the area, e.g. West Africa), so as to render them as little recognisable as possible. For the same reason, I decided not to specify in the quotations in which language the interview took place. Given the relatively high turnover of detainees and the long time that has passed since my field research, I believe that telling their stories does not put them in danger. For those with whom I am still in contact, I avoided mentioning their current situation in order to better protect them. Regarding staff members, I decided to avoid dealing with questions of hierarchy within the institutions since this was not fundamental for the thesis and could possibly raise some trouble for them. As for members of the management, I informed them that it would be more difficult to anonymise them given their specific positions, and they agreed with that situation, although names have been changed.

I took into consideration the possibility of anonymising the entire institutions by using invented names and giving fewer details about them. However, full anonymisation would have needed to avoid any thorough description of the spaces, locations and conditions of the facility so as to make it unrecognisable. This would have significantly impacted my ability to discuss specific issues regarding these two facilities. Since the institutions did not ask me to change their names, I decided to keep them and considered this aspect while writing, choosing a method of description that would respect the people participating in the research. Despite raising some criticism in my analyses, I tried not to highlight any particular person, for example showing how structural aspects are reflected in the discourses of staff members.

4.2.4. Data analysis

The analysis of data collected through qualitative methods was a long process that started in the field. I wrote up memos and first interpretative analyses after each observation session and interview and these were extremely useful for the progressive development of my observation and interview guides.

Later, all the interviews were transcribed with the help of faculty students appointed for this task. Together with the observation field notes, which I also fully digitally transcribed, this made up a very large amount of text to analyse. The use of software called MaXQda helped me to keep the data together in one single file, allowing me to easily switch from one document to another and to conduct lexical searches of my whole material.

The actual analysis of this qualitative material took two main forms: one that I would call vertical or individualised, in which each interview was analysed on its own terms to identify patterns of discourse and links between what the person said, how he or she behaved, and his or her personal trajectory; and one transversal form based on a mix of theoretical and thematic coding. I proceeded simultaneously with these two forms of coding and analysis. To apply the first, I wrote analytical documents for every interview, in which I first summarised the personal trajectory of the person. Then I added some methodological notes on the conditions under which the interview had taken place, and on the previous contacts and relationship that I entertained with that person, such as in the following example relating to an interview with a staff member in the RP Bern:

"I didn't know him at all before the interview. From the beginning, he was very friendly, talkative and communicative, I felt like I had known him before. The interview took place in the afternoon, in a small room with a milk-glassed window (he said he had reserved that one because of the window). He didn't want me to record the interview, he said it would be 'like a police interrogation' if I'd recorded it. I didn't insist. I couldn't ask all the questions but got very interesting information from him". (Interview notes, methodological comment)

This facilitated taking into account the interview context in the analyses. After those comments, I provided an overview of the topics that had been touched on (with numbers of pages or paragraphs) and summarised the interview content with regards to different subject categories, adding some analytical comments⁹⁷. Finally, I wrote memos in the form of short analyses and interpretations, looking for connections between several parts of the interview, as in the following examples:

"[Code of interviewee] is very keen on security, rules and hierarchy (...). Often he answers questions about practice by outlining the rule (...). In one case he also states that they don't make exceptions (p. 6). Security is always the first priority: he states it (p. 14, also 32), but it is also clear in the way he answers the questions, e.g. uncertainty related to the possible danger of disclosing information about security (e.g. pp. 25-26). Several times, particularly when talking about legitimacy of detention, he talks in a defensive tone: defends Switzerland which does what it has to do; and defends his position ('it's a job!', p. 32) and the fact that he is not responsible for the system or for the situation of detainees."

"[Code of interviewee] presents his situation as the consequence of a plot against him between different kinds of judicial and immigration authorities. Everything is decided before, he has no way to change his situation. He uses words like 'mafia' (paragraph 275), 'manipulate' (paragraph 22), 'project' and 'torture' (33) to describe the authorities' behaviour." (Interview notes, memos)

These analyses also gave me the opportunity to translate the most important interview content into English and dispose of a corpus of data that was a little more homogeneous, at least in terms of form and language.

⁹⁷ The categories were usually the following for detainees: experience and trajectory; daily life/activities; materiality/architecture/detention conditions; cohabitation; agency/resistance; staff; immigration authorities; immigration control/politics. As for what concerns staff members, those were: daily work and work conditions; team; relations with detainees; detainees (cohabitation and behaviours); force/violence/resistance; migration office/control/deportation.

The second type of analysis was transversal and took place through coding of interview transcripts as well as observation notes. Despite being inspired by the methods of theoretical coding as developed by Glaser and Strauss (1967) and Strauss and Corbin (1990), as soon as I started coding my material I realised that a rigorous coding of all material was impossible and that I had to find my own way of coding that would allow me to classify and analyse the data. The aim was to make the material accessible in order to analyse themes and questions transversally throughout the different materials. Therefore, I made large use of thematic codes on specific subjects that I knew I wanted to address in the thesis: ‘Medical care’, ‘Use of force’, ‘Entry procedure’ or ‘Cohabitation in cell’ are some examples. Other codes were more descriptive and interpretative, reflecting the expressed feelings and the discourses of research participants. Some examples are ‘Angriness toward immigration authorities’, ‘Feeling of racism’ or ‘Interpreting the law/system’. I also used a few *in-vivo* codes (Strauss and Corbin 1990) for recurrent discourses such as ‘This is not a hotel’ or ‘They are all working together’. Some codes also had sub-codes, for example ‘Staff’s room for manoeuvre’ has five sub-codes: ‘Keeping calm and anticipate problems’, ‘Making exceptions’, ‘Giving advice’, ‘(Coping) strategies’ and ‘Different working styles/attitudes’. The same segment could be coded several times, for example with a thematic code pointing at the general topic discussed, and a descriptive or interpretative code regarding the way the interviewer was talking about it.

The codes were clustered in broader themes such as prison space, prison organisation, management of detainees, relations with outside, daily life and activities, agency and resistance, criminalisation and crimmigration, experiences of confinement, migration trajectories, migration authorities, working in prison, understanding immigration detention, and interactions. The clusters and the position of every code were adjusted progressively as the coding moved forward. Some of the codes and code clusters were later analysed in more depth by exporting the segments into an Excel table and developing further connections or patterns across the data.

For some chapter sections I also developed other types of analysis. For example, in preparation for writing Chapter 7, I summarised more than 60 detainees’ trajectories both in text and in a table which would allow the comparison of some specific aspects (for example how they were detected/arrested or their kind of immigration case).

The analyses conducted on the ethnographic data – both vertical and horizontal – are reproduced in the second part of this thesis, divided into four longer chapters that focus on different angles of analysis. In particular, Chapter 5 investigates the logics of the carceral facilities as institutions, Chapter 6 follows the perspectives of staff members and Chapters 7 and 8 focus respectively on the trajectories and the carceral experiences of detained migrants. The structure of each chapter is mainly based on the structure of codes and codes’ clusters. However, most of the analyses were made during and through the process of writing, using the interpretative memos I had been writing during the observations, transcriptions and coding, moving back and forth between writing and data analysis.

4.3. Researching closed spaces: managing multiple loyalties and positionalities

A research design which aims at understanding the perspectives of various actors in such a contested field of practice unavoidably translates into the researcher being caught between different forces. Indeed as argued by Lavanchy (2013), researching state institutions can confront the researcher with competing claims and multiple loyalties. This situation was made more difficult by a structural context in which actors are co-present, with a strong power imbalance and different

interests and roles. In this section, I address the multiple loyalties I felt during my fieldwork, and then further discuss my positionality within the staff and with detained persons.

My position in the field was affected by three main loyalties. First, I felt a sense of indebtedness to the prison management who had granted me access to the institution despite my research implying some risks and time investment on their side. Second, I felt sympathy for detainees who found themselves in a situation of domination of which I was very critical. Third, I wanted to understand the point of view of prison staff without demonising them and I appreciated how several staff members had welcomed me although they had not been consulted before approving my request to undertake fieldwork in the institution. These loyalties could sometimes enter into conflict, and I needed to ensure confidentiality as both staff members and detainees would tell me things about themselves and prison life or work that they would not express in the presence of other people.

During fieldwork in Bässlergut, there were constantly situations when staff and detainees were co-present and these conflicting loyalties were difficult to handle. The passage from the first phase (dedicated to understanding detainees' points of view) to the second one (dedicated to staff's points of view) was particularly challenging. Although I had planned a break between the two phases, when I started to walk through the stations following staff members in order to observe their daily work, there were several detainees who I had come to know fairly well. On the first day of that second phase, I encountered diverse reactions to my presence among detainees: surprise, suspicion or indifference. Over the following weeks, I observed that my relationships with detainees who I had previously known started to change. The same person who had discussed and joked with me in the courtyard was now very discreet. Another person who had been very friendly when we had met in the courtyard almost ceased talking to me, despite the fact that I had informed him of this second phase of observation of staff's work. Weeks later I bumped into him in the city – he had been released – and he was very friendly again. He explained that he had not been angry with me, but that he was feeling very bad in detention. However, I suspect that the key issue that had motivated his distance was my closeness to staff members.

Detainees who saw me only in the second phase of participant observation were sometimes also puzzled by my presence. As I was accompanying staff, I had little time to answer their questions or explain what I was doing. I used to explain simply that I was doing research, I was interested in daily life and work in detention, and that on that day I was there to observe the work of staff. This particular form of presence made me complicit with the prison administration for many detainees, one of whom pointed at the phone I was carrying saying: "you are half member of the prison", adding that he would not talk to me any more because I was "with him", pointing at a staff member. Another example of how multiple loyalties would enter into conflict during participant observation is described in the following note from my field diary:

"At some point, I am in the detention area with P. [staff member]. One detainee asks me if I have ever seen a cell and invites me to enter. I go inside. It is a big cell, divided in two parts. There are at least six beds. I find it pretty big and not so bad. He starts to say that it is not normal, that we are in Europe, the walls are dirty, the mattresses are disgusting, then he shows me the toilet which is at the same time a shower. P. intervenes and says that when the Commission for Human Rights came, they found the size etc. conforms and he starts to discuss with him by saying that if they would keep it clean and ordered, it would be better and that there are other cells which are better maintained. (...) Then E. [staff member] arrives, he looks like he disapproves that we have started to discuss this with him and makes a gesture to me to come out of the cell (as if he would like to say 'don't even listen to them')" (Field notes, Bässlergut).

Here again, I felt competing claims from the detainee (who wanted me to support him in saying that they were subject to inhuman conditions), from the first staff member (who may have wanted me to sustain his own argument), and from the second staff member (who appears to have thought that I was to blame for putting myself and his colleague in such a position). Being asked my personal opinion about detention in the presence of both groups was actually one of my biggest anxieties, although this hardly ever occurred.

On several other occasions, I felt different expectations from staff and detainees. It happened once that a detainee asked me as a favour to get his phone from a friend and bring it to the prison before he was deported to Italy. This phone was important to him as it contained the phone numbers of his family, but his friend was afraid to bring it to the prison. I decided to ask permission from the director, who finally wrote per e-mail that they did not want me to do it “because of the boundary [*Abgrenzung*]”, without giving any further explanation. I tried to explain that it was important to me that I do something positive for the detainees, who had enabled me to do my research, and that it was a return of this favour, but to no avail. I was not able to act in the way I wanted to, which made me feel angry and guilty as I had prioritised my research access and relationship with the institution over the needs of a detained person. Finally, I tried to call his friend who never picked up the phone and I was unable to do anything further.

A short note on my positionality

Being a white woman in men’s immigration detention facilities made me a noticeable presence. My Swiss nationality and white skin certainly positioned me more on the side of those detaining than those detained. Furthermore, while the RP Bern is a mixed institution, female roles within the prison of Bässlergut were exclusively related to medical or spiritual assistance and not to surveillance and security tasks. Also, the fact that I come from an Italian-speaking Swiss region and I am a member of that minority within Switzerland led to my perception as a non-typical Swiss citizen and not as a member of the Swiss majority. At the same time, I did not speak Swiss German and I had an Italian accent when speaking German, which created a certain boundary with staff members and moved me closer to detainees, who were sometimes confused about my national identity. My language skills also shaped my relationships with both detainees and staff as I had closer relationships with staff of Italian origins or with detainees who had been living in Italy or who spoke French. As for my background, I generally did not tell people about my previous and current voluntary work with pro-asylum NGOs. Usually, I also avoided talking explicitly about politics, but I had the impression that I was perceived by staff members as left-wing and pro-migrant, which was not surprising. Among detainees, despite the fact that I continually explained my academic background, I was sometimes associated with volunteer and activist groups, and other times with the Swiss people in general, somehow implying that all Swiss citizens were complicit in the system of migration control since it was working in ‘our’ interests.

4.3.1. My position among staff members: entertaining a relationship of trust and mistrust

My relationship with staff members in both prisons was generally friendly, and from the beginning I was invited to use the informal pronoun ‘*Du*’ instead of the formal ‘*Sie*’. I naturally felt more proximity and complicity with some staff members than others, but I generally felt welcome in both institutions. However, my role as a researcher raised curiosity and some suspicion, particularly triggered by my taking notes during participant observation, which led me to reduce note-taking to a minimum during actions or conversations.

Besides the mistrust of ‘outsiders’ being a characterising feature of carceral institutions (Crawley and Crawley 2008: 136), these attitudes of suspicion have several possible sources. Among these were the fact that my presence was imposed from above, and that staff members did not fully understand my role as a researcher. Indeed, while staff members were formally not obliged to take part in the research, as agreed with the prison administrations and wrote in the information sheet, in practice I was assigned to a staff member each day, and refusing this task might have been received negatively by the management. This posed some important ethical questions. While I was more or less able to ensure that participation in interviews took place on a voluntary basis, this was left in the hands of the prison director concerning participant observation. To reduce the risk of involuntary participation, I tried to ask each officer I was assigned to whether they agreed to it at the beginning of the day, and to be sensitive to any sign from their side, making sure that I was not too invasive with my questions or movements.

In Bässlergut, the fact that I had socialised and built relationships with detainees during the first phase of my research presumably led to my being seen to be more loyal to detainees than to prison staff. At the same time, the fact that I was imposed from the hierarchy and that I seemed to have a good relationship with the management also influenced my position among staff members, triggering some suspicion that I would relate to them what I would hear or observe despite my efforts to explain the confidentiality of information. Particularly in Bässlergut, which is characterised by a certain culture of sanctioning staff in case of mistakes or inappropriate behaviour, this might have impacted my relationship with staff members. Indeed, sometimes I felt I was a burden for some staff, who would leave me in the office while they set about their tasks. This kind of behaviour was also related to a general insecurity about what I was authorised to see, to do and to get to know, as staff members often required official approval for things for which I had already received approval in Bässlergut.

4.3.2. My position among detainees in Bässlergut: navigating uncertainties and expectations

The first phase of participant observation in the prison of Bässlergut took place in the exercise yard. Most of the time I was there alone with detained migrants, albeit the camera surveillance enabling staff at the command centre to watch that space. I would introduce myself and then let detainees decide whether or not they wanted to participate in the research by talking to me about their situations. Most actually wanted to have a conversation, probably in the hope that I could do something for them or at least help them to understand their legal condition.

Aware of the false expectations that this could raise among detained persons, I wrote in the information sheet that was circulated that I would not be able to help them change their legal situation, something that I repeated during our conversations. However, detainees would often come to me with questions about their situation and ask advice on what they should do. When related to their legal situation, I generally suggested consulting the legal advisor who visited the prison twice a week, as he had access to their files and documents, and had more competence and experience than I. When detainees were struggling to understand the detention system and its legal framework, I tried to explain it to them as far as I was able. Furthermore, when I heard of situations in which detention might have been unlawful, or when I thought that something could be done in legal terms, I actively suggested a meeting with the legal advisor. Often it turned out that detainees were not informed about his presence or about the fact that his services were free.

Discussing their situation with me was, however, not only a way to gain information or help. For many detainees it was a distraction, as I brought some “fresh air” in the words of a detainee. My

presence as a (female) outsider was experienced by several detainees as something positive: “when you are here, I feel the freedom!”. Furthermore, my presence and my interest in their experiences provided an outlet for detainees to express their incomprehension, anger or disagreement: “it does me good to talk to you. We have like a ball in the stomach, and it’s good to take this out”, said a detainee. In a condition of confinement in which detainees are being silenced (Puggioni 2014b) and where agency is reduced to very low levels (Bosworth 2014), participating in this research can be seen as a political act and a way of expressing one’s voice and thoughts. This will be further discussed in Chapter 8.

The walk with detainees usually put me in the centre of group dynamics that were interesting to observe but sometimes hard to manage. Some detainees became important for my research as they would relate to me many aspects of prison life and introduce me to newly arrived inmates. This was particularly the case with one detainee who had been my first acquaintance in the prison and with whom I kept in contact even after he left Bässlergut. He had been very kind to me and was interested in discussing and denouncing detention practices. He eased my access to other detainees and my acceptance in the detention space, but he also presented himself as an intermediary and started to mediate my discussions with others even when I did not wish him to.

Group dynamics could differ very much from one time to another. Sometimes there were group discussions and an atmosphere of solidarity, while other times detainees simultaneously tried to talk to me in private about their own situations, which was difficult to handle, as in this example:

“A. asks me if I want to see his papers. I say that I’ll be happy to do it, although unfortunately, I won’t be able to help him, (...). A. wants to go get the papers, but S. tells him it’s not necessary and he starts to explain to me A’s situation. Yet A. brings me a court decision. S. says: ‘I told him, he must submit an asylum request, so he will be released’. I say that it is not sure at all (...). I start to read the document. In the meantime, S. wants to explain to me what is written. Then he starts to speak with another detainee (F.). While I am reading, another detainee (X.) arrives and wants to tell me his story. After approx. half an hour in which I have A’s document in my hands, A. looks annoyed and complains to X. about the fact that he was talking so much while I was reading his document” (Field notes, Bässlergut).

This quotation is one of many examples in which several people expected me to discuss or do something about their situations, which provoked tension between detainees. In the example given, A. wanted me to read his document and help him understand his situation, while S. positioned himself as an expert and an intermediary. At the same time, X. desired to tell me his story and sought empathy, while F. also wanted to be part of the discussion. While the other detainees spoke French very well and liked to debate politics, A. was less equipped to understand his legal situation and to make me understand him. He had worked in France although undocumented and did not know the asylum system and Swiss bureaucracy as the others did.

At other times, I had the impression of being monopolised by one person and not accessible for others, as in the following example from my field notes:

“F. rushed at me and started to talk a lot. In the meantime, I wanted to talk a bit with L. too, not really for the research, but because the way he looked distressed me and I wanted to comfort him a little. Emotionally, I was absorbed by him. He was silent, and sat on the exercise bike in the corner. At the same time, F. was talking and talking. I must admit I did not listen to him all the time, also because I had realised other times that I had listened too much and observed too little” (Field notes, Bässlergut).

This kind of situation put me in an awkward position: I realise that such monopolisation of my attention by some people might have reflected power relations among detainees, which were not

easy to understand from the sole perspective of my participation in the walk. However, this phenomenon could also be related to identity coping strategies. For someone who is detained and constantly reminded of not being a citizen, talking to me as a white, Swiss woman and in a national language could mean positioning themselves as insiders. Unsurprisingly, the detainees who talked for long periods with me were often long-term residents in Switzerland or in Europe. On a more practical level, establishing a relationship of trust might have represented, in the eyes of some detainees, a small chance of being helped in detention or after release or deportation. Finally, as mentioned above, for people detained for a long time, having contact with someone from outside, was per se a way of mentally escaping the prison space, at least in the mind, and having a normal conversation with a woman, which is not usual when confined in prison.

Describing the research process and methods is fundamental for any empirical study in order to situate the data production and analysis within the context of the research. This chapter has aimed to describe this process, starting with negotiations of access to the institutions, moving on to explain how I conducted participant observation and interviews during my period of fieldwork, and providing some details of my position as a researcher in the carceral facilities studied. In addition, it has shed light on how the securitised nature of those facilities and their institutional embeddedness in the penal system have affected access to the field and the actual conditions in which I was able to conduct my ethnographic research. It shows how I was dependent on prison management and staff for negotiating my presence and access to specific spaces, times and actions as well as their modalities. Furthermore, the closed and securitised nature of those facilities made me feel constantly observed and controlled, and combined with the multi-perspective design of the research, this strongly affected my relationship with research participants.

Most importantly, negotiations around access to the field have revealed central features of immigration detention facilities such as the importance of discourses on security and how those construct detained persons as potential threats, in this case a threat for me as a (female) researcher within the facilities. Furthermore, negotiations suggested that prison management understand their role as purely executive and separate from the actual system of immigration control and deportation enforcement, which facilitates both the legitimisation of their work and the maintenance of moral distance from detainees and their fate. As the reader will see, these issues are central to the analyses in the second part of the thesis.

Chapter 5. Governing migrants in the carceral space

This chapter delves into the daily life of immigration detention, addressing how space and time are organised and how detainees are handled in the facilities under scrutiny. The angle of analysis chosen for this chapter is the functioning of prisons as institutions, with their rules, materiality, temporality, social life and power relations. More specifically, the chapter asks how detainees are governed within the carceral space, identifying the main rationalities that characterise these institutions and shape practices and experiences within them. The chapter will describe the daily functioning of detention facilities, while their underlying logics, functions and tensions are critically examined.

The analysis of the rationalities of government is inspired by Foucault and his conceptualisations around ‘governmentality’ (Foucault 2004)⁹⁸, understood here as an analytic perspective (Bröckling et al. 2011: 15), “a cluster of concepts that can be used to enhance the think-ability and criticize-ability of past and present forms of governance” (Walters 2012: 2)⁹⁹. Studies of governmentality analyse the ‘art of government’ with a focus on technologies and rationalities of government (Bröckling et al. 2011; Foucault 2004), defined as “the techniques and knowledges that underpin attempts to govern the conduct of selves and others in diverse settings” (Walters 2012: 38). Bröckling et al. (2011: 11) argue that “[t]he programs of (self-) government are both descriptive and prescriptive: they always presume a reality that they describe and problematise on the one hand, and in which they intervene (...) on the other hand”. For this reason, “analyses of governmentality are centred on the question of how practices and thinking about these practices constitute themselves mutually, or more precisely: how they translate into each other” (Bröckling et al. 2011: 11). In the following pages, I discuss practices of immigration detention in a way that acknowledges this relationship between the practice itself and how it is justified, described and experienced. However, the focus here remains on institutional rationalities as they translate into rules, practices and discourses, while the subjective points of view of prison staff and detainees will be further analysed in Chapters 6 and 8 respectively.

This conceptual framework also allows me to approach the subject of the government of detainees in a more nuanced way, in which detainees “are not merely objects of government, nor are they fully determined by technologies of control (...): in articulating themselves as subjects they take part in power relations, thus reproducing and transforming them” (Foucault 2003: 29-30, cited in (Bröckling et al. 2011: 14). Within this framework, I draw attention to the ways in which detainees resist attempts to govern them, giving rise to further attempts at enhanced control. Including resistance in this analysis is fundamental to understanding the “microphysics of power” (Foucault 1975: 34, see also Campesi 2015; Hall 2012), as “[r]esistance is not merely the counterstroke to power, it is also that which directs and shapes power” (Malpas and Wickham 1995: 43, in Bröckling 2011: 19).

In this chapter, I address the main rationalities of governing detainees while bearing in mind their plural and relational character (Bröckling et al. 2011). I show that management, discipline, biopolitics and humanitarianism are the main rationalities at play, intertwining to shape spaces, practices and experiences of immigration detention. Each of these rationalities involves a series of techniques and knowledge, producing detainees as subjects (or objects) accordingly. Detainees arrive in the facilities as objects which need to be processed, moved and placed somewhere in the

⁹⁸ It should be noted that Foucault has used this term with different meanings throughout his writings, including as a synonym of liberalism (Walters 2012).

⁹⁹ Foucault himself wrote that he wanted his work to be a sort of “toolbox” for the analysis of power and society (Foucault 1994: 523, in Walters 2012: 138).

carceral space following a rationality of management that makes use of logistics technologies. The rationality of discipline recognises them as subjects only in order to transform them into detainees who need to conform to prison life. Based on technologies of surveillance, the rationality of discipline borrows from the criminal justice system a series of techniques related to retribution and rehabilitation. However, as immigration detention is not intended to facilitate reintegration after release, the rationality of government that is perhaps the most central is the biopolitical, which produces detainees as bodies to be fed and kept alive until deportation. Finally, a humanitarian rationality underlies the involvement of NGOs offering legal (and return) advice to detained migrants. According to such rationality, detainees are governed in the image of rights bearers, but the ambiguous position of NGOs limits their impact and inserts them into a ‘deportation continuum’ (Kalir and Wissink 2016).

Throughout this chapter, I will also question how the mixing of penal and administrative forms of detention and the resulting ambiguity with respect to the purpose and nature of incarceration shape the daily life and practices of immigration detention facilities. While formally not aimed at punishing detainees, the institutional setting of the prison lends punitive aspects and measures to immigration detention that it rationalises through the need for security, control and prison order. However, these are also implicitly considered as playing a deterrent role in the same way as is expected in the criminal justice system. I will show that the institutional blurring of migration and crime control and the resulting confusion are manifest in the ways in which detainees are governed and criminalised in the carceral space.

5.1. Managing arrivals and transfers: Detainees as objects to be placed and moved

The first rationality to address is that of detainees’ management, in which detainees become objects to be processed, registered, placed, moved, accounted for and made space for. Although this is significant in both prisons researched, in this section I focus on data gathered in the Regional Prison of Bern as it better exemplifies this rationality of government with its specific practices and technologies related to logistics. In fact, as outlined in the description of the institution (see section 3.3.1), the RP Bern is a dynamic prison that manages up to 70 or 80 entries and exits each day. The administrative work related to each entry and exit is intense and needs an organisational apparatus made up of specialised staff, procedures and technologies. In the following pages, I describe the work of this unit and show how this high dynamism results in a process of the objectification of detainees, who become objects to be placed and moved. At the same time, I go on to address two further implications of the administration of detainees’ files and movements across the carceral system: one related to crimmigration control and the other to detainees’ transfers as potentially punitive and deterrent.

5.1.1. The Regional Prison of Bern and the management of occupancy rates

There are two main reasons for the high number of entries to and exits from the RP Bern¹⁰⁰. The first is related to its position at the core of the cantonal carceral system, which implies that detainees held under both immigration and criminal law are usually confined there for the first period of incarceration, before being transferred to other facilities according to the availability of cells. Even after a transfer (e.g. to Witzwil, Burgdorf or Thun), detainees are returned to the city of Bern for Court hearings (necessary for every extension of a detention order), on which occasion they transit

¹⁰⁰ The description here is based on the situation at the time of my fieldwork between 2015 and 2016. The canton has organised its immigration detention elsewhere since. See section 3.3.1.

through the RP Bern. Furthermore, they are transferred to the RP Bern before any attempt at removal from Switzerland, which usually takes place from this prison.

The second cause of this high dynamism is the prison's location in the Swiss capital city of Bern. The prison is used as an overnight transit space for detainees from other cantons who must attend a meeting or an interview with federal or consular authorities based in the capital city. In particular, foreign nationals are brought to Bern in order for the State Secretariat for Migration (SEM) to hear them in the effort to identify their nationality – e.g. through linguistic tests or meetings with delegations from the countries of origin – or to pursue identity documents¹⁰¹. For the RP Bern, these people are 'passers-by', a description used by an employee at the prison. These detainees only stay for one night or a few hours, despite causing much administrative work.

The procedure for these overnight extra-cantonal incarcerations is as follows: the RP Bern receives a request and on confirmation of the availability of a cell, the canton of origin organises the transport, the person arrives in Bern and is registered as an ordinary entry by the administration team. They are body-searched and brought to any available cell. The prison organises transport and the following day, the detainee is moved from the cell to one of the waiting cells on the underground floor¹⁰², and after a period of waiting, is led to the SEM, the embassy or any other office. After the hearing, they are brought back to the RP Bern, which organises transport back to the canton in charge¹⁰³. Where accommodation overnight is not needed, the detainee waits directly in the 'waiting cells'. In this way, the RP Bern becomes a mere 'stopover', a space of transit for those detainees and the cantonal officers who organise their movements.

As the daily functioning of the RP Bern is characterised by significant movements of people, a specialised team was created by the former director to take charge of the whole administrative work related to them. This team, called *Aufnahme/Loge* (literally admission/command centre), is composed of 14 staff members working on rotation at the command centre, the management of entries, the storage of detainees' personal belongings, and in the function called *Läufer* ('the walker'), which consists of accompanying detainees' movements within the prison. Three members of this team are also in charge of the *Disposition*, described as a 'hub' from which all detainees' arrivals, transfers or movements outside the prison space are organised and administered. One of the main roles of the *Disposition* is to organise the space in order to allow for the unannounced arrival and placement of new detainees, which requires an overview of present occupation and the foreseeable transfers or releases of detainees:

"The Disposition always keeps an eye on who comes and who goes, and how much change we have at a given time (...). So we always have to make sure that we have places for new entries, because the RP Bern is the centre, (...) we have to expect people to come at any time. And therefore our task is to make sure that we can transfer people to other prisons as soon as possible, so that we have space again" (Anton, prison officer, RP Bern).

¹⁰¹ If they are not already incarcerated in that other canton, they can be temporarily detained under Art. 73 FNIA only for the time and purpose of being led to such authority in Bern.

¹⁰² There are four or five waiting cells of different sizes situated on the underground floor, next to the garage from which most detainees enter the prison. Detainees are divided using the internal criteria of the organisation, particularly relating to which sort of movement they are waiting for (movements within or outside the canton). Women are kept separated, but the principle of separation between detention regimes is not strictly followed. The waiting cell that I visited – the largest one – is equipped with a bench, a table, a TV, toilets and two milk-glassed windows.

¹⁰³ While a cantonal transport service is in charge of transports within the canton, the private agency Securitas transports detainees outside the canton.

The central position of the RP Bern in the cantonal carceral system described above makes it necessary for staff to always find solutions, whether or not the prison is already full. This also explains the prison's frequent overcrowding (see section 3.3.1). In fact, making space for new arrivals implies the transfer of detainees to other prisons, but this is only possible when these have free places themselves, otherwise a solution must be found within the RP Bern.

The need to make space for new arrivals is valid both for criminal and for immigration detention. In fact, in both cases, incarcerations are often unforeseeable, for instance when they follow police control (although in reality, the police usually inform local prisons when a raid is planned). In the case of immigration detention, there can be peaks of arrivals that the institution needs to manage. While the male section for immigration detention officially has 27 places, it reached a peak of 57 people in 2016, according to an employee. In such a circumstance, the institution attributes cells to immigration detainees that were originally devoted to other types of detention. We shall return to the consequences of this practice in terms of confusing different types of detention and constructing the immigration detainee as a threat and a potential criminal in Chapter 6. In cases of general overcrowding across the whole carceral space, the use of 'emergency beds' (*Notbetten*) is foreseen, and in exceptional cases, mattresses have been installed in the waiting cells.

As Anton continues to explain, the work at the *Disposition* can be stressful: it "requires nerves" and the ability to prioritise among several procedures and tasks. During fieldwork, I was able to observe this officer's work for a few hours and found it to be dynamic and include much networking. In fact, his work consisted mainly of contacting other stakeholders to exchange information and he made significant use of the phone, e-mail and fax for this purpose. Anton worked with two screens: one had the internal informatics system open, and on the other he was switching from e-mail to a software used for the management of phone calls. He was wearing an earpiece and microphone so that he could make calls while using his hands on the computer or to look into paper documents. In my field notes, I described the atmosphere as "like in a call centre".

This work requires being constantly in contact with other detention facilities and authorities. Every day, this prison officer calls the other cantonal prisons (particularly Witzwil and Burgdorf) in order to coordinate transfers, as well as migration authorities, who must give their consent before he can organise a transfer in immigration detention:

"We are in daily contact with Witzwil and Burgdorf. Sometimes they call us themselves and say: 'we have two places available, you can send us two people'. Then I seek [detainees] who can be transferred. But sometimes it's hard [or: annoying], because you always have to ask [the migration office:] 'do you still need him?', [and he says] 'yes, I need him [here in Bern] for a while, you can only transfer him then'. In that case, there would be space in the other prisons, but you couldn't transfer anyone, [even though here] the hut is full!" (Anton, prison officer, RP Bern).

As is clear from this interview, in the management of a prison's places and occupancy, detainees quickly become numbers or pieces to be moved in a puzzle. The next section moves on to explain the objectification of detainees that is entailed in this rationality of government.

Dehumanisation and objectification

These several movements and the use of the prison as a transit space shape officers' daily work in important ways: "The beds do not have time to get cold – you can feel it", explained one officer. Not only does this impact the work routines and conditions of staff, but also their representations of the carceral institution, of which some of the metaphors they used are revealing. Referring to the high movement of people, the prison was frequently described as a 'beehive' or an 'anthill':

“This is not a quiet prison. (...) it’s really like a beehive. (...) [People] come, go, they take onward transport, or maybe they wait here for another hour, so there are X people who come and [quickly] leave the house again, or who stay. This is RP Bern” (Luise, prison officer, RP Bern).

The use of these two metaphors, the beehive and the anthill, is meant to reflect the back-and-forth movements of detainees, producing what we could call ‘ordered chaos’. In fact, watching it from outside, a beehive or an anthill could appear chaotic, but both bees and ants are in fact known for their high levels of organisation, and their movements are characterised by order. The use of these metaphors from the animal world (see Coutin 2005; Khosravi 2007; Vaughan-Williams 2015) represents detained migrants as living beings, but not as human beings. They also convey an image of detainees as interchangeable, as an ordinary human observer would be unable to distinguish one bee or ant from another. The use of these metaphors, therefore, reflects the process of dehumanisation that occurs in detention (Bhui 2013) and more generally at border sites (Coutin 2005).

Alongside dehumanisation, a process of objectification takes place: detainees become not only objects of government, but also objects in the sense of items that are repeatedly and without their own motivation moved within the carceral space – intended here as both the prison space and those liminal spaces such as the transporting vans (Moran et al. 2012; Moran, Piacentini and Pallot 2013). When observing the work of prison officers in the RP Bern, another metaphor came often to mind, namely the postal service, through which detainees could be seen as being sent, moved from one place to another, and deposited like passive packages in ‘waiting cells’. Anton also used ‘the market’ as an image to describe his work at the *Disposition*:

“We are constantly on the phone, looking for places, it’s like at the market, can you imagine? You have this number of places, so ‘I give you this, you give me that’. It really goes back and forth” (Anton, prison officer, RP Bern).

This description exemplifies the process of objectification triggered by the logistics of managing the prison’s capacity and occupation in which detainees become merchandise to be exchanged. That Anton was the person using this metaphor – he was one of the most sensible and sensitive prison officers in my view – is interesting because it shows that objectification is intrinsic in some of the prison’s technologies of government.

If the high dynamism of the RP Bern was often presented as making the work livelier and more interesting, it also produced situations of stress. As argued by another staff member, sometimes there are up to 10 or 15 new detainees arriving at the same time, who have to be body searched and registered in the informatics system. Each detainee must be processed quickly in order to maintain the normal functioning of the prison and avoid confrontations. Another colleague explained:

“When you work back there [in the admission area], they [the detainees] come and when we have time, we talk [to them], but sometimes you don’t have much time. Then you have to say, ‘you can ask later when you’re upstairs’. And then they leave and the next one is right behind them. Almost like... a production line” (Dario, prison officer, RP Bern).

This officer, Dario, regrets that he does not always have enough time to talk properly to detainees during the entry procedure because he needs to process the individuals swiftly. Again, he uses a metaphor, the conveyor belt used in a production line (*Fliessband*), referring to detainees as objects to be tracked, registered, controlled in an automatic way, although he does so critically.

A certain level of objectification might be considered inherent to bureaucratisation, implying that officials act in impersonal ways and “treat people only as cases rather than as individuals” (Gill

2016: 32; Weber 1948). This is particularly relevant for immigration case officers who rarely come into contact with the people about whom they make decisions, who become *de facto* objectified through the work on their files (Bhui 2013; Bosworth 2014). In detention, detainees are both a file and a body. Personal files are stored in chronological order in the prison's office which is in charge of administrative tasks, and are removed from the manual database as soon as the detainee is released or transferred, remaining on the digital database as a record of past detainees. For each detainee, an 'accompanying card' (*Begleitkarte*) is printed, containing a picture as well as various pieces of information about the detainee. These cards are gathered in the office of each floor and follow the detainee in each of his or her movements. When detainees are in the medical service or in a waiting cell, for example, the card is left in a holder outside the door.

The administrative account of detainees also includes digital registration in the internal informatics system as well as in a series of documents and lists that are considered fundamental for the functioning of the prison, such as the plan of the cells, which is constantly updated with the names of the detainees and their detention regimes. This plan serves as an essential tool during coordination meetings, when detainees are mainly referred to with the number of their cell, and sometimes with their family name.

The process of objectification is concurrent with moral distancing (Bosworth 2014; Gill 2016; Hall 2012), which we will address in Chapter 6. According to Bosworth (2014), "objectification is a key *outcome and justification* of immigration detention" (Bosworth 2014: 184, emphasis added). It is an *outcome* in the sense that it is strongly related to the "politics of uncertainty and denial" (Cohen 2001, cited in Bosworth 2014: 184) and can be seen as an effect of governing through uncertainty (Griffiths 2013). It is a *justification* in the sense that "objectifying migrants and detainees (...) make[s] the belligerent pursuit of narrow national interests more palatable" (Bhui 2013: 2). Through the construction of detainees as objects, the carceral institution finds it easier to forget about their pains and minimise the consequences of their exclusion.

5.1.2. The prison as a space of crimmigration control

For the administration of detainees' entries, exits and transfers, the difference between criminal and administrative types of detention is highly relevant¹⁰⁴. Staff members must take this into account when placing detainees in cells and they are obliged to respect the separation of regimes. When there is no place in the 'living group' or in the multiple cells devoted to immigration detention, however, alternative cells must be found. It can therefore be the case that a cell is temporarily used for immigration detention while all the surrounding cells are occupied by remand prisoners. As well as not conforming with the regulations in terms of regimes' separation, this spatial practice clearly contributes to blurring the difference between criminal and immigration detention. Besides this, there are other ways in which staff members at the unit called *Disposition* participate in merging migration and crime control and are led to perform crimmigration control in their work of managing the entries and exits of penal and administrative detainees.

The first occurs during registration of a new arrival to immigration detention, when the person in charge usually enters the RIPOL system – a federal police register in which all cantons' denunciations and condemnations are gathered – and seeks to ascertain whether the person is registered. If a detainee appears to be wanted for a crime or under investigation by the police, the prison worker will make contact with the relevant authority:

¹⁰⁴ At the same time, the different types of detention within immigration law detailed in section 2.3 are rather irrelevant when assigning places in cells.

“When people come into immigration detention from outside, (...) I can have a look at the RIPOL to see if they’re wanted for a criminal sanction in another canton. If I see, ‘oh, the police in the canton of Lucerne are looking for him for an interrogation’, then I call the police and say, ‘Mr. X, our police brought him here, he’s in immigration detention now, but you’re looking for him for interrogation, because of so and so’. Then they say, ‘Oh yes’. ‘Okay, he’s here at the moment, I’ll give you the number of the migration service, the person in charge, and then you can talk with them. Because we don’t always know how long he will stay here and what the situation is’. That’s how I sometimes orientate them” (Dario, prison officer, RP Bern).

By informing police or criminal justice authorities that a detainee they have registered as wanted is currently in the facility, prison officers exert crime control for people who are detained for immigration related reasons, becoming actors of crimmigration control.

A second practice of crimmigration control occurs with foreign penal inmates who are due for release, when the staff of the *Disposition* is required to make contact with migration authorities before enforcing release. This can occur with prisoners reaching the end of their sentence, where it must be ensured that the end of sentence coincides with release. In fact, it is possible for immigration detention to be ordered successively to the end of a criminal sentence. Contact with migration officers must also be made with foreign detainees in pre-trial detention when the public prosecutor orders release, be it awaiting a judgement or because the detainee has been acquitted of any criminal charge. Dario related:

“Maybe at 5pm we receive a fax from the public prosecutor’s office, which states that Mr. X must be released from remand custody. In terms of prosecution, it’s over, but I have to see then, can I let him out or... or will he stay, will he need to be moved into pre-removal detention?” (Dario, prison officer, RP Bern).

In this way, the prison becomes a site for border control (Kaufman 2013) and its officers find themselves in a position of exerting migration and bordering practices. However, prison officers are only responsible for making contact with migration authorities, who then decide whether to release the detainee or to issue an immigration detention order. The separation and insufficient communication between criminal justice and immigration authorities can lead to difficult situations in which prisoners at the end of their sentence are awaiting release but are instead informed of a new detention order under immigration law:

“These are the most extreme emotions that I experience here. People who say, ‘today is my day, I’m going to be free, my sentence is over’. They make themselves look nice and everything, and in the end the prison employee is the one who has to tell him, ‘You’re [just] changing cells, yes, you’re currently in a penal department, and now you’re going to an immigration detention department’. (...) Only after they have changed section (...) [does someone from immigration authorities come] to show them the detention order. Because the two authorities ostensibly don’t want to... overlap, and the deportation authority says, ‘we’ll only inform him when the sentence has effectively ended’” (Stefan, prison officer, RP Bern).

As Stefan points out, prison officers must sometimes take on the task of informing a prisoner that instead of being released, they are merely changing detention regime, a heavy task that should not be the prison officer’s responsibility. Indeed, the hybridity of the facility allows for internal transfers through different regimes, in which the inmate’s cell or even floor is changed, but in which they remain – at least for the first weeks of detention – within the very same facility.

5.1.3. Transfers and mobility within the carceral system

Transfers of immigration detainees to other facilities occur to a greater extent than elsewhere in the canton of Bern, which has developed a system of immigration detention that involved – at the time

of my empirical research – four prisons and was based on an idea of progression levels in which longer detentions would in principle entail transfers to facilities providing for better and freer conditions. As we will see, however, transfers within this system could also be used as rewards or sanctions (Gill 2009b; Goffman 1961), which contradicts the idea that detainees are objectified and relates to the argument made in section 5.2 that the system aims at producing docile inmates.

The usual carceral trajectory for women was from the immigration detention female section of the RP Bern, where they spent only a few days, to the equivalent section in the RP Thun. Male detainees usually spent the first days in multiple cells where they were locked up for 23 hours a day, before being transferred to the ‘living group’ (*Wohngruppe*), a separated wing where they would benefit from a slightly more open regime enabling them to freely move within the section for three and a quarter hours in the morning and one and half hours in the evening. As soon as places were available in the prisons of Burgdorf or Witzwil, they were transferred there, which usually took at least a couple of weeks. The RP Burgdorf has a more modern infrastructure than the RP Bern but strict conditions, while Witzwil provided for much greater freedom of movement and the possibility for working and earning money.

It is important to highlight that judicial power had an important role in the development of this system of progression. In several judgements, the cantonal administrative Court judged the conditions in the RP Bern as too narrow for prolonged detention, particularly because of the absence of occupation programmes¹⁰⁵. The situation of women was especially problematic since, due to the low numbers of incarcerated women, they were sometimes *de facto* isolated for several days, according to a legal advisor who had legally represented some of these women. This led to the opening of a new female section in Thun (see Box 2 in section 3.2.1), to which women could be quickly transferred from the RP Bern.

The functioning of this system of progression depends in practice on the actual occupation of each carceral institution. There is no clear rule determining after how long a detainee must be transferred, but concretely, the person working at the *Disposition* will decide who to transfer when a place in another institution becomes available¹⁰⁶. In order to do so, they follow a series of criteria. After having excluded those detainees whose deportation is planned for the following few days, those who have been held for longer are considered. However, before organising a transfer, the migration services must be contacted in order to check whether they ‘need the person’ to stay in the Bern area for a meeting, a hearing or a removal attempt.

The method for proceeding following detainees’ date of entry is presented as the most egalitarian and fair for detainees. However, a closer look shows us that it is not applied in a systematic way. The personal characteristics and skills of detainees can also play a role, as occurred during one of my observations, when the person in charge tried to transfer a remand detainee who was practising kickboxing to a prison with a fitness room so that he could train. Categories such as nationality, language or religion also play a role in decisions about transfer. During a phone conversation, I heard a prison officer ask which nationality would fit for the transfer (presumably based on the cell’s composition).

¹⁰⁵ Despite the obligation to provide for an occupation having been stripped from the FNIA in 2014, Bern cantonal law still requires that immigration detainees are provided with the possibility to work after two months at most (Art. 15 of the *Verordnung über den Vollzug freiheitsentziehender Zwangsmassnahmen des Ausländerrechts VZAV*, state as of 21.01.2015).

¹⁰⁶ This procedure differs from that of penal detention, at least concerning condemned inmates serving a prison sentence. In those cases, it is criminal justice authorities that decide upon the transfers.

The transfer of detainees sometimes leads to conflicting situations between the prison, which needs to make space for new arrivals, and migration authorities, who would like to keep detainees in the RP Bern in order to have them at their disposal for hearings and meetings, without needing to travel to another location. This problem not only concerns immigration detainees but also criminal justice prisoners:

“We get a lot of resistance from the public prosecutors, migration office, regional courts, particularly the Court of coercive measures. They are all here, they want the people to stay here. So we are constantly at war with the authorities, because we have to transfer people to make room and we can’t, because they have to be here for an interrogation or a court hearing (...). If a prosecutor says ‘I want to keep him here’, you don’t stand a chance, you can’t transfer him, whether you like it or not” (Anton, prison officer, RP Bern).

As we will see in the next section, these tensions are not only related to logistics, but also to different understandings of immigration detention and its purposes.

Detainees’ transfers as reward or punishment

The movement of detainees within the carceral system has been described as a form of governmentality (Michalon 2013) and as a disciplinary tool (Gill 2016) through which the authority of the state “is performed and enacted and the identity of the inmate as a subjugated body is reinforced” (Svensson and Svensson 2006, in Gill 2009a: 190). Studying cases of forced mobility across carceral spaces, scholars have also demonstrated how those can be used as punishment (Michalon 2013), uprooting and separating the detainee from community, family and legal support (Gill 2009a; Mountz et al. 2013).

While the system developed in the canton of Bern to manage immigration detention is meant to respect the idea that longer detentions require better conditions, it can also be used to allow sanction and reward (Gill 2009b; Goffman 1961). In fact, this ‘system of progression’ – described as such by the director of the RP Thun – is based on the idea that over time detainees move from a more to a less restrictive form of confinement, but that they can also be moved backwards as punishment for being recalcitrant. In this way, moving or avoiding moving detainees from one facility to another can be a way of rewarding them for their compliance or punishing them for their attempts to resist the system. Even within the RP Bern, a member of the management made clear that transfers to the ‘living group’ only occur if the detainee behaves well and is “of good contact” (Reto, member of management, RP Bern).

The following event that was related to me is a good example of this technology of government of moving detainees, and shows how a transfer might mean different things to different actors or individuals, reflecting the various views on immigration detention:

“Someone had resisted the second [attempt to deport him] (...) and came back. And I knew in advance that he still had about three months on his detention order (...) The situation here was quite precarious, it was full, so I wanted to send him to Witzwil. (...) When he arrived here there was a possibility of transport, so I sent him along. Witzwil agreed. And then the migration office came and was angry with me, [asking] why I had rewarded him (...) by sending him to Witzwil. It’s luxury there, compared to here. So I said, ‘yes, I had no place here and I sent him to Witzwil, I knew that you didn’t need him. [And they said] ‘no, he should remain here now, (...) he should feel that prison is not good’ and so on. And... I don’t accept such things, so I said, ‘we are not here to punish, we are here to work. Someone else is doing the punishing’” (Anton, prison officer, RP Bern).

In the case described here, the transfer over which Anton was struggling was more than a mere practical issue of logistics. The arguments put forward reflect different understandings of immigration detention as a state practice. In fact, Anton decided upon this transfer based on two facts: first, the detainee in question returned to the RP Bern after refusing to take a flight out of Switzerland and had already had the lawfulness of his detention controlled by the Court, which means that his detention was likely to last a certain amount of time; second, he had been confined for longer than other detainees, so according to the rule outlined above, it was his turn to be transferred to Witzwil. For the immigration officer in charge of this case, such a transfer would be seen as an undeserved ‘reward’, while refusing to board a flight is behaviour that should be dissuaded, repressed and even punished. Not allowing him to be transferred to a facility providing for more freedom of movement and better conditions of detention takes the form of punishment for his non-compliant behaviour. Anton instead felt a moral and professional obligation to treat detainees in a fair and egalitarian way beyond their behaviour during deportation attempts.

Furthermore, this prison officer can be seen to purposefully distance himself from the role of punishment, and criticises the idea that immigration detention should be punitive and exert a deterrent effect, which is not the case for all staff members. The example provided above illustrates that prison officers have some room for manoeuvre in the ways in which they perform their tasks, and how those are impacted by their ideas and representations of their work and role. As we will see in Chapter 6, this is not only true for staff working in the administration team, but also for officers working in the prison wings.

As reported by Anton, similar debates to the one described above also take place within the prison when a detainee returns after refusing to embark on a plane. While some would directly assign him to a cell in the ‘living group’, other colleagues think that he should start again from the first level of progression, being confined 23 hours a day in a multiple cell¹⁰⁷. This practice also reflects comments which suggest that immigration detention should not be too comfortable because it needs to perform a function of deterrence. During my visit to the prison of Realta, for example, I asked whether the education programmes offered to prisoners serving a sentence were also accessible for immigration detainees, some of whom had been confined there for more than a year. Surprised by my question, the staff member in charge of the immigration detention section answered that detention should not be too comfortable but should rather be demoralising or backbreaking (*zermürbend* in German) in order for detainees to accept and comply with their removal. This answer reflects the idea that besides its official aim, detention is also meant to serve an informal function of deterrence (Leerkes and Broeders 2013), as well as a disciplinary function of convincing detainees to comply with orders (Campesi 2015a; Majcher and de Senarclens 2015). As we will see in the next section, transforming detainees into docile subjects is one of the main purposes of the carceral institution.

5.2. Governing detainees through discipline: the prison as total institution

The second rationality that is detectable in the government of detainees is one of discipline, intended as an effort to produce docile detainees through a series of techniques such as the ordered distribution of bodies in space, the control of activity, movement and employment of time, a system of surveillance, and sanctions that are meant to normalise detainees’ behaviours (Foucault 1975). In Foucauldian terms, discipline is a technique of power that treats individuals both as objects and as

¹⁰⁷ This resonates with the experience of a detainee (Robert) who returned four times to the RP Bern but was always detained outside the ‘living group’, in a cell for six people.

instruments of its exercise (Foucault 1975: 200). We will see throughout this chapter that daily life in detention is dictated by strict rules and schedules that detainees are expected to follow and a system of surveillance and sanctions aiming at ensuring that.

Besides the work of Foucault on discipline, Goffman's (1961) study of total institutions will be useful to conceptualise some aspects of this rationality of government transforming the individuals entering prison into inmates who need to conform to prison order. For Goffman (1969: 314), the central feature of total institutions is "the breakdown of the kinds of barriers ordinarily separating [different] spheres of life" such as the activities of sleeping, playing and working. In a total institution, "all aspects of life are conducted in the same place and under the same single authority (...), in the immediate company of a large batch of others, all of whom are treated alike and required to do the same thing together" (Goffman 1969: 314). Goffman's view of total institutions has been criticised for reifying the boundaries of total institutions (Moran et al. 2012), a critique that I find very useful for conceptualising carceral space as going beyond the walls of a prison, being included in networks and circuits and entertaining strong relations outside the prison itself (Gill et al. 2018; Moran 2017: 89). Nevertheless, Goffman's analyses can still help us to understand some of the mechanisms of such institutions.

Goffman attaches great importance to the moment of entry in a total institution to explain how the entering individual is attributed a new role and a 'stigmatised status' as *inmate*, while their previous roles and personality are erased. Inmates are temporarily dispossessed of their belongings and stripped of their previous supports, while their "self is systematically, if often unintentionally, mortified" (Goffman 1969: 317). This description reflects many of my observations regarding the entry procedure in immigration detention, that I explored in the first part of this section, showing how individuals are transformed into detainees. Other important characteristics of total institutions are the tight schedule of the day's activities (addressed in sections 5.2.2 and 5.2.3), a system of surveillance (section 5.2.4) and the existence of a privilege system made up of rules, rewards and punishments that regulate the daily functioning of the total institution (section 5.2.5). Together, the following sections enable us to show how the detention facility attempts to create order and routines, and to govern detainees through discipline.

5.2.1. Entering the prison, becoming a detainee

Goffman identifies entry into a total institution as a key moment through which the detainee is stripped of his previous identity and assigned a new one. Detention entry procedures follow standardised protocols (Campesi 2015a) and become routinised and repetitive for staff, like a "choreographed performance or ritual" (Hall 2012: 32). In the following paragraphs, I detail the procedure every detainee has to go through when arriving at the RP Bern or in Bässlergut on the basis of observations and interviews with staff.

Detainees are brought in handcuffs to both facilities either by the police or by a prisoner transport service¹⁰⁸ in a securitised van partitioned in cells with bars and tinted windows, the same used for criminal offenders. They generally enter the prison space through a garage that is underground in the RP Bern and on the ground floor in Bässlergut. The first thing that happens on arrival is that handcuffs are removed. This marks the transition of responsibility from the police or transport service to the prison, which from now on is in charge of the detainee. At this moment, the reception procedure starts, with some distinctions between the two facilities.

¹⁰⁸ The private company Securitas is in charge of inter-cantonal transfers, while a cantonal transport service operates intra-cantonal movements in both the canton of Bern and Basel-Stadt, respectively under the authority of the prison service and the cantonal police.

In Bässlergut, the detainee is roughly searched (*grob abgetastet*) before being locked in a waiting cell while prison staff accompany the police or transport service outside. A staff member asks a few practical questions through the porthole, namely whether the detainee smokes and whether they are vegetarian. In case of communication problems, they use images to ascertain the answers. When the staff member has time, they lead the detainee through a corridor to a room where they are photographed and body searched while their clothes are scanned through a metal detector. The body search is conducted in two phases: firstly the detainee is asked to remove their shirt, followed by their trousers and underpants once they have replaced their shirt. Usually, such control is made by two staff members, one of whom wears gloves. The room has a shower that the detainee can use if they wish to or if the staff require it. The detainee receives a set of clothes composed of a white T-shirt, a blue sweater, tracksuit trousers, socks and underpants (in a standard size) that they must wear while their clothes are checked and washed. After the body search, the detainee is locked again in a second waiting cell reserved for those detainees who have already been searched¹⁰⁹. The detainee waits in this cell until a representative of the migration office comes to discuss their options and ask questions that may decide their fate, which usually occurs within a few hours. In the cases under the authority of Basel-Land, at arrival in Bässlergut the detention order has already been confirmed and so detainees are directly transferred to a cell after the entry procedure.

In the RP Bern, detainees are locked in a waiting cell only if the number of entries requires this. Otherwise, the detainee is directly brought to the reception area, where they are body searched in a small closed room and photographed by a staff member of the same sex. A short conversation takes place, during which the detainee is asked whether they smoke or have a particular diet (e.g. vegetarian or diabetic), like in Bässlergut. Other information is also transmitted during this control procedure but without following a clear protocol.

Part of the entry procedure concerns the detainee's state of health. In Bässlergut, all detainees at entry are systematically and as quickly as possible visited by medical staff. This visit consists of taking vital signs such as blood pressure, pulse and weight as well as asking about medical history and health, and whether the detainee has specific requests or needs. In the RP Bern, there is no systematic medical visit but detainees complete a medical form with the help of the staff member in charge of the admission procedure. Relevant information about diseases or drugs will be transferred to the medical service, who will organise a medical visit if necessary.

While these procedures are carried out, the command centre (in Bässlergut) or the responsible person at the *Disposition* (in the RP Bern) assigns the detainee a cell and, if it is ready, the detainee will be transferred immediately after the control procedure. If the cell is not yet accessible, they will be placed again in a waiting cell. The cells are assigned, similar to the Italian context described by Campesi (2015a: 432), "according to what the management perceives as the main ethnic and racial dividing lines". Particular weight is given to religion, language and the divide between smokers and non-smokers in both prisons. When the cell is ready, a staff member accompanies the detainee to the floor where the cell is situated, where they receive a set of blankets, towels, slippers and a hygiene kit. In Bässlergut, detainees also receive an eating set composed of a plate, a bowl, a glass and cutlery, all made of plastic. Finally, the detention officer accompanies the detainee to the cell. Sometimes the officer provides some general information (see below), sometimes they introduce

¹⁰⁹ Detainees in the waiting cell are entitled to a one hour walk in the courtyard in the morning and one in the afternoon (they receive three cigarettes per walk if they smoke). They can also make one phone call if they ask. The waiting cells have a window that looks directly onto the yard. Detainees can open the window, which allows them to talk to those walking in the yard, but two levels of bars avoid any transfer of objects.

the new detainee to their cellmates, and depending on whether or not it is during a time of free movement within the section, they may leave the door open or lock the detainee in the cell.

The description of the admission procedure above allows us to suggest some general comments. First of all, of high significance for this thesis is the fact that the entry procedure is exactly the same for any detainee, independently of whether they are detained under criminal or immigration law. This has importance at a symbolic level as the process of entry is the one through which people become detainees under the authority and responsibility of the prison institution. As described by Goffman, the total institution erases all distinctions between individuals, and it is precisely through the entry procedure that different categories of people, confined for different reasons, are attributed the same primary role as inmates. The figures of the immigration detainee and the penal inmate therefore blur within the entry procedure, which can be understood as an effect of crimmigration measures. While this does not mean that the different types of detention are unknown or disregarded by the institution, it provides a useful lens for understanding the recurrent confusion of detention regimes when talking about detainees (doubts such as ‘was it an immigration detainee or a penal detainee?’ were frequent). While total institutions make efforts to produce a homogeneous group of detainees, staff members are divided between the demand to treat all detainees fairly and in an egalitarian way, and the need to differentiate between detention regimes, keeping them apart according to the principle of separation of different detention regimes.

The provision of a sort of prisoner uniform in Bässlergut could be understood as a way to affix the ‘inmate’ etiquette to all new arrivals. After the first day, once the clothes are washed, detainees – be it in immigration or penal detention – are free to wear the prison tracksuit or their own clothes. Only during external visits are they required to wear the prison uniform, with the security argument that this makes it easier for staff to identify detainees and differentiate them from visitors, avoiding escape attempts. In the prison of Realta, wearing the prison uniform (made of grey trousers and a dark green sweater) is obligatory for all detainees. Staff explained during my visit that this rule was introduced a couple of years before for practical reasons (some detainees only had one change of clothes) as well as to erase distinctions in clothes and brands, producing in some ways a more egalitarian but also anonymous atmosphere.

The reactions of detainees to the entry procedure were always related to me in short fashion, without detail, despite my efforts to draw out such information. This could be due to a feeling of shame arising from the process. Body searches in particular can be experienced as humiliating, as described by one detainee:

“In prison, the first thing when you enter, it’s humiliation. You have to take off your clothes. For us, this is humiliating. [L: Us, who? The detainees or...] The Muslims, the detainees, detainees were all Muslims. (...) So it’s humiliation. (...) With all the technology they have, why can’t they use a metal detector or a scanner, why do we have to remove everything! (...) they have terrific technology, but when it suits them, they use it, when it doesn’t suit them, they don’t” (Fouad, detained in Bässlergut).

It is interesting to note that this was the only interview in which a detainee talked about the entry procedure, and it took place after Fouad’s release, in a public space and without recording. The fact that Fouad felt humiliated is important because it reflects a process of mortification (Goffman 1961) and degradation (Fischer 2013) that other detainees did not express but presumably felt. While Goffman considered such processes as being partly unintentional, what strikes us here is that Fouad perceived them as an intentional way to subjugate and humiliate him. The argument made with regard to the selective use of technology is precisely that the state wants to humiliate detainees by choosing not to use the technology that would avoid such humiliation.

If security controls can be experienced as humiliating, for staff members they are of fundamental importance in order to feel secure during their job. One prison officer described work in the admission area (called *Vorzellenbereich*) as the most dangerous:

“That’s where you need the most caution. (...) You have to be very careful because you don’t know what’s coming at you. Because the police always say ‘yeah, yeah, we controlled him’, but they don’t search the way we do. And if they hide something, and we go behind [in the control room] with them, (...) he can always have a knife or something, we won’t know (...), that’s why you always need caution” (Daniel, prison officer, Bässlergut).

This quote highlights that prison work entails fear, despite this being negated by almost all staff members. Such fear is related to the perception of detainees as potentially dangerous and aggressive. Security measures such as control at entry is productive of this representation that fosters the securitisation of migration. Before being body searched, the detainee is seen as particularly threatening because he could hide some object that he could use as a weapon. The control procedure is supposed to pre-emptively neutralise such threats, producing a harmless detainee but also reinforcing the idea that detainees are controllable. Even the medical control carried out systematically at entry in Bässlergut is conceived as a way to neutralise the threat that detainees could represent were they carrying some disease. The transfer of the detainee from what is called a ‘dirty room’ to a ‘clean room’ in Bässlergut – a procedure that was found by Hall in the same form in the UK – signifies that the detainee has “been initiated into the secure inner world” of the detention facility and that “staff ha[s] now assumed responsibility for him” (Hall 2012: 31).

In the words of Hall (2012: 30), reception is “a series of processes that [seek] to make a newly arrived detainee known and visible to the establishment”. On the other hand, as highlighted by a staff member at Bässlergut, the entry procedure is the ‘visiting card’ of the prison, during which detainees receive their first impression of the institution. If they do not behave in an appropriate way, it is important “to make them understand the rules”, one staff member explained during an informal conversation. This comment demonstrates the power imbalance and the symbolic violence of this first interaction between the prison institution and the detainee.

5.2.2. Day schedule and routines in immigration detention

According to Goffman (1969), an important aspect of life in a total institution is the tight schedule of every activity: the meals, the walk, the cells’ opening – all follow a very precise timetable and structure both staff’s and detainees’ days (see also Foucault 1975). This is the case in both the RP Bern and Bässlergut, the difference being that the daily life of detainees in Bern is composed of fewer scheduled activities, namely the meals, the walk and sometimes the shower or external visits. Detainees spend the rest of their time watching TV, reading or socialising in the multiple cells or during opening hours if they are accommodated in the ‘living group’. In this section, I focus on the daily schedule and activities in Bässlergut, since they are slightly more diverse and enable a more detailed analysis, although the lack of activity is per se an interesting circumstance.¹¹⁰

Immigration detainees in Bässlergut are accommodated in one of the two wings on the second floor. At 07:15, a prison officer opens the cell doors one by one. According to the guidelines, prison officers at this point have to undertake an ‘integrity control’ (*Unversehrtheitskontrolle*), meaning that they ensure that everybody is present and alive. At 07:30, they bring a cart with the breakfast and leave it in the leisure room, where it is accessible for detainees until 07:45. Breakfast consists

¹¹⁰ Since the time of my fieldwork, there have also been several changes in the conditions of detention concerning the day schedule. See section 3.3.2.

of coffee or tea, one piece of bread¹¹¹, one portion of butter and one of jam, and is taken from the leisure room and consumed in the cells. During this time, staff members also distribute medicines that are prepared in advance by the medical team. Detainees must autonomously go to the prison officer who will give them their medicines and is has to ensure that they swallow them. Detainees can also put their laundry in the corridor (in a perforated bag) in order for the officer to gather them and have them laundered¹¹². At 08:00, depending on the day of the week, detainees can go either to work or for a walk.

The days of the week are not all scheduled in the same way in Bässlergut despite the repetitive nature of daily activities for detainees. On Monday, Wednesday and Thursday, work is scheduled from 07:55 until 10:30 and the walk from 12 noon until 13:00 and from 14:00 until 16:00. On Tuesday and Friday, work and walk are inverted, the walk taking place from 08:00 to 10:00 and 12 noon until 13:00, and work activities from 13:55 to 16:30. In total, immigration detainees can work for two and half hours and have access to the courtyard during three hours a day. Detainees serving a prison sentence, on the other hand, have the same possibility to work two and half hours a day (in the morning or in the afternoon, in alternation with immigration detainees), but can walk in the yard for only one hour a day. Neither immigration nor penal detainees are obliged to work but can decide whether or not they want to participate in work activities, which they need to communicate the day before (staff will ask during the delivery of dinner). If they have decided to work, they must be ready and gather next to the wing door at 07:55, from where two or three officers will take them down the stairs and through the courtyard to the production workshop.

Lunch is scheduled at 11:00. Just before this, detainees have to return to their cells, although these remain open. The prison officer brings two carts with food to the station and one designated detainee called the *Kalfaktor* helps to distribute the food. Detainees need to bring their own plates in order to be served. They receive either an ordinary menu or a vegetarian one according to their preference, which they have to communicate at the beginning of their stay¹¹³. The distribution of meals is usually accompanied by small interactions such as “enjoy your meal” or requests about the quantity of food, but it also happened that I took part in meal distributions where the staff member did not say a word. The food is prepared in the prison of Waaghof (the command centre communicates the exact number of portions needed every morning) and a small team of prisoners working in the kitchen warms it. They also prepare a soup and syrup for those who like it. Most detainees did not appreciate the quality of food. After lunch, detainees have to wash their own plastic cutlery.

Between 12 noon and 13:00, detainees can access the courtyard again through a door opened by a prison officer. During that time, they can freely move back and forth between the detention area and the courtyard. The afternoon is marked either by work activity (13:55 to 16:30) or the walk (14:00 to 16:00). During the hours of cell opening (from 07:15 to 17:00), detainees are free to move within the ‘station’, meaning in the corridor, the cells and the leisure room. At 17:00, they have to return to their cell, staff members lock the doors and serve dinner through the porthole, again with the help of the *Kalfaktor*. Detainees consume their meals alone or with their cellmates. At 17:36, the prison

¹¹¹ Bread is delivered to the prison only three times a week so it must be frozen, which affects its quality.

¹¹² Detainees’ clothes are washed by the prison officer in charge of the station in the washing machines and tumblers located within the wing, while bedclothes are washed by penal detainees working in the house service.

¹¹³ Despite the use of pork meat being reduced, many Muslim detainees prefer the vegetarian option to be sure to avoid pork. As a way of comparison, pork meat has been abolished in the prison of Zurich airport as well as in Frambois. According to a staff member of Bässlergut, it happened a few times that the vegetarian dish (from the prison of Waaghof) contained a meat sauce, and detainees complained about it.

officers' shifts end and they leave the detention area. If detainees need anything urgent after that point, they ring the intercom, which connects them to the command centre.

Prison order, discipline and ideals of correction

Several staff members argued that having a daily structure is fundamental for detainees. If it is true that work and leisure activities, when available, can reduce the pain of daily life in prison, there are other reasons for declaring this. In particular, the strict schedule of activities can be understood as a way of disciplining detainees while keeping prison order. As one of my interlocutors among the staff put it: "Having a structure to the day is important: structured people do not have time to think about bad things [presumably implying self-harming]".

Furthermore, this topic is sometimes interpreted through a moral lens as a way to educate, redress or even 'civilise' detainees. For example, in both prisons, detainees are required to make their bed in the morning, to shower regularly and to wear clean clothes. They need to be on time to work (Bässlergut) or to their walk (RP Bern). The focus on work activities in Bässlergut can be seen as a way of teaching detainees how to honestly earn a living, which was also made explicit in a few conversations. The prison as part of the criminal justice system usually pursues an aim of correcting, reforming and transforming the souls and habits of prisoners (Bosworth and Turnbull 2015; Foucault 1975). Despite immigration detention having a different purpose – removing detainees from the national territory – a similar logic can be found in many discourses and practices concerning immigration detainees. This is partly a consequence of the embeddedness of immigration detention in the penal system, but it is also related to moral and cultural judgements on how people should behave properly that are imbued with colonial and even racist world views. Staff members sometimes talk about immigration detainees as childish, ill-mannered or lazy. This was particularly striking in the context of the RP Bern, which provides for no work or leisure activity and little freedom of movement, obliging detainees to spend most of their time on their bed.

The condition of confinement is achieved through a combination of temporal and spatial logics. The daily schedule takes control over detainees' lives and their employment of time. Being locked in the cell or section exerts a further effect of subjugation, establishing a relation of high dependency from staff members whom they have to address in case of any need, from making a telephone call to receiving toilet paper. During the day, every prison wing has a staff member responsible for it. In Bässlergut this person was informally called the *Chef* by both detainees and staff (for example: "I'm not working here today, ask the *Chef*!"), illustrating the power of staff members in this relation of dependency. The tight scheduling of daily life in combination with spatial confinement is a technology of government that operates a change of focus from questions of immigration control to the daily control of detainees' movements and time.

5.2.3. The role of work in prison discipline

As already mentioned, detainees in Bässlergut have the opportunity to work during their incarceration¹¹⁴. Most detainees work in the production workshop, where work is scheduled for two and half hours either in the morning or in the afternoon depending on the day of the week. Detainees from penal detention alternatively have the opportunity to work in house service, which includes four to six places in the laundry, six in the kitchen and two in the cleaning service. These positions are only offered to detainees in penal detention, since they are more numerous and the

¹¹⁴ Detainees of Basel-Land are allowed to work from the second day, while detainees of Basel-Stadt need to wait until the fifth day with the justification that until the judicial control has happened, a release is likely to occur (while detainees of Basel-Land usually arrive after such judicial control has already taken place).

production workshop provides only for 20 places. For immigration detainees, the only alternative is to work as *Kalfaktor*, responsible for several tasks within one of the two prison wings on the second floor, such as distributing meals and cleaning the leisure room.

On the prison website, work activities are presented as follows:

Work structures the day in prison. A daily routine with a clear structure and rules is important for the development of self- and social competences of a prisoner. In addition, work distracts from personal problems and allows the inmate to earn some money, e.g. for cigarettes or toiletries (author's translation, official website of the prison of Bässlergut¹¹⁵).

This quotation presents the three main functions that work is supposed to serve in detention: the function of structuring the days and disciplining detainees; the function of distraction and diversion from the monotony of prison life; and the economic function of providing resources to purchase basic items. In the way it is formulated, the need for a daily routine and structure goes beyond the pursuit of prison order, taking a moral dimension when it comes to the “development of self- and social competences”. In fact, the idea that working has an educative function was implicit in some discourses of staff members who implied that many detainees were “not used to work” and that prison work would prepare them for life after release or deportation.

This was the case for Manuel, the prison officer managing the production workshop in Bässlergut. The workshop is composed of two spaces of ten places each, where immigration and penal detainees work in alternation. The work is mainly composed of simple and mechanical handwork tasks, such as folding papers, assembling mechanical parts or gluing pieces together. Staff members assign tasks to detainees based on their assessment and often on preconceptions about nationalities and race, as this quotation shows:

L: How do you decide which inmate goes to which job?

M: That's the most difficult problem in here! (...) But we do have experience... I'm not saying this nastily, but black Africans... you can't give them a challenging task right away! First you give them a simple job, a very simple job, and then you have to observe how they do it. And then you'll know: Oh, he can do something! So you give him a more difficult job. So that's [how it works] with immigration detainees. (...) With sentenced prisoners... we look at the nationality. If we've got a Swiss, we'll assume that he has worked before. And we have a look at the offence, that's also quite important. If you see, that's a young, a very young guy, let's say [he has violated] narcotics law, you'll know: he has never worked. So you first give him a simple task! Age is also important. (...) For example Romanians: old men have usually worked a lot (...), while if they are still young, then you'll know exactly: (...) they've just come over here and they've never worked before! So that is our way of approaching them. And most of the time we are actually very good at it! (Manuel, production officer, Bässlergut)

According to this explanation, Manuel and his colleague decide which task to assign to each detainee following a prediction of their work experience based on assumptions about nationality, age, race and the type of criminal offence for prisoners of the criminal justice system. While Manuel's discourse is explicitly racist, as he takes skin colour as indicating inability to do more difficult tasks, in his discourse, work affinity and experience have a moral dimension as well. As transpired from other parts of the interview, Manuel is aware that teaching detainees how to work properly would prepare them for future employment. He also explained that he tried to entertain a work relationship with detainees similar to that with an employee in a private company in order for detainees to learn how to relate to an employer.

¹¹⁵ Available at: <https://www.bdm.bs.ch/Ueber-uns/Organisation/Amt-fuer-Justizvollzug/Gefaengnis-Baesslergut.html>. Accessed on 27 September 2018.

As described above, detainees are free to decide whether or not they want to work on the following day, but once they decide to work, it is imperative for them to respect their decision, otherwise they make themselves sanctionable:

“If he signs up for work and does not come, he’ll get a day of work prohibition. So, if he does that again within four weeks, then he will get five days. And if he does it again within four weeks, then he gets ten days. Because we have to, or we want to discipline them and do what they say they’ll do! [It’s] preparation, resocialisation, small resocialisation [or rehabilitation], a preparation for work life” (Manuel, production officer, Bässlergut).

Although immigration detention is not meant to support detainees in the process of resocialisation after release – which is the main goal of penal institutions – the head of the production team explicitly related detainees’ resocialisation as one of his work’s goals. The idea of work discipline was also implied in the development of a new system of salaries that would be based on detainees’ performance, but that was still in the conceptualisation phase when I heard about it. The rationality of discipline works to construct detainees as productive subjects and prison time as useful and efficient (Foucault 1975).

As already mentioned, work activities are also a way of earning money for detainees, who can then buy cigarettes or other goods from the prison, or save funds for their release (and/or deportation). As opposed to the experience of penal detainees, there is no part of the immigration detainee’s wage which is blocked until release (prisoners serving a sentence have one third of their wage blocked in this way). Detainees earn a very modest salary of six Swiss francs for two and a half hours of work, which rises to nine and twelve francs respectively as from the third and the fifth month of work. Every Friday, they can purchase goods in a small internal storage called the *Kiosk*, which they can enter one at a time and choose the commodities they want to buy. A staff member scans the commodities and the total price is directly detracted from their personal accounts, cash not being allowed within the prison. The goods on sale include water and beverages, sweets and biscuits, fruits, spices (but not pepper and chilli because they could be used for injuring others according to the management), cigarettes and tobacco, as well as soap and goods for personal hygiene, underwear and phone cards¹¹⁶. The prices are similar to a supermarket and sometimes a little cheaper.

When I visited the *Kiosk* during my fieldwork, immigration detainees mostly purchased milk, fruits, beverages such as juice and Coke, biscuits, tobacco with papers and filters and phone cards. Detainees spent an average of 20 to 30 francs, which is very high when compared with a normal weekly wage of 30 francs for those who work every day. Although some detainees still have some money that they were carrying on the day of their arrest, or that they received from outside¹¹⁷, most relied on work in the prison to be able to purchase goods in the *Kiosk*. In this way, work activities create a relation of economic dependency between detainees and the prison institution.

Detainees often told me that they worked solely for some diversion from the monotony of the wing, and that they would not do it otherwise for so little money. However, for many detainees, working was indispensable to be able to cover their needs, especially if they were smokers or wanted to communicate with people outside using the phone¹¹⁸. By way of comparison, a certain number of cigarettes (six per day) and phone cards (worth five francs per week) are provided for free in the RP

¹¹⁶ The assortment is limited by the fact that there are no fridges in the cells. Milk was for a long time not sold for this reason, but at the time of my observations, half-litre cartons were sold on the assumption that they would be consumed quickly. Suppliers included Migros and Prodega.

¹¹⁷ A few detainees also received goods from relatives, friends or associations paying regular visits to detainees.

¹¹⁸ In other prisons, detainees have to pay for the TV as well, if they have money.

Bern. For these reasons, I would argue that work in Bässlergut acts as more than a diversion but is necessary to cover basic needs, which puts inmates in a weak situation of dependency. This also makes them vulnerable to short-term prohibitions to work that can be pronounced as sanctions if they do not turn up to work on time or if they do not provide good quality work. This relation of dependency might be the reason why a few detainees refused categorically to work, either bearing the consequences of this decision, or receiving goods from outside instead.

As Hiemstra and Conlon (2017: 130) argue, as a consequence of detention creating a sense of deprivation, it is “the dispossession of livability and comfort, that turns detainees into willing – desperate, even – consumers”. This implies that even the most willing workers find themselves under a certain level of coercion. The production of certain freedoms within the carceral regime – such as the possibility of purchasing goods and deciding whether or not to work – therefore becomes a key “site of governmental power” (Conlon and Gill 2013: 252). Through the deprivation of choice and ability to purchase things outside, the institution introduces the desire for specific goods and the possibility to buy them at the *Kiosk*, which they can afford only if they work, thus creating circuits of accumulation and dispossession (Hiemstra and Conlon 2017) and establishing a relation of dependency.

Detainees’ work and market logics

Despite the work done by detainees being mostly mandated and paid for by external companies, the production workshop is not meant to create any gain for the prison. However, its functioning is highly influenced and regulated by economic logics and market strategies. One of the main tasks of the head of the production team is to find new mandates and clients so as to occupy detainees. At the time of my fieldwork, the prison had 17 clients, of whom eight were permanent. Clients were from very different areas – pharmacy, stationery, mechanics, etc. – and were mainly interested in outsourcing specific tasks for economic reasons rather than with a social motivation. This meant that the prison had to provide good quality work as well as cheap prices in order to be competitive on their market niche:

“I searched for different customers on the Internet and wrote to them. Obviously, if you write to a hundred customers, you’ll be lucky if you get five answers. Because Bässlergut is not the only institution... there are enough workshops for disabled people, there are enough prisons, there are enough such institutions that want to get work! And then of course you have to find a job that they [the companies] don’t like to do, that costs them too much, but one which you can do for a lower price! And then the industry will say: ‘let’s let them do it’. (...) [The tasks] where you don’t need a machine, where you use your fingers and hands (...) to assemble something, or glue something together, (...) they cost very different amounts of money outside, in comparison to here!” (Manuel, production officer, Bässlergut).

Providing a very cheap workforce for basic tasks, the prison enters into competition with social institutions such as psychiatric hospitals or institutions for disabled people. The tasks they fulfil are tasks using the hands, which would be too expensive in the ordinary labour market. At the time of my fieldwork, an important mandate consisted of assembling one million small boxes that would serve to export and commercialise drugs in Japan: a useful example of the inclusion of the prison in broader circuits of production that problematises Goffman’s reification of the prison boundaries (Gill et al. 2018). Manuel had calculated that creating a machine that would do the same work would cost more than one million Swiss francs, to which the cost of a person controlling the machine would need to be added. In comparison, outsourcing this work to the prisoners had cost 100,000 francs to the company that had mandated it. Despite the prison not making any gain from detainees’ production work – given the costs it produces in terms of personnel – this example points

at the association of detainees' labour as exploitation if seen in a broader market perspective (Bales and Mayblin 2018; Nowakowski 2013). The use of inmates' work in the house service – laundry, kitchen, etc. – can be more directly associated with a measure of the prison saving money while keeping inmates occupied.

The logics of the market are also evident in the way Manuel decides on the prices of work through a comparison with those of other similar institutions that he could find online:

“You should not price yourself too low! You should not be 100% less, if you want to earn something. It's just fair... fair market economy! Everybody fights for his job, but nobody would go and say: ‘Well, he charges 1.- franc for this, I'll do it for 20 cents’” (Manuel, production officer, Bässlergut).

Dealing with large orders like this is not easy for an institution like Bässlergut. Detainees must be offered the opportunity to work and must be occupied every day, but it is impossible to foresee the size of the workforce each day since occupation rates fluctuate and detainees are not obliged to work. For that reason, when an order needs to be finished and handed over to the client, the prison will sometimes collaborate with other prisons or social institutions such as the psychiatric hospital in order to be able to meet their obligation. The relationship between these institutions is thus characterised both by competition and mutual help. In other cases, the pressure of the deadline brought the production team to decide on a rather more drastic measure, consisting of doubling the shifts of penal detainees, whose workforce was larger and more stable. As a consequence, those immigration detainees who wanted to work were relegated (and locked) in the leisure room in their wing, which does not provide the same diversion in terms of space and atmosphere. This example shows how the rules of the market can come into conflict with the nature of work activities in immigration detention that are meant as a resource for detainees and not as a way to make profit.

5.2.4. Security and surveillance

Security is an omnipresent institutional category in prison. It justifies a group of practices which would be illicit were they not carried out in its name – as for example with body searches that imply the undressing of detainees. The understanding of security in prison is broad, encompassing the integrity of both prisoners and staff members, but also questions of prison order such as keeping control of the circulation of drugs or avoiding escapes. Security concerns materialise in architectural and procedural aspects as well as in practices and technologies of surveillance. They are at the core of most prison rules, for example, regulations relating to which objects can be received and brought into the cell and which are forbidden. Objects and products which could potentially be used to injure others or oneself are forbidden, limiting the choice available to detainees. Another example of the powerful effect of security rules is to be found in the confiscation from a detainee of plastic bottles, which occurred in the RP Bern, as the detainee was using them as sport weights (filled with water) but the staff were concerned that they could be used as weapons.

The maintenance of security and order in prison is reliant on technologies of surveillance. Both Bässlergut and the RP Bern have a surveillance system composed of cameras, through which the staff at the command centre can observe what happens in the prison space. In Bässlergut, which has a more modern infrastructure, a system of sensors attached to several points (doors, bars, windows) and related to an alarm system additionally enables the staff in charge of video surveillance to detect possible escape attempts. The security system is based on a system of alarms linked to the internal phones that staff members as well as external partners (including myself) carry at all times. Every person in possession of this device can trigger the alarm by pulling a stripe on the phone, which will alert the command centre as well as all other staff members. In the RP Bern, all

colleagues will rush to the place where the alarm has been set off, while in the prison of Bässlergut only a selected number will be expected to reach their colleague.

If surveillance in prison is reliant on technology, it is also based on visual practices and techniques (Hall 2012). In Bässlergut, staff members on duty in a prison wing can observe from their office what happens in the detention area through cameras and microphones that are placed in the corridor as well as in the courtyard. A few times during my observation, a prison officer spotted a scene on camera which appeared suspicious, which led them to watch certain detainees more carefully or to carry out a security check. Indeed, staff members are able to search a cell upon suspicion in order to detect any banned object or substance. These checks are carried out in the name of security but also serve a disciplinary function, in the sense that detainees know that their cells can be searched at any time so they are discouraged from forbidden actions or holding illicit items. Such security checks respond to several rationalities: they are supposed to prevent escape and aggression with home-made arms (security rationality), but also suicides or self-mutilations (biopolitical rationality) and the consumption of drugs or the production of alcohol (disciplinary rationality).

As we will see in Chapter 6, suspicion and intuition play an important role in the work of prison officers and particularly in surveillance practices. In her ethnography of a removal centre in the UK, Hall (2012: 48) coined the term ‘bodywatching’ to describe specific visual techniques of staff members of “tracking and deciphering the body”. Bodywatching is defined as a “watchful and suspicious practice of observation” and “a set of embodied visual habits, which constantly ‘read’ the detainee’s body as a site where intent and proclivity could be discerned ahead of time, and where control could be inscribed” (Hall 2012: 28-29). In this way, ‘bodywatching’ assumes that “the body of the detainee in everyday movement would betray intent, meaning and purpose” (Hall 2012: 39). As a technology of surveillance, it acts in a proactive, “precautionary, anticipatory and pre-emptive mode” (ibid.: 45) rather than to respond to an actual threat.

Bodywatching as described by Hall both stems from and produces representations of the detainee as unknown and potentially a threat (see section 6.4.4). Many security procedures are precisely conceived in order to contrast this unknown character of detainees and render them knowable by the institution (Hall 2012; Mountz et al. 2013; Vaughan-Williams 2015). This is the case for informatics systems in which information about detainees and their behaviours is registered and made accessible to other staff members, for instance, or the entry procedure discussed in this chapter. The pre-emptive character of such measures based on suspicion rather than evidence of guilt – such as the decision to make a cell or body security check – means they are experienced as particularly unfair and humiliating by detainees.

5.2.5. Sanctioning and punishing detainees

Disciplinary sanctions play a key role in the daily life in immigration detention. They form part of a system made of rules, rewards and punishments that regulate the daily functioning of the prisons, providing for a framework in which pressures are exerted to normalise detainees’ behaviours and to foster a “reorganization of self” (Foucault 1975; Goffman 1969: 320). In the prisons under study, a system of sanctions is in place¹¹⁹, with the joint aim of providing for order and a smooth daily routine, and the idea of correcting and educating detainees who are often described as unable or unwilling to follow the rules.

¹¹⁹ It should be noted that a system of sanctions exists also for staff members in case they commit mistakes in their work. This is strongly felt by staff members of Bässlergut who can be fired if they accumulate a series of such errors or misbehaviours.

In Bässlergut, the procedure to sanction a detainee usually starts with a staff member writing a report. The management then decides on the disciplinary measure to take, which include according to the house rules¹²⁰: a written warning; the deprivation or limitation of purchase, leisure or work activities, or visits and phone calls; monetary fines; cell enclosure for up to 30 days; and confinement in the disciplinary cell for up to ten days. During my fieldwork, I only heard about the use of prohibition to work (only issued for non-attendance or problems which occurred at work), cell enclosure and confinement in the disciplinary cell. The last two measures are both forms of solitary confinement, but with different conditions. Enclosure takes place in a normal cell (often the detainee's own), in which the detainee can keep everything he wants, and has access to TV. On the other hand, in the disciplinary cell, the detainee is deprived of everything except a Bible or Koran, and is provided with prison clothes, anti-tear ones if he is at risk of self-harming. The material environment is also punitive: it has no furniture, only a mattress that is laid on concrete, a milk-glassed window that cannot be opened and a squat toilet. There is a camera in one corner, which is switched on only upon consent of a doctor and only if there is a potential danger of the detainee self-harming. Detainees in this disciplinary cell have the right to one hour's solitary walk as from the second day of confinement. They cannot receive visits or private mail.

The disciplinary cell, or 'bunker' as it is usually called by both staff and detainees in Bässlergut, is used above all when a detainee has behaved violently, but it can be ordered as well in case of repeated violation of the rules. In fact, disciplinary sanctions are considered a rather effective way of forcing detainees to follow the rules:

"Confinement in a cell, (...) it's not always useful because it's still relatively cool. He's in a room, he has TV, he can smoke, and so on. It's not... it's not that restrictive. What is restrictive, however, and helps a lot, and here we come back to the educational measure, is that in case of recidivism within four weeks – and I tell them this – the initial sentence is doubled. (...) That means that if he wants to play a little, it's dangerous for him, because when he decides that he's had enough, he may still have thirty days to go. So that's what bears fruit, yeah, the dimension of punishment. Or the arrest [in the disciplinary cell], that form of confinement most of the time bears fruit because [it means] no tobacco, no cigarettes, no TV, no visits, no phone calls..."
(Fred, member of management, Bässlergut).

The dimension of punishment is also manifest in this quotation above. Furthermore, the mechanism of doubling the sanction in case of 'recidivism' is considered by Fred to be an educational measure, in the sense that the detainee will learn how to behave or not to behave. These measures construct detainees as undisciplined, childish, uneducated people that have to be taught how to behave. In fact, staff members often talk about detainees as always demanding special treatment, implying that if they are incapable of conforming to the rules of a closed society like prison, they will be unable to conform to society at all. In this sense, I agree with Gill (2009a: 190) when he argues that "[t]he operation of sanction and reward mechanisms positions the detainees as subjects that can be legitimately disciplined, and centres employees themselves as paternalistic, which can have its own consequences in fostering a condescending view of detainees among the management staff".

Detainees often consider the sanctions as excessive. For example, a detainee related that he had received five days of confinement in the disciplinary cell because he had refused a body search after an external visit and had elevated his hand in a position that had been perceived as threatening. The employee set off the alarm and four staff members rushed to the room. According to the detainee, the whole event had been caused by a misunderstanding and overreaction, but he stayed calm while

¹²⁰ Bässlergut has two different house rules for penal and immigration detention, however, article 24 on disciplinary measures is exactly the same.

they brought him to the ‘bunker’ since he felt that he was in too weak a position to resist: “they do so in order to make you nervous, and if you make a wrong move, they accuse you of criminal assault and they put you in prison for six months!”, said the detainee. At moments like this, the action of prison staff aims to re-establish prison order as well as authority over potentially undisciplined detainees.

Use and threat of physical force in the case of non-compliance with rules

Sometimes – as in the case related above – the enforcement of disciplinary measures entails the use of physical constraint. Besides self-defence and defence of others, enforcing discipline and prison order is one of the goals that under some circumstances can justify the use of physical force according to a member of Bässlergut’s management:

“Everyone has to respect the rules, because otherwise it is no longer possible to maintain security for everyone. And so, this is the third aspect where we don’t move directly to the use of coercive, physical measures, but it’s the logical consequence. Uh... because someone who doesn’t respect the house rules, well he might get an arrest (...) and if the person uh... defends himself, at some point, you have to use the means that will allow you to... to apply this disciplinary measure. So it does involve coercive measures such as handcuffing him and (...) if he really defends himself in a violent manner, well, it involves immobilising him on the ground (...) and then cuffing his feet, hands, etc.” (Fred, member of management, Bässlergut).

Despite using the argument of providing ‘security’, it appears from this quotation that physical force is used to maintain prison order and a power hierarchy between prison staff and detainees. Through the monopoly of the legitimate use of physical force, staff members embody sovereign authority (Hall 2012; Weber 1978). This kind of “violent suppression of indiscipline” can be analysed as “one of the ways in which control [is] reinvigorated” in detention centres (Hall 2012: 112). If control is usually enforced through visual techniques in detention, in such acts it moves to a physical realm, reducing the detainee “to an inert, contorted and ‘wrapped up’ body just as the officer’s body [is] materialised as ‘male’ in its vigour” (Hall 2017: 227).

Such demonstrations of force have a significant symbolic role in which the visual aspect is very important. This is manifest in the special equipment that staff members in Bässlergut usually wear during interventions requiring the resort to physical constraint. By way of example, one day I saw three staff members entering the cell of a prisoner (in criminal detention) wearing thick dark gloves and with yellow glasses covering part of their faces. The prisoner was a 60-year-old man of tiny physique, and the staff had to take him to the medical service to check his health since he had been performing a hunger strike for a few days. Apparently, he was classified as refractory and according to a recently introduced rule, the use of cut-resistant gloves and glasses (to protect staff from spit and potential diseases) was foreseen when dealing with such unpredictable situations, as an officer explained to me.

The visual effect of this equipment is also supposed to exert a disciplinary function as it signifies to the detainee that physical force could potentially be used in a certain situation:

“You can say ‘I need two more people here’. Then two [colleagues] arrive, (...) and that’s actually psychologically good, because then two more [officers] come and, I’ve already seen that, they wear glasses and gloves and stuff. And then very often [the detainees’ reaction] is ‘oh!’. They see the glasses, the gloves, four more people. They are not stupid, they already know ‘Oh, something is about to happen’. And often they finally get the hang of it and say ‘ok, ok, I’ll do it’. So from that point of view, it’s also good practice” (Max, prison officer, Bässlergut).

The prison provides further specialised equipment for interventions implying the use of physical force and in particular for interventions in the disciplinary cell when a detainee is considered to have high potential for aggression. This kit is made up of kneepads, shin guards, elbow pads, gloves and a ‘balaclava’, and even a helmet and a shield, all in black: a real armour that gives the impression of a war between staff members and the detainee, which is meant to protect employees but certainly also to impress (and frighten) the detainee.

Showing power is also a method of reacting to and oppressing resistance acts, as shown by a scene at which Max had assisted. Some immigration detainees had engaged in a group protest and decided not to return to their cells after the walk, affirming that they were on strike. Despite this potentially being seen as a legitimate way of protesting, the prison reacted by calling the police. Since a special unit was in town for a football match scheduled on day, they were able to mobilise twenty fully-equipped policemen who intervened, displaying their strength. According to Max, the sight of this special force led the detainees to quickly retreat to their cells.

The categories of discipline, punishment and violence are blurred in such situations in which the use of force or its threat is intended to maintain prison order. However, physical interventions also operate as a further punishment in addition to formal sanctions. Constraint measures are obviously violent and painful even though they are conceived in order to avoid or minimise physical harm (see section 5.3.3), and can also be experienced as degrading.

5.3. Biopower, resistance and the ambiguous relation of control and protection

Upon the arrival of a new detainee and until their release or deportation, the prison institution is responsible for the inmate (Goffman 1969). This means that – besides avoiding escapes – it has to ensure detainees’ survival through the fulfilment of their basic needs (Goffman 1969), which is also a legal obligation for the institution. This represents an important element of the everyday in prison, in which the day is structured by needs such as food distribution, walking in the fresh air, and so on. The third rationality of government that I have identified is a biopolitical rationality which takes detainees’ existence as its object (Fassin 2011a: 185) and their survival as a main objective to be reached through medical care (section 5.3.1), protection against self-harm (5.3.2) and the careful calculation of any form of physical violence that is applied to them (5.3.3).

Despite characterising any space of confinement and government, biopolitics becomes particularly important in immigration detention for two main reasons. The first is related to the lack of a meaningful goal to be pursued through the experience of confinement as opposed to penal detention. While the latter is meant to serve a function of redressing and re-socialising detainees – a process in which prison employees play an active role – the only formal goal of immigration detention is to ensure deportation. However, the prison administration is in charge of neither organising nor enforcing removals, which are respectively a task of immigration authorities and the police. In other words, the goal of immigration detention is pursued outside the carceral space, while the prison merely plays the passive role of holding those migrants due to be deported.

Reinvested with a new role in the deportation system while being kept at its margins, the prison becomes a “purely custodial institution” (Campesi 2015a: 441) in which detainees are made to wait for their deportation. They must be at the disposal of state authorities and healthy enough to be deported, which implies that the prison assumes a role always fluctuating between surveillance and assistance, control and care, coercion and protection. This main task of immigration detention facilities is epitomised by the ‘integrity control’ (*Unversehrtheitskontrolle*) that prison staff must

carry out every morning upon entering the detention area, which consists of making sure that all detainees are still in their cells and alive. In this sense, we can say that detainees are governed through biopolitical power that conceives and produces them as bodies to be fed, controlled and kept safe.

Such biopolitical power is challenged by detainees through acts of bodily resistance such as hunger strikes or self-mutilations (see section 8.4). Not only does the body become an object of responsibility and surveillance for the institution, it also represents a powerful tool of dissent and resistance for detainees (Puggioni 2014b). Indeed, a threat to detainees' integrity can endanger the institution of detention, putting prison authorities in a very difficult position. In such a precarious and uncertain situation of pre-removal confinement, the body can be seen as one of the few remaining means through which detainees can protest. Acts of self-harm are a source of anxiety for staff and they disrupt the order of the institution, which puts everything in place in order to prevent them and to regain control over such 'undisciplined bodies' (Fischer 2014) through the use of specific techniques of coercion and heightened surveillance that are also based on medical knowledge and authority.

5.3.1. The provision of medical care

The first way in which the prison exerts biopolitical power is through the provision of medical care which is limited to necessary treatment and drugs to ensure the survival of detainees, the smooth functioning of the prison and the enforcement of deportation. Medical care and knowledge are central to the constitution of the humanitarian border (Walters 2011), where "human life is regulated in the name of preserving biological life and alleviating suffering" (Williams 2015: 13). I consider detention facilities as a manifestation of such humanitarian borders through a combination of biopolitical power using medical knowledge and technologies, and a humanitarian rationality providing legal advice and support to detainees through the involvement of nongovernmental humanitarian or human rights based actors. While the second aspect will be discussed in section 5.4, in this section I analyse the provision of medical care in the two prisons in which I conducted the core field research.

Primary health care or 'minimalist biopolitics'

Immigration detention significantly harms detainees' health. The lack of exercise and limited fresh air, a diet that cannot be adapted to everyone's needs, material conditions that do not allow a detainee to sleep or sit correctly are all characteristics of incarceration that impact detainees' health and well-being. In addition, the pervasive uncertainty of immigration detention and fear of deportation are productive of high levels of anxiety and can result in physical and mental health issues. On top of this, detained people can arrive at prison with a wide variety of medical problems, sometimes resulting from traumatising events or unfortunate prior living conditions, especially during their journey to and within Europe.

For any kind of health issue, a medical service is available within the two institutions where I conducted fieldwork, which detainees can access by completing a form. The medical team of the RP Bern is composed of five female nurses, while in Bässlergut, a male and a female nurse work part-time, one in the morning and the other in the afternoon. The nurses receive detainees requiring medical care and decide whether a visit by a doctor or psychiatrist is necessary. The doctor visiting Bässlergut twice per week is hired by the cantonal prison health care service, while in Bern he comes from the prison area of the university hospital (*Inselspital*). The two psychiatrists come from the forensic section of psychiatric hospitals in their respective areas.

The medical team is in charge of the delivery of medicines in the RP Bern, while in Bässlergut, the doses are prepared in the pharmacy for the prison officers to distribute. Much of their work in both institutions also consists in administrative tasks, particularly those related to the search for and transferral of medical information about detainees. This is particularly time-consuming in the RP Bern, given the high number of entries and exits. In Bässlergut every new detainee is subject to a medical check as part of the entry procedure (see section 5.2.1). The RP Bern does not foresee a systematic entry visit; detainees only have to answer a series of questions on the entry form and the medical team will only visit detainees if a health issue becomes known to them.

The medical care dispensed in prison (including in immigration detention) is primary health care, which means that injuries and illnesses are treated, but without further examinations or verifications unless those are urgent:

“The inmates have basically primary health care (Grundversorgung), which is regulated by law. It includes the usual entry controls, that they are treated properly if they have any illnesses (e.g. diabetes), that they receive their meds (...). Um... in emergencies also being hospitalised if necessary... So, this is primary health care. Examinations (...) are not done if (...) it's not an emergency or an acute problem. (...) And of course they are entitled to primary mental care, they can go to the prison psychiatrist at any time and introduce themselves” (Andrea, nurse, Bässlergut).

Primary health care does not include dental care, which means that detainees can visit the dentist only in case of emergency and high pain and they do usually not receive further treatment than pulling out the painful tooth. Health care is thus conceived in a very minimalist way, as this quotation of a nurse working in the RP Bern shows:

“Our main task is to manage emergencies, and crisis interventions when it's psychological. We have a lot of administrative, organisational work too. Nursing is kind of marginal. It's just what is needed right now, but just what's absolutely necessary, right. It's also again about finding the balance, what's really necessary and what's not” (Lena, nurse, RP Bern).

Lena goes on to explain that, especially in immigration detention, a therapy that is identified as necessary is sometimes not begun because continuity cannot be guaranteed after deportation. For treatments such as retroviral therapy for HIV-positive people, starting and then discontinuing treatment would be counterproductive. Another nurse explained the need to evaluate in every specific situation whether a given treatment is appropriate. This assessment includes financial aspects: most detainees without a residency in Switzerland (and hence the majority of immigration detainees) do not have medical insurance, which means that the canton often bears the costs of treatment¹²¹.

Focused on the urgent and the short-term rather than aiming at detainees' health and well-being in the long term, medical care is at the core of one of the main rationalities of the prison, biopolitics as “a politics which takes existence as its object and the living as its subject” (Fassin 2011a: 185). Applying this theory, Redfield (2005: 344) has characterised the humanitarian action of MSF (Médecins sans Frontières) in disaster zones as of “minimalist biopolitics”, which he defines as “the temporary administration of survival within wider circumstances that do not favor it”. We can argue that the provision of medical care in immigration detention is embedded in a tension similar to that described by Redfield as the symptoms of the most urgent health problems being treated but often

¹²¹ In case of particularly high costs (for example if several hospital admissions or a surgical operation are needed), it is possible for the prison to make a ‘forced registration’ (*Zwanganmeldung*) to health insurance to cover such costs.

without addressing their causes – often directly related to incarceration – nor their medium- and long-term effects, especially after deportation¹²².

This is particularly true in immigration detention. Besides a large variety of common and less common diseases (such as diabetes, flu, scabies, etc.), the most frequent detainees' health issues are psychosomatic, according to Lena, the nurse quoted above. Health problems such as sleep disorder, stomach or headache and anxiety are mostly related to enclosure and uncertainty. In such cases, a talk with a nurse can be beneficial, and the symptoms can be treated with common drugs such as analgesic, or the psychiatrist can prescribe tranquillisers. As highlighted by Lena, the symptoms are fought rather than the cause. She identified fear of deportation as the main cause of health problems. However, dealing with that issue goes beyond her role and professional remit, so she listens to detainees but clearly distances herself from any conversation about deportation, referring detainees to the migration office for that kind of talk.

Despite being well aware of the relation between detainees' health status and their uncertain and dramatic situation, medical staff actively try to separate the two, looking at the detainee as a body to be treated: "it's important to distinguish between different aspects and be able to deal exclusively with the health of detainees, independently from their legal status or situation", said a young doctor who was undertaking his civilian service in the RP Bern at the time of my research. A colleague who was listening to our conversation added: "it is important to remain neutral in our work. We deal with health issues, not with the rest, and we are not in charge of the specific case". Most of the medical staff having worked in hospitals, emergencies and the ambulance service before – where contact with human suffering is constant – are used to setting some distance between themselves and such suffering, a characteristic needed by their profession. We will return to this kind of distancing as a coping strategy of staff members in section 6.3.

Interestingly, for the prison administration, the identification of detainees as patients is to be avoided. At least this was the case in Bässlergut according to Andrea, a nurse, who related that every time she used the term 'patient', she was corrected and reminded that they are 'detainees, not patients'. For the prison, police and migration authorities, even if sick or injured, the detained person remains an inmate who needs to be controlled and prevented from escape. That is why, when detainees are led to the hospital, they are brought into a prison-like area of the university hospital in Bern (the *Bewachungsstation*). In Basel, detainees from Bässlergut are hospitalised in hospital rooms without surveillance, implementing a strategy that consists of confiscating the detainee's clothes with the aim of preventing escape. Detainees who are brought to the hospital for ambulatory treatment are transported handcuffed – at least from Bässlergut – as in the case related by Jakob, a detainee who had returned to Switzerland after deportation to Italy and who was suffering from an eye disease. He related that he was handcuffed behind his back and foot cuffed during the transfer, and that the police did not remove the handcuffs during the medical examination. This is evidence of the fact that even the medical care of detained migrants is a space of criminalisation, a process that will be further discussed in the next chapters.

Making detainees 'fit to fly': medical staff's involvement in the deportation procedure

The detainee's medical situation is critical to immigration detention since detainees must meet a minimum standard of health in order to be deported. Furthermore, health issues can be mobilised to avoid deportation and provide grounds for legal protection through medical and legal expertise

¹²² The prognosis in case of deportation and the question of access to health care including treatment and drugs in the country of deportation must be taken into account in the removal decision and can make the object of a re-examination demand but is not part of the evaluation of the ability to fly.

(Fassin 2001; Fischer 2013). Detainees are aware of this and try to use their body and health status strategically in their struggle to avoid deportation. This is one of the reasons why self-harm is frequent in immigration detention. According to medical staff interviewed for this thesis, however, it is very rare that a person is released for medical reasons; at most their removal is postponed. On the contrary, deportation can apply to individuals with severe diseases – I heard of detainees who were deported with cancer, HIV or who were on dialysis.

In immigration detention, the task of the medical staff is often reduced to verifying that detainees are able to fly and that there are no contra-indications for that. This medical confirmation is required before any removal. Before 2013, the prison doctor had the authority to decide whether or not a detainee was able to fly, issuing a ‘fit-to-fly certificate’. This practice was criticised by the ethical commission of the Swiss Academy of Medical Sciences in 2013 because it violated medical secrecy to which the prison doctor is subject unless the detainee consents to the transmission of their medical data. Furthermore, the commission found that certificates were sometimes issued far prior to the time of removal and that the medical risks related to deportation (stress, cardiovascular respiratory problems, venous thrombosis) could not be assessed in advance (ASSM 2013). Following the recommendations of the Commission, this practice was replaced by the search for contraindications. New forms and lists of such potential contraindications were provided to prison medical services¹²³. On the basis of this information collected by the medical service of the prison, another doctor of the company OSEARA SA, specially appointed by SEM, would decide whether or not the detainee is able to fly. The same company is also in charge of providing a medical escort during removals when the detainee’s medical situation requires it, and in all special flights (level 4 of enforcement) given the risks entailed by the use of constraint measure such as tying and helmets.

In Bässlergut, medical staff still referred to ‘fit-to-fly’ forms which were completed by the doctor through responses to a series of questions of the detainee. In the RP Bern, a nurse explained that the new procedure had actually significantly complicated their work. If a detainee answered positively to any of the questions on the form, the medical team was required to do a series of verifications to determine exclusively whether or not the detainee was able to fly, although not including any examination of the consequences of deportation in the short or long term.

This new procedure removes the responsibility from the prison doctor as the ultimate decision rests with OSEARA’s doctors. Despite that, the involvement of medical staff in the deportation procedure is evident from the description of the procedure, as such a decision is taken on the basis of information collected by the prison health service. Furthermore, given the minimalist understanding of health care that prevails in immigration detention, medical treatment is very often provided in order to render the detainee deportable. For example, this can involve organising vaccinations as required by the country of deportation. This also implies maintaining the detainee deportable and alive, as in the case of a woman who threatened her own life several times, about whom Lena related:

“They tried to deport her several times, uh... and that’s always a special situation when you know someone’s coming in, where you can almost be sure that if she can, she’ll kill herself before she’s deported. That is of course a relatively big challenge for us if we know exactly, mmh, the potential is very high that she will kill herself before she flies. Nevertheless, we have to receive her and try to handle her somehow, until she’s actually deported” (Lena, nurse, RP Bern).

¹²³ The list of contraindications and the form to communicate any detected contraindication are both available, together with the statement of the ethical commission of the Swiss Academy of Medical Sciences, at their website: <https://www.samw.ch/fr/Ethique/Apercu-des-themes/Exercice-de-la-medecine-penitentiaire/Rapatriement-sous-contrainte.html>. Accessed on 18 February 2021.

In this quotation, the anxiety relating to a potential suicide is patent. However, as the responsibility of the prison staff ends with deportation, the main objective here seems to be that the woman is deported *before* she can commit suicide.

Due to their essential role in the deportation procedure, medical staff are in constant contact with migration authorities, to discuss a deportee's medical situation (only allowed with the detainee's agreement), to discuss the financial implications of certain therapies or to organise the provision of medicines after deportation, which in Bern is done in collaboration with the Swiss Red Cross. Yet, the question of access to medical care after deportation is interpreted in rather minimalist terms. In Bässlergut, detainees are usually only provided with drugs for one week, after which time they need to find solutions to continue their treatment locally. In the RP Bern, detainees are usually provided with drugs for a few days up to two weeks. Medical reports are handed to the detainee at the moment of departure. Nevertheless, ensuring the maintenance of therapy after deportation is not the responsibility of medical staff but rather of migration officers, as a nurse explicitly claimed during an interview. This represents a significant difference from penal detention, from which detainees are usually released on Swiss territory¹²⁴. In those cases, the prison nurse will try to connect the prisoner with the medical support needed.

Distinct from the situation in the RP Bern, probably because the Swiss Red Cross is not involved in Basel, the medical team in Bässlergut sometimes becomes involved in establishing contact with local hospitals or doctors with the aim of enabling continuity of a therapy. This was the case both for a man undergoing dialysis and for one who was undergoing chemotherapy at the moment of deportation to an African country, where the medical team made contact with local medical institutions in the country of origin. In Bässlergut, the involvement of medical staff in the deportation procedure is also tangible in the need for one of the two nurses to be present in the facility during detainees' removal from their cell and preparation for level 4 deportations (on special flights). Andrea, the nurse quoted earlier, hated participating in these interventions involving a high level of coercion and related that she always tried to stay apart from the action, and not allow the detainee to see her.

The marginal, yet at the same time central, role of medical staff in the fragmented system of deportation reflects the position of the detention institution as a whole. Despite being directly involved in the enforcement of deportation, medical staff retain very little decision-making power and room for manoeuvre. Being aware of this involvement, some detainees do not trust them. Sometimes they are disappointed in the care received, and often they are suspicious of the close relationship entertained with migration officers and prison staff, as this quotation shows:

"we're in a situation of leaving [the territory]. The state wants us to leave and go home, and because of that, (...) they don't provide help. They don't care if you are sick or not. (...) They are not correct with people [detainees]. (...) Because the guards, the [health] people, doctors, all of them, they work with the migration [office], with the police. It's... it's like a group, it's politics. (...) If you are sick, (...) he'll control the pressure [and he'll say] 'you are in good shape, ok, bye. Do you want medicine? You'll take an aspirin'" (Nassim, detained in Bässlergut).

Besides feeling as though their concerns are not taken seriously by the medical staff, in the quotation above, Nassim implies that care is provided in a way that only serves the purpose of deportation.

¹²⁴ If deported at the end of their sentence, however, the same will be true for criminal detention as well.

Williams' (2015) analyses of the provision of medical care to migrants in the border zone of southern Arizona resonates with my findings in immigration detention facilities. Using Walters' (2011) conceptualisation of the 'humanitarian border', the author traces the recent development of care in this border area, showing how "informal policies of humanitarian exceptionalism" in which humanitarian organisations used to provide aid to migrants who were sick or injured without interference from the Border Patrol "have been replaced by policies of contingent care that link care to enforcement" (Williams 2015: 18). As a consequence of a new approach to border enforcement within the Border Patrol, the agency became responsible for the care of undocumented migrants as well as their surveillance during their treatment in hospital. According to Williams, subsequent to this shift, care has become "contingent upon subsequent deportation" and "provided in ways that privilege timely deportation over corporeal care" (Williams 2015: 17). Despite the different context of study, we can argue with Williams (2015: 18) that the provision of care in detention is contingent on the goal of deportation, so that "care functions as a technology of enforcement" in a context in which "minimalist humanitarian interventions complement and uphold the enforcement regime".

5.3.2. Materiality and reactions to self-harm

A further look at how the prison institution tries to prevent detainees from putting their life at risk and how it reacts when this occurs will help us to highlight the core paradoxes of the biopolitical logic and show the ways in which care and control are intimately related in a total institution.

In both prisons in which I conducted fieldwork, every piece of furniture or object that could be used to injure somebody is actively excluded or tightly controlled. This is a similar situation to that described by Campesi (2015a) with regard to the Italian removal centre of Bari. Campesi shows that security is a powerful organisational principle in the facility, in that all pieces of furniture are stuck to the floor in order to avoid the risk of self-mutilation, violence and protest, and where cigarettes, books and newspapers are not allowed because of fire risk. In the Swiss prisons under study, cutlery is made of plastic, and no other sharp object is allowed in the detention area. Detainees can ask for a razor or nail clippers but must return them immediately after use, and ensuring that no razor or nail clipper is circulating in the detention area is one of the responsibilities of staff. Even cleaning products or shampoo must not be accessible to detainees in large quantities as they could be ingested, provoking severe problems to the digestive system. This led both a detainee and a staff member – on different occasions – to argue that "it is almost impossible to kill yourself in the cell".

There are detailed procedures regulating how to react in case of suicide attempt, self-mutilation or hunger strike, as explained by a member of the management of Bässlergut. Medical treatment is the first priority in case of injury, and the detainee is transferred to the hospital if needed. Most of the time, however, prison officers are confronted with threats of suicide and declarations of self-harming intent rather than with accomplished incidents. In this case, the procedure is to place the detainee in a security cell with video surveillance, a response which is shaped by the securitised setting of the prison. Staff immediately inform the medical team so that they can contact the doctor and the psychiatrist. In fact, only a doctor can order camera surveillance. The security cell in Bässlergut is an anti-suicide cell in which the furniture is made of special materials and stuck to the floor, the window cannot be opened and the TV is enclosed in an anti-break glass cage. The detainee is deprived of his own clothes except from underwear and is given a blanket made of an anti-flame and anti-tear material that cannot be torn to produce a rope. Usually, the detainee cannot even bring a book into the cell with him. If he wants to smoke, he is provided with a special lighter that does not allow him to set the cell on fire. A member of the medical team will visit him on a daily basis.

The use of this specific kind of confinement is justified through the intent of protecting the detainee:

“If someone threatens to injure or kill himself, we have a duty to make sure that this isn’t carried out. And therefore, he gets cell confinement, but... a camera-monitored cell confinement and then he has nothing with him! (...) We give him tear-proof clothes, and a tear-proof blanket and depending on how calm he is, he can have a smoke at meal times and watch TV” (Peter, prison officer, Bässlergut).

Enclosure in a security cell and camera surveillance will be interrupted only if the detainee distances himself from suicidal thoughts and only with the psychiatrist’s approval, which can be interpreted as a way for the institution of shifting responsibility under the authority of medical expertise.

The reaction in case of hunger strike is also very strictly regulated. In Bässlergut, within 24 hours of the start of a strike, the detainee will see a doctor, if necessary with an interpreter, who explains to him the health consequences of a hunger strike and makes him sign a document in which he clarifies his intentions in case of loss of consciousness (whether or not he would want life support). The staff continue to offer him food at least three times a day and write down whether he has refused the food, which is meant to protect staff members – and the institution as a whole – in case of severe consequences. Medical staff are also required to monitor the status of the detainee’s health on a daily basis. The detainee is usually placed in a multiple cell, so that his co-inmates can also watch him, being co-opted in the institutional rationality of biopolitics¹²⁵.

The two prisons studied take any threat of self-harm very seriously and as soon as a detainee says that they want to kill themselves, the staff take the measures detailed above, placing the detainee under surveillance upon the authorisation of a doctor. This is certainly a way of protecting the institution and its employees, as the prison is responsible for the life of detainees in its custody. However, some detainees also interpret this procedure as an overreaction. In fact, the systematic application of a strict procedure in case of threat of suicide could be also understood as a way to parade the power of the institution and neutralise detainees’ agency and freedom of speech. According to some interviewees, even if the detainee immediately retracts what he has said, he is placed under surveillance for at least 24 hours.

Acts of self-mutilation are very unpleasant for staff, who strongly fear suicide attempts. In the RP Bern, where several suicides had already occurred, staff were very sensitive and sometimes even traumatised by those events. In Bässlergut, staff members were worried about the possibility of being personally condemned for failure to provide assistance in the case of suicide of a detainee¹²⁶. Many times, however, I had the impression that those acts were minimised and sometimes even ridiculed (see also Bosworth 2014: 191) in the discourses of staff, who highlighted that most detainees use the threat of self-harm to try and achieve something, with no intention to actually harm or commit suicide: “if you really want to commit suicide, you don’t do it in the corridor, you do it in your cell, the rest is only show!”, said a staff member of Bässlergut. And another: “If I scratch my forearm a little bit with my nails and say ‘I will kill myself’, I am still not there [committing suicide]”. Those can be seen as discursive ways of regulating the anxiety produced by

¹²⁵ Having said that, I also once heard a member of the medical team in the RP Bern propose placing a detainee in a single cell in order to verify whether he was *really* doing a hunger strike – since no food would be accessible to him. This shows the important role of suspicion even in the relationship between medical staff members and detainees (see also Chapter 6).

¹²⁶ This worry is mainly due to a rule that does not allow staff members to open a cell door during the night, including the late afternoon and early morning. If a person died during this period of time, they would be vulnerable to such an accusation.

the fear of being confronted with a suicide attempt (see Fischer 2014) as well as a way of producing moral distance (Gill 2016) that will be further discussed in section 6.3.

In the next section, I will analyse more critically the relationship that exists between measures of protection and control, as well as care and punishment.

The blurred line between protection and punishment

Measures of ‘protection’ are often accompanied by the use of coercion and physical force, as appears in the following episode related in my field notes:

“A young man shows a paper with the words ‘Geneva Bologna [date]’ through the porthole and asks what it means. [Officer A] explains that his flight is on [date]. He asks when that is, and she answers ‘in two or three weeks’. The man disappears into the cell. [Officer A] (...) keeps looking inside and tries to call him. Then she opens the door and tells him to come and talk to her, but he stands aside, behind the bathroom’s curtain. Strange noises come from within. (...) [Officer A] triggers the alarm. Meanwhile, I hear a noise of glass breaking (we will discover afterwards that he has broken a lamp). In a few seconds, a few prison officers arrive and in a short time almost all employees including one from the medical team are in attendance. First, they bring out the two other inmates, then Officer B and Officer C enter the bathroom and take him out with his hands tied behind his back and his head bowed to the ground. He’s wearing only underwear. (...) They take him down the corridor to the stairs and later I hear that they took him to the security cell. (...) [Later] I see [Officer B] and ask him about the guy brought to the security cell. (...) He tells me that he will remain there until Monday (almost a week!) and that while they were taking him down to the security cell, he said ‘I’ll kill myself’ repeatedly. ‘We take it seriously’, he adds. I ask him if placing the detainee in the security cell is a sanction or a security measure, and he tells me that it is a measure of protection (Schutz) only intended for the detainee’s own safety” (Field notes, RP Bern).

After witnessing this event, I was very impressed with the contrast between the violence of the action and the argument of protection put forward by Officer B. Beyond the use of physical force, which was measured in intensity and limited in time, another form of violence was going to occur through isolation and punitive conditions as the detainee had been placed in what is informally called ‘the bunker’ or ‘cachot’. In fact, the RP Bern only has one type of cell for solitary confinement (‘security cells’), used both for protecting detainees in case of self-harm and for punishing them in case of bad behaviour. There are three such ‘security cells’, all located on the underground floor. Their material conditions are very harsh: the bed and a small table are the only pieces of furniture and they are built as part of the concrete structure of the cell. A mattress lies directly on the wall-bed, and there is a squat toilet. The walls are painted in light green, except the one from which one enters the cell, which is made of bars. From inside the cell, you can see a wall clock, a window with bars and a neon light just beyond the bars.

As noted above, the security cells are used in different situations and with allegedly different aims:

L: (...) in what situations do inmates have to go in the security cell?

D: If they want to kill themselves, if they endanger themselves, they are transferred to the security cell for safety reasons. Or if they smash a cell upstairs, or if, for example, they attack other inmates, or if there is a discussion between the guard and the inmate, and he swears or spits at them, this happens sometimes, then we will transfer him to the security cell. Or if we see he’s all... crazy, he’s always knocking on the door or screaming the whole time, we put him in the security cell until the next day and then we’ll make sure he goes to the psychiatrist who can maybe help a bit, with some medicine. In those situations [we use the security cell] (Dario, prison officer, RP Bern).

The grounds for solitary confinement presented here include protection from self-harm, sanctions for material damage, physical aggression or insulting the guards, and psychiatric problems or decompensations. In practice, detainees at risk of suicide are subject to the same conditions as those of a disciplinary measure. The way in which Dario mixes all these grounds without clearly differentiating between sanctions and protection is particularly interesting. This confusion is also illustrated by this quotation of a member of the prison management:

L: And (...) in case of resistance or self-mutilations ... those cases that seem to occur frequently in immigration detention, how do you handle those situations?

F: Uh... we work so that on the one hand they are sanc... sanctioned in the sense that they are brought to the security cell. The reason is that it has a surveillance camera, so that we can monitor it better and so they don't do any further harm (Franziska, member of management, RP Bern).

In Bässlergut on the other hand, different spaces are provided for carrying out disciplinary measures – the ‘disciplinary cell’ – and for protecting detainees who put their life at risk or threaten to do so – the ‘security cells’. However, even there, detainees often confuse the two and call both ‘the bunker’. According to a detainee named Karim, measures of protection are even worse than disciplinary measures because the conditions are particularly humiliating, as the detainee is usually deprived of his own clothes and provided with special clothes and/or a blanket that cannot be set on fire or torn to produce a rope. Furthermore, he explains that while in the case of a disciplinary sanction, there is an administrative decision that it is possible to challenge, there is no such procedure in case of measures of protection. In those cases, the authority of a doctor is sufficient to ensure the need for placement in a security cell. Karim describes the conditions in the security cell as follows:

“They say ‘this is for your own safety so you won’t hurt yourself’. (...) [But there] it’s humid and [I was] without clothes, only underpants and it was cold. At night, there’s no normal blanket, there’s no sheets on the mattress. (...) They put the [TV] channel on the station you ask for and then they take the remote control. (...) They need to light a cigarette for you, you smoke in front of him... they say it’s for your safety. As I told the doctor, (...) honestly, if I was in my [normal] cell, what would it change? It’s the same thing, it’s a prison. Do we have knives? Do we have axes? We don’t have those things, we’ve even got plastic cutlery. (...) And it’s not a bunker, because a bunker is for (...) punishment (...), [and there] there will be an administrative decision [Verfügung] which he has to sign, [where it is written] how many days and the cause why he is there. But where I was, there’s no formal decision, (...) it’s the doctor who puts you there” (Karim, detained in Bässlergut).

In this account of the conditions of the security cell, we can see that the special materiality as well as the heightened surveillance over the detainee’s body and behaviour is experienced by detainees as punitive and humiliating. The relationship between medical knowledge or expertise and biopower is also made explicit in the fact that the doctor has full authority and decision-making power in these situations.

I will further discuss the relationship between acts of self-harm and resistance in Chapter 8. For the purpose of this chapter, however, it is interesting to note how, through acts of bodily resistance such as hunger strike or self-mutilations, detainees reappropriate the biopolitical rationality to disrupt prison order and defy the biopower exerted over their bodies (Fischer 2014; Puggioni 2014b). According to Fischer (2014), the management of acts of self-harm becomes paradoxical in that it involves humanitarian treatment of the suffering body and at the same time regain of control over such an ‘undisciplined body’. This tension is manifest in the description I have provided of the use of solitary confinement which blurs the distinction between care and protection on the one hand, and control and punishment on the other.

5.3.3. The measured use of physical force: a political economy of violence

The capacity and the authorisation to use physical force in situations where it is required or is deemed necessary is one of the main components of the prison officer's role (Crawley and Crawley 2008). However, the kind of force used always needs to be measured in a way that does not harm or hurt the detainee more than necessary. For this reason, staff members in Bässlergut follow internal (almost weekly) training in which they learn specific tactics and techniques of control and restraint. This training, which they refer to as 'self-defence', takes place over lunch, during work time, in a room situated underground, equipped with a carpet made of rubber. Although I was never invited to take part in the training, I once saw the training room and my description of the training below is taken from conversations with staff members.

The training alternates between self-defence classes and fitness, both led by officers acting as internal trainers. The fitness class focuses on endurance, strength and mobility, with the aim of improving the physical condition of officers. Classes of self-defence focus on techniques of control and restraint and on 'tactics' of intervention. Officers learn how to act in and react to different situations – for example aggression by a detainee or hostage-taking – and different spaces – such as the cell or the wing. The training includes psychological aspects such as how to interact with a person who is threatening you with a knife. Tactics such as avoiding looking the detainee in the eyes (which he might interpret as provocation) and showing the hands to appear unthreatening were mentioned during interviews. Officers also learn how to use physical force in a proportionate and situational way, avoiding harm to the detainee.

Usually, the first step in an intervention involving the use of coercion is the immobilisation of the detainee on the ground, which is generally done by three staff members. One officer (Daniel) explained to me that this move has the aim of preceding and preventing outbursts of violence, for example when a detainee starts to raise his hands, and communicating the seriousness of the intervention. Max explains:

"Keeping him on the ground [fixieren] serves on one hand to make him quiet, so that you have him under control and he can't mess around with anything anymore. So it's also a lot about self-protection. And secondly, it's done in order to handcuff him. Because doing that while standing, when he's mad, it's hard. You can't do that! It's already hard on the ground, it's extreme. (...) And then of course you also have to take responsibility... when we do something like that. Responsibility towards us, towards colleagues, but also responsibility towards the inmate! Because we do not want to, and must not, hurt them. We just have to carry out the intervention" (Max, prison officer, Bässlergut).

Visually, such immobilisation on the ground displays the power asymmetry between staff and detainees and symbolises detainees' oppression (see Hall 2017). In the quotation, Max underlines that while prison officers sometimes need to use physical constraint, they also have the responsibility of using it without injuring detainees. Nevertheless, this kind of intervention can be violent. Asked about these cases, the nurse in Bässlergut said that it is possible to injure detainees, "depending on how far the individuals defend themselves and how many staff members are needed to restrain him" (Andrea). Lena, a member of the medical staff in the RP Bern, also talked about briefing staff members when they have to deal physically with a detainee who has medical problems, lending her medical knowledge and expertise to prevent consequent medical incidents.

A member of Bässlergut management highlighted the importance of being trained in these techniques in order not to cause injuries:

"The goal is indeed to avoid staff injuries and to act in a professional manner to avoid a risk of detainee injury as far as possible. Bringing a person to the ground is the first step, [but] then

you have to keep them on the ground. Again, there are different ways to maintain someone on the ground. And we try to do it in a professional way, knowing where to hold, and not just jumping on him. Uh, and sometimes, if the person is really in a state of extreme agitation, it can last ten or fifteen minutes during which you have to hold until they calm down. (...) And so besides (...) self-defence, there are also some more medical measures [that you need to know]. (...) For example, someone who is on the floor, I'm not going to put my knee between the shoulder blades because I'm going to compress his rib cage and if he's lying on his stomach, very quickly he's going to have no air in his lungs. So we have to manage, I'm not saying that we don't put the knee on for a few seconds, giving us time to grab the arm or to put the handcuffs on, but no more. We're not allowed" (Fred, member of management, Bässlergut).

Here again, we can see that the staff's actions are drawn simultaneously by the will to control the detainee's body and the need to protect it from harm. The use of force must always be measured and controlled, following specific and thorough techniques based on medical knowledge. I found in Walters' notion of 'political economy of violence' an extremely useful concept to understand this phenomenon. In an article on aircraft and deportation by flight, this author states: "With the idea of political economy of violence I foreground the element of force while insisting that the kind of force mobilised (...) is not a naked violence" (Walters 2016: 438), it "is not random but invested by various forms of calculation. It is not blind but calibrated by medical, penal, ethical and psychological knowledges, many of which have been trialled within the criminal justice complex" (Walters 2016: 442). This resonates with the testimony of a person (working for an NGO) who once asked the police to tie them up as they would in a special flight in order to know how it feels. He related to me that it was extremely bizarre as these ties do not hurt or press, they feel almost soft on the skin, but still immobilise the body.

Walters continues explaining the concept by stating that "[t]o speak of a *political* economy of violence is also to qualify the view that the use of these techniques is the exception rather than the norm. It may well be that only a minority of deportations require the exercise of force and constraint. But we should not see these instances as aberrations [but rather] as an inherent feature of governing populations in a world that is hierarchically divided into territories and peoples" (Walters 2016: 443). This observation resonates with the discussion presented in section 5.2.5 about the disciplinary function of sanctions and the threat of using physical force to accomplish prison order. It also relates to the Swiss system of deportation that foresees four levels of enforcement according to the level of physical constraint used. Deportations under level 4 of enforcement, taking place through the employment of special flights, only represent 4% of removals¹²⁷, however, they have a significant effect on the whole system of deportation, acting as a threat to convince migrants to collaborate with their return (de Senarclens and Soysüren 2017; Soysüren 2017). The use of physical force and constraint, thus, needs to be understood in a broader context or system combining different kinds of physical, psychological and political violence and sometimes even mobilising care and protection as justification.

5.4. Providing legal assistance: the involvement of NGOs in the government of detainees

Immigration detention incarnates a tension between the sovereign right of states to control their borders and democratic principles such as equality in the eyes of the law and protection of fundamental rights and liberties. In a law-governed state, any deprivation of liberty needs to be politically justified, legally based and contestable, and conform with a series of human rights

¹²⁷ In 2017, 287 people were repatriated or transferred per special flight out of 7,147 controlled departures (SEM 2018).

standards. This tension translates into the conjunction of a logic of repression and a logic of legal protection in detention centres (Fischer 2017). This results in a paradoxical situation in which the institution of immigration detention includes methods for contesting the lawfulness of both detention and deportation, and allows access to nongovernmental actors whose mission is to render this contestation possible, as argued by Fischer (2017) with regard to the activity of the Cimade in French detention centres (*centres de rétention*).

In Switzerland, there is no such organisation present in the majority of detention centres, but a few nongovernmental actors are present in some facilities such as the RP Bern and Bässlergut, where three organisations (the KAZ and SRC in Bern, the BAS in Basel) are formally granted access and provide legal advice to detainees. As we will see in this chapter, however, their role and function are rather ambiguous as they sometimes combine legal contestation and mediation efforts between detainees and migration officers. Having limited room for manoeuvre, these organisations are always at risk of being co-opted by the state in the pursuit of its deportation goals or in the reaffirmation of its humanitarian character to counter criticism (Campesi 2015a; Makaremi 2009a; Walters 2011).

The activity of nongovernmental organisations in immigration detention facilities certainly deserves more attention and could itself be the focus of an entire PhD. In the framework of this chapter, however, we will limit our analysis to the understanding of how their involvement contributes to the government of detainees. In this sense, our interest is twofold: on the one hand, providing legal advice and support to detainees can be related to a humanitarian rationality that contrasts or rather interweaves with the other rationalities of government that we have addressed thus far. Acknowledging that detention provokes suffering, the institution provides for some forms of services that specifically aim at supporting and assisting detainees. This is not only the case for NGOs, but also chaplains providing for spiritual care, for instance. The humanitarian rationality not only conceives of detainees as suffering subjects, it also governs such subjects “if not as, then certainly in the image of rights-bearing individuals” (Walters 2011: 151), resorting to legal expertise.

Our main interest in the activity of providing legal (and return) advice in detention facilities, however, lies specifically in the decision to delegate this task – which aims formally at supporting detainees – to external, nongovernmental actors. This allows the prison institution and its employees to strengthen the humane character of detention while removing themselves further from the deportation procedure. Indeed, in case of legal questions, prison staff can reorient detainees towards those ‘independent’ services, which also aims at maintaining prison order. Advisors from NGOs certainly exert a function of control over the administration’s use of immigration detention through their occasional legal contestation of detention orders. However, given their restricted room for manoeuvre, they often end up reinforcing the state’s discourse and practices of deportation in several ways.

5.4.1. Three organisations providing legal and return assistance

In the prisons under study, several NGOs are involved in formal or informal ways. In the RP Bern, an organisation called KAZ provides legal support and representation mainly on the basis of case files, while the Swiss Red Cross (SRC) has a regular presence in the prison, providing advice in terms of return and future prospects as well as financial return help¹²⁸. Despite maintaining relatively frequent contact, the two organisations have different scopes and can be seen as

¹²⁸ The Salvation Army is also present in the prison and provides social and spiritual care. This is additional to the formal pastoral care provided by two chaplains and one Imam appointed by the prison service.

complementary. In Bässlergut, a service provided by the local asylum seekers' legal support NGO BAS visits the facility twice a week providing for legal information, advice and support. In contrast to the KAZ in Bern, it does not exclusively provide legal work but also sees its role as one of mediating between migration authorities and detainees in the interest of the latter. Another civil society organisation called Solinetz is also active in Bässlergut, paying regular visits to detainees and providing different kinds of support, including legal aid and contact with lawyers. Given the focus of this chapter, however, I will not consider this organisation since it does not entertain any formal relation with the prison administration. In the following pages, I start by describing the three organisations and their context of activity, each having its own characteristics, and then move on to analyse some common features with respect to their position toward the state and in the system of deportation.

KAZ

The Church Contact point for Coercive measures KAZ (*Kirchliche Anlaufstelle Zwangsmassnahmen*) was founded in 1998 upon the initiative of the Church as a response to the recent legal tightening in the area of detention. Since its inception, its aim has been to provide detainees with legal support, controlling the lawfulness of detention orders and representing detainees during legal procedures. To facilitate access, the KAZ stipulated an agreement with the migration authorities of the canton of Bern, through which detainees can request contact with the KAZ or the SRC (see below) using a form they receive at the time of the notification of their detention order. The detainee can tick a box saying "I enable the KAZ to review my file and would like to receive advice", in which case the KAZ lawyer would be enabled to access the detainee's personal file through the immigration authorities or courts. The lawyer would then examine the decision to detain and make contact with the detainee to give them an assessment of the situation. In some cases, he would request a judicial review, file a release request or an appeal.

Over the years, the KAZ has succeeded in obtaining a number of releases. For most detainees, however, the organisation remains barely accessible as it manages most contacts exclusively in writing. According to its website, 108 detainees completed the form asking for contact in 2017, while the appointed lawyer visited detention facilities only 15 times¹²⁹. Indeed, the lawyer only visits the detainee if he needs further detail, otherwise he engages legal procedure or, if he thinks that there is nothing to do in legal terms, he informs the detainee of his assessment in writing. The only possibility that remains for the detainee to obtain advice in person, then, is through the SRC.

Swiss Red Cross

The intervention of the Swiss Red Cross in the area of immigration detention started in 2008 with a pilot project called 'Detention', implemented in several cantons and facilities¹³⁰. The project was developed in collaboration with cantonal and federal stakeholders¹³¹ and was intended as an opportunity to provide detainees with support while at the same time lowering the cost of the procedure (Kakpo et al. 2011). The SRC offers 'prospects and return advice' (*Perspektiven- und*

¹²⁹ Website of the Reformed Churches of Bern-Jura-Solothurn: <http://www.refbejuso.ch/inhalte/oemigration/menschenrechte-migration/zwangsmassnahmen/>. Accessed on 15 October 2018.

¹³⁰ The programme originally involved several cantons, including Zurich, Fribourg, Basel and Bern. The Swiss Red Cross had been active in the Flughafengefängnis Zürich since 2001, but its involvement ended a few years previously when the cantonal service for return advice took it over. The SRC project still exists in Fribourg and Ticino, but it was not extended in Basel after 2013, since the BAS offered a similar service. In Bern, in January 2016, the team was composed of three employees working part-time (185% FTE in total).

¹³¹ Namely the *Conférence des directrices et directeurs des départements cantonaux de justice et police* (CCDJP), several cantonal migration services and the Federal Office for Migration (currently the SEM).

Rückkehrberatung) in the form of individual consultations in all eight prisons of the canton of Bern¹³². At the time of my research, it was accessible both for immigration detainees and for people in penal detention who are expected to leave the country at the end of their sentence. Since 2013, the programme has been financed by the cantonal migration office (MIDI).

The aims of this service are summarised in a short presentation drawn from a flyer addressed to potential partners:

“The SRC prospects and return advice service helps people in detention pending deportation and in the criminal justice system to better understand their situation and supports them in working out a possible prospect in their country of origin or in a third country. Detained persons are taken seriously in their rights and dignity and prepared for life after their return” (Flyer for partners, available online¹³³).

Besides providing information on the detainee’s legal situation and possible outcomes, the SRC is actively involved in case of ‘voluntary’ return, which includes support in the search for travel documents, information on medical and daily issues in the country of deportation, contact with local organisations and provision of financial support (300 Swiss francs for removals outside Europe and 50 within). Besides its own financial help, the SRC can also make a request for additional return assistance to cantonal authorities¹³⁴ as well as to the State Secretariat for Migration (SEM).

At the time of my research, a counsellor from the SRC visits the RP Bern once per week. Detainees can sign up for a free advice consultation through forms that should be available in the detention area. Migration authorities also hand in the form during the notification of the detention order, together with the contact form of the KAZ. In 2017, the Swiss Red Cross carried out 531 consultations with 269 detainees¹³⁵.

BAS

The local asylum seekers’ legal advice service BAS (*Beratungsstelle für Asylsuchende der Region Basel*), which is managed by the protestant charity organisation HEKS (Hilfswerk der Evangelischen Kirche Schweiz), created in 2008 a Contact point for people in immigration detention (*Kontaktstelle für Zwangsmassnahmenbetroffene*)¹³⁶. The project is co-financed by HEKS and the migration authorities of Basel-Stadt. During my fieldwork, a legal advisor visited the prison of Bässlergut twice a week, where detainees could register for an individual consultation through forms that are available in the detention area. Women detained in the remand prison of Basel-Stadt in immigration detention also have access to this service in theory, despite the advisor only attending that facility on call. According to a yearly report, the *Kontaktstelle* carried out 510 consultations for 149 detainees in 2017¹³⁷.

The main role of BAS in detention is to provide legal advice to detainees, including detailed information on their situation and on future prospects and opportunities. Lack of information was

¹³² RP Bern, RP Thun, RP Burgdorf, Witzwil, Thorberg, Hindelbank, RP Biel and RP Moutier.

¹³³ The flyer is available online at <https://www.srk-bern.ch/de/migration/perspektiven-fuer-die-rueckkehr/>. Accessed on 18 February 2021.

¹³⁴ It is worth remembering that the financial support formally provided by the SRC originates from cantonal finances.

¹³⁵ 2017 yearly report of the Swiss Red Cross, Canton Bern, p. 8, available at <https://www.srk-bern.ch/de/portraet/publikationen/>. Accessed on 22 February 2020.

¹³⁶ An advice service of the SRC was also active in Bässlergut and in Waaghof from 2011 to 2013 but was not financed after the pilot phase as it was considered redundant with the work of the *Kontaktstelle* by BAS, that was more anchored locally, the same organisation being active in terms of legal advice for asylum seekers.

¹³⁷ The report is available at: <https://www.bas-basel.ch/media/BAS-Info2017.pdf>. Accessed on 18 February 2021.

observed as a major gap in the needs assessment under which the project started. Despite the advisor who was active during my field research not being a lawyer by training, he would examine the lawfulness of detention orders and represent detainees in legal procedures. Besides its informing and legal roles, the service understands itself as a mediator between state authorities and detainees, as stated in a factsheet describing their work: “Last but not least, the project aims to improve mutual understanding between those concerned and the enforcement authority. This contributes to the prevention and reduction of conflicts in everyday prison life”¹³⁸.

Limitations of NGOs’ impact: context of activity and hurdles to access

Detainees can largely benefit from advice received by the NGOs listed above as their work has led to several releases or, in the case of the SRC, better conditions for return. However, it should be noted that the room for manoeuvre of such NGOs is very restricted. Legally speaking, they can require a judicial review if it has not yet taken place (for example in the case of Dublin detention, where it is not automatic – see sections 2.3 and 2.4), appeal against the court’s decisions confirming detention¹³⁹ or file a release request. Possible legal grounds are, for example, violation of the principle of celerity through the inactivity of the authorities, an estimated impossibility of enforcing a removal within the time limit of detention or the inadequacy of the conditions of detention. Involvement in asylum procedures is extremely rare since this is not the area of focus of the three services mentioned above and most detainees have already received an asylum decision, their removal being enforceable¹⁴⁰.

As several authors investigating this kind of activity have pointed out, the legal advisors find themselves trapped in the “paradoxical position of actively using the state’s legal framework in their attempt to support migrants” against the state’s decisions (Kalir and Wissink 2016: 42; see also Makaremi 2009; Fischer 2017). In particular, Fischer (2017) discussed the activity of the Cimade in French ‘retention centres’ as being subject to a series of institutional constraints such as the limitation of the legal register to contest detention, the need to focus on individual cases and to select the most defensible among those. The compromise is that providing legal advice *in* detention centres gives NGOs the possibility of influencing public action in this domain, but at the cost of having to level critique (Fischer 2017; Walters 2011).

The impact of NGOs providing legal support is further limited by a series of hurdles that detainees encounter in terms of accessing services. The most significant hurdle is that information about these services is often incomplete, non-systematic or not understandable. In fact, many detainees I encountered – especially in the RP Bern – were not aware of the existence and accessibility of those advice services. Some had heard about them but thought they were paid services. Often, they received the information in a language they did not understand, as in the case of an English-speaking detainee who had received the SRC’s contact form in German and was convinced – because of the Red Cross logo – that it was a medical service.

¹³⁸ Factsheet of the project (version of 23.03.2018), available at: https://www.heks.ch/sites/default/files/documents/2020-07/Factsheet20_BS_Kontaktstelle%20Zwangsmassnahmenbetroffene%20BS_520019.pdf. Accessed on 18 February 2021.

¹³⁹ The appeal has to be made within ten days of the decision to the Administrative Court (*Verwaltungsgericht*) of the canton of Bern. However, according to the KAZ, it can take four to eight weeks to receive a decision from the Court. The decisions of the *Verwaltungsgericht* can be further challenged by appealing to the Federal Supreme Court.

¹⁴⁰ In those cases, only an application for re-examination is possible under the Asylum Act (Art. 111b).

In theory, information on services should be available to all detainees. In Bässlergut, posters advertising the BAS are hung in the corridors of the two wings in four languages (German, English, French and Italian). In the RP Bern, information is provided by migration authorities during the notification of the detention order, and SRC forms should also be accessible in the prison wing (this was not the case during my observations)¹⁴¹. Additionally, detainees are occasionally informed about this offer by employees, chaplains or other detainees. Information by employees, however, is non-systematic and depends much on the personal sensitivity of staff members¹⁴². Moreover, prison staff themselves are sometimes confused about the specific services and the differences between them. For example, a staff member in the RP Bern could not explain to me the difference between the KAZ and the SRC, while another prison officer, Luise, explained: “Yeah, they are almost the same, they... they help as well. Actually, there is no difference at all”.

All these sources of information require minimal language skills, which can represent a significant hurdle to access for those detainees who cannot communicate with employees or other detainees, strengthening their isolation and lacking opportunities for claiming their rights. Language can pose a difficulty in interaction with the legal advisors as well, despite their sometimes using phone translation.

A further observation is necessary concerning the consolidated practice in the canton of Bern of providing information about legal advice during the notification of the detention order, which is problematic in at least two ways. First, the notification is a highly emotional moment for detainees, where they encounter – sometimes for the first time – the authority who has decided upon their detention (see section 8.2.2). It is also a meeting in which they receive much information and need to sign a high number of papers. This context certainly reduces the detainee’s capacity to spot the relevant information about accessing legal advice or having their detention order examined by a lawyer. The accuracy in presenting this offer significantly depends on the individual will of migration officers and their communication skills. Secondly, the fact that information about this legal support originates from the very people who have decided to detain the person jeopardises its credibility as well as their presentation as independent NGOs. Entertaining a close relationship with the carceral institution, the BAS in Bässlergut encounters a similar bias as detainees are often very critical about its autonomy, saying that its employee ‘works for the prison or the migration office’.

Given this series of hurdles to accessing legal support, we can conclude that despite prison administrations proudly relating this offer, little effort is made to render access to those services effective. This, together with the very limited leeway inherent in the NGOs’ activity, significantly weakens their impact on state’s practices of detention and deportation.

5.4.2. NGOs’ ambiguous positions in the system of deportation

The framework in which NGOs provide advice and support not only restrains their leeway and impact on detainees’ lives, it also places them in a very ambiguous position with regard to the state. As we have mentioned, prison administrations and migration officers do not present the activity of those NGOs as problematic or as antagonistic, despite the NGOs sometimes opposing the state’s decisions and practices through appeals and legal procedures, and despite migration officers’ apparent occasional reticence to publicise the work of the NGOs with detainees. The director of

¹⁴¹ In every cell, there should also be an information sheet containing the main information which is useful for detainees (sometimes missing), but these sheets are the same for all detention regimes and they do not mention the KAZ or the SRC, but rather pastoral care and the Salvation Army, who also provide a social and spiritual support.

¹⁴² For example, once during my observation a detainee in Bässlergut asked explicitly about a lawyer, and the staff member did not provide him with the relevant information and the BAS contact form.

Bässlergut goes as far as defining the work of BAS as an important complement of the state's activity:

"In our opinion, it is important that we offer this service here. (...) We have an employee [from BAS], Mr. [X], who works for us part-time, on a mandate basis, and we have a good and close collaboration with him, and we've had good experiences. I believe that it also brings a certain calm into the prison, if we have this offer, because you can get another opinion as an inmate in administrative detention (...). I think that it's still important and right. (...) Also, we regularly verify: is the demand still in line (...) with the hours that he works and that we pay for?" (Georg, member of management, Bässlergut).

In this quotation, Georg talks about the BAS member in a positive way, highlighting the calming effect of this presence, while at the same time making the paradoxical position of the NGO manifest and explicit. On the one hand, he highlights the importance of offering this service to detainees, who can hear 'another opinion' and ask for advice and support. But at the same time, Georg presents this project as an offer of the prison and the responsible advisor as 'their' employee, albeit hired "on a mandate basis". He goes on to explain the relationship with that NGO in economic terms, as the canton is one of the sponsors of the advice service. Interestingly, in the quotation he seems not to distinguish between migration and prison authorities, using a general 'we' that embodies all state actors, partly even Diego, the legal advisor working for BAS.

Diego, from his point of view, underlined several times that his collaboration with the prison management was very good and that they were doing their job in an "excellent way". If the relationship between the three NGOs that I spoke to and the management of the two prisons was mainly related as good during the interviews, it is also because maintaining good contact is in the best interest of both parties. For the prison, allowing this external gaze gives legitimacy to their practices and contributes to the maintenance of prison order. Furthermore, delegating these tasks of information, advice and support to external stakeholders facilitates the employees' process of distancing from the deportation procedure in general, as well as from the individual situations of the detainees.

For the NGOs, such collaboration is vital to their activity. In fact, all three NGOs have to ensure continued access to the institution for their purpose of supporting detainees. This creates a certain insecurity that was manifest in Lukas's statement:

"The KAZ has now existed for so long (...) it's like an institution. But it will only be working for as long as it's supported by the government, the canton. And if anyone thinks 'we don't want it any more', they simply say 'go away', and then we are gone" (Lukas, lawyer at KAZ).

Beyond this general insecurity emanating from the fact that the existence of these projects – or at least their formal access to facilities – is dependent upon political will, the projects of BAS and SRC receive respectively half and the total of their budget from state authorities, which puts them in a larger relationship of dependency. At the times of our interview, the BAS was not sure that the project would continue after 2018, which depended upon funding among other things¹⁴³. Anne related the SRC's position as uncomfortable and sometimes risking of co-optation:

"This position towards the authorities is exhausting, because we always have to stay in the middle, don't we? We're not supposed to be... we must not allow ourselves to be instrumentalised by the authorities, and then you sometimes have to talk against the authorities and that is not easy, because we are dependent on this cooperation" (Anne, advisor for SRC).

¹⁴³ The project was still ongoing in June 2020, with funds provided by the canton of Basel-Stadt and the cantonal Churches of Basel-Stadt and Basel-Land. <https://www.heks.ch/was-wir-tun/kontaktstelle-fuer-menschen-ausschaffungshaft>. Accessed on 17 July 2020.

Indeed, all of these organisations need to maintain good contact not only with prison administrations but also with migration authorities. In the case of the BAS and the SRC, this is because mediating and negotiating with migration services is one of their key strategies of action. In the case of the KAZ, detainees' access to information about the KAZ is fully in the hands of migration officers handing the contact form to detainees when they notify them of their detention order.

Exerting control over state actions and its unintended effects

We have seen that the organisations that are formally present in immigration detention act in a framework characterised by little room for manoeuvre and a certain relationship of dependency on cantonal authorities. Despite that, these actors consider their presence as external observers to be essential as they perform a function of control over state authorities (both of migration and prison institutions). For example, Diego (BAS) realised how much his presence had made a difference when he won a series of appeals to the Federal Supreme Court challenging the SEM's interpretation of the new regulation of detention under the Dublin procedure in 2016. He noted that several detainees had been released thanks to those actions, and that the SEM had been obliged to adapt their practice based on such case law, adding:

"And here I have to say: There would have been many more cases of detention, if I was not there with our service! (...) NO one would have had access to these people. These people would have had NO opportunity to receive any legal protection!" (Diego, advisor for BAS).

The example of the KAZ will allow us to better understand this role of external control. As already mentioned, when the detainee allows access to their file, the KAZ reviews it with the aim of finding out whether all the formal requisites for ordering detention were fulfilled. This task of controlling the lawfulness of detention orders – that Lukas defines as his "core task" – is a way of ensuring that authorities do not take their decisions arbitrarily. In this sense, it also operates an indirect disciplinary effect on the bureaucrats who issue detention orders, as they know that an independent lawyer might examine their decisions. Although this control is primarily provided by courts in charge of the judicial review of detention orders, exerting an effect on migration officers who try to anticipate their decisions (Miaz and Achermann 2021a), civil society organisations have a much more critical view than judicial actors, who usually confirm the detention order. In this sense, the KAZ operates a disciplinary function not only over migration offices, but also over judicial authorities that are formally entrusted with the role of reviewing the legality of orders of detention.

Lukas related in a rather explicit way his activity's function of controlling state work, including prison work:

"For me, it's also very important that they know that we are there, because they know that there is someone watching and that has an influence on their work, obviously. They can do less bad stuff. Also the prison officers, etc., they know that there's a chance that some detainee will tell me something, (...) and that has certainly some influence on what happens in everyday life in prison, I believe that. That's also why it's important that this service exists, regardless of how many people we get released, that's also one aspect, but the other is that they know that someone is looking inside" (Lukas, lawyer at KAZ).

The understanding of this external gaze as achieving a disciplinary effect is very important because it highlights that the impact of NGOs' work goes beyond the direct effect on individual cases and the concrete successes of legal procedures. This enhances the significance of the presence of external actors and highlights the ways in which they are deeply embedded in the system of deportation by exerting control over state practices.

I would argue, however, that the presence of these external actors that rationalise their action through discourses of human rights and/or humanitarianism has two unintended effects. The first is that it contributes to legitimate the institution of immigration detention, giving it a more humane character. Through opening the doors to external actors, immigration detention becomes less covert and more transparent. This intention is reflected in the assertion I was often welcomed with by migration authorities and prison administrations during my own research on detention practices: “we don’t have anything to hide, please ask your questions”.

For the second unintended effect, we have to look at the ways in which legal work and critique impact the state’s practices of detention. Let us take the work of the KAZ in the area of women’s detention as an example. Lukas related that in the last few years, he had defended several women who had eventually been released because the conditions of detention in the women’s section of the RP Bern were insufficient:

“We got tons of women out because of the prison conditions. For years it was a big fight, actually it was back in 2001 that we received the first decision from the Federal Supreme Court, where they said conditions were simply insufficient in Bern, because it’s too cramped, provides no occupation, women are isolated, I don’t know what else. (...) and we’ve always demanded equal rights with regard to men, because for them, there is the section in Witzwil, they live in group, 18 places, it’s like... a big space and they can also work. The women want that too, we said, those who have to wait a long time (...)” (Lukas, lawyer at KAZ).

Lukas continued to relate this “everlasting struggle” (as he called it later in the interview) on the detention of women and the impact of legal claims and judicial decisions. He explained that after several of these decisions, the authorities of Bern started to transfer women to the prison of the airport of Zurich, the only Swiss detention facility that has a relatively large area dedicated to the immigration detention of women. They used to transfer these women back and forth from Zurich, until another decision came from the Court to stop this practice. As a consequence, it was decided to open a new section for the detention of women in the Regional Prison of Thun that would provide for better conditions of detention and better conform to the standards of immigration detention. This is despite, according to Lukas, the conditions remaining insufficient and inadequate in the case of long-lasting detention (see also section 3.2.1, Box 2 on the RP Thun).

This case illustrates how the legal work of the KAZ-appointed lawyer has pushed the authorities to continuously find new and more sophisticated solutions, which eventually led to the creation of a new section of immigration detention in another cantonal prison. The unintended effect of this development, however, is that it might render it easier for migration authorities to legitimise long-lasting detention of women in that space, and more difficult for the KAZ to legally challenge it. The establishment of this new section moreover contributes to the institutionalisation and normalisation of detention practices (see Fischer 2017). This is an example of how “the way in which civil society framed the issue of alien control – in terms of arbitrary detention and the rule of law – shaped, in turn, the evolution of (...) detention” and its institutional organisation (Makaremi 2009a: 423). Makaremi (2009a: 427) analysed a similar dynamic in the emergence and establishment of ‘waiting zones’ of border detention in France, where “judicial condemnation of border detention led to the creation of legalised confinement; [and] the denunciation of poor living conditions led to the construction of neo-penal facilities”. Similarly, the KAZ has played a role in the evolution of detention practices in the canton of Bern.

The role of NGOs in the acceptance of deportation

The work of the SRC in immigration detention has been analysed within an external evaluation (Kakpo et al. 2011) as reproducing or doubling the state's discourse through conversations in which the irreversible character of the decision of deportation is underlined, thus operating in the direction of pushing detainees to accept that decision. During my interview with Anne, one of the SRC's advisors, it was clear that she did not understand her role as one of convincing detainees to return, but rather providing detainees with all the elements that would enable them to make informed decisions on how they wanted to behave:

"It's called 'prospects advice', because we want to give the people the overview, by giving them all the information we have about the system, (...) the laws, so that the person can assess [his/her situation] in the best way possible. Maybe they still don't agree with it, but so they have also heard it from us and this should actually lead to the person being able to... decide how they want to behave. And so... they say 'ok, I don't have a chance anymore, now I have to go, so I'm taking a normal flight, then I might be able to bring some [financial] return help with me and I'll go like this', or the person says, 'no, no way I can go, I'll wait until they come with the special flight, I'll do it like this'. For us it's the same (...), no, it's not exactly the same, but... the important thing is that the person understands the situation and can decide how he or she wants to behave given the small room they have for manoeuvre" (Anne, advisor for SRC).

In this quotation, Anne explains her role as one of providing information that will help the detainee decide what to do without exerting any pressure. Despite making contact with the KAZ in some cases, the SRC does not have the role of challenging detention orders. The case of the BAS *Kontaktstelle* is a little more ambiguous as this NGO works both in the direction of opposing state's practices through legal work, and mediating between detainees and cantonal authorities in ways that very often also reproduce the state's discourse:

"Of course, a lot of misunderstanding can arise in the contact between the enforcing authorities and the individuals concerned. (...) And therefore it would be useful to have an independent body that would actively mediate between the situation of the individuals and the goal that the authorities want to reach. (...) and within this process, of course I try to mediate in the interest of the client" (Diego, advisor for BAS).

This role of mediation is related to an approach that Diego defines as 'pragmatic'. When all legal paths are blocked or he considers it useless to try using them, he can still attempt to obtain something in the interest of his 'clients' by mediating with migration authorities, who have some margin of discretion in how they deal with cases. At the same time, this mediation also has the effect of facilitating the cooperation of detainees and helping them to more easily accept their deportation. Migration authorities' discourse is supposed to become more credible to detainees because it comes from an external, nongovernmental actor, as explained by a member of Bässlergut's management during an informal conversation:

"Having someone who's independent, it's given us a lot, someone who can explain, in some cases, that there's nothing to do and that they have to go back, it makes for greater acceptance" (Field notes, Bässlergut).

Through their work of informing detainees about their situation, external advisors also try to explain the system in a way that is understandable for detainees, with the effect of rationalising it through discourse, as the following quotation shows. When I asked Diego how he answers detainees who ask why they are detained despite not having committed a crime, he explained:

"I say: 'You know, you should have understood that, it's a very strange world we live in. It might be very difficult for you to understand, you come from a country where there is no such

thing as putting people in prison just because they, supposedly, don't have the right to be here. [But] this is Europe! Recent history tells us about a very high migration pressure, which has increased in the last years. (...) states have of course responded to this pressure by tightening up some of the laws, and within those there is also the creation of coercive measures. There are countries such as Switzerland that take this very literally'. (...) And then I go into more detail and say: 'You see, and now in Switzerland, for example, we have a law that allows the authorities to keep people in prison for up to 18 months, with the aim of enforcing their return to the state where they came from! (...) This does not mean that one has to remain 18 months, but theoretically it would be possible (...)'. Of course I want to confront them with the possible, theoretical perspective of 18 months, so that they already realise that this is a serious issue" (Diego, advisor for BAS).

Diego here engages in an effort of explanation that goes beyond the reproduction of the state's discourse. He presents immigration detention as an extreme but rather rational answer of states to a presumed migration pressure. He does this despite the fact that he personally had a very critical opinion of this measure as expressed in our conversations. Acting in a framework that is completely shaped by the state – intended both as an institution and as its bureaucrats – in both his legal work and efforts of mediation, the BAS becomes part of what Kalir and Wissink (2016) have called a “deportation continuum” between state agents and civil-society organisations. Indeed, these scholars challenge the prevalent image of the deportation regime as opposing state bureaucrats who enforce the law and NGOs who contest their action, arguing for its conceptualisation as a continuum. They highlight the “significant convergences (...) [between the] terminology and categories, (...) interactions (...) and worldviews” (Kalir and Wissink 2016: 35) of state and non-state actors, showing that “state power shapes the subjectivities of those who operate within and without its formal apparatus” in intricate ways (ibid.: 37).

The ambiguous position and discourse of the NGOs active inside detention facilities is not overlooked by detainees. In fact, I encountered many detainees who distrusted such organisations because they thought that they were working in the interest of – or directly for – migration authorities. Several detainees in Bässlergut were disappointed by the lack of action undertaken by BAS, for example, Nassim:

"I need to understand what's going on with me, what to do, if it's possible to reach a lawyer (...), because here [the legal advisor] told me... the same thing [as the migration officer]: 'you leave Switzerland, it's better'. (...) He tells me the same thing, 'I can't help you. The best thing [you can do] is asking to leave, ask to leave Switzerland, it's better'. Here's everything, ciao, ciao" (Nassim, detained in Bässlergut).

In BAS advisor Diego's view, this kind of reaction is due to the fact that he is honest and frank with them, avoiding the creation of false expectations. From this quote, however, it clearly appears that Nassim was strongly upset by his conclusion that the best thing for him would be to return to his country, which he seemed to consider as hinting at Diego's unwillingness to help. In the next section, we will see the implications of such doubling of the discourse of an absence of alternatives to deportation through the example of the SRC's return advice.

The interweavement of humanitarian and economic logics

The SRC 'Detention' programme was explicitly founded with the idea that accompanying and providing advice to detainees would “ally a humanitarian and a bureaucratic dimension” (Kakpo et al. 2011: 14), supporting detainees while lowering the costs of the removal procedure. As mentioned before, Anne, the SRC worker, was convinced of the importance that the detainee makes their own decisions without the SRC exerting any pressure. However, given the limited framework

in which she acted, she often thought that accepting return was actually the best option for the detainee, one which would avoid the use of physical coercion and enable them to receive some financial help:

“If someone wants to get to the very last option, the special flight, then that’s the way it is, but of course from a humanitarian point of view it’s better if someone goes on a normal flight and not on a special flight like that. It’s just a terrible thing, isn’t it? And from our point of view (...) if they go on a normal flight and with some return help, we think that’s good, and if the person doesn’t want that, it’s also okay, it’s the way it is (...) the person should decide for themselves” (Anne, advisor for SRC).

The analysis of the situation under the humanitarian lens – as Anne explicitly mentions – leads her to conclude that a scheduled flight is the best option for the detainee, one that will reduce physical suffering and shorten the period of liberty deprivation. The relating of another case in which the authorities were planning a special flight which was eventually avoided thanks to the mediation of the SRC and its definition as a ‘success’, also reveals the NGO’s informal function of reducing the use of special flights:

“That’s of course a success in the sense that the person had to leave anyway, we can’t change that, but he didn’t have to fly with the police and he didn’t arrive penniless. He had money with him and so that’s a big success. And the success is not only for the person, the success is then also on the part of the authorities, because it obviously costs much less than if three or four policemen are needed on the flight, right? That’s a huge cost” (Anne, advisor for SRC).

This quotation sheds light on the tension that is inherent in the activity of the SRC in detention. While following a humanitarian ideal of alleviating human suffering, the SRC ends up facilitating the state’s project of deportation that is fundamentally anti-humanitarian.

A 2017 report focusing on the effects of the SRC Detention project illustrates this tension. According to this report, the consultations carried out by the SRC contribute to rendering deportation more acceptable for the detainee and leading them to accept a ‘voluntary return’ (probably intended as an unaccompanied deportation) faster. This has – the report continues – a positive effect for detainees, who “benefit from shorter periods of detention and leave Switzerland in dignity on a normal scheduled flight”; for prison staff, who is “relieved” (*entlastet*) because detainees are quieter, and because they have fewer questions as a consequence of the information work of the SRC; and for cantonal authorities, who save money due to the shorter periods of incarceration and the more economical implementation of deportation. The report states:

“Besides the clients and staff of detention facilities, the authorities also particularly benefit from the Detention programme. Thanks to clarifications adapted to the situation and corresponding action by the SRC advisors, it has been possible to shorten the length of detention periods, speed up departures and/or avoid police-escorted departures or even special flights. This has resulted in significant economies in both detention and deportation costs (...). The following example illustrates the savings with regard to the duration of detention: If a person is placed in pre-removal detention for six months under the Foreign Nationals Act, this results in expenses of CHF 40,860 at the Witzwil detention centre. If the person is willing to leave as a consequence of the SRC’s advice on prospects and return and returns unaccompanied to the country of origin after two months in immigration detention, the costs drop to CHF 13,620 for detention and around CHF 1,000 for the unaccompanied flight. In this example, the resulting savings are of approximately CHF 30,000”¹⁴⁴.

¹⁴⁴ Author’s translation. Schweizerisches Rotes Kreuz Kanton Bern, Wirkungsbericht Programm Detention: Perspektiven- und Rückkehrberatung SRK, 11.01.2017. Accessed online on 25 October 2018:

The report underlines the positive effect of the SRC in economic terms, as it allows the canton to save a significant amount of money. Migration authorities thus appreciate the work of the SRC, as this quotation by a migration officer also shows:

“The SRC is giving very good leads. They talk to people, then they call us, then we explain to them, and then they can explain the situation better to their clients. They can’t give people false illusions. We’ll see what we can do so that the person can leave as soon as possible. We have to advertise them, they are very good. If they can get somebody, somebody who has been in prison for eight years, to go home, then they have a good effect. It saves a lot of money (...). That is why they are good” (Lucia, migration officer, non-recorded interview).

The work of the SRC is particularly sensitive to attempts of co-optation because of its involvement in the material and financial support of detainees’ return. Totally financed by the state and acting within a restricted field of possibilities, the SRC is trapped in the mechanisms of the state. Despite the goodwill and commitment of its staff members, the humanitarian approach of the SRC has the effect of depoliticising the condition of detainees and reinforcing the state apparatus of deportation. As Campesi (2015a: 443) has argued with regard to the NGOs managing detention centres in Italy, “humanitarian work appears to be compromised by the same structural conditions within which it takes place, turning into a disciplinary and normalizing tool”. Despite providing detainees with useful advice and support, the work of the SRC, and to a lesser extent the activities of the KAZ and BAS, also contribute in subtle ways to normalising detention and deportation practices and their inherent violence (Campesi 2015a; Walters 2011).

Explaining the involvement of NGOs providing legal support

Despite the prison administration as well as migration offices gaining some benefits from the existence of legal and prospects advice services, we might still ask ourselves why state authorities that pursue the objective of enforcing removals accept and even value the presence of NGOs that have a rather critical stand on their practices. If, in the case of the SRC, the impact in terms of accelerating the procedures of return and lowering their cost might be a sufficient explanation, this argument does not explain the long-lasting collaboration of the migration services of the canton of Bern with the legal service of the KAZ, the main focus of which is legal litigation. Again, Foucault’s work can help us to answer this question in at least two ways. First, his work on the liberal art of government allows us to consider the incorporation of mechanisms of control as a key mechanism of liberalism (Bröckling et al. 2011: 5). Mechanisms of control and compulsion are established within state institutions to protect those freedoms that liberalism both creates and endangers. The creation and activity of the National Commission for the Prevention of Torture is a good example of this logic in that it casts a critical gaze at detention facilities, reporting on their shortcomings and suggesting ways to improve detention conditions. As noted by Fischer (2017), the state’s critique is invested by the state itself in that it both multiplies partnerships with nongovernmental organisations and creates its own critical organisations that are independent but constrained by their status as public agencies.

A second Foucauldian concept that might be useful to understanding the involvement of NGOs is ‘counter conduct’, that we can define as “a practice that enacts a right to question how subjects are governed” (Conlon 2013: 135). Foucault uses this concept to argue against a view of liberal government as a “unidirectional process where well-governed subjects uncritically accept the terms of government” and for a more complex view that understands that “problematization, dissent, and

<https://www.srk-bern.ch/de/migration/perspektiven-und-rueckkehrberatung-srk/>. The report is not accessible online anymore (Last accessed on 22 February 2020).

objections to being governed in particular ways are consistent with the rationality of government and values of freedom and autonomy that characterize liberal society (...). As such, questioning why one is governed in a particular way (...) is a form of protest that is always already incorporated within liberal society” (Conlon and Gill 2013: 251). Understanding detention through this lens enables us to consider the ways in which the system of detention incorporates counter-conducts that “expose, problematize, and interrupt technologies of government” (Conlon 2013: 142).

Involving nongovernmental actors who provide support to detainees is also a way to handle the harming effect of border control measures through a humanitarian rationality mobilising legal-knowledge (Walters 2011). As opposed to penal procedures, legal assistance in immigration detention is not conceived of as a right, but is provided within a humanitarian perspective. Besides some hurdles to accessing these services as previously discussed, the NGOs have no legal obligation to represent the detainee but can decide whether or not to intervene based on their discretion. In many detention facilities across the country, no such legal service is available to detainees at all. This difference from penal procedures is surprising given that liberty deprivation entailed by this administrative measure is in everything comparable with pre-trial detention. The crimmigration theory can explain this paradox. Besides observing a convergence of migration and criminal law, criminologists have observed that the importation of criminal law measures into civil immigration law has often occurred without importing the procedural guarantees that are characteristic of criminal law (Legomsky 2007; Stumpf 2006). The lack of a systematic legal representation in immigration detention procedures is to be read in this light. In a legal context in which detainees are not entitled to legal defence, NGOs such as the BAS and KAZ partly rationalise their action as one of compensating for this flaw, guaranteeing that the rights of detainees are respected and that the law is not violated. From the perspective of the state and especially the prison, however, the involvement of NGOs is rather a matter of humanitarian assistance than of human rights. As the room for manoeuvre of NGOs is limited by the same system in which they operate, and their work is dependent on collaboration with state authorities, the NGOs find themselves fully involved in practices which they might be opposing in principle and need to level critique in the name of their commitment to legal protection (Walters 2011). State and non-state actors are part of a ‘deportation continuum’ in which they “are interchangeably placed in endorsing, operating and criticizing – yet always accepting – the deportation of illegalized migrants as an inherent practice of states” (Kalir and Wissink 2016: 46). The same can be said for what concerns immigration detention, its diverse state – cantonal and federal, related to immigration and criminal justice – and non-state actors participating in one way or another in the deportation continuum.

This chapter has investigated the daily life of immigration detention to see how the context presented in the first part of this thesis has concretely given rise to specific spaces with their own rationalities. I have previously discussed how the prison has served as a model for the conception of immigration detention centres such as the Zurich airport facility or Bässlergut, and how the use of ordinary prisons for the scope of immigration detention – or inversely, the use of a facility conceived of for immigration detention for confining criminal offenders – could be understood in the context of an increasing convergence of criminal and immigration enforcement. In this context, penal logics and measures have been transposed to immigration detention, often without being questioned. The carceral architecture, the rigid structure of the day and long hours of enclosure, the system of sanctions in place, have been taken – mostly implicitly – from penal institutions. At the same time, the punitive character of incarceration was also transferred to immigration detention,

partly unconsciously, and partly with the assumption that in order to serve its aim of ensuring deportation enforcement, the detention regime must not be too lenient.

Throughout the chapter, I have sometimes preferred one facility over the other to explain some aspects of the four rationalities described. In fact, despite these being present in both institutions, they are not so to the same extent. There are two main differences between the two prisons under study that have a major impact on their everyday lives: the different amount of time that detainees spend in them and the type of detention performed besides immigration detention. As we have seen, the RP Bern is used as a hub in which detainees usually spend a few days or weeks before being deported or transferred to other facilities. Accordingly, the rationality of management and logistics is particularly significant in this prison, where many resources are spent in the organisation of arrivals, transfers and departures. Furthermore, the RP Bern is mainly a remand prison and has been conceived as such. The regime of detention in immigration detention is shaped on the basis of pre-trial detention regime, which is known to be particularly restrictive in Switzerland (something that is under critique given the presumption of innocence in this form of detention).

Given the shorter stays of detainees and the longer time of enclosure, in the RP Bern, contact with staff is reduced and the disciplinary logic mainly takes the form of surveillance through security measures. In the prison of Bässlergut, the logic of discipline is present through a rigid daily structure, through work activities and a system of sanctions thought not only to maintain prison order but also to educate and redress detainees. This can be explained by the fact that detainees can stay several and up to 18 months in that institution. Contact with staff members is closer and longer. Furthermore, the facility is also used for the execution of prison sentences and has been influenced by this type of detention, aimed at punishing, but also correcting and redressing detainees in order to prepare them for reintegration into society. This is somehow paradoxical since immigration detention does not aim at reintegration into Swiss society but rather at physical exclusion from Swiss territory. The only reintegration that is conceivable for Swiss authorities is reintegration in the country of origin – the activity of the SRC, providing individual advice on prospects upon return, can be understood in this light as similar to an international probation service.

The primary goal of redressing and correcting is not formally pursued by immigration detention, which exclusively aims at enforcing deportation. In such a context in which the purpose of confinement lies outside the carceral space – the organisation and enforcement of removals being respectively a task of the migration office and the police – the prison becomes a “purely custodial institution” (Campesi 2015a: 441) with the main role of maintaining detainees alive and at the disposal of immigration authorities. The biopolitical logic therefore assumes a particularly fundamental role in both prisons. Similarly, this chapter has shown how security is central to life in detention in both prisons, where notions of security underlie the logistical organisation of time and space and strongly impact the everyday experience of any actor involved. Practices of surveillance that conceive of detainees as potential threats are central both to disciplinary and biopolitical rationalities. In fact, detainees are under constant surveillance both with regard to their compliance with the prison order and to their physical integrity. Surveillance as a pre-emptive mode of control constructs detainees as potential threats – to themselves, other detainees, staff and/or the prison’s functioning. This is well reflected in the representations and understandings of staff members about immigration detention and detainees, as we will see in the next chapter. Finally, humanitarianism has been discussed as the rationality underlying the involvement of nongovernmental actors providing for legal and return assistance.

Chapter 6. Working within the context of crimmigration: daily experiences, role perceptions and moral distance

The previous chapter addressed the everyday functioning of immigration detention facilities, yet the focus has been on institutional logics and practices, leaving aside staff members' individual agency and subjectivity. This chapter focuses on the daily work and the social and emotional world of detention staff, which is often overlooked by scholars working on the subject of confinement (Crawley and Crawley 2008; Crewe et al. 2008). It addresses how staff members understand their roles, how they act and relate to detained persons, making use of the available leeway. This allows me to depict staff members' practices as shaped by work context but also by personality, life experiences and worldviews, giving rise to a wide range of attitudes among employees.

Working in immigration detention is particularly challenging for two reasons: on the one hand, pervasive uncertainty creates high levels of anxiety both for detainees and also for staff members (Fischer 2014). On the other hand, immigration detention centres suffer from a 'legitimacy deficit' (see section 1.3.2) arising from a manifest gap between their purpose and form (Bosworth 2014). This requires from staff members a constant task of legitimation (Ugelvik 2016b). In her ethnography of immigration removal centres (IRCs) in Great Britain, Mary Bosworth writes about staff members "struggl[ing] to understand the nature of the institution" as well as their job and its purpose, being "unsure about their day-to-day responsibilities" (Bosworth 2014: 187). She argues that IRCs' employees experience their role as somewhat ambiguous and incoherent, often turning to the prison in their efforts to find a vocabulary for their work and make sense of immigration detention (Bosworth 2014).

One main lens through which I analyse staff members' attitudes and discourses is the concept of moral distance as used by Nick Gill (2016) to question how border control systems are able to produce high levels of indifference among those who work within them. Building on arguments made by Max Weber, Michael Lipsky and Zygmunt Bauman around modern bureaucracy as driven by impersonality, technical considerations and moral detachment, Gill argues that "the bureaucratic system of managing borders increasingly precludes literal proximity, and hence encounters, between bureaucrats and their subjects", thus producing moral distance (Gill 2016: 45). He shows that indifference arises not only through geographical distance – decision-makers being literally distant from the subjects of decisions – but also in contexts of sustained contact, such as detention centres, in which indifference results from overfamiliarity with suffering. According to Gill, immigration detention produces moral distance both through institutional tactics such as the spatial churning of detainees and through employees' "psychological techniques of estrangement, detachment and aloofness (...) [that are] a form of self-care" (2016: 110).

The chapter starts by exploring the professional identity of staff members as shaped by the institutional integration of immigration detention within the penitentiary system. It then describes the daily work of detention staff, focusing on their temporal experiences, understanding of their roles and room for manoeuvre as well as how team dynamics are shaped by the crimmigration context of detention facilities. In the third part of the chapter, I analyse in further detail relationships with and attitudes toward detainees, taking the concept of moral distance as an analytical framework and explaining how a certain level of indifference is sought, performed and partly achieved in the institutions studied. In the final section, I will question how the working conditions

described in the chapter are reflected in the employees' representations and often moralising understandings of immigration detention and detainees.

6.1. Staff's identity and constructions of prison work

The fact that immigration detention facilities are institutionally placed under the prison service has a few significant implications for the work conditions of staff. First, since the management of penal estate in Switzerland has not been privatised as in other countries like the US or the UK, prison staff members are state employees (with the exception of staff at the command centre in Bässlergut). The same cannot be said for federal asylum reception facilities: these are under the head of the State Secretariat for Migration, which delegates daily management and security to private companies. Even at the cantonal level, the reception system is largely in the hands of non-governmental actors (Alberti 2019). Employees under state contract are more accountable and benefit from better working conditions than, for example, security agents working for private companies. In relation to the facilities in the present study, immigration detention staff are employed by the cantonal prison service and receive on-the-job training as custodial agents, positioning them in the penal sphere of state's action. They work in hybrid institutions operating both penal and administrative forms of detention. Given this context, they tend to rely on the penitentiary to make sense of immigration detention. Such reliance has been found in other contexts (see for example Bosworth 2014; Bosworth and Slade 2014), however, it is far more explicit in the Swiss context. As a way of comparison, other detention systems like the Italian or French have engaged in long-lasting efforts to redefine immigration detention as a form of administrative, non-punitive and non-carceral confinement, avoiding reference to penal vocabulary and partly delegating the management of centres to NGOs in an effort to appear more humane (Campesi 2015a; Fischer 2017).

This part of the chapter deals with detention staff's socialisation and identity constructions as prison officers, starting with their professional trajectories and working conditions, going on to discuss perceptions of the job as stigmatising and the related techniques of legitimation to counter external and internal criticism, and ending with an analysis of hiring procedures to discuss gendered representations of prison work and their impact on the prisons' institutional culture.

6.1.1. Professional identity and socialisation as *prison* officers

The prison officers I met often turned to prison work without having a specific interest in the carceral world, and even less so for migration issues. In this section, I focus on work trajectories and conditions to show that staff members who work in the two main facilities studied are trained and socialised as *prison* officers, without much attention being paid to the different nature of immigration detention.

Turning to prison work: staff members' professional trajectories

Prison officers in the RP Bern and in Bässlergut have very diverse professional backgrounds, with experience in industrial, construction, security and police, sales, public and private service sectors. Staff included an ex-school teacher, professional footballer, mechanic, travel agent, security agent, military person, gardener, gravedigger, baker, waitress, driver and immigration clerk. There is no 'typical' professional path leading to the position of prison officer, although the most common field of previous professional experience is the private security sector.

Despite not having an initial interest in prison work, many of the officers I spoke to were introduced to the role through an acquaintance or careers advisor who informed them of a vacant position and encouraged them to apply. This was the case for Anton, who described his first contact with the

prison as unexpected. He had seen the name of an acquaintance in a job advertisement and had decided to call to catch up:

“She told me everything and said: ‘come and work here’, and I said: ‘no, I can’t work in prison’ [laughs]. (...) I came and looked at it and it was pretty gloomy, pretty... yeah, just another world. But still different than I imagined it. The staff were cheerful and good humoured. (...) And at that time, I wasn’t satisfied with my job, (...) I was so lonely with myself and computers and machines. (...) I wanted to work with people again” (Anton, prison officer, RP Bern).

Anton’s professional dissatisfaction was the main driver for his decision to apply and later to accept a job he had never imagined he could do and had known nothing about. Several other prison officers had turned to prison work after being unemployed or unhappy with their former job. In particular, several interviewees mentioned, like Anton, that they had been missing social contact in their previous jobs:

“I felt the need to do something new. Everyday life at the factory, as a production employee, was too monotonous for me. It was always the same. You came in the morning, [turned on] the machine (...) and that was it. I wanted to look for a job with human contact” (Peter, prison officer, Bässlergut).

This will to work directly with others proved to be one of the key motivating factors to apply for a job in prison (six prison officers out of 13 interviewed mentioned this social aspect¹⁴⁵). The variety of tasks, colleagues and the intriguing work context were also mentioned as rendering prison work interesting and sometimes exciting: “it’s like a microcosm (...), a small closed world on its own: you don’t know how it functions if you don’t work here” (Doris, RP Bern).

Other fundamental elements attracting staff to prison work are job security and relatively good conditions provided by the public sector. Lionel especially appreciated this, since he had been leading a small company before joining the prison service and had been suffering high levels of anxiety in that position, which also prevented him from spending time with his family: “I wanted a secure job, with fixed working hours”, he said, hence the move to the prison service. Work-life balance considerations were also a concern for several employees in the RP Bern, who specified that shift work was beneficial to their well-being and their families.

None among my interviewees mentioned a specific interest in the area of migration or asylum as a motivating factor for their application, most starting their career in the prison service without a vocation for this area of work. Only one staff member in Bässlergut mentioned applying with the expectation that the work would consist of assisting and helping migrants awaiting deportation, focusing on care “like in a hospital”. He was upset by the discovery that criminal offenders were detained in the same space. In Bern, the opposite was often found to be the case: employees did not know that they were applying for a job that would entail working with non-criminal foreigners who were detained in view of deportation. One employee, for example, explained that she did not know anything about immigration detention in advance, and that even in her first months of employment, she had not realised that the people in her care were not all criminal offenders. This was despite internal training is provided to new recruits.

¹⁴⁵ These numbers exclusively concern staff members employed as prison officers (and not as members of the medical team, spiritual care or management).

National training as a space for prison officers' socialisation

In Switzerland, no specific qualification is required to join the prison service. Basic vocational training in any profession is sufficient, which makes prison work attractive for someone desiring a career change. Upon completion of the first year of employment, during which time they receive internal training, prison officers are supposed to start to follow national training on-the-job. In practice, it can take much longer to start this training (in the RP Bern, there is a general 'delay' which means that most staff access the training only after three or four years of employment). At the time of my research, national training was composed of 15 weeks of classes spread over two years. Training took place at the Swiss centre for the training of penitentiary staff (SAZ)¹⁴⁶ in the town of Fribourg. At the end of the three years, officers were required to complete a final dissertation on a topic of their choice before being issued the federal diploma of prison officer ('Fachfrau/Fachmann für Justizvollzug').

Despite the SAZ having undergone a restructuring process in 2018 that seems to have led to several changes, I will base my comments on the situation before this reform. In fact, during my fieldwork the SAZ was often criticised by trainees and management for not being sufficiently related to practice. Subjects included law, psychology, medical and psychiatric issues, as well as specific topics related to the carceral world. Questions of roles and the balance between proximity and distance were handled during training, as well as intercultural communication. On the other hand, some interviewees expressed surprise that skills such as how to conduct a body search or a security cell check were missing. The Zurich airport prison filled this gap through internal training sessions on these highly practical yet also ethically relevant questions, as I was told during my visit to that facility.

Training was the same for all participants, regardless of the type of custodial institution in which they were operating. As a consequence, training focused on the penal context, especially on prisons in charge of people serving long sentences. These institutions have very different needs and goals than prisons for pre-trial or immigration detention as they concentrate their efforts towards the re-socialisation of offenders. As for immigration detention, this was almost absent from the training: only half a day was dedicated to the subject according to my sources (two persons with directive functions in detention facilities). This reflects a widespread opinion that work in custodial institutions does not much depend on the specificities of the type of detention, as shown by the following example drawn from my field notes:

"During an informal conversation over lunch, I expressed my opinion that national training should dedicate more than half a day to the subject of immigration detention, given its particular characteristics. [The officer with whom I was talking] answered: 'but do we need it?', and explained that they did not need to know more than the basics about the topic; their work was just to assist ['betreuen'] the detainees" (Field notes, prison of Realta).

The reaction of this prison officer can be interpreted both as a defence of his job's legitimacy and his own professionalism (see section 6.1.2) and as the reiteration of a basic principle of prison work, namely that staff members need to avoid involvement in the personal cases of the persons of whom they are in charge, which is better achieved without knowing too many details.

Besides initial training, the SAZ also provided prison workers with the opportunity for further training and proposed a rich annual programme. However, I saw no training sessions on

¹⁴⁶ The training centre was called Swiss Training Centre for Penitentiary Staff (*Schweizerisches Ausbildungszentrum für das Strafvollzugspersonal, SAZ*) until 2018. Since that year, the training has been part of a broader competence centre called Swiss Centre of Expertise in Prison and Probation (*Schweizerisches Kompetenzzentrum für den Justizvollzug*).

immigration detention, migration issues or asylum. When I asked prison staff about such courses, they would answer by mentioning training that addressed specific groups according to their origin, such as detainees from the Balkans, North Africa or Africa in general. In fact, the programme was full of such courses, for instance the ‘Workshops on good practice in dealing with detainees from Africa’¹⁴⁷, still proposed in the French version of the 2019 programme. Independently from their content, the mere existence of this kind of course institutionally reinforces the very common ethnicised and racialised understandings of detainees’ behaviours that I often witnessed during fieldwork, supporting the idea that detainees behave according to their origin and culture (see section 6.4.3). Furthermore, confusing the specific challenges of immigration detention with cultural aspects related to the regions of origin of detainees has the symbolic effect of oversimplifying and depoliticising immigration detention as well as the acts of immigration detainees, as we will see later in this thesis.

Beyond its educational function, the SAZ also plays an important role in the socialisation of prison officers. Moving for a few days to another town to attend classes gives training the flavour of a class trip, with social opportunities during the day and evening. This strengthens group solidarity within the staff, as classes are usually attended in small groups from the same institution, although they also get to know employees of other carceral institutions, and thus acquire an informal knowledge about the wider prison world which complements the formal training. The SAZ can thus be defined as a central institution for the professionalisation and (to some extent) harmonisation of prison work, but also for the socialisation of prison officers and their identification in this professional group. What is highly interesting for this thesis is that this identification is based on a context that is strongly related to the criminal justice sphere and system.

Working conditions of prison employees

Comprehending the everyday working conditions of prison employees is fundamental to understanding their attitudes and behaviours (Crawley and Crawley 2008; Lipsky 1980). As already argued, the job security provided by the public sector is one of the main motivating factors that orientates people towards a prison officer’s career. Switzerland has not undergone the privatisation of its prisons as other countries have. In the facilities considered for this study, only a limited number of security tasks are delegated to private companies but delegation to private agencies is strong in prisoners’ transport, which is provided by Securitas AG when it is transcantonal. Bässlergut has also subcontracted Securitas AG for the management of their command centre and central video surveillance, which are fundamental tasks for the functioning of the prison. Employees on private contracts are not, however, provided with the same conditions as those hired by the cantonal prison service, creating an inequality within the institution.

Staff members employed by the state earn a salary of approximately 5,500 to 6,000 Swiss francs gross per month (approx. 5,000-5,500 euro)¹⁴⁸, which is little lower than the median Swiss salary (6,538 Swiss francs in 2018 according to the Federal Statistics Office). This salary is considerably higher than that of Securitas employees, who earn approximately 20-25% less than state employees¹⁴⁹. Moreover, the job of people employed by private firms is much less secure and their work

¹⁴⁷ The course, which was offered in French, had the title: ‘Ateliers de bonnes pratiques lors de la prise en charge de détenus issus de l’Afrique’.

¹⁴⁸ This salary concerns employees of the Canton of Basel-Stadt who have already completed the national training as custodial officers. The salary varies according to the previous work experience and seniority of the employee.

¹⁴⁹ For these comparisons, I used the website www.jobs.ch, which provides a comparator of salaries. The average annual gross wage of a custodial officer according to the website (calculated on 2 March 2021) is

conditions are more demanding in terms of shifts. This provides evidence that privatisation renders prison work more precarious and less attractive, which is much more visible in other national contexts.

Generally speaking, the employees I interviewed considered their wage fair and their working conditions relatively good. This was particularly the case in the RP Bern, where staff especially appreciated the organisation of the work shifts (early, late and night shift)¹⁵⁰, which provided for a large amount of free time for family or hobbies. In the prison of Bässlergut, on the other hand, usual working hours resembled office hours to a greater extent, from 7.15 until 17.37 (this exact time being related to the work hours due), with a long mandatory lunch break. Only two employees per day worked the early shift starting at around 5.30am, which was compensated through an earlier finishing time. As night surveillance is delegated to Securitas, state employees have no night shifts. However, they are required to work at weekends quite often (seven out of 12 weekends). The most problematic aspect of the rota in Bässlergut – based on a 12-week fixed plan that is the same for each employee – is that the plan includes working turns of seven days in a row¹⁵¹, which staff members found extremely hard.

As for the general conditions of daily work, several staff members described a stressful job, mentioning as sources of stress the difficult or aggressive behaviour of some inmates – which can also endanger staff –, the fear that detainees would commit suicide or self-harm, and the quantity and diversity of their duties. In the RP Bern, some staff members said that the workload had increased over the last few years and that they felt they had “less time for the detainees”. The reliance on civilian servants¹⁵² (*Zivildienstleistende*) in the last years had provided some relief in the daily management of the wings. Several staff members of Bässlergut also mentioned the presence of psychiatric cases as strongly negatively impacting their working conditions. This category includes offenders who are subject to a ‘measure’¹⁵³. Both prisons under study provide for supervision or psychological support for staff on demand. However, these services are rarely used, while informal forms of sharing with colleagues are preferred.

Concerning the work atmosphere, some interviewees reported suffering from the physical environment of the prison, experiencing feelings of enclosure, although on a much lower scale than the detainees. They generally appreciated the team, while relations with the hierarchy were more heterogeneous. Despite these different views, the tendency in the RP Bern was to consider management as quite supportive, while a few officers in Bässlergut expressed feeling undervalued by their superiors.

81,625 Swiss francs (this average was calculated on 58 salary entries), while that of a primary school teacher is of 84,216, that of a nurse of 78,663, and that of a policeman 90,384. According to the same website, a security agent earns on average 60,000 francs per year. This comparison is meant to be indicative and is not based on accurate research.

¹⁵⁰ The early shift starts at 6.30 and ends at 13.40, the late shift starts at 13.30 and ends around 20.30, while the night shift starts at 20.30 and ends the next morning. At weekends, the shifts are fairly long (from 7.00 to 19.00 and from 19.00 to 7.00), but as a consequence, weekend shifts are less frequent.

¹⁵¹ A member of the management explained that this is necessary in order to be able to give some free weekends to the employees.

¹⁵² A civilian servant is someone who has chosen civilian service as substitute for military service, which is mandatory in Switzerland.

¹⁵³ As previously explained, a ‘measure’ is issued under the penal code for reasons of public security. People subject to a measure should be placed in a specialised carceral institution and receive appropriate psychiatric support and treatment, however, due to a lack of capacity, they might also be held in ordinary prisons.

6.1.2. A stigmatised job?

While the prison experience is stigmatising for detainees, prison staff can suffer similar prejudices. This was observed in several national contexts where working conditions are more precarious, however, this is also due to the tasks of prison officers and the people they deal with (Fassin 2015: 284). As Crawley and Crawley (2008: 134) point out for the UK context, “prison officers see themselves as part of an unvalued, unappreciated occupational group. Their understanding is that they are regarded by the public as unintelligent, insensitive and sometimes brutal”.

Despite this being directly addressed in only a few interviews (most staff members discussed rather the curiosity awoken by their work), the feeling of stigma is reflected in discussions about uniform, which represents the material manifestation of the professional identity as prison officers. The director of Bässlergut explained that they opted for a neutral uniform that would not display the name of the prison service in order to avoid being easily recognisable in the public space:

“[We could] write here ‘Justizvollzug Basel Stadt’ [Correctional Department Basel City]. But this means... when our employees go out for lunch, to a restaurant, they might not want to come out [used the word ‘outen’ in German]. When you see them, you think ‘ah, prison, what kind of person is he?’ Right? In this uniform, we are inconspicuous, you don’t know [where we work]. So we’re discreet in appearance and not recognisable” (Georg, member of management, Bässlergut).

The term ‘coming out’, borrowed from the vocabulary of LGBTI experiences, was used by a second employee and signifies hiddenness to avoid stigma. If this occurs within prison work in general, it is particularly relevant in immigration detention, where officers are often uncomfortable with the incoherence of their roles and responsibilities (Bosworth 2014: 188) and need to respond both to external and internal criticism (Ugelvik 2016b), for example in the form of public demonstrations or detainees’ accusations of indecency or racism.

In the prison of Bässlergut, the presence of activists who regularly visited detainees and sometimes organised anti-deportation and anti-detention demonstrations in front of the prison opposed the work of the prison’s employees in rather direct ways. Besides the long-term presence of a few visitors of an organisation called Solinetz, a new group of young people regularly visited detainees during visiting hours. This was an informal group, despite its members being active across several militant organisations. Officers of Bässlergut were very distrustful of these visitors, interpreting their behaviour as disrespectful and sometimes offensive, as in the following case, related by Peter:

“Insults or aggression from the inmates (...), they don’t attack me or insult me [personally], but my function. (...) What I find annoying is when visitors come, private people who support the refugees, and almost insult me. Just yesterday (...) they started arguing with me so I asked them to go outside, (...) They started saying that I was trying to be the big guy, the heavy man and... they said they wouldn’t leave, and... ‘you’re the most stupid people!’ and that what we’re doing here is not right” (Peter, prison officer, Bässlergut).

Peter felt very offended by these accusations while other employees described this group of visitors being rude to them, withholding greetings and willingly attempting to annoy and disturb their work, for example by trying to provoke delays or complicating tasks. At the same time, prison staff were rather uncooperative with these visitors, for instance by making them wait for longer than was necessary. They associated the groups with recent prison abolitionist and/or anti-deportation demonstrations and presented their views as unrealistic and the people as naïve, arguing that detainees behaved in a completely different way with them than they did with prison staff. The emotional reactions that their criticism triggered among prison staff reveal the discomfort of prison officers in endorsing their role as representatives of the punitive arm of the state. Although they

tried to ridicule the demonstrators, they also felt threatened by them, as surfaced when they insisted on showing me videos in which protesters had fired rockets toward the prison, forcing staff to wait until it was over to go home.

Countering the stigma: discourses of self-valuing and distancing from police work

In order to deal with the stigma of prison work in general and of working in immigration detention in particular, prison staff develop coping strategies and “attempt to renegotiate their spoiled identities by asserting the positive value of their role in the face of claims to the contrary” (Crawley and Crawley 2008: 146, see also Crawley 2000). In particular, my analyses show that they construct positive accounts of their work, which can be understood as “narrative constructions of legitimacy” following Ugelvik (2016b). These have the double aim of persuading the public as well as themselves about their good work and positive impact. Officers’ narratives also work to maintain a positive sense of self, to resist and “transform the stigma and taint associated with their chosen profession, and turn it into a positive characteristic of professionalism” (Ugelvik 2016b: 225).

The institutional figure of the prison officer has undergone many changes in the last decades, being the target of a rehabilitation effort, for example through a change in name (Fassin 2015: 286). Nowadays, at a national level prison officers are called “agent de détention” in French, “Fachmann/frau für Justizvollzug” in German, and “agente di custodia” in Italian, names with slightly different nuances which all try to distance themselves from the common notion of the ‘warder’. However, according to Reto, prison officers still have a bad reputation in the public sphere:

“Someone from the prison, he’s always exotic, always special, but (...) never at a level of (good) reputation [Ansehungslevel] like (...) an independent businessman. (...) you will never reach such prestige [Ansehen] (...). Because people keep saying (...) ‘they are not the most intelligent people who work in prison, they are mostly just those with big muscles’ and so on. That’s an attitude from the past but it’s still a little present in the vernacular and it always comes back... What I hear again and again and about which I get angry, is ‘warder’, ‘the warder’ [Wärter]. I say: there are warders in the zoo for animals, we are not warders, we are employees in the penal system and we complete two years of training (...). The exam is recognised with a federal diploma, it gives a federal certificate” (Reto, member of management, RP Bern).

In this quotation, Reto is not talking about a mere vocabulary change. For him, this new definition of the prison career must reflect a mentality change across the whole carceral system and assert its professionalisation, which occurs above all through vocational training and the federal brevet which all prison officers have to pass (see 6.1.1).

While formal professionalisation has taken place over the last decades, discourses about the professionalism of staff are also a technique of legitimation (see Ugelvik 2016b). Prison officers often remind others that they hold huge responsibility and that they have to behave in a ‘professional way’ in order to guarantee their own as well as their colleagues’ and detainees’ security. To them, working in a ‘professional way’ means knowing and following the rules and procedures, mastering emotions and relationships with detainees, and using physical force only when it is necessary and in a way that does the least harm possible (see section 5.3.3). The establishment of a ‘professional’ relationship with detainees is understood in terms of balancing proximity and distance, as we will see below. It also implies being fair with detainees and not allowing personal lives or judgment to blur the professional function.

In the RP Bern, there was a shared belief that the staff were doing a good job, compensating for or counterbalancing the very bad infrastructure and the strict detention conditions of the prison. The staff were described as fair and friendly by its members, a conviction that was supported through stories comparing different prisons:

“From what I’ve noticed so far, also in relation to other prisons in the region, I think our prison is quite harsh in terms of infrastructure: the prison itself, the cells, the size of the cell [is small]. But in terms of the team, the people working here, it’s.... very pleasant. I’ve also often heard from inmates who were already in other prisons that (...) [here] the prison officers are very friendly and they’re strict but fair and (...) you’re not treated badly” (Emma, prison officer, RP Bern).

One staff member reported that it is not unknown for the team to receive a letter of thanks from detainees after deportation or transfer.

Following Ugelvik (2016b), we can argue that staff members tell stories about the detention centre as a humane and decent institution in order to contradict external criticism and to legitimise their work there. In particular, Ugelvik found that Norwegian detention officers told “stories about how they do an emotionally difficult and morally ambiguous job in an as gentle and considerate way as possible” (226) and “stories about how officers try to see the individual detainee as a fellow human being” (227). He concluded that they used these stories “to construct a community of ethically conscious, decent individuals doing an important job altogether” (Ugelvik 2016b: 228). Thus, discourses on professionalism and fairness serve as a means of self-legitimation.

Another way through which staff members legitimate their work while contesting the negative image of the *warder* is through highlighting the humane and sometimes social nature of their work. This discourse is also reflected in the official name of the position – in both the RP Bern and Bässlergut – named ‘Aufseher/Betreuer’, which could be translated as *watchman/care-giver* or *surveillant/assistant*. This double term is meant to signify a change in prison culture, in that prison guards are nowadays called to exert functions of care in addition to control and security tasks. During our conversations, staff members often focused on assistance tasks when relating their work, arguing that this was the most important and challenging part of their job (see section 6.2.3). Through this emphasis, they countered the idea that prison work only consists of locking and unlocking doors.

The professional identity construction of prison officers passes through the constant comparison with and opposition to police work (see also Fassin 2015: 289). Such work of boundary-making allows prison staff to construct their identity relying on the human and social part of their function rather than on the coercive one. This distinction was particularly important in the RP Bern, which was originally under police authority. The current director attaches much importance to the need to distance the prison from police culture, a discourse which was internalised by a number of employees who highlighted the fundamental difference:

“The police and us, we are very, how shall I say, differente [in Italian]. (...) When they see an African [they think] ‘oh this is a black one, we have to take him’. The police grab them hard sometimes, don’t they? Then they come here in prison and they [the inmates] think we are also from the police. But then we say ‘that is the police, we are not [the police]... we are in civilian employment, we look after you, we are not those who arrested you’, then many people think, ‘yes, that’s true’” (Dario, prison officer, RP Bern).

In this discourse, the police become the ‘defining other’ of prison officers, a figure to which all the properties attributed “are inversions or distortions of those vindicated for oneself” (Balibar 2005: 30). If the police are violent or racist, then, above all, prison officers are not. We can also see

certain competition between the two, as police work seems more valued in the public sphere, despite also being the object of several stereotypes. A clear distancing from the police corps is also important in front of detainees according to Anton:

“So as soon as the police come to us with them, the first thing that will happen is taking off the handcuffs, yeah, unless they are extremely aggressive (...). You can notice the difference (...) the police bring people who are very aggressive, and as soon as they see us, they get calmer. So they don’t see us as police but rather as caretakers [Betreuer], and that is actually the goal! It always calms them down to see us, because we... we don’t stand there as policemen and support the policemen, but rather, we are autonomous and tell the policemen ‘ok, now handcuffs are taken off and we’re in charge now, the person belongs to us now’. And then the aggression is over, then it’s normal again. Even the policemen are always surprised [about this change of attitude], yeah [giggles]” (Anton, prison officer, RP Bern).

In this last quotation, we see again how Anton makes sense of his role through his closer relationship with detainees and through the assistance tasks he has to carry out, while distancing from the police institution and the broader use of force, which constitutes another technique of legitimation and self-valuing to cope with various criticisms and negative representations of prison work.

6.1.3. Hiring staff: institutional cultures and (gendered) representations of prison work

Hiring procedures are interesting because they reveal the management’s representations of a good prison officer. In the RP Bern, the director explained that she looks above all at the professional qualifications when hiring a specialised worker such as a nurse, a cook or an accountant, while she has a much more open perspective for prison officers. In fact, while sometimes she hires people with experience in the security field, recruits have often undertaken commercial or handicraft training. The job interview is especially important for evaluating the candidate, as the management values social skills and ‘common sense’ more than professional background. Languages and conflict management skills are especially appreciated. Furthermore, a general openness and interest in ‘other cultures’ is considered important:

“During the job interview, there are of course specific questions about things like how he feels about his social competence, questions about other cultures, about travelling. People who travel, who are interested in other cultures, they also usually have less of a negative attitude towards other cultures (...) Someone who is interested in other cultures, he’ll also have far fewer prejudices, won’t he?” (Reto, member of management, RP Bern).

Reto values openness to ‘other cultures’ but in a way that strengthens alterity and sets boundaries with the ‘other’. In fact, at the time of my research the team was still not particularly diverse in terms of ethnicity and did not comprise any black members. This situation was very different in the detention centre of Frambois (Geneva), where the candidate’s origin is an important element in the choice of new employees. In fact, the staff is composed of several members of foreign origin, especially from Maghreb and other African regions as well as from Eastern Europe, partly reflecting the regions of detainees’ origin.

In the prison of Bässlergut, the formal requisites¹⁵⁴ to apply are being aged 30 or over – which the management justifies with the need for a certain ‘life experience’ to work in such an environment –, the completion of three years’ vocational training or study, a driving license, the absence of

¹⁵⁴ Foreign nationals with a residency permit as well as border dwellers (from Germany or France) are eligible.

criminal records or pursuits, and a residency or border dweller permit. The personal characteristics and skills that the administration seeks are language skills, the ability to work in team and to work under pressure. This is one of the reasons why much importance is attached to the trial day which forms part of the hiring process, in which other staff members have their chance to speak about the candidate they have observed during that day.

When analysing the applications, those in charge of hiring try to extrapolate information about candidates and to imagine how they would fit the job position according to their own representations. One of the elements that they seek is the picture, which according to a member of the management tells something about the candidate. In his view, the context of the picture proves the seriousness of the application, while the physical appearance enables him to imagine whether the person would be suitable for prison work:

“The picture says a lot about a person, (...) what he looks like. Because he also has to be able to get by on the station with [the detainees], so [if] it’s someone who’s, I don’t know, 35 years old but who looks like a 14-year-old kid, uh, he’s going to have a little more trouble with the detainees. If on top of that he’s 1.58 metres tall, uh, he’s been playing the violin since he was young, he doesn’t like violent games, and then... mh! If, on the other hand, I have an application from someone who does a little bit of self-defence, who has worked for a security company, who’s interested in this aspect, in this aspect of the function [L: More security-related, you mean?] Yeah, it’s in relation to that, it’s also in relation to that that it’s going to be decided” (Fred, member of management, Bässlergut).

According to this quotation, physical appearance is an important aspect in the recruitment process, Fred implying that if the candidate looks strong and tough, detainees will respect him more. His words reveal a gendered image of the prison officer who should be not only a man, but tall, sporty and virile. He considers military experience as representing an advantage for the applicant, as argued later in his interview. This highly gendered representation of prison work impacts the institutional culture of Bässlergut, which is a male prison with an almost exclusively male staff. The only women employed by the prison – out of 28 employees – are a secretary, a cleaning person and a nurse¹⁵⁵, besides the chaplain providing her services once a week. The only two female institutional figures who come in contact with the detainees, thus, have a care role.

When asked about this near total prevalence of men in the team, the administration countered with practical issues, in particular the need for every staff member to be able to carry out a body search, which only same-sex employees can do (a typical argument for hiring men according to Crawley 2004a). The possibility of changing the shift plan to suit a mixed staff was apparently never seriously considered and is not felt to be a need in Bässlergut, which reveals a tendency to see prison work as a man’s job. Although not representing the view of the institution, Fred, member of management, had a very traditional view of the gendered division of labour in our society, arguing that the ‘genetic’ difference between men and women would orient them toward different jobs. This would explain why there are more female than male nurses or hairdressers in his view. In such discourse, prison work is presented as a male job because it implies the possibility of physical force and coercion against renitent detainees. Fred considered the separation of the security and the assistance functions – as occurs in many other contexts such as Italian and French detention centres and also in some Swiss prisons for long-term sentences focusing on reintegration – as a viable option for the future, arguing that this would also allow women to be hired into the assistance function, not requiring strip searches. This idea is also strongly related to the representation of

¹⁵⁵ At the time of my fieldwork, there was also one female employee of Securitas working in the command centre.

women as more sensitive and keen to do care and assistance work, which in contrast constructs masculinity as characterised by a lack of sensitivity and care. Through the opposition with women, masculinity in the context of the prison is also constructed as related to physical strength, as the following quotation about a previous experience in the police shows:

“We had a woman with us who was doing a great job. She controlled cars like we did, yeah, no problem. The big advantage was that there was a woman to hear about domestic and child abuse. On the other hand, as I have the right to say that, I also have the right to say that when you go to a brawl (...) with a girl who is 1m57 and 49kg, it’s not the same as when you go with uh [name of a burly officer]. Right? Here you go, there are pros and cons” (Fred, member of management, Bässlergut).

Here, Fred talks about physical appearance and ability to use physical force as factors that discriminate against women in police and security work. These discourses reveal a focus on the coercive role of staff members, which impacts the institutional culture of Bässlergut and the professional identity construction of its staff.

The situation in the RP Bern is rather different. The discourse of the administration is much more focused on taking a distance from the coercive side of prison work. Indeed, the prison manager explained that her project was to move away from police culture and toward an institutional culture of mediation and communication, in which the use of physical constraint is reduced to a minimum:

“My vision for the future [is] to get away from police-like people, I don’t want to have any jerk-offs! I want people who provide assistance [betreuen] and who... are responsible for security, yes, but I don’t want security agents who are all... shackles and gagging and all that. (...) I’m looking for people who do their work with heart and mind and do not forget where they work... so, in a complex environment, with criminals. (...) We just discussed yesterday whether we should use pepper spray and truncheons, if this must be part of the equipment of the staff, and we decided against it! We do not hit and we do not spray, so... We solve our problems differently and if it is so drastic, we call the police! That is an attitude, it’s my [attitude], ‘do I attack or do I hit’, no, I don’t want that” (Franziska, member of management, RP Bern).

As this quotation shows, the director is willing to foster a change in the institutional culture of the prison she manages, which still carries the weight of its past as it was built more than 40 years ago and was originally under police authority. The RB Bern’s director tries to pursue this change both through a focus on social skills when hiring, and through decisions which distance their work from the use of coercion – not least through the reliance on the police to manage the most difficult cases which require the use of physical force – and promote values such as communication and mediation as alternatives to coercion. This is also reflected in the statement that she looks for employees who work “with heart and reason”, implying that empathy and mediation are important in prison work, despite needing to be balanced with a certain level of distance required by the specific context of the prison.

The different discourses that I have quoted reflect only in part the reality of the field in the two prisons. Indeed, the RP Bern is characterised by a low level of interaction between staff members and detainees, which is in large part a consequence of the specific conditions of detention (see section 3.3.1). In Bässlergut, the attitudes of staff members are fairly heterogeneous, but the conditions of their work actually put them in much more frequent and intense contact with the detainees in their charge. One possible explanation for these different discourses and focuses might be related to institutional differences. The conditions in the RP Bern are shaped by security concerns related to its origin and function as a remand prison. Detainees are contained in many ways through these same conditions, and spend most of their time in their cells. The architectural and organisational focus on security needs to be compensated through a very humane treatment of

the detainees in the eyes of the administration. On the other hand, the prison of Bässlergut provides detainees with more internal freedom of movement and involves much more contact with staff members. In this situation of physical proximity, the focus of the administration is on the need to keep relational distance from the detainees, in order not to endanger the institution (Goffman 1961).

Questions of care and control, proximity and distance are central to the daily life and role understandings of prison officers, to which we will shortly turn. Before moving onto the daily experiences of prison work, I would like to conclude this first part of the chapter with a reflection on the identity construction of detention staff as prison workers. Indeed, it is interesting here to compare these situations with the one of Frambois, the only detention facility I visited which operated exclusively immigration detention. Despite the brevity of my visit, my impression was of total difference from the other facilities I observed, including the way staff members talked about their work and related to the detainees. The director of Frambois talked explicitly about the importance of differentiating their work from that of penitentiary staff¹⁵⁶, constructing a different institutional culture based on respect, empathy and mediation. Despite these values not being absent in the two prisons that I studied more in depth, the staff there are formally employed by the prison service, and are trained and socialised as prison officers. Their professional identity is strongly related to their role within the criminal justice system, which also provides a particular lens through which staff members understand immigration detention.

6.2. Performing care and control in a context of crimmigration

In the institutions under study, staff are employed by the prison service, mostly with the function of *Aufseher/Betreuer*. This means that they are in charge of the both surveillance and the assistance of detainees. This duality of the role of prison officers was found in all carceral institutions visited in the context of this research, while in several other national contexts and even in some Swiss carceral institutions, these roles are separated. In the Italian context, these tasks are even handed to different actors: the police are in charge of security and maintaining prison order while NGOs or private companies are in charge of the daily management of detainees' needs (Campesi 2015a). The joining of these tasks in one role has significant implications for the daily work and role understanding of prison staff that will be the focus of this part of the chapter. Furthermore, I will show that the work conditions of prison officers actually blur the distinctions between immigration detention and other forms of penal (and punitive) incarceration, which is reflected in their discourses and understandings of immigration detention, presented in the last section (6.4) of this chapter.

6.2.1. Daily work in the detention area

Prison officers carry out a range of tasks that depend on the specific function they are fulfilling and the shift they are working. In fact, in both prisons, members of the *Aufsicht/Betreuung* team work their shifts following a rotation system which means that they alternate between working in the wings and other functions such as surveillance at the command centre or the *Läufer* (literally the 'walker', the person who leads individual detainees through the prison space) in the RP Bern and the section dedicated to the entry procedure (*Vorzellenbereich*) in Bässlergut. In this section, I focus exclusively on work in the prison wings that requires regular contact with detained persons.

¹⁵⁶ In her discourse, penitentiary staff become the defining other, like police staff in the RP Bern.

Daily schedule and other sources of tasks

Despite a few differences in the detention regime (see section 3.3) and in detainees' rights¹⁵⁷, the officers' daily tasks in the detention area differ very little between penal and immigration incarceration. To work in the detention area implies being responsible for one floor (in the RP Bern) or one wing (called 'station' in Bässlergut), and being accessible to detainees when they need something. The tasks of prison officers are various, which staff members consider one of the main virtues of the job. Some of these tasks are carried out on a daily basis, following a strict schedule: opening the cells, ensuring that everybody is present and alive (called the 'integrity control'), distributing meals, accompanying detainees to work, to walk, or the visiting room, closing the cells. Here I present the example of the RP Bern as the daily schedule for prison officers is particularly structured. Indeed, when I asked staff members about their tasks, they would usually describe them following this timeline.

Day schedule of prison officers in the RP Bern (men's section)

Early shift

6.30: Prison officers distribute breakfast through the portholes and collect 'blue papers' (A5 forms for requesting cigarettes) and 'yellow papers' (A5 forms for requesting material or anything else, e.g. making a call, meeting the medical team, looking for something from their personal effects, etc.). Back in their office, they sort out the yellow papers: they keep those containing requests they can handle by themselves, passing over the other forms to those concerned (mainly the administration and medical team).

7.00: They return dishes to the kitchen and bring detainees the material requested. On Monday, Wednesday and Friday, they provide access to the shower to those who are confined outside the 'Wohngruppe' (living group) by opening their cells. In so doing, they must respect the separation of detention regimes. During the early morning, they also inform detainees who are going to be transferred that day.

7.30: They open the cell doors in the 'Wohngruppe', including on the fourth floor where the section of immigration detention is located.

9.00: They gather on one floor and accompany detainees of that floor to the exercise yard. The same happens at 10.00 and at 11.00, when they bring detainees back to their cells and then accompany other detainees to the yard.

10.45: They close the cell doors in the 'Wohngruppe'.

11.30: They deliver lunch through the portholes.

12.00: They return the dishes.

13.30: Their shift finishes after the coordination meeting.

The coordination meeting (*Tagesrapport*) has the function of switching from one shift to the other so that those who work the late shift receive salient information from the morning.

Late shift

13.30: Coordination meeting.

¹⁵⁷ In the RP Bern, these differences are mainly related to contact with the outside, which is much more restricted and controlled in pre-trial detention. In Bässlergut, it mainly concerns access to the exercise yard, which is allowed for three hours, compared to one hour in penal imprisonment.

14.00-16.00: On Monday, Wednesday and Friday, prison officers manage external visits. They follow a specific distribution of tasks including registering visitors, accompanying them to the visitors' room or parlours, accompanying detainees, controlling visitors and items they bring with them.

15.10: They accompany detainees to the exercise yard and back to the wing. The same occurs at 16.10 and at 17.10.

17.30: They distribute dinner through the portholes.

18.00: They return the dishes to the kitchen.

18.30: They open the cell doors in the '*Wohngruppen*'. They then prepare work for the following day, including informing detainees who will be transferred the next day of their departure from the prison and taking their personal effects to pack.

20.00: They close the cell doors in the '*Wohngruppe*'.

20.45: The late shift finishes.

Night shift

20.45: Prison officers start the night shift.

21.00: They distribute medicines. They then print the lists for the following day, check the luggage for the following day's departures and prepare breakfast. Sometimes there are some departures – usually for deportations – during the night, so they wake up inmates. Otherwise, they wait until the morning.

Although this schedule is fairly intense, these are not the only tasks assigned to prison officers, whose days are also shaped by (mainly) unpredictable tasks arising from administration (managing entries, preparing transfers and cell changes, and so on) and the detainees. As well as answering detainees' questions and dealing with their requests, these include bringing material (toilet paper, cleaning products, razors, cigarettes, etc.), looking for an address or phone number as needed, bringing personal effects that are stocked in a dedicated space, translating documents or explaining decisions of the authorities or judgments, which are written in formal German and with legal terminology. The amount of time spent on some of these tasks largely depends on staff members' personal initiative and sensitivity. Furthermore, working in the prison wing requires reacting to what happens in the detention area, meaning for example handling conflicts, with either mediation efforts or through the use of physical force (see sections 5.2.5 and 5.3.3).

Prison officers also have more latent tasks of watching detainees, showing their presence and undertaking security checks, which are meant to keep the detention area calm and secure. Despite some depending on staff members' personal initiative – specifically the security checks of cells made upon suspicion – most surveillance tasks are relatively passive. In fact, the work of prison officers consists to a large extent of being there and marking their own presence, so that detainees feel controlled, which could be described as a 'panoptical' function. This has important consequences on the temporal experiences of prison officers, as we will highlight in section 6.2.2.

Crimmigration and the rotation system

Alternating between working in the wings and in other functions or sections of the prison is an organisational measure that both institutions have taken in order to provide diversification and relief to employees:

“We do this very consciously, changing [rotating] people. (...) Working only on the floor [is] very strenuous, it can be really exhausting! And so, once you are at the command centre, doing entrance control, once you are working as a ‘Läufer’, which means you bring the people from A to B, that gives a certain variation. It’s worked out well and... it makes sense that we take them away from the floor occasionally, so they’re not overwhelmed by [the demands of] the inmates” (Franziska, member of management, RP Bern).

As this quotation reveals, working in the prison wings is considered particularly challenging because of direct and continuous contact with detainees, and the necessity to manage their requests, but also their anxieties. Prison officers in the two facilities under study not only rotate between different functions, but also between different floors or prison wings, where detainees of different detention regimes are held. The directors of the two prisons also valued this type of rotation, arguing that it provided further diversification of the daily work of employees given the different carceral regimes and populations. Based on this positive experience, the director of Bässlergut was planning to continue the rotation scheme between different types of detention even after the expansion of the prison that would allow the separation of immigration and penal detention:

“we don’t just operate pre-removal detention or just penal detention, but rather we always do both, and we’ll continue this philosophy with the expansion of the prison. (...) Because we want to have generalists, not specialists in this field (...) So the thought is the following: variation” (Georg, member of management, Bässlergut).

In the RP Bern, the director explained that the rotation system was partly motivated by the will to support a professional and “not too close relationship” with detainees (see section 6.3). Furthermore, the floors do not all require the same intensity of work. Most staff members consider immigration detention as the most arduous section, which was confirmed by the management of four different prisons, including Bässlergut and the RP Bern, the director of which stated: “It is one of the most explosive detention types!”.

Staff members related this enhanced difficulty to the uncertainty in which detainees live (see also Bosworth 2014; Griffiths 2013), not knowing how long their detention will last and whether or not (and sometimes also where) they will be deported (see section 8.1.2). They also explain it through detainees’ anger and feelings of injustice (see also Campesi 2014a; Lietaert et al. 2014):

“Administrative detainees are... sometimes the most difficult, because they have the feeling that they haven’t done anything wrong and that they don’t belong here. And they’re right too, and sometimes they’re also very... agitated and... with emotions and... partly aggression. So you need a lot of tact with these people, and languages above all” (Anton, prison officer, RP Bern).

Many detainees in immigration detention do not master national languages. Besides being a hurdle to communication, this also requires from staff members additional efforts to explain and sometimes translate official letters and communications, which can be time-consuming. Working in immigration detention is considered very challenging because of the unpredictability of events, including brawls, self-mutilations and suicide attempts: “Immigration [detention], there are the most agitated people, you don’t know how they will react”, commented a staff member of Bässlergut. As we will further discuss, immigration detainees are often described as demanding and even arrogant or willing to annoy prison officers.

In Bässlergut, employees can be on duty in one of the five sections – two of which are for immigration detention, and three for prisoners serving a sentence – or in the area dedicated to the entry procedure (with detainees in any regime). In the RP Bern, every floor hosts pre-trial detention and at least one additional type of detention¹⁵⁸, which means that prison officers have to deal with different types of detainees even during the same working shift. It is important to highlight that in the RP Bern, only one fifth of the detainees are in immigration detention, which means that prison officers who are rotating across different functions and different wings are not so frequently in contact with them.

This situation can be confusing for staff, who sometimes mentioned a detainee without remembering in which regime he was. This happened particularly in the RP Bern, which supports the argument that this confusion is partly a consequence of the spatial and material context of the prison. Indeed, in the RP Bern, not only are the floors very similar, but there is no clear separation between the different regimes. Cells are identical and interchangeable, which aims at maximising its capacity. Prison officers need to write a capital letter on cell doors with chalk to signify the detention regime of the detainee held: U (as in *Untersuchungshaft*) for pre-trial detention, A (as in *Ausschaffungshaft*) for immigration detention, SV (as in *Strafvollzug*) for serving sentences, H (as in *Halbgefangenschaft*) for semi-detention, and so on. This practice is an eloquent example of the spatial overlap of different types of detention and detainees.

This lack of spatial distinction contributes to confusing staff members about the differences between penal and immigration detention, and to understanding immigration detention precisely through the analogy with criminal imprisonment, as we will see towards the end of this chapter. I will briefly discuss the case of Emma to exemplify this. Emma is an open-minded officer with a good understanding and a critical stance on immigration detention. However, she gained such understanding only after several months of work in the RP Bern. She narrated that before starting to work there, she did not know anything about immigration detention, which in her view reflects a general lack of knowledge about immigration detention in the public:

“So I had never actually seen [immigration detention]. (...) My first thoughts were that they were criminals. But that immigration detention operates here and they are actually not criminals, or let’s say most of them are not criminals - I had never thought about that. That was actually something... very new. And at first I didn’t really realise that either. It was all a bit... ok, they are just prisoners, criminals somehow.” (Emma, prison officer, RP Bern).

As she continued discussing in the interview, learning about the different detention types and regimes – with every small difference regarding what is allowed and not allowed in each – was a process she had to go through during her first months of employment. However, it was particularly through direct contact with immigration detainees that she realised the specificities of their condition:

“[I understood the differences] when I learned the distinct types of detention, of course. But it was actually above all by talking to the inmates in immigration [detention]. Because most of them come and tell you, ‘I’m not a criminal, why am I in prison?’ And at the beginning I always thought, ‘yes, well, everybody says that, don’t they?’ [but then I understood] (...) Of course there are many who may have done something criminal, but not all of them are here only because they’re illegally here. But you can’t just say, yes, they’re all criminals! And actually

¹⁵⁸ In particular, there is a ‘*Wohngruppe*’ for inmates serving a prison sentence on the second and third floors, and one for immigration detainees on the fourth floor. Staff on duty in the female section (on the first floor) also deal simultaneously with women in pre-trial detention, in immigration detention and serving a prison sentence.

through these conversations (...) [I thought] actually you're right, you're not criminal, why are you in prison?" (Emma, prison officer, RP Bern).

Throughout this progressive awareness, Emma became very critical of the practice of detaining migrants awaiting deportation in ordinary prisons. She realised that the confusion she had held between people detained for criminal reasons and those detained for immigration was actually very common, as was suggested by their co-confinement, which in her view was unfair towards detained migrants as it portrays them as criminals.

While the system of rotation is precisely aimed at avoiding too frequent contact with the same detainees, other prisons that I have visited have preferred other options. The prison of Realta, for example, has two staff members who work exclusively in the immigration detention section, which makes them very close to the (up to 16) detainees, although this did not seem to translate into a more trusting relationship, according to the conversations I had during my visit there. The prison at Zurich airport also decided to separate the staff into two distinct teams, one in charge of immigration detention and the other of penal imprisonment. The prison management there gives much importance to the separation of the two institutions – due to their completely different nature and purpose – which is also achieved through the maintenance of separated teams. In the RP Bern and in Bässlergut, immigration and penal detainees were held in similar conditions, and there was less attention paid to diversifying the regimes¹⁵⁹. The conditions of the daily work in what I qualify as a 'crimmigration context' impact staff's representations of immigration detainees, who are often seen as threatening and potentially criminal in analogy with the criminal offenders who are held with them (see section 6.4).

6.2.2. Stress and boredom: temporal experiences of prison workers

While detainees' experiences of time have been the focus of prior ethnographic research (Griffiths 2014b), those of people who enforce migration law are underexplored (Eule et al. 2018). In this section, we will focus on the temporal experiences of men and women working in detention facilities.

Prison work – particularly in immigration detention – is characterised by discontinuity and an alternation of different temporalities. There are frenetic and stressful times provoked by the simultaneity of several tasks and/or the need to react to emergencies, and there are calm times of waiting that can be experienced as boring. In fact, my field notes – particularly those written in Bässlergut – contain various remarks such as “nothing happens. [B.] went out of the office, maybe he is having a break. [S.] is reading a book”; or “I found the turn/shift very boring although there were a couple of interesting moments”. Or again: “this morning I was at the medical service from 7.15 until 11.30. In the whole morning, absolutely nothing happened. We grasped the opportunity to discuss a bit (...) but it was also pretty boring”.

As argued by Crawley (2004a: 171), “[m]uch of prison life *is* mundane, routine and boring for both staff and prisoners”. Experiences of boredom and idleness are frequent among immigration detention officers (Eule et al. 2018). In Bässlergut, prison officers spent a huge amount of time in the office, chatting, joking or sipping coffee. They watched videos, surfed the Internet, read books,

¹⁵⁹ The main difference in the prison of Bässlergut relates to the walk that was granted to all detainees for two hours a day until 2012, but which, following the recommendation of the National Commission for the Prevention of Torture to better differentiate the regime, was reduced to one hour for criminal detainees and increased to three hours for immigration detainees. In practice, this differentiation has led to worse detention conditions for prisoners serving a sentence, which has been criticised by the NCPT, the original recommendation being related to extending the freedom of movement for immigration detainees and not to restricting that of penal inmates.

made private calls or studied for exams. Preparing good coffee with an Italian moka pot and drinking it together while chatting was almost a ritual among staff and was important in terms of team building. During my period of observation, I sometimes drank up to seven cups of coffee a day.

This relative inactivity is contrasted with moments of high adrenaline, when the prison officer needs to be alert and act quickly, such as during emergencies, brawls or attempts to self-harm. Unpredictability is a characterising feature of the daily work of prison officers and makes the job interesting, according to several employees:

“That’s also why the job is good, you never really know what’s going to happen. And at the same moment it’s bad because you never know what’s going to happen” (Emma, prison officer, RP Bern).

Quick reactions to emergencies are a fundamental part of prison work and are strongly related to the relationship between protection and control (see section 5.3.2), also explaining why a certain number of workers must always be on duty. The job of the prison officer requires a continuous physical presence, which inevitably results in periods of inactivity. One agent, while relaxing on his chair, told me: “this is also part of the job”, referring to the condition of being present but doing nothing, waiting for something to happen that would require him to react. In the RP Bern, a young member of staff said that the work could be very boring, particularly in the afternoon shift, with empty waiting time. He observed that in that mood, he could become very lazy: “in those moments, you have nothing to do, and then when they ask you to do something, you become lazy and say ‘oh no, I have to work’, although actually you were just waiting for some work to do” (informal conversation with a civilian servant in the RP Bern). The condition of ‘doing nothing’ is often the topic of jokes, when – particularly in front of me – staff members would teasingly reproach colleagues for not working.

The ways in which prison officers experience time mirror, to a certain extent, those of detainees. According to Griffiths et al. (2013: 19), migrants experience “two temporal guises, one of a fast, frenzied time rushing out of control, contrasted with a suspended, stagnant time. (...) these two faces of time can exist simultaneously, producing a sense of time that is particularly uncertain and untrusted”. Prison workers and detainees both experience prison life as composed of moments of boredom, in which they kill time through contact with staff or inmates, or through the use of media (mostly TV for detainees and the Internet for workers). Officers also have an experience of *frenzied time*, defined as an “accelerated sense of time” in which “developments can happen suddenly and without warning” (Griffiths 2014b: 1999).

Much prison work involves *frenzied time* as “fast time rushing out of control” (Griffiths 2014b: 1994) and aims precisely at regaining control in such situations – which occur with higher frequency in immigration detention than among penal detainees, mostly due to its high levels of uncertainty – through separating people who are brawling, through immobilising an out-of-control detainee or one who has tried self-harming, and then through deciding on a sanction or protection measure, such as bringing the detainee to a disciplinary or security cell or to the hospital. The staff are trained in order to react quickly in these situations, as we have seen in Chapter 5.

Prison officers also experience a lack of control over time in their mundane work. In fact, the simultaneity of tasks arising from different sources provokes a certain amount of stress and the inability to plan ahead. Max complained about not being able to set priorities and work according to them:

“[The job is] demanding in the sense that you have to deal with the stress, get all the things done. [Sometimes] in the evening you have five things that you have to do at once, the phone keeps ringing, like today, I also have to write a report, the boss is waiting for it, he wants it, but then you have to go there, be here, go there! It’s just too much. You can’t do your job step by step and set priorities (...). If I say this has priority A, I do that first, (...) then something comes up again, (...) it becomes a new priority instead of what you have planned. That is challenging and exhausting” (Max, prison officer, Bässlergut).

In the RP Bern, the multiple entries and exits also fill the days:

“There are always so many entries and exits that you can’t actually do assistance work, I mean, as it should be done. If you have a bit of understanding of people, if you notice that someone is not well, it goes without saying for me that I approach the person and ask them. I want to know how he or she is. But often you don’t have the time. I start to talk to someone, after two minutes the phone rings, you have to go there and there and... I wish I had more time for the people who are here” (Doris, prison officer, RP Bern).

While the amount and simultaneity of her tasks leaves Doris with less time to interact with detainees, she later argues that this can also result in problems of communication within the team, such as when staff members forget to pass on relevant information to colleagues because they are stressed or distracted by new unexpected tasks. Lack of communication can have severe consequences, which is how Doris had learned the importance of entering information immediately into the digital information system. Some of her colleagues developed the strategy of writing memos or keywords on their hands while walking, when unable to reach the computer system.

Another prison officer at the RP Bern described her strategy of completing the most essential tasks right away in order to save time for unpredictable and assistance tasks: “You never know what can happen, so it is better to deal with what you can right away”. Anticipating is an important strategy in prison work, encompassing a feel for what is going on in and the atmosphere of the detention area through physical presence and the act of talking with detainees, in order to prevent unexpected issues:

“The bosses, they only see when something has happened, a mess or (...) through a report¹⁶⁰. But a good officer, many times you don’t see him, because he always reacts before it happens. But the bosses, they’ll not see those things. (...) I write few reports, (...) I always try to react before it happens. [L: Prevent...] Prevent, yes, yes” (Daniel, prison officer, Bässlergut).

Many staff members highlighted the importance of preventing crises. For instance, in the RP Bern, several staff members were very proud of having never pulled the alarm, which in their view proved that they were able to prevent emergencies in general and incidents requiring the sanctioning of a detainee in particular. These are examples of the room for manoeuvre that prison officers have in their daily management of the prison wings, as we will discuss further in this chapter. These different attitudes are also revealing of one of the tensions that is inherent in the role of prison officers, that between control and assistance, coercion and care.

6.2.3. Performing control and care, holding ‘two hearts in one chest’

In the two prisons under scrutiny in this thesis, prison officers are hired with the professional role of ‘*Aufseher/Betreuer*’. This term signifies the fusion of the security role (*Aufsicht* meaning control, supervision, surveillance) with the assistance role (*Betreuung* meaning support, assistance, care), which are separated in some penitentiary institutions that aim at the resocialisation of criminal

¹⁶⁰ Prison officers in Bässlergut are required to write a report when something happens which could provoke the ordering of a sanction. The management will then decide on the required action based on this report.

offenders¹⁶¹. Staff members often define their role – be it in penal or immigration detention – by resorting to this duality:

“The role is very clear. The surveillance role [Aufsichtsrolle] focuses on security (...) for yourself and your colleagues, and security for the inmates (...). And then of course the security related to the prison, that nobody breaks out, that nobody brings in drugs, that nobody has any weapons and so on, the general security. (...) That is an important aspect. But the most significant aspect of our work is the aspect of care/assistance [Betreuung]. (...) The inmates are here on the wing all day long (...) and we have to look after them, support them with the daily things that they need. For personal hygiene, bring them the razor, take it back, bring the toilet paper, take it back, just that, and also a little bit of housekeeping, (...) distributing food. These are general things. And then of course also assisting [betreuen] them when... they come to me with a detention order. They don’t understand it, (...) then I sit down with them and read it through and explain it to them in understandable language. That’s also part of the assistance [role]. Or does someone have worries? That also happens from time to time. (...) You listen if someone’s sad or afraid, that also happens” (Max, prison officer, Bässlergut).

Max describes his role as composed of two distinct areas: the *Aufsicht* role serves to guarantee the security of detainees, colleagues and the institution, while the *Betreuung* role has two components: on the one hand, it means supporting prisoners and detainees in their daily needs (for the most part arising from the condition of confinement); while on the other hand, it means helping them with punctual issues, caring for and listening to them. This last component is less codified and leaves a certain leeway for staff members as to how and how much they try to support detainees – be it practically or emotionally (we will return to this question in section 6.2.4).

The duality of the prison officers’ role is institutionally valued, both by the national training centre and by members of prison management of the RP Bern and Bässlergut:

“I always say that we have two hearts in our chest: the surveillance [Aufsicht] and the assistance [Betreuung]. We don’t have specialists like other institutions have, for example, only the security or only the assistance. We have both, and I think that’s the interesting thing about it, that you don’t only do the one, but also the other. There must be room for both, at the same time, and at the right place, so you have to be able to deal with that. (...) There are institutions that clearly separate the two. But we have the philosophy that you should do both, because it also makes the job more diverse” (Georg, member of management, Bässlergut).

Georg mentions the diversification of tasks as the main driver behind the decision not to separate the two roles. However, in his interview, he also mentions practical organisational questions that impede such development. Another member of the management had a different take on this question, preferring to separate the care role from the surveillance role in principle, but highlighting the practical impossibility of doing so, partly as a consequence of the small size of the prison. Discourses about the value of this dual role thus also hide practical and economic factors, since the merger of these roles creates synergies and allows the prison to spare time and resources. Indeed, control and care are much more intertwined than these discourses show. Prison officers exert control even when they are carrying out assistance tasks, and surveillance allows them to care for detainees through protecting them from harm inflicted by themselves or others. Also, being the gatekeepers of information and those in charge of the delivery of goods (tasks understood to be ‘assistance’) gives them a certain power to exert control over detainees.

¹⁶¹ This kind of prison (*Justizvollzugsanstalten* in German) are usually reserved for longer sentences, while local jails and prisons like the RP Bern – but also Bässlergut – are used for short sentences or while waiting for a place in a *Justizvollzugsanstalt*.

As mentioned by Georg, there are other institutions as well as many detention centres of different national contexts which prefer to separate the two functions. In Italy and France, for example, the police are in charge of security, while the daily management of detainees' needs is delegated to private companies or NGOs (Campesi 2015a; Tassin 2016). Facility staff being responsible for providing assistance to detainees can be frustrating since the structural condition of confinement is the primary source of their suffering (Esposito et al. 2021). In the context under study, where the same staff members incarnate both functions, this tension is even more tangible, as illustrated by this quote:

“So on the one hand, I have to make sure he’s all right. (...) But on the other hand I have to tell him very clearly what he can do and what he cannot! And for that, I also have to... keep a certain distance!” (Peter, prison officer, Bässlergut).

The duality of their role can be challenging for staff members and confusing for detainees. However, it is coherent with the need to balance proximity and distance, an institutional discourse that structures the expectations held by prison management in terms of staff-detainee relationships. The awareness of a potential requirement for coercion is a further hurdle to establishing a relationship of trust between staff members and detainees. The conditions of this dual role can be problematic in the view of detention staff since in case of use of coercion or sanctions, the detainee can later ‘avenge himself’ – in the words of a staff member – toward the officer, for example by hindering his work or provoking more tasks for him to do.

As we will see later in this chapter, prison staff members differ in their prioritisation of security or assistance as the most important component of their job. Based on her research in two long-term Swiss penitentiaries, Achermann (2008) has delineated five different ‘types’ of prison staff members according to their different understandings of the prison’s purpose and their consequent attitudes toward detainees, in a sort of continuum between security and resocialisation. The first two types focus on the role of providing security both toward the interior and exterior of the prison, either through a strict disciplinary regime exerting a deterrent effect or through surveillance and control. The third type understands their role as more active, aiming at avoiding recidivism through educating prisoners to follow the rules of daily life and cohabitation in the prison. The fourth and fifth types perceive prisoners not only as offenders but also as victims of the system, focusing either on resocialisation or on individual care and the establishment of a close and loyal relationship with prisoners¹⁶².

It would be difficult to draw a similar typology on the basis of my data, partly because of methodological biases¹⁶³, and partly because the attitudes of prison officers seem more ambivalent toward the purposes and methods of incarceration and particularly of immigration detention. Moreover, the way in which the institutions under study understand the assistance role is very different from understandings of resocialisation that – at least in theory – lead the daily working of penitentiary institutions for long sentences like those examined by Achermann (2008). Assistance and care in jails used for pre-trial detention or short prison sentences are usually not directed toward future resocialisation but rather concern the present of prison life. This is particularly true for

¹⁶² Achermann (2008) also specifies how these five types see the purpose and implications of resocialisation in the specific case of foreign national offenders who will or might be deported at the end of their sentence.

¹⁶³ In particular, I refer to the size and composition of the sample of prison officers, which is rather small (seven Aufseher/Betreuer in the RP Bern and five in Bässlergut) and is not representative of the staff make-up. Staff members volunteered to be interviewed, particularly in the RP Bern, and officers focusing on care were overrepresented (this is evident when comparing with informal conversations held during the observations). Another methodological problem is that in the RP Bern I was not able to systematically observe the persons I interviewed at work.

immigration detention, which has no official purpose of resocialisation and preparation for post-incarceration life. Even though the RP Bern and Bässlergut both house inmates serving prison sentences, the purpose of resocialisation was very rarely mentioned in the interviews, due both to the relatively short time prisoners spend in this type of institution and to the high presence of foreign nationals whom Swiss authorities planned to deport after their sentence, making it hard to plan their life after release (see Achermann 2008).

Before going on to discuss the different working styles and attitudes of staff members towards detainees, in the next paragraphs I will focus on staff members' discourses highlighting either security or care as a way of representing their job. In particular, in the RP Bern there was a tendency to describe the work as being shaped more by the assistance than the security aspect:

"Like most people think, [at the beginning] you think only about security and surveillance. But when you work here, you notice that you have to deal with people. You have to assist people, (...). It is not anymore the aspect of security. It is much more [about] care. Sometimes you are a nurse, sometimes you are a psychologist, sometimes you are certainly also someone from the security service, it has also to do with security but the biggest part here, it's about supporting/caring for the people who are here" (Doris, prison officer, RP Bern).

I interpret this focus on care as a discourse of legitimization that addresses criticism of the coercive nature of prison work in general and on the harsh conditions of the RP Bern in particular (see section 6.1.2). In the prison of Bässlergut, this was less the case in the interviews, which showed a more ambivalent or conflicted view of care (see also Tait 2011) and in some cases explicitly focused on security as the main role of prison workers. Some officers considered the balance between assistance and control tasks inappropriate and did not expect the work of prison officers to be so much about assisting detainees, as Jan related in response to my questioning how he had imagined prison work:

"It's a little different. I'd probably have thought more of the security aspect, not the... cultural one. So like being service providers almost for the inmates or... handing out toilet paper, handing out this. These are like... inferior [or low-value] tasks. When you think of prison or when people ask you: 'What are you doing?', [I say] 'I work with undocumented people' for example, 'I make sure no one escapes or flees, or I make sure there's peace and order'. I thought that was more what the job was like, (...) not the common things that you're doing here, more like... in a hotel, serving and feeding food and... I didn't think it was like that" (Jan, prison officer, Bässlergut).

From this quotation and others within his interview, it appears that Jan is particularly disappointed with the proportion of tasks that he considers to be 'service providing'. This dissatisfaction is related both to a feminised image of this kind of task (deriving from the domestic nature of prison life, see Crawley 2004 and section 6.2.5) as well as to his considering the recipients of these services as undeserving. These two aspects render those tasks degrading for some staff members, who often reiterated to (immigration) detainees that that was "not a hotel". By way of example, one staff member related having learned at national training that he had to knock on the cells' doors before entering, and commented: "but this is not a hotel, this is a prison!".

The gendered nature of social relationships in the prison of Bässlergut could partly explain this reluctance toward the presentation of prison work as social, reflected in the widespread use of the term *Aufseher* to refer to prison officers, while in the RP Bern the term *Betreuer* was more common. While conversing in their office, staff members often discussed events that had required the use of force or described detainees' demands as annoying, while they avoided showing empathy or compassion (see section 6.3).

As we will see later, different interpretations of the prison officers' roles led to a certain division in the team, particularly in the RP Bern where the distinction was more explicit. Beyond narratives that serve to create a positive sense of self, the possibility to focus more on one or the other role and tasks according to one's own values and affinities arises from the leeway that officers have in their daily work, to which we will now turn.

6.2.4. Prison officers' use of discretion and different working styles

Following Lipsky (1980), migration scholars have largely explored the role of street-level bureaucrats in the implementation of migration and asylum law, showing how desk workers and counter clerks possess a certain margin of discretion that they use differently according to their own individual and collective rationalities, sensitivities and values (Eule 2014; Gill and Good 2019; Miaz 2017a, 2017b; Spire 2005, 2008). Prison officers in charge of immigration detention can be described as street-level bureaucrats in that they are state workers in direct contact with their 'clients', about whom they must make decisions. However, the decisions they make do not concern their migration cases and deportation procedures directly but rather the daily conditions of their confinement. In fact, despite working in an environment characterised by the presence of strict rules and regulations as well as a clear hierarchy, prison officers still have to make many (usually small) decisions and display certain leeway in the way they carry out their tasks and handle relationships with detainees (see Hall 2012: 15).

In the two facilities that I studied, many decisions concerning detainees are formally taken by the management, for instance those concerning protection measures in cases of self-harm, or sanctions of detainees' problematic behaviour or rule violation. It is thus difficult to study how prison officers use their leeway, because most of the decisions they make go unnoticed in the daily routine of the prison. What does not go unnoticed is the very different ways in which prison officers carry out their mundane work and interact with detainees, which is why this topic deserves closer scrutiny.

Indulgence and exceptions: making use of the room for manoeuvre

One of the ways in which prison officers make use of their leeway is through indulgence – i.e. by overlooking a forbidden object or act – and through small exceptions to the rule, with the aim of keeping the prison functioning smoothly and preventing conflict. This then has the potential to reduce their workload and avoid stressful events. If detainees become nervous or angry with staff, they can disrupt the stability of the detention area or even 'take revenge' through the creation of additional work for staff. Letting a detainee make a call outside the scheduled time is an example of this kind of small exception: "An inmate who calls is a happy detainee", commented a staff member, implying that allowing the call was convenient both for the detainee and himself. Another example was the unscheduled distribution of cigarettes, which an officer allowed as the detainee was being deported the following day and the officer preferred to avoid conflict.

As early as 1958, Sykes observed that prison staff are reluctant to enforce their total power, preferring to "make a series of accommodations to keep the flow of prison life going" (Sykes 1958, in Liebling 2000: 345). Following this argument, Liebling (2000: 347) states that 'underenforcement' is much more common than over-use of power in the prison context, reflected in officers' attempt to move from tension to peace without incident, or in their use of language rather than action to avert the requirement for force. These observations could be understood within Lipsky's (1980) analysis of street-level bureaucrats, who – he argues – tend to protect their well-being and pursue their own interests in their daily work, resorting to coping mechanisms under conditions of uncertainty and work pressure.

Another way in which prison officers use their leeway is through informal acts of sanctioning or rewarding. A security check can be used as an informal sanction, for example. On the other hand, one detainee told me that he received an extra package of cigarettes because the staff members saw that he was generously distributing his cigarettes to other inmates who did not have money to buy them. In this and other cases, staff members rewarded a detainee for a kind gesture. However, several staff members told me that they made exceptions or tried to help detainees only when the detainees were nice to them. With arrogant or aggressive detainees, they were more likely to stick to the rules or did just what was required from them, and nothing more. These ideas were related to a discourse on reciprocity as a pillar of staff-detainee relationships. I observed an example of this in the entry area to the RP Bern, when goods were delivered for detainees from the outside. The employee told me that despite the rule stating that every detainee is allowed to receive up to 3kg of goods, he would sometimes overlook an overweight delivery. At this point, the following occurred, as recorded in my field notes:

“There’s a big, full bag coming in. [The officer] runs everything through the metal detector (...) and realises that the goods are at least one kilo over the 3kg allowed. Although he had just told me that sometimes he turns a blind eye when the goods exceed 3kg, he decides to remove a packet of cookies, and puts it aside to give it back to the lady who brought it. (...) He tells me that the inmate is not a nice guy and so he doesn’t feel like making an exception for him” (Field notes, RP Bern).

This example shows that the ways in which staff members implement the rules can be used as an informal way of rewarding or sanctioning. These are applied according to staff’s individual values, perceptions of deservingness and moral judgements about detainees. Detainees are therefore no longer a homogeneous group, but are perceived by staff members as individuals with different behaviours. However, their judgement is primarily based on their behaviour as inmates, with the consequence that immigration detainees – who tend to be more renitent due to their particular condition and feelings of injustice – are often considered the most aggressive and least thankful detainees, not deserving of the generosity and kindness of staff.

Proximity and distance: different attitudes towards detainees

Prison officers’ attitudes towards detainees depend of course on the personality and background of each employee, but also on understandings of their role and how the staff-detainee relationship should look. One of the most striking differences when I observed prison officers working was the ways in which they interacted with detainees. Some prison officers limited their exchanges with detainees to strict necessity, sometimes even avoiding greetings. On the other hand, I noticed that an officer named Sarah was very attentive, greeting everyone when I was following her in the women’s section. She made small talk with the detainees, and never forgot to say “enjoy your meal” during lunch delivery. When calling detainees for the walk (in the male and female sections), she used a very friendly and respectful tone of voice and questioned (“*Spaziere?*” – meaning ‘walk’), while most prison officers would just yell in the corridor “*Spaziere!*”. Frank, a prison officer working in the RP Bern for a couple of decades, was also very talkative and valued small talk:

“I talk to them, (...) I ask them what they saw on television the previous day, how they are doing... And they are happy (...), they thank me on Friday for the conversations and so on. (...) And they are happy if you know a few words [in their language]. I talk a lot in English, sometimes a little in French or Italian. But we always understand each other. You know, even someone who doesn’t know foreign languages, like [name], he can always communicate. It depends on how you look at them. Even without knowing foreign languages, you can do a lot” (Frank, prison officer, RP Bern).

For Frank, small talk is a way to provide detainees with a little relief from their lonely, boring and uncertain condition of incarceration. He spent much more time than his colleagues delivering food or other items because he always accompanied his gestures with small talk, which a colleague of his made me aware of through a comment on Frank's slow pace. During our interview, Frank also mentioned the different levels of commitment of staff, with some colleagues doing only "the basic work" despite all earning the same wage. As we will discuss further, differences in attitude can lead to tensions within the team.

According to Frank, the ability to communicate with detainees is a matter of will and attitude rather than language skills. In a similar vein, Stefan considers communication to be one of the most important elements of his work and gives several examples of the value he attaches to it. He said for instance that when he wanted to explain something to a detainee, he preferred to open the door rather than speaking through the porthole, as many others did. He also explained that the morning after a forced deportation (Level 2 or 4 of enforcement) – which usually takes place during the night with the involvement of the police and a certain level of violence – he liked to be present in the detention area, at the disposal of detainees, answering their questions and confronting them with the prospect of deportation. One of his colleagues, Luise, said exactly the opposite when I asked her how detainees reacted after the deportation of another inmate:

"If someone addresses me, 'what happened?', then I say 'nothing'. Yeah... what do you want to discuss with them? You don't have to, or you can just say 'he had to go to another prison' – done. If someone says 'what happened last night?' or this morning, you can also say, 'I don't know, I wasn't here', because otherwise they feel that the prison officer was the bad guy, right? So it's better if you're not there" (Luise, prison officer, RP Bern).

This quotation shows the distinct way in which Luise deals with the emotional state of detainees following a deportation. While Stefan prefers to face them, Luise prefers to avoid uncomfortable contact or discussions in which she could be blamed for what has happened. She also deploys specific strategies to cope with detainees' questions, as described in the quotation, such as physically avoiding them, pretending she does not know what occurred, minimising it or even lying about it (defining it as a transfer to another prison).

Explaining and providing information is one of the main areas of difference for prison officers. These have a high impact on the experiences of detainees, given their uncertain and stressful conditions, particularly at their entry point into the facility. For Doris, for example, informing detainees about their situation was a fundamental part of her work:

"I often explain things to them that they don't know. (...) Especially in pre-removal detention, people are brought in and they don't know why they're here. The first important thing is to say they're not criminals. That's the first piece of information I'm gonna give them. Then it's important [to say that] we are neither from the police, nor the migration service. That's the second important point. And then they want to know what happens next. I take my time, I speak for five or ten minutes with these people, and I explain the procedure to them: 'someone from the migration authorities will come, they will notify you of the detention order, (...) papers will be organised... now it's a question of organising your return to another country'" (Doris, prison officer, RP Bern).

Many of Doris' colleagues managed the entries in a very different way, providing only basic information on the cell infrastructure, meals and walk times, or even avoiding explanation altogether, assuming that a detainee would do it.

Doris also talks to detainees about the possibilities of advice and support provided by external organisations. She recommends detainees to contact these organisations and helps them to do so:

"I approach the people, I say to them: 'look, I have a form here. We can fill it out together. The Red Cross comes along. Talk to them, explain your situation'. If someone is in immigration detention for a longer period of time (...), I come with the contact form for the lawyer, (...), I am writing that there is something wrong, this person has been in immigration detention far too long, (...) something is not right, is there something to be done about it? I look, I try to get something done for this person, but it's just so difficult, isn't it?" (Doris, prison officer, RP Bern).

Doris' behaviour is the exception rather than the norm, with few colleagues following her example. It is possible that hiding information about legal advice could be used as an intentional act of hindering access, but in most cases I interpret it as a lack of awareness on the part of the staff, which is also reflected in the widespread confusion about the different services available to immigration detainees in the RP Bern (see section 5.4.1).

Doris also explained that it was important for her to be able to bid farewell to detainees upon transfer or removal, trying to encourage them to think about their future and the paths open to them. This highlights another area in which the views of prison officers differ, namely how they understand and act upon the staff-detainee relationship.

The relationship between prison officers and detainees is not completely left to the discretion of staff members, however. Several aspects are regulated by management. For example, prison officers are expected to use the courteous pronoun 'Sie' with detainees. In Bässlergut, even shaking hands is dictated by rules: a formal handshake is allowed, but not a friendly, more informal greeting. Prison officers are supposed to be able to balance 'proximity and distance' in their relation with detainees. This has become almost a device within the Swiss carceral landscape and is taught at the national training. However, according to a member of the Prison of Zurich airport's management, it remains unclear what this means in practice. Interpretations of this device can vary widely among prison staff members, as I will now illustrate with two examples drawn from the prison of Bässlergut. Peter and Daniel are more or less the same age and they seem to get along well. However, their approach to detainees differs hugely. Peter entertains a very distant relationship with detainees. He usually keeps silent when he enters a prison wing, limiting interactions the absolute necessary. During his interview, he was explicit about his will to maintain a distance from detainees:

"Well, I'm not going to the inmate and, uh... starting a conversation with him! (...) If an inmate comes to me, talks to me, about the weather or something, then I talk to him and... should there be any questions where I don't want to answer, I just tell him that! (...) For example if I was on holiday, then he comes and says 'ah boss, you're back, have you been on holiday?'. 'Yes, I was on holiday'. 'Ah, where have you been?' Then I'd say, for example, 'by the sea!', but I don't say where! [L: Why?] I don't want there to be a connection! (...) For me it would be too close" (Peter, prison officer, Bässlergut).

In this quotation, Peter explains that he does not actively seek interaction with detainees, and he is particularly keen to avoid discussing his private life. On the other hand, Daniel values the establishment of a personal relationship with detainees and likes to talk about private details:

"[Talking with the inmates about personal stuff] is good because it also helps me to react if there is a problem in the cell or something, to understand that situation, see the connections. (...). And then people see that I respect them (...) They see that I am on the same wavelength and look, I'm like you, I'm also here inside with you 8 hours and 24 minutes, and in here we have to cooperate together, don't we?" (Daniel, prison officer, Bässlergut).

For Daniel, having a more personal relationship with detainees is an advantage because this allows him to feel the situation, foresee difficulties and anticipate problems. Being close to detainees seems natural to him, but is also part of his personal strategy of dealing with issues and maintaining prison

order. Later in the interview, he explains that the same goal can be reached in different ways, giving an example. When detainees go to work in the morning, they have to be ready at 7.55. Some prison officers are very strict and close the door at 7.55, so that those who are late cannot join the group. However, some detainees then become angry and this can cause trouble. In order to avoid this kind of problem, he prefers to enter the station a couple of minutes before the cut-off time and tell the detainees to get ready, reminding them that if they do not want the boss of the production unit to make trouble, they need to be on time.

According to Daniel, being flexible and friendly with detainees, establishing a personal relationship with them also results in detainees being more sympathetic to him compared to other colleagues:

“It’s funny, if you observe how people [detainees] behave: if there’s a prison officer who’s a little bit more closed... the inmates are gonna act like a pain in the ass. They come with the same questions, they call him every time, ‘chef I want this, chef I want that’, they call. But with me it doesn’t happen. With me, if they see I’m not well that day (...) I can almost say ‘eh you guys don’t bother me’ [light laughter] (...) and then [they say] ‘today I’ll leave you alone, don’t worry’. And then really, it works. And they understand it too” (Daniel, prison officer, Bässlergut).

Like many of his colleagues, Daniel deploys a narrative of reciprocity. However, in his discourse it is officers’ attitudes that will be reflected in how detainees act and behave. For Peter, on the other hand, detainees’ behaviours are the starting point, according to which he responds: “What’s most important to me is that I look at the person and how he is to me. And the way he is to me, I will be to him! It’s very simple”. These different views of interpersonal relations have a huge impact on prison officers’ working styles.

The value given to communication and personal relationships cannot be reduced to a deliberate strategy to account for prison order. It is rather related to staff members’ perceptions of their self and the ways in which they make sense of their job. For example, a staff member in the RP Bern proudly related the fact that he had never pulled the alarm, which he considered evidence of his ability to handle situations without the need for force:

“I’ve never pressed the button yet. (...) I feel like I can communicate with people and that I don’t use that. (...) I’m proud that I can handle situations without the alarm and I hope I can use my ability to read people, so that I can recognise issues early, before anything happens” (Stefan, prison officer, RP Bern).

Through this kind of statement, Stefan constructs a positive sense of his personal and professional self. In a similar vein, one of his colleagues, who had worked there for 30 years, was equally proud of never having triggered a detainee’s sanction in the disciplinary cell: “I’ve never put somebody in the bunker. I could always resolve conflicts myself. I don’t think that many people can say that after 30 years of service. It’s the way I work”, he said with satisfaction.

How then should we understand and explain these differences in the attitudes of prison staff towards detainees? Crawley (2004a: 168) argued that in the prison context, “these differences derive, in part, from officers’ views on 1) the causes of crime; and 2) the purpose of imprisonment and how this purpose can be best achieved” (see also Achermann 2008). In the case of immigration detention as examined in this thesis, we can argue that the personal perceptions and opinions about the causes of migration and exclusion are relevant to the ways in which prison officers will treat detainees. The perceived purpose of immigration detention, or rather its underlying purposes, also guide the way in which prison officers will approach detainees. For example, Doris had a very critical view of the system of migration and deportation, as well as of the punitive conditions in which immigration detention takes place, particularly in the RP Bern, while other officers found

detention necessary as a consequence of migrants' noncompliance (see section 6.4). Some officers understood the conditions of detention as contributing to the disciplinary and deterrent effect expected of detention. This was particularly the case in Bässlergut, which provides for better conditions than the RP Bern, and in which the device "this is not a hotel" was frequently repeated in order to justify restrictions on freedom or to answer detainees' demands.

Officers' individual backgrounds and past experiences also have an important impact on their relationships with detainees, as can be seen in the case of Ray, who arrived in Switzerland many years ago as an asylum seeker:

"When I open a six-cell, (...) I see people. Unlike some people who work with me, I can tell the difference (...) I see people with their suffering and with their problems. They didn't come here because they expected paradise, but maybe because they were persecuted and went through terrible situations. And I know myself that nobody just leaves their home like that. And that everyone misses it... for a lifetime, when you're no longer at home, then you're no one. And that's why I deal with them differently, and they feel that too, so... it happens automatically, without any great effort, without me having to pretend" (Ray, prison officer, RP Bern).

Drawing on his personal experience of having to leave his country and home himself, Ray has a more profound understanding of migrants' emotional worlds. The boundary that his role clearly establishes with detainees is nuanced through empathic feelings that shape his method of relating to detainees.

6.2.5. Team dynamics

Prison staff rely strongly on team work, which represents a fundamental pillar of prison work. In almost every discussion I had around the working environment, my interlocutors mentioned the importance of the team: "the team is great, it's what keeps me here", said a worker at the RP Bern. Friendships arise among colleagues, who sometimes meet outside the prison space in their leisure time and with their families, as a worker in Bässlergut related. "It's like a big family", said another. Being part of a strong team is especially important given the stressful working conditions and the negative atmosphere related to detainees' enclosure and sorrow:

"[The working atmosphere] is very pleasant, even though it's actually quite stressful at times and we're not confronted with pleasant situations, we actually have a lot of fun together and... we can count on each other. With some employees you may not get along so well on a personal basis, but if someone needs help, it doesn't really matter who it is. That's just very important when I'm in a situation where I have the feeling that... I need help, that I really know that my people are going to help" (Emma, prison officer, RP Bern).

Being able to trust and rely on others is existential when working in detention facilities, which lends enormous value to loyalty (see also Crawley 2004a; Hall 2012). As a member of the management team stated, "you need to trust your colleagues. (...) It's not always the case, but when the day comes, it's important to rely on your colleague and to know that he won't be fleeing" (Fred, member of management, Bässlergut). Another interviewee explained the significance and importance of being able to talk with his colleagues about problems related to work, as he could not share issues with his family. Indeed, the more formal offers of psychological support and supervision are rarely used despite anonymity being assured, staff members preferring to share concerns informally with colleagues. These conditions produce a "tight camaraderie", as defined by Hall (2012: 55), who describes the relationships between officers as characterised by "intimacy". This forms a good basis for the formation of group identity, in which the value of the team is often spoken of in both prisons: "we're a team, we look out for each other, when someone needs something" (information conversation, RP Bern).

Despite this strong camaraderie, different understandings of the job and the prison context lead to internal tensions that deserve closer attention. This is the subject of the next section, after which I will discuss the gender dynamics of team work and the relevance of jokes and banter in the social life of prison staff.

Tensions arising from different understandings of the job and prison context

The leeway left to prison officers in the way they complete their tasks can result in tensions within the team. If one worker is more permissive, this will turn his colleague who is sticking to the rules into “the bad one”, as one interviewee put it. For example, if one staff member makes an exception and gives a detainee a pack of cigarettes, this will cause trouble for employees on the next shift because other inmates will expect the same treatment. Frank found that the tougher working styles of some colleagues made him more valued:

“Actually, it’s not so bad that there are different ways of working. I say it selfishly, if others are stricter – not mean, I would never accept mean – then I and my work are appreciated more. Then detainees are happy to see me. Have you noticed before what happened when this man (...) walked by? Did you observe? He shook my hand” (Frank, prison officer, RP Bern).

The most significant source of tensions is the fact that when a prison officer does not do his job correctly, it impacts the work of those following, multiplying the tasks they need to accomplish and creating expectations on the part of detainees:

“For example, if I say to an inmate ‘yes, I’ll take care of it’, then I do it. But there are some people who say ‘yes, yes, I’ll have a look’, but actually already know ‘pff! I won’t do it, he can kiss my ass’ and so on. (...) and the inmates are not stupid, they get that. (...) And then of course everyone comes to me, or to the two or three who are like me. And then obviously you have double or triple the work to do. And that gets on my nerves... but that’s the result of the [attitude of] other colleagues (...). Some are well relaxed, and the others are the mugs who... have to step on the gas!” (Max, prison officer, Bässlergut).

In this discourse, Max clearly positions himself among those who work hard compared to others who are not committed to their work duties. In his view, these different attitudes reinforce the difference between the two groups of workers because the lack of responsibility and inaccurate work of some produces more work for the others.

Disrespecting the rules or not keeping one’s word with detainees are clear examples of shortcomings at work, but tensions also arise from the leeway that is left to prison staff and the lack of a clear definition of what *Betreuung* (care or assistance) means in the context of the prison and particularly of immigration detention. While for some, it mainly consists of distributing meals, cigarettes and fulfilling basic needs, for others it includes talking with detainees, particularly if they are not feeling well, helping them to understand official letters and to make requests or complaints. As explained by Stefan, working in the RP Bern:

“Many things are a bit left to the discretion of the individual and I find that positive on the one hand, because then I can shape my work myself, but... (...) if you don’t want to work, then you can come and do practically nothing! You can get the work that you have to do done in two hours from seven and then you can... smoke and surf the internet and all that... because actually the ‘Betreuung’ side of things is not defined at all, how far it goes and how far it doesn’t go, eventually what we do and don’t do really depends on the character of the officer” (Stefan, prison officer, RP Bern).

Such ambiguity around the role of the prison officer gives employees like Stefan the impression that the system is unfair because there is no reward for those who work harder. He complained about the

fact that because he is communicative and dedicated to work, he is very often assigned to the most work-intensive area, which is the floor with immigration detention. Stefan also mentioned that some of his colleagues who had worked in the sector for a long time were not committed because they were frustrated by the more permissive nature of the modern prison and believed that the system should be more restrictive.

Indeed, divisions within the team were not only related to different understandings of prison work (see Crawley 2004a: 168), but also of the carceral system itself. This was especially visible in the RP Bern, where the main division reflected a political distinction, according to a member of management:

“We have a split. We still have groupings within the team. But that happens elsewhere as well. So, there are the good and the bad, the right-wing and left-wing. So there’s the... [disguised voice] prison and rule, [normal voice] and then there’s the... yeah, ‘let’s allow it’” (Franziska, member of management, RP Bern).

As stated by Franziska, this division that reflects in the different attitudes of prison staff is actually an extension of individual political opinions and interpretations of the prison world. Immigration detention seems to crystallise this division because it is a highly politicised subject, especially at the time of my fieldwork in the RP Bern in 2015, when much media attention was paid to what had been defined as a ‘migration crisis’. According to a few informal conversations and interviews, some staff members could be extremely harsh when talking about migrants, and some even held explicitly racist discourses. As explained by Stefan, those people were frustrated by an asylum system as well as a deportation system that they considered inefficient because it gave too many rights to foreigners, who they perceived to be abusing those rights:

“There are people who get upset. They are frustrated in some way, they think that the deportation and migration system in Switzerland should be much stricter or very different, or that it is chaos. They don’t trust the system and then it’s really gruelling to work here. (...) I personally have (...) the feeling that Switzerland is well organised in terms of [migrants] and so on. If you don’t have this conviction, working here will wear you down. (...) I don’t get upset if someone is deported in the morning and then he comes back in the afternoon, I don’t take it personally, I don’t have the feeling that I’m a judge, that I have to punish him or something like that” (Stefan, prison officer, RP Bern).

As seen from this quotation, staff members hold different views on how migrants should be dealt with politically and concretely treated. The belief that the immigration system should be tougher and less attentive to human rights lies behind the negative attitudes of certain prison officers, especially with respect to immigration detention.

Female workers and the ‘cult of machismo’

As Dana Britton (2003) has shown, prisons are gendered institutions which reproduce dominant discourses about masculinity and femininity (see also Achermann and Hostettler 2007). Prison work has in fact “long been thought to require the traditional male qualities of dominance, authoritativeness and aggressiveness” while “the traditional female qualities of nurturance, sensitivity and understanding ‘are thought to be not merely unnecessary but actually detrimental’ (Zimmer 1986: 3)” (Crawley and Crawley 2008: 141). In the prison context, it is often perceived that officers must master a masculine image before prisoners and colleagues in order to avoid trouble (ibid.). Ryder (1993: 710) calls this a “cult of machismo, in which almost any sort of moral scruple is despised as a form of weakness”. In this context, employees learn to suppress ‘non-masculine’ emotions, which also prevents them from seeking help when they need it (Crawley and Crawley 2008: 145).

Humour plays a central role in establishing this ‘cult of machismo’, as we will see in the next section on humour and banter. In the prison of Bässlergut in fact, sexist and homophobic jokes are the bread and butter of everyday prison life. While Bässlergut is affected by a certain machismo, the situation in the RP Bern is quite different. This prison has been led by a woman for several decades. In fact, the current director – a woman – has replaced another woman, one of the first to occupy this role. The different position of women in this carceral institution might also be related to the fact that it has been for several decades a prison for both men and women, despite female inmates representing a minority group. An employee who was hired more than 30 years ago and who has lived the long history of the RP Bern related that previously, the director – who was employed by the police – lived in the prison building, and that his wife used to manage the female section. Because it confines female inmates as well, female staff are fundamental actors in the RP Bern, which could not function without them. In fact, body searches must be performed by workers of the same sex as the detainee. Additionally, in order to protect detained women from potential aggression or harassment, a male worker is not allowed to enter the female detention area alone but must be accompanied by at least one other staff member (male or female).

Women in the RP Bern work not only in female but also in male sections. According to my conversations with female workers, they do not seem to feel discriminated against in the workplace as occurs in other contexts (see Crawley 2004a; Tait 2008). However, they remain a minority within the team. The fact that the shift in the female section includes extra tasks such as cleaning the kitchen and doing the laundry reveals a slightly gendered division of labour, despite this being more evident in other contexts (see Tait 2008; Tassin 2016).

With regard to the prison context, some studies have focused on gender in order to disclose differences in working styles and experiences. Often female officers need to prove themselves more – through actions as well as discourse – than male officers as a consequence of “institutional sexism” (Tait 2008: 70). Crawley (2004a) found that despite some exceptions, the majority of women rely on communication and persuasion skills in their relationship with detainees, which are appreciated by most of their male colleagues because of their ‘calming’ and normalising influence. Despite this also being the case for many men working in the prison, “[m]ale officers may, however, experience more peer pressure than their female counterparts to adopt a confrontational style” (Crawley 2004a: 194). The latter analysis could help us to understand the situation in the men-only prison of Bässlergut, where relations with immigration detainees appear closer but at the same time more confrontational in terms of interactions than in the RP Bern. This is also a consequence of the longer time detainees usually spend in Bässlergut and the closer contact between staff and detainees under conditions that allow for more freedom of movement in the carceral space.

In fact, gender appears to be more relevant in the prison of Bässlergut, a male-only prison, to explain its functioning, than it is in the RP Bern. Bässlergut seemed to me to be shaped to a large extent by the need to construct prison work as a masculine job. As noted by Martin and Jurik (2007: 180), female officers pose a threat for male officers because if they “can do the job as well as men, the job is no longer a viable resource for constructing masculinity” (see also Crawley 2004a: 197). One important space for the construction of masculinity was the weekly physical and self-defence training session, which represented an occasion for asserting and reproducing a certain type of masculinity related to physical strength and vigour (see also Tassin 2016). Such training sessions were also a source of division in the team since some staff members with health problems were excluded, which constructed them as weak. Other staff members participated in the training but complained about colleagues enjoying it too much, taking it too seriously and hurting other trainees.

Two staff members related that they carefully chose their training partners, avoiding those colleagues who did not care about hurting others.

Regarding interventions that require the use of physical force, staff in Bässlergut are formally divided into three groups. When a staff member sets off the alarm calling for an emergency situation, one member of Group 1 will be in charge of the operation, while two members of Group 2 will arrive and coordinate with this first staff member. If more staff members are needed, the alarm is sounded again and further colleagues will join. Group 3 is composed of those staff members who almost never intervene, and includes employees with health problems as well as those who are not working in the wings but are in charge of specific tasks such as the house service or the management of detainees' belongings. The division in groups is related both to physical attributes and attitudes. Group 1 is the group of "the large men", as a staff member put it, referring to their physical appearance. In fact, the group is mainly composed of those employees who are young, muscular and physically trained. A member of Group 2 interpreted this division saying that "those who are more '*Aufsicht*' (surveillance/security) are in Group 1, those who are more '*Betreuung*' (assistance/care) are in Group 2". During our conversation, this staff member also implied that employees who form part of Group 1 have a certain interest or even pleasure in the use of control and restraint techniques, adding that these people sometimes look forward to its use. Another staff member stated that some colleagues might intentionally provoke situations that give them a certain satisfaction ('*Befriedigung*'), allowing them to take out frustrations from their private life within the prison space. This seemed to concern a minority of staff members, however, and this idea was contested in several interviews, when staff members clearly stated and explained that using physical force was never a pleasure, it was just a necessary part of the job.

Observing the social functioning of Bässlergut, we can conclude that prison officers construct and perform their masculinity through sexist and homophobic jokes, through the display of masculine physical attributes and force during self-defence training as well as during interventions in the detention area (see also section 5.3.3). This aids their coping with the frustration related to other tasks that they consider to be of a feminine nature or even degrading, such as delivering food or doing the laundry. This 'macho' environment is felt by Andrea, the only female staff member who comes into direct contact with detainees at Bässlergut as a nurse, as well as by the cleaning person, who told me that she felt very little respect from most of the prison guards. This representation of prison work can also have the effect mentioned by Hall (2012: 75) of precluding the part of the work considered more 'feminine', the 'caring' role. This part of the work is in fact little discussed or described as such in Bässlergut, and when it is, it often takes the form of jokes and banter among prison officers.

The role of humour and banter in Bässlergut

Humour is a fundamental aspect of the social functioning of the prison and particularly of team building. It can take many forms: jokes, pranks or banter, and it is considered important by staff members, who enjoy having fun in the workplace: "I can come every day to work, and before starting at 7.15, I've already started to laugh – that is a positive thing", said Daniel.

Humour is a universal component of human life which has been studied by scholars of several disciplines interested in its forms, content, functions or effects (Carty and Musharbash 2008; Zijderveld 1983b). For the present work, I have selected a few sociological and anthropological studies that help us to understand the role of humour and banter in the social life of prison officers. According to my analyses of this topic – which have focused on data collected in Bässlergut – this

role is threefold: it helps defuse tense emotional situations, it fosters group integration and bonding among staff members, and it supports gendered constructions of prison officers' masculinity.

That prison work implies a great deal of emotional labour (Hochschild 2003) has been long acknowledged (Crawley 2004a, 2004b, 2011). In this context, humour functions as a defence mechanism as well as a morale raiser (Crawley 2004a: 87). In fact, many psychological and sociological theories emphasise its "liberating effect" (Zijderveld 1983a: 38). Crawley (2004a: 44) describes humour in the prison context as "a strategy for conveying, disguising and managing emotion" which has a "palliative" role. She points at remarkable similarities between the type of humour one can find in prison and that from the medical context, where humour can be analysed as a coping strategy (Lella and Pawluch 1988). The role of humour in the management of emotions is also highlighted by Zijderveld (1983a: 45): "through the exchange of jokes (...) shocked emotions in embarrassing situations are often made bearable for the members of a group. In a sense, emotional experiences which are hard to express verbally are thus made collective and communicable". This is particularly the case among men, who "manage their anxiety concerning emotional intimacy or other unmasculine practices (...) through joking" (Pascoe 2013: 93).

Recurring to humour and laughter in tense situations might be seen as a way to balance tension. As noted by Zijderveld (1983b), people engage in cynical humour when they perceive that they are in danger, and gallows humour is recurrent in repressive and violent political contexts. In the prison of Bässlergut, jokes among colleagues can be fairly offensive, as explained by Max:

"We have a special sense of humour in here. (...) we make jokes and stuff, but some of them are a little (...) below the belt (...), also sometimes stupid stuff, insults or such... but everything, yeah, just within the context ... And this, this is special here. But I think it's just the nature of things in here, just that you... you have to compensate for what goes on in here. You have to laugh... and we do laugh!" (Max, prison officer, Bässlergut).

This employee understands humour within the context of prison as a compensation for the seriousness and the level of emotional charge of such spaces. Elaine Crawley points out that "[m]uch of what prison officers call 'banter' could be described, in anthropological terms, as 'ritual insult exchange' (Zijderveld 1983) (...) [a] social phenomenon of self-consciously staged verbal contests" (Crawley 2004a: 86). As explained by Max, what can seem to be offensive and exaggerated to an external observer is considered normal among colleagues. In fact, humour and laughter are important elements of boundary-making and part of what indicates group identity, together with jargon, gestures, clothes, etc. (Zijderveld 1983a: 47). The use of comical nicknames, for example, can be understood in this sense. Thus, humour has an important integrating function, and the particular style of humour that is proper to each work context must be learnt on the job, forming part of the socialisation process. Crawley (2004a) observed that new recruits are tested during the first weeks of their employment, needing to show that they can control themselves and react quickly, meaning that they can handle detainees' provocations with similar dexterity.

However, as much as humour unites people, it also performs an opposing role, enacting social exclusion (Carty and Musharbash 2008; Swinkels and de Koning 2016). The most obvious way in which humour among prison officers has an integrating effect while excluding is how it asserts the boundary with detainees. Jokes with detainees are also frequent but generally take a different character. Sometimes staff members make jokes about a detainee behind their back. For example, I saw a detainee talking to his wife on the phone at the migration office's locale, with his back to two prison guards who had accompanied him and were waiting for him. The guards were making jokes out of earshot of the detainee because he appeared to be suffering a scolding from his wife. Joking

about the detainee rather than with him constructs a boundary while creating a sense of commonality between the two officers.

Furthermore, jokes and banter – or their absence – can also be used within the staff group to exclude deviant officers who are not deemed to be part of the group as well as to establish and maintain informal work hierarchies (Crawley 2004a). To be accepted as part of the group, one must be able to take the joke without taking offence, as Max explains:

“[This type of humour] is actually positive, because every now and then it’s really funny, unless they all laugh at you, then maybe it’s less funny. But (...) then it depends on you. There’s jokes flying around about everyone, about me too, but I also make jokes about others and so on, it’s a give-and-take thing! You just have to bear that here. So if you’re a bit soft-hearted, if you emotionally... can’t protect yourself or... you’re extremely warm-hearted or emotionally open or something, um... then it’s hard here, (...) not everyone can cope with that” (Max, prison officer, Bässlergut).

It appears that one has to be strong enough to endure sharp jokes, reflecting the dominant view of masculinity in prison work, related to physical and psychological strength as well as to the ability to control emotions.

The kind of exchange described by Max can be understood as constituting a ‘joking relationship’. Radcliffe-Brown (1940: 196) used this concept to describe a relation of mutual “permitted disrespect” between two persons (or two social groups or *clans*) who are at the same time attached and separated. This type of relation that combines friendliness and antagonism is recurrent across the globe – for example between specific members of the family who became related through the marriage of a common relative. In a joking relationship, “[a]ny serious hostility is prevented by the playful antagonism of teasing, and this in its regular repetition is a constant expression or reminder of that social disjunction which is one of the essential component of the relation, while the social conjunction is maintained by the friendliness that takes no offence at insult” (ibid.: 197).

An analysis of jokes and their content also “provides insight into local norms, paradoxes and taboos” (Swinkels and de Koning 2016: 8). In the prison of Bässlergut, where I spent most of my observation time, the topic of jokes and banter was very often related to gender and sexuality. Sexually explicit jokes are common and “culture-transcending” (Kotthoff 2006: 16), particularly among groups of men, but the amount of jokes centring around sex and sexual orientation was particularly relevant in Bässlergut. Staff members made jokes about one another which rested on the notion that the colleague was gay, as in the following example: I was sitting in the office with a few staff members and we were talking about our places of origin. There were two guys who came from [P.], and an employee said: “[P.] is known for two things: homosexuals and deer. [And] they don’t have horns!”. Staff members exchanged several words designating homosexuals, with different nuances and in different languages. When a staff member bent over, colleagues started to laugh, implying that this was a homosexual sex position. One day, a staff member was joking with a bilingual image vocabulary, trying to make me uncomfortable by reading and asking me the meaning of various words designating the male reproductive organ. At a certain point, he said that the image on the next page (clearly representing a woman) was similar to one of his colleagues, whom he described as androgynous and bisexual. He said that he “liked to be hugged by a big man during the self-defence training” and that he had a “feminine side”, making fun of him in his absence.

Through such sexually explicit and homophobic jokes, prison officers reaffirm their own masculinity, a hegemonic masculinity based on ideals of strength and virility alongside heterosexuality. Homophobic humour has been analysed as central to the formation of male identity

(McCann et al. 2010), and studies looking at teenagers have underlined that “homophobic bullying is a part of boys’ gender socialization into normatively masculine behaviours, practices, attitudes, and dispositions” (Pascoe 2013: 88). McCann et al. (2010: 506) argue that “[h]omophobia is central in shaping heterosexual identity in terms of appropriate sexual behaviour, which in turn shapes social ideas of how successful masculine gender is constructed”. Such humour polices non-conformity to gender norms and sexuality and allows the joke-teller to assert his masculinity and heterosexuality (ibid.).

Certainly, my presence as an external academic observer and as a young woman inhibited certain jokes and triggered others, although it is impossible for me to know how banter and humorous interactions would have looked in my absence. Jokes about my presence were frequent, for example staff members saying to a colleague that he was particularly happy or nervous because of my presence. Mathilde Darley relates similar experiences while investigating the French police. She describes the “hyper-sexualisation of social relations” in the police corps through the will to demonstrate their virility and strength (Darley and Gauthier 2014: 72).

Homophobic humour can take the form of bullying (Pascoe 2013) in the prison, particularly when it targets colleagues who are physically small. However, the latter can also turn the same humour to reassert their masculinity beyond their physical appearance. For instance, one day some staff members made fun of a colleague because of his pronunciation of a detainee’s name. This member of staff was fairly short and slim built. He was in charge of the kitchen and was once described by one of his colleagues “the princess of the prison” for this reason. When he saw his colleagues laugh at him, he reacted by saying, completely out of context: “they are only jealous because I have the biggest penis here” and then leaving the room with a smile.

There might be a reason why prison officers constantly feel the need to reassert their masculinity through reference to sexual attributes and sexuality. My hypothesis is that they do so in order to contrast and cope with what they perceive as an increasingly ‘feminine’ job. Despite having joined the prison service assuming that it would take the form of a security job requiring the use of authority and sometimes physical force with detainees, some prison officers are frustrated by the feminine nature of much prison work, which includes many tasks of daily care (e.g. supplying food and medicines) and housekeeping (e.g. providing cleaning materials and doing laundry). In fact, a staff member told me once, filling the washing machine and shaking his head: “we have to do even this [the laundry]!”. On another occasion, an employee defined prison officers as “housewives”, again referring to laundry duty. Humour thus allows prison officers to play out this frustration and restore their virile masculinity in the way in which they wish it to be presented.

6.3. Relationships with detainees and the establishment of moral distance

Carceral institutions are highly emotionally-charged spaces not only for detainees but also for staff members (Crawley 2004a, 2011), who need to manage their own emotions as well as those of detained persons (Crawley 2011; Fischer 2014). During my research, I saw staff members expressing sorrow for a detainee, joking and sympathising, or trying to see their perspective for an instant. These eruptions of empathy sometimes translated into a softer, gentler attitude or into an attempt to help detained migrants by providing information, advice or favours and concrete actions, as seen in section 6.2.3. However, this was the exception rather than the rule, and during observations I was more often struck by the lack of compassion or meaningful interaction between staff and detainees.

The concept of ‘moral distance’ as developed by Gill (2016) has proven particularly useful in the attempt to understand such apparent lack of empathy. It refers to the “the human tendency to care more for people close to us than to those far away” (ibid.: 4), where distance refers not only to the physical, but is also related to perceptions of belonging and moral value. In his book based on research carried out in the UK, Gill argues that systems of border and migration management are designed in ways that preclude encounters – meant as morally obligating interactions – between bureaucrats and their subjects and thus produce moral distance. Gill provides several examples that sustain his thesis, starting with a programme of the National Asylum Support Service that has distanced decision-makers from the asylum seekers about whom they make decisions through their insulation and the delegation of services to charitable agencies. He then continues with a detailed account of the ways in which encounters and meaningful interaction are averted in situations that involve face-to-face contact. He takes asylum interviews and appeals as case studies and shows how these moments are “carefully choreographed” (ibid.: 79) in order to avoid the interaction being transformed into an encounter.

One of the reasons why these moments – interviews and hearings – do not translate into an encounter is that they are based on a single contact, albeit one that can last several hours. Indeed, frequent contact is one of the conditions that leads to a contact being meaningful and prejudice-reducing according to psychologist Gordon Allport, referred to in Gill’s book. However, Gill shows that even within contexts of sustained contact with their subjects, border control systems can maintain high levels of indifference. In order to make this argument, he dedicates one chapter of his book to an analysis of UK immigration detention facilities. Drawing on Simmel’s analysis of modern urban life, in which different individuals come into frequent contact and develop a ‘blasé outlook’ towards needy others, the author argues that situations of sustained contact with the subjects of migration control can give rise to a different form of indifference, based on overfamiliarity with their suffering.

According to Gill, moral distance is produced both through institutional tactics and psychological techniques. Among the former, he mentions for example “the spatial churning of detainees from centre to centre [which] exposes staff to a greater diversity of suffering and forces them to step back from close empathetic relationships with individual detainees” (2016: 110). As a consequence of frequent transfers, “staff (...) begin to view the asylum seekers in their care as a collective rather than as individual” (ibid.: 122). Features like frequent transfers and “the institutionalised trivialisation of detainees” (ibid.: 110) render insensitivity both more imperative and “easier to internally justify” (ibid.: 118). On the other hand, staff members use psychological ruses in order to “avoid the risk of becoming overwhelmed” with detainees’ suffering, like entering a ‘state of denial’ “to hide the truth about trauma and atrocity” (ibid.: 109). Such psychological techniques can be understood according to Gill as a form of self-care.

In this section, I investigate how several institutional aspects such as the fragmentation of the deportation system, the rotation of staff within different areas of the prison or the requirement to maintain professional distance in the relationship with detainees facilitate the establishment of moral distance among prison staff. Then, I turn to some psychological strategies of distancing that staff members deploy to cope with the difficulties of their job before ending with a discussion on how indifference in the prison context is above all a matter of performance, needed to preserve both one’s well-being and reputation within the team.

6.3.1. Fragmentation of the deportation system

The allocation of spaces for immigration detention within prisons forming part of the criminal justice system creates a certain institutional distance between those authorities in charge of operating detention and those in charge of enforcing deportation. This reflects a broader fragmentation of the system of migration and border control and can be seen as part of an institutional technique of distancing decision-makers from the people about whom they make decisions (Bosworth 2014; Gill 2016). In this context, prisons find themselves undertaking a fundamental role within the system of migration control and deportation without their staff having any decision-making power or enforcement competency over deportation itself. The delegation of tasks related to migration control to a penal institution can be understood as a transfer of competencies within the state and an example of crimmigration enforcement (Stumpf 2006, 2015).

This structural position has an important effect on the role and self-perceptions of staff, whose professional identity is, as underlined above, strongly related to the criminal justice system. Prison staff perceive their role as rather separated from the ‘deportation machine’ (Fekete 2005), consisting exclusively in the surveillance and assistance of detainees during their confinement, while their fate is decided elsewhere by immigration officers. The situation is very different in Sweden, where staff employed in detention centres are very much involved in the deportation process, acting to encourage and motivate detainees to cooperate (Khosravi 2009). The fact that immigration authorities and the prison have different goals is well expressed in this quotation of a staff member of the RP Bern who, asked about the goal of immigration detention in general, answered:

“The goal? The goal is to take good care of people here in prison, [to make sure] that they are not harmed or seriously damaged. And finally, the goal of those up there [the authorities] is that they leave the country. (...) but for us it’s... it’s that we take care of them, and hope that we don’t have any suicides, so that everything goes well” (Dario, prison officer, RP Bern).

Furthermore, prison staff are not actively involved in deportation attempts, which are under police competence. If removal happens with the compliance of the detainee, staff generally accompany the detainee to the exit, where the transport service in charge of taking them to the airport is waiting for them. In case of forced deportation on a special flight (and sometimes also on a scheduled flight), police enter the detention area and usually immobilise the detainee in their cell. Prison officers accompany and guide the police through the prison space, opening doors, but they generally do not intervene.

The institutional separation from decision-makers means that detention staff are usually unaware about the trajectories, deportation routes and legal cases of detainees. Such lack of knowledge and involvement in detainees’ individual cases facilitates the process of moral distancing since it relieves prison officers from moral responsibility towards detainees. Having no decision-making power is a comfort to prison staff (see Enjolras 2010: 222 for similar results), as appears from this quote:

P: If somebody has to leave [the country] or not, that is not MY decision! I have to make sure, first and foremost for security and that everybody’s fine, physically and mentally. And with that my job is done! I can go home happy.

L: Ok, you don’t feel responsible for... the situation, right? You have not decided...

P: I have not decided that, I have not caused that... This is a JOB (Peter, prison officer, Bässlergut).

In the context of the UK, Bosworth (2014) relates that immigration removal centres are under the responsibility of the Home Office, which contracts private companies for their daily management. The Home Office deploys local immigration officers on site who are in charge of mediating

between detainees and immigration caseworkers, while the latter – in charge of decision-making – are kept physically distant from the detainees about whom they make decisions so that they are “sequestered from the potentially destabilizing effects of facing up to those they wish to remove” (ibid.: 18). Bosworth argues that such division of labour reinforces estrangement and assuages guilt. The same can be said for the Swiss context, where the institutional separation between custodial institutions and migration offices is an additional source of fragmentation and distancing. Such separation is actively sought and maintained by prison administrations:

“We try to get involved as little as possible [in the procedure], so that there is this separation of powers a little bit. That facilitates our daily work a lot because we are not here only to open and close the door, carry out [security] checks in the cells, body searches, etc. We are also here to look after, to take care of these people, to talk to them. (...) And if they have the impression... they always have the impression (...), the suspicion that we are working together [with the police and migration office]. And that’s the reason why we attach great importance to this separation of powers. (...), often we tell them ‘listen, here we are [responsible] for eating, drinking, sleeping, security etc., or if you have a health problem, etc., for the rest, all that concerns your detention, it’s not us, it’s the migration office [who is responsible]’” (Fred, member of management, Bässlergut).

As appears in this quotation, prison staff use their position in a strategic way in their interactions with detainees. In fact, prison staff often remind detainees that they are not from the immigration office, that they do not know anything about their case or that the detainee must wait to ask his questions until someone from the immigration office can respond. Highlighting that they are powerless over individual cases helps staff to build a relationship of at least minimal trust with detainees, while at the same time retaining distance from them and their fate.

If we can analyse such distancing as a coping strategy or a defence mechanism, we can also understand it as a discourse of legitimation. This is particularly tangible in the discourses of the directors of both prisons, who underline their role as merely executive:

“Anyway, we are an executing institution! We do not decide, we are simply executing what we’re told to! We keep people as long as they [migration officers] need them and then they’re... gone” (Franziska, member of management, RP Bern).

Bässlergut’s director answered my question about the goal of immigration detention and the specific role of the carceral institution thus:

“You have a law, which you have to implement accordingly. But the acceptance among the population or even for the affected inmates themselves, (...) it’s not always easy to understand why. And we’ve also had repeated discussions with institutions that ask the question, which is certainly justified but I am not... authorised to answer it conclusively, because I am an executor of the law, an extended arm, and the adaptation must certainly happen much earlier. (...) I implement the rule of law. I am responsible for a constitutional and conforming enforcement. Everything else must be decided at another level” (Georg, member of management, Bässlergut).

Despite this very clear stand of the management, my field notes contain a few hints of a light involvement of some prison officers in the deportation procedure, and not only through the confinement of detainees. In Bässlergut, for example, migration officers of Basel-Stadt have their office within the prison building. They walk in the prison corridors and sometimes take breaks in the cafeteria. Although they are clearly not members of prison staff, they do have occasional contact with prison officers and exchange small talk. This connection also means that prison staff can contact migration officers whenever they need information about a detainee. Staff members explained during interviews that they exchange information if the detainee is problematic and could

endanger others, himself or the prison order. In fact, when a detainee is particularly nervous, it can be useful to know more about his case:

“We also want to know from time to time, what’s going on when someone is a bit conspicuous! (...) Well, we just ask (...) and then they say for example ‘He’ll be back on the street tomorrow (...)’ This is a great hint and help too, (...) then we can go and talk to him ‘You’re leaving tomorrow (...)’. These are communicative tools for us, we can have a de-escalating effect (...), it is quite helpful” (Max, prison officer, Bässlergut).

A colleague of Max’s, Daniel, also explained that he talked to migration officers when he saw that a detainee could benefit from receiving information on his case. In the RP Bern, prison officers have frequent contact with migration officers. The two often work together when communicating with detainees in the detention area (instead of doing it in an office). Lucia (migration officer) explained that this method is particularly suitable both because the prison officer hears the conversation and acquires knowledge about the case, and because the situation is more comfortable for the detainee, who knows prison staff already, and trusts them more than (often unknown) migration officers.

In other cases, staff members related their soft attempts to convince detainees to comply with migration authorities and accept their removal, trying to avoid a special flight. Stefan for example, likes to talk to detainees the morning after a deportation as related before:

“I like to confront people afterwards. (...) Usually, when a black African leaves, then all the black people have questions afterwards, what happened to him (...) and did he fight back and where is he going now and so on and then you can tell them, ‘yes, anyway that can happen to you too, yes, you’ve already got the information x times, you have to leave Switzerland and that is meant seriously, and that’s the last resort’. And that gives food for thought...” (Stefan, prison officer, RP Bern).

In a similar vein, Doris also attempted to advise detainees not to wait for a special flight but to embark on a plane and avoid such use of force:

“And then comes the moment when I know exactly, now they have the last chance, they have refused the flight once, they get another chance, a second time. I go up to the people and say: ‘I know... the future in Italy or wherever is not good, but in the end it’s better than sitting in prison. Because freedom is the most important thing. When you’re in prison, you can’t do anything for your family’” (Doris, prison officer, RP Bern).

Such examples show that despite not feeling part of the ‘deportation machine’ (Fekete 2005), prison officers do participate in the procedure and sometimes can even have an impact on detainees’ futures. Therefore, their discourse highlighting the separation from the deportation system can be understood mainly as an effort to legitimise their position through denying any responsibility. To conclude, the fragmentation of the deportation system has an intended effect of producing moral distance: on the one hand, prison staff who daily rub shoulders with detainees have no decision-making and feel powerless; on the other hand, those in charge of making decisions and organising deportation are physically and institutionally removed from such daily contact with detainees.

6.3.2. Material aspects and institutional tactics

The architectural configuration of the prison and everyday spatial practices contribute to shaping the relationships and distinctions between staff and detainees (Kynsilehto & Puumala, 2017: 209) as well as their interactions (Enjolras, 2010). Detainees and prison staff have very different experiences of the carceral space. Detainees spend most of their time in their cell or wing and their spatial perception of the prison is partial. Moreover, they depend on prison staff for access to other spaces such as corridors, visitors’ room, the courtyard, etc. While detainees’ everyday life is

characterised by immobility, prison officers on the other hand experience space in a very mobile way, their job requiring them to constantly move within the carceral space.

This spatial organisation and separation of bodies is particularly noticeable in the RP Bern, in which time is marked by the accompanying of a group of detainees to their daily walk every hour from 9.00 to 17.00 with the exception of lunchtime. Every time the staff follow a very precise procedure: they walk to the relevant floor, open the cells one by one and announce the walk, then they accompany those who want to the exercise yard. While waiting for the detainees to gather next to the stairs and while walking to the yard, staff and detainees always remain well separated and usually do not interact. During the walk, detainees can socialise, as can staff members, who often take a coffee break while the detainees walk. These are the only moments of a shift when all staff can gather together and socialise. Before the end of the walk, prison officers gather in the monitoring room and watch detainees through black glass, sometimes commenting on them. Detainees, on the other hand, cannot see the prison officers, another example of the asymmetry of power between the two.

Besides the obvious spatial and material separation playing between staff and detainees, there are specific institutional features that mark this distinction and prevent relationships emerging. I would like to present two of these features here: mediation and turnover.

Mediating interaction

There are several ways in which the interaction between staff members and detainees is mediated in the facilities in this study. First, there is an architectural barrier to communication constituted by the porthole through which most interactions occur in the RP Bern, and some also in Bässlergut (particularly outside cells' opening times and in the waiting cells situated in the area for admissions). This porthole in the cell's door prevents full interaction and sight is restricted to the eyes alone as long as both bend to the height of the porthole. Staff members can also open a small window just above the porthole which enables them to look inside the cell. The same cannot be done from inside. During my observations in the RP Bern, interactions between prison officers and detainees were generally limited to the strictly necessary, which was less the case in Bässlergut (where cell doors are open for the whole day). One staff member in the RP Bern said that when he had to talk to a detainee – for example to explain his situation when migration authorities had failed to do so – he did not like to do so through the porthole but preferred to open the door and talk to the detainee in the corridor, especially if he was held in a multiple cell. However, he said that many of his colleagues would not take the time to do this. In one case, an officer who I was accompanying was keen to avoid a detainee who was in search of interaction – he had been told the date of his flight to Italy and was showing a paper to the officer through the porthole. The officer simply said a couple of words through the porthole but initially avoided any further interaction or explanation. A few minutes later, the young male detainee claimed attention in another way, by harming himself, and was brought to the security cell (this event is related in section 5.3.2).

A second way in which interactions are mediated is through technology, especially by way of an intercom through which detainees can call staff members from their cells. During the day, calls arrive directly at the floor office, while during the night they are taken by security staff at the command centre. It is also possible to use the intercom to communicate to detainees from outside the cell area. In Bässlergut, the intercom was often ringing in the staff's office. Detainees called to ask for items (e.g. toilet paper), asking to make a free call to their lawyer or some other authority, or to ask or communicate something else. Staff members often answered with an annoyed tone, especially if the request had already been made once before and not dealt with the first time. The

use of the intercom made it easier for staff members to stop the conversation, by saying “that’s just the way it is” or “you have to wait” before cutting the call. The mediation of the intercom was confusing and irritating for detainees, who did not know who they were talking to. I heard one detainee ask the name of the officer to whom he was speaking, maybe because he wanted to complain about his behaviour, but the officer would not tell him his name.

Besides the porthole acting as a physical barrier and the intercom being a technological intermediary, I detected another measure that increases or facilitates distancing from detainees through mediation in both prisons. This consists of the development of written communication systems in which detainees are required to use forms to make requests. In Bässlergut, a form is available to detainees through which they can make contact with medical care, the chaplain and immigration authorities. They can also use these forms to make complaints or requests (for example, a cell change) to the prison management. Other requests such as making calls to authorities or lawyers, which is allowed for free, can be done orally and are dealt with directly by prison officers working in the detention area. In the RP Bern, the use of forms is broader since any request must be made by use of a form. According to the rules, all forms are submitted in the morning, but staff members usually accept them at later times as well.

Written communication is a problem for detainees who cannot write – at least not in English or in one of the national languages – and who have to rely on other detainees to write down their requests. The use of papers reifies demands, which have to be short and clear and does not leave room for uncertainty or doubt. In addition, particularly in Bässlergut, the use of forms was sometimes only a formality with staff members writing on the paper themselves and asking detainees to sign it, in order to accomplish the task as quickly as possible. Despite this dysfunction, the use of written communication is also seen by prison management and staff as a sort of educational tool in which detainees must follow the rules and adapt to a bureaucratic form of governance.

Although all these measures were introduced and might be legitimised as management tools rendering the work of officers more efficient, they are also ways of creating distance between staff and detainees through mediation (Bauman 1989). The use of forms to make requests is the best example: staff members become intermediaries who collect and transmit requests. They are stripped of their leeway in managing the requests, and can justify any decision by saying that the decision was not theirs. Interactions taking place under such conditions, instead of creating proximity or bridges between the two groups of detainees and prison officers, contribute to maintaining the distance between them. Such acts of distancing or mediated communication can also be seen as mechanisms of objectification (Bauman 1989; Bhui 2013) in which the “detainee as person falls away” (Hall 2010: 891).

The rotation system

Another organisational measure with significant consequences for the relationships between staff and detainees is the rotation system, in place in both carceral facilities under scrutiny. As mentioned, staff members work in turns in the different areas of the prison and partly also in different functions. Taken together with the turnover of detainees, the rotation system obstructs the establishment of personal relationships, reducing the amount of time individual staff members spend in direct contact with any detainee passing through their carceral institution. This is particularly important in the RP Bern, a larger prison with a very high turnover of detainees. A staff member told me that it was not worth learning the names of the detainees because the next time you worked in the same section, they would have moved on. Given the number of detainees with whom

staff members deal, the rotation of staff constitutes a powerful mechanism of distancing actually desired by the management, who argued: “We do not want to create relationships that are too close, because we do not offer a therapeutic setting, and we do not work with a system of reference persons”. It can thus be understood as one of those mechanisms facilitating the detachment of staff from the pains of detainees, diluting “the depth and quality of relationships” (Gill 2016: 118). Under these circumstances, “staff (...) begin to view the [people] in their care as a collective rather than as individuals” (2016: 122). The turnover of detainees, matched with the rotation of staff, fosters staff members’ need to be detached and distracts them from the individual pains of detainees.

The rotation system in a context of ‘crimmigration’ also affects staff members’ views and representations of the persons under their charge. Given the spatial overlap of criminal and administrative detention and detainees, and given the constant movement of staff between areas dedicated to those different types of confinement, detainees under different regimes become almost interchangeable, which projects a moral stigma related to crime towards those persons detained for immigration-related goals (see section 6.2.1).

A question of roles: professional ethos and distance

The institutional context not only impacts staff-detainee relationships through material, spatial and organisational aspects. It does so as well through the establishment of a rhetoric of the prison officer’s role as requiring to maintain professional distance from the detainees in their charge¹⁶⁴. The necessity of finding a balance between proximity and distance is even stated in the ‘code of conduct’ that employees must sign in the RP Bern and is considered an essential skill for prison officers, requiring intuition and experience. A member of Bässlergut’s management explained:

“We expect a professional relationship: managing proximity and distance in dealing with inmates (...) You have to reflect on the relationship: where do I stand? Where does the inmate stand? They are inmates, right? And I am here for quiet, security and order. (...) You have to reflect on yourself every day: ‘where am I? Am I too close?’ (...) If you have a hand-shake [in English] with an inmate, I mean not a normal handshake, but a hand-shake like you do with a mate, of course that’s not possible, not at all. This is a no-go” (Georg, member of management, Bässlergut).

A ‘professional relationship’ for Georg therefore requires distance between detainees and prison officers, which also applies to seemingly trivial acts like hand shaking. The management of Frambois has a different take on the issue, requiring from prison officers that they shake hands with detainees, listen to them and get to know their stories and display “a great deal of empathy” (conversation with the director).

Many interviewed prison employees mentioned the need to learn how to balance proximity and distance, despite the different interpretations of this balance. Lena, working in the medical team of the RP Bern, explained that setting boundaries with detainees was fundamental for her, and that she always tried – and succeeded – to maintain distance from the individual stories and situations of detainees: “I like it, to keep the balance, between clearly supporting them medically, but only to a certain extent”, she said.

Being able to switch off at the end of their shift is another important coping strategy of prison officers. Doris, for example, talked about her work being characterised by ‘positive stress’ which

¹⁶⁴ In Bässlergut, for example, it is required from staff members that they communicate if they personally know a new inmate, so that they will not be assigned to the section where he is held. This is done to avoid a potential conflict of interest.

dissipated on her leaving work. Lena also talked about her ability to clearly separate the professional and private spheres. She also related about quickly forgetting past cases as a skill that she learned and honed in her previous job on the ambulance. Indeed, Crawley (2004a) has noticed many similarities in the ways in which nurses and prison officers cope with their emotionally demanding jobs.

6.3.3. Psychological techniques and the management of emotions

The ability to switch off after work and to quickly forget about the pains of detainees can be defined as a psychological technique to cope with the difficulties of prison work. Other strategies are necessary for prison officers to manage their own as well as detainees' emotions. Prison officers' displays of empathy or compassion are the exception rather than the rule. However, my intention within the current analysis is not to negate that staff members' have such emotions, but rather to understand how those are kept under control through (partly intentional) institutional and psychological strategies.

During my field study, staff members did feel empathy for some detainees, usually because they appreciated their behaviour as inmates and their positive effect on the detention atmosphere, sometimes also because they had something in common with the detainee: a similar experience, a hobby or faith. However, most cases that led to compassion were related to family separation and situations that involved children, such as cases within Bässlergut of fathers who were detained while the wife and children remained in the asylum camp, or mothers detained with their children or separated from them, which sporadically occurred in the RP Bern:

"Sometimes there are also families, fortunately not so often (...) The most difficult thing is when you have to separate families... Twice that I've seen that. We had to separate a mother from their children. That was... that was quite hard, yeah. (...) Not only for me, I noticed it was very hard for everyone.... we're used to a lot of things, so you get pretty strong here. You can see blood, you can also see dead people, yeah, it's... it's bad, but it's part of the job. But something like that, I realised that it was pretty hard for everyone, to see mother and child being separated" (Anton, prison officer, RP Bern).

The case related here left nobody in the team insensitive because it affected the universal and fundamental bond of mother and child. The parenting experience is an easy one to connect with for those staff members who have children themselves. Furthermore, children are seen as the innocent subject par excellence – their condition being dependent on the parents' choices – and thus particularly deserving of compassion. Feeling sorry for them appears justified in the prison context – which is no place for children – while officers usually show less compassion in cases involving adults. According to Crawley (2011: 260), "officers try to ensure that when they perform emotion, they do so in the 'right' circumstances and settings". Expressing compassion for children or parents separated from their children was socially accepted in the facilities that I studied.

Crawley (2004a, 2011) has investigated the emotional worlds of prison officers, drawing on Hochschild's concept of 'emotional labour' defined as "the management of feelings at work, in order to create a publicly observable facial and bodily display that is appropriate to, or consistent with a situation, role or an expected job function, and with socially accepted norms" (Crawley 2011: 259). She observed in particular that some emotions are more acceptable than others in the prison context. For example, expressions of anger are much more accepted than anxiety or fear, which are seen as expressions of weakness (Crawley 2004a). Crawley relates this to the gendered representations of these emotions and to the machismo that underlies much of the prison occupational culture. Officers thus learn to perform courage, confidence and indifference, and to

appear confident and authoritative (Crawley 2004a). “[M]ale officers often tend to be particularly careful, in their interactions with prisoners (and indeed fellow officers) not to show qualities traditionally regarded as female, e.g. sensitivity, sympathy and compassion” (Crawley 2011: 261).

In fact, the protection of their own safety was an issue for staff members, who sometimes spoke about situations that could endanger them. Lionel, for example, said that his first impression when he started to work in Bässlergut was that one could die there. Such risk or danger is presented, however, in an objectified way rather than in terms of the emotions it could trigger. Fear is taboo in prison work and is not a legitimate emotion for prison officers (see also Crawley 2004a). Anxiety is also aroused by the risk of detainees’ suicide, which besides the legal consequences that could arise, is a traumatising event for staff members.

Following Crawley, we can argue that what looks like a lack of empathy in the eyes of an external observer can be an intentional performance – particularly by male officers, but sometimes also by female officers who want to assert their role and equality with male colleagues. This would explain why sympathetic or empathetic comments about detainees were more common in discussion with me – particularly in private – and very rare in wider conversations among staff members. If staff members learned how to manage emotions such as empathy and compassion towards colleagues and detainees, they also developed strategies to manage these emotions and prevent their eruption. Crawley (2011: 262), for example, talks about “humour, strategies of de-personalisation (...) and a rhetoric of detachment” as coping strategies to get through the working day. I discuss some of those strategies in the next section.

Psychological strategies of moral estrangement

When discussing empathy and compassion, some staff members talked about a past when they worried more about detainees, but argued that they had ‘got used to’ many things (see the quotation by Anton in the previous section) and had hardened with time:

“With that woman who had to go back... to Hungary, for example. I have already heard that the situation is bad for women in prison [there], so I feel sorry, I find... I find it so bad. But... I can’t help her, I cannot do much and with others or in general, yes, you quickly get a bit hardened. (...) she is feeling bad, really bad, she is crying the whole day. Ehm... you see it so much, you see it every day, it becomes almost normal. You can’t really do anything” (Emma, prison officer, RP Bern).

This quotation shows that indifference can be also a painful and guilt-charged emotion, which ensues not only from constant and persistent confrontation with detainees’ suffering but also through feelings of powerlessness (and inability to stop such suffering). In this case, empathy is a source of frustration and therefore needs to be managed and/or prevented. It is also possible that being convinced of powerlessness and inability to provide change is a strategy for coping with empathy. Indeed emotions such as empathy and care are “sometimes central to the mechanisms through which indifference is achieved” according to Gill (2016: 135). Walkup (1997: 44) also found strategies of detachment arising among aid workers in the humanitarian field, adopted “to reduce the level of distress caused by their limited capacity to help”. These strategies included avoiding interactions with client populations, focusing on paperwork and developing a dark sense of humour.

One psychological strategy of moral estrangement consists of mistrusting or questioning the stories of detainees. When I asked one officer whether there had ever been a detainee who had particularly touched his emotions, he answered as follows:

“Now, that’s a difficult question to answer. Because of course I hear a lot and I am told a lot! But in my experience, I have to say that I am careful [with] what is true and what is not! Much has been told, which was not true. I mean, you hear something from an inmate and at the same time, I don’t know now if this is allowed or not, but... you come into conversation with a person from the migration office and ask about this person, and you have a completely different story. So touched... [L: Not really?] No” (Peter, prison officer, Bässlergut).

Peter was not the only prison officer who expressed such suspicion. Several staff members mentioned difficulties distinguishing between truth and lies in the allegations of detainees, referring for example to allegedly false identities they had given. The difference between detainees’ stories as related by them and by their immigration files (or by migration officers) is often turned into a mechanism that facilitates distancing (see Gill 2016: 123).

Another psychological strategy preventing the emergence of empathy and compassion is convincing oneself that detainees – at least some – deserve to an extent what they are going through, either because of their alleged past criminal or system-abusive behaviour, or because of their current bad behaviour as inmates. This leads us to understand discourses about detainees that are charged with contempt as strongly related to the need for distancing. Indeed, for many staff members, empathy is conditional on the degree of respect and compliance that detainees display in their daily life in carceral facilities. During an interview, Lionel talked about feeling pity for some detainees and detecting an incoherence in the system, which would remove people who “are good and do everything in order to be able to stay”, while others who “do nothing and just want money” would often be released. As we will see in section 6.4, these moral understandings strongly impact the ways staff members make sense of immigration detention.

Acts of self-harm and threats of suicide were often minimised and sometimes even ridiculed by staff members, particularly when they were understood as ‘fake’ attempts. Fred, for example, implied that a detainee who threatened to take his own life while “scratching his arm with his nails” was not very credible. The emotional complexity of acts of self-harm was often reduced to their allegedly instrumental use in a sort of over-rationalisation of detainees. A member of management of the RP Bern qualified such acts as ‘abusive’ (*missbraucht*). In a few cases, acts of resistance were even described as selfish or awaking antipathy, particularly when they involved the use of excrement (see section 8.4).

In other discourses, detainees were understood as irrational and culturalised, as in the following quotation:

“Yesterday, someone came in who’s cut his stomach again and again because he had headaches. For me there is no connection, the connection could only be made by a psychiatrist. (...) You don’t know exactly, does he want to achieve something? Yes, but he hasn’t made any demands. (...) That’s a bit of a stereotype of Algeria for me, (...) suddenly they can’t breathe anymore, ‘I can’t’, and I think to myself: ‘he’s been breathing for thirty years and now he’s no longer able to do it’, and then it turns out (...) he just wants a cell change. And suddenly they harm themselves, you can’t really make sense of it. This is a group about which I will sign up for further training” (Stefan, prison officer, RP Bern).

A colleague of Stefan described cases in which detained migrants would ‘go crazy’ (*spinnen*) and break things when they were about to meet migration authorities. However, discourses that present acts of self-harm and suicide attempts as over-rational or irrational both fail to consider the highly emotional pressure under which detainees live and the political character of these acts (Puggioni 2014b). Following Gill (2016: 123), the belittling of detainees’ experiences and the consideration of “their suffering and confusion as trivial and insignificant” serve as strategies to facilitate moral

distance. Staff members avoid the risk of becoming overwhelmed through entering a ‘state of denial’ that hides the truth about trauma and atrocity (Gill 2016: 109).

The emergence of these individual and collective strategies can result in institutionalisation, providing the structure for a common organisational culture (Walkup 1997) based on moral distance (Gill 2016), in which this type of discourse is common and acceptable, while discourses of sympathy and empathy – with their disruptive potential (Hall 2010) – are rather exceptional and can even be seen as problematic.

6.4. Understanding and legitimising immigration detention

The institutional context in which detention staff works – that which I have previously called a ‘crimmigration context’ – strongly affects how they understand immigration detention. In fact, employees of Bässlergut and the RP Bern clearly rely on the analogy with imprisonment to make sense of pre-removal detention and their work within it. As we will see in the next sections, they draw on notions of (il)legality, (un)deservingness and ‘dangerousness’ to build legitimacy through processes of othering and the construction of the detained migrant as a threat to the Swiss society. Furthermore, the interpretation of detainees’ behaviours through the cultural lens makes it easier for them to construct detainees as not belonging to ‘us’ and thus excludable, so categories of race, ethnicity and religion are also mobilised to make sense of immigration detention.

Together with narratives about prison work being predominantly about assistance and care and their performance as professional, narratives about immigration detainees as being partly responsible for their condition (6.4.1), abusing the system and thus undeserving of state’s protection (6.4.2), inherently different and unassimilable (6.4.3) and potentially criminal and dangerous (6.4.4) also sustain prison staff in their attempt to give legitimacy to their own work of controlling migrants pending deportation (see also Ugelvik 2016b). The following sections do not intend to present a coherent and monolithic discourse of prison staff, but rather to identify specific tropes and topics that are recurrent in the discourses of its members. In order not to fall into the trap of overgeneralisation, I will dedicate the last section to some less dominant, more critical views on immigration detention encountered in the field.

6.4.1. A necessary evil? Understanding detention through illegality

The first way in which many staff members understand immigration detention is through the lens of ‘illegality’. Despite being aware that immigration detainees are not incarcerated for a criminal offence, they often argue that ‘they are not criminal, but... they are (still) illegal’. This simple sentence is powerful in that it operates simultaneously in two directions, both distinguishing and merging the two categories of illegality and crime. Their rationale is as follows: detainees may not be criminal, but like criminal convicts, they are deprived of liberty because they have violated the law. Illegal entry and stay are even condemnable through penal detention, which contributes to producing confusion between the categories of criminal and administrative detention¹⁶⁵. Such analogy between prisoners and administrative detainees is materialised in the work of prison officers, who have to deal with both categories every day, and in the conditions of detainees, who are held in the same space and in a very similar regime. It is not surprising, therefore, that prison staff interiorised and incorporated this ambivalence and confusion in their understanding of immigration detention and tried to create coherence through relying on the criminal justice context (see Bosworth 2014).

¹⁶⁵ Migrants charged with illegal stay or violation of an entry ban can be detained in the same institutions in the section dedicated to criminal offenders.

Rather than being acknowledged as a consequence of a restrictive border and migration control system, ‘illegality’ is presented in staff members’ discourses as a reified category (De Genova 2002) and as a “moralised condition” (Hall 2010: 893). In a similar way to penal prisoners, detainees are seen as having broken the law through their illicit presence on Swiss territory: “they entered illegally”, “they’re not allowed to stay here”, “they should have left by themselves” were recurrent statements during participant observation. A staff member added: “we also cannot travel to another country without papers!”.

This view enables staff to blame detainees for their own detention (Khosravi 2009; Ugelvik 2016b), while illegality is perceived as an individual choice (Hall 2012). On the one hand, staff members highlight that if they had left the country by themselves or had collaborated with the authorities, they would not have ended up in prison. Such discourse, however, does not take into account that crossing international borders – be it with the aim of leaving or entering Swiss territory – is not allowed for undocumented migrants. The idea that every detainee has been offered the possibility to exit Switzerland by his own means does not reflect the experiences of detainees, some of whom were detained after having refused to collaborate with the authorities, while others were arrested at border or police checks or in view of a Dublin transfer, without providing them with such an opportunity (see section 7.2).

Furthermore, staff members sometimes argued that the length of incarceration depends on detainees’ will to cooperate with the authorities:

“Every detainee knows that his release depends on himself. He can’t blame me, or us, and deep down he knows that he is the one who can make the decision” (informal conversation with staff member, Frambois detention facility).

Again, this view is reductive since it implies that all detainees are able to return to the country to which the authorities want to send them, and to obtain the necessary documentation to do so, which is not always the case (Griffiths 2012; Pinkowska 2017).

The idea that detainees could have avoided detention or could be released if only they had complied with migration authorities’ orders is one of the main methods through which detention is morally justified in the discourses of staff members. As defined by one officer, detention becomes a ‘necessary evil’ in a system in which individuals do not collaborate or accept the sovereign decision of Swiss authorities. Most officers are indeed convinced that detention is necessary as a measure of last resort:

“There is almost no other solution... because the Migration Service or the Federal Office for Migration gives you the papers, says ‘Your asylum application has been rejected, you have to leave Switzerland’. (...) if they don’t leave Switzerland, and this prison and this pre-removal detention doesn’t exist, what happens? Then they just stay and there are always more who come, right?” (Dario, prison officer, RP Bern).

A member of Bässlergut’s management explained that if the rumour was spread that ‘in Switzerland, you can do what you want and you don’t go to prison’, then ‘everybody’ would come to Switzerland. He reported a motto heard in another context which said that sometimes, ‘repression is the better form of prevention’. Detention acquires, therefore, a deterrent function as well as the aim of forcing compliance with deportation (Campesi 2015a; Leerkes and Broeders 2013).

In a similar vein, for some staff members the lack of cooperative behaviour justifies deportation according to ‘Level 4’ of enforcement – implying the use of binding and physical coercion and the recourse to a ‘special flight’ instead of a scheduled flight. In the following quotation, a prison

officer explained why he did not become emotional when a detainee was sent back on a special flight:

“Nobody is deported coercively from the beginning! This is a LONG procedure. He was asked [to leave the country] several times, he had the opportunity [to be deported without force] several times. Initially they always try with Level 1 [with little coercion] (...), then with Level 2, (...) it’s a normal [scheduled] flight, you are just accompanied by two policemen. He has ALWAYS... had several times opportunities to go, and he knows he must go!” (Peter, prison officer, Bässlergut).

Through such discourses, Switzerland is presented as a democratic and reasonable country that allows the use of coercion only when migrants’ behaviours – that are presented by contrast as irrational – require it. Detention and deportation are then seen as ‘benevolent violence’ (Barker 2017) in the sense that they are indispensable in order to maintain a fair asylum and migration system. By the same logic, Stefan argued that forced deportation becomes necessary as a last resort, because “otherwise all the rest [of the system] would not work”, recalling one of the main arguments in favour of detention and deportation in political debates (see de Senarclens and Soysüren 2017).

Ultimately, the notion of ‘illegality’ supports the argument which blames detainees for their own condition and simultaneously establishes an analogy with prisoners: however, while prisoners are detained for a crime they have committed, migrants are detained because their presence is in itself considered illegal. According to Kynsilehto and Puumala (2017: 204), “the act of detention inscribes culpability, illegitimacy and susceptibility on the mobile/immobilised body”. It has been argued, however, that ‘illegality’ does not automatically function as “an absolute marker of illegitimacy” (Chauvin and Garcés-Mascareñas 2012: 243), where an emerging ‘moral economy of deservingness’ introduces different grades of (il)legality (Chauvin and Garcés-Mascareñas 2014) as we will see in the next section.

6.4.2. Understanding detention through undeservingness: “those who are here are either economic refugees or criminals at home”

The construction of detainees as responsible in some ways for their own incarceration is strongly related to their representation and construction as undeserving of protection or leave to remain. Van Oorschot (2000) argues that the notion of deservingness is defined according to five criteria: 1) actual need; 2) control over one’s own neediness or responsibility for it; 3) identity and closeness to ‘us’; 4) attitude towards support, docility and gratefulness; and 5) reciprocity. We have seen in the last section that staff members often see detainees as responsible or at least co-responsible for their condition. This view is related to an image of ‘illegality’ conceived as antithetical to the victimhood associated with forced migration (Scheel and Squire 2014; Squire 2009).

Detention is often seen as the final stage of an administrative path – usually identified with the asylum path – through which individuals have to prove their need for protection and/or their civic value. A staff member in Bässlergut said that the easiest way to explain immigration detention is to refer to its geographic location next to the federal asylum centre:

“[Freiburgerstrasse] 50 [address of the federal asylum centre] is the beginning of Switzerland, and 48 [address of the prison] is the end, a negative decision. That place over there [asylum centre] is where they stay at the beginning. They come and apply for asylum. They get a negative decision and come over here. (...) That’s easy to explain” (Jan, prison officer, Bässlergut).

Detention is then understood within a state system which sorts ‘true’ refugees from ‘bogus’ asylum seekers and legitimate from illegitimate migrants (see Darley 2010). Those who end up in detention must then inevitably be the ‘undeserving’ ones:

“I think that we live in a state ruled by the law [Rechtsstaat]! (...) they have so many rights and particularly WE in Switzerland, we take extreme care that it [the country of deportation] is not a country where someone is persecuted, that it is not a country where there is war. (...) I assume that they [the detainees] are of two sorts: economic refugees and criminals who are worried about a criminal prosecution at home [in their country]” (Peter, prison officer, Bässlergut).

For this employee, deportation lies at the end of a procedure that allocates a status to those who deserve it. The fact that a large number of detainees are asylum seekers awaiting transfer under the Dublin Regulation, whose claims of protection have usually not yet been examined by any authority, is either not acknowledged or is perceived as another form of abuse as those persons – in the words of another prison officer – “should have stayed in the first country of arrival, that’s what the Regulation says”. Peter’s quotation distinguishes two categories that are deemed undeserving of protection: people leaving their country for economic reasons and those fleeing because of the risk of being prosecuted for a crime committed there. Several other employees also mentioned the latter category. When I asked Jan if he thought that the State Secretariat for Migration could make an error and return someone who was persecuted, he answered: “If he’s being searched [in his country]... then there must be a reason, that he has committed a crime and therefore does not want to go back”. He went on to tell the story of a Kosovar man who was repatriated and handed over to the local police, who had been seeking him for a long time for a crime he had committed. Jan did not mention that when asylum seekers are fleeing criminal prosecution at home, they often do so because their crime relates to state regimes condemning any manifestation of political opposition. In any case, the reference to a possible criminal past before arriving in Switzerland contributes to constructing detainees as potentially dangerous, as we will see in the next section.

The figure of the ‘economic refugee’, on the other hand, is borrowed from public and institutionalised discourses that present the asylum procedure as a necessary tool to separate ‘true refugees’ from ‘bogus asylum seekers’. It is frequently recurrent in staff discourses and is represented in a rather stereotyped way: a young man, arriving from a poor region of the world (usually from the African continent), sent by his family or by the whole village in order to earn some money and send it ‘back home’. In this context, migrating could be presented as a rational and sometimes even an altruistic decision. However, this migrant’s figure sometimes acquires an immoral character like in the following quotation:

“Something that always depresses me is that many people from Syria are shown on TV, how they have to sleep under the tents – old people, children, and so on. They are not here, because here are... many young people, who have money, who partly have done – how we’d say it in the Bern dialect – ‘big shit’, they are here. The poor people who are there, down there, they cannot come, because they don’t have the money for the journey. That’s the worst [thing]” (Dario, prison officer, RP Bern).

For this employee, those who are in real need of protection are too destitute and helpless to undertake the journey to Europe. Those who succeed in travelling to Switzerland must therefore be undeserving and trying to abuse the system. This representation is strongly impacted by political discourses having framed asylum as a matter of ‘abuse’ since the 1990s (Frei et al. 2014; Leyvraz et al. 2020; Rezzonico 2020a). The institutionalised and productive dichotomy between ‘true’ refugees and ‘bogus’ asylum seekers is mobilised here in order to justify the system of detention and deportation. This dichotomy has a strong gender dimension: the feminisation of the image of the

refugee as a passive victim results in the demonisation of rejected male asylum seekers, who in opposition are seen as excessively agentive and opportunistic, lying and trying to abuse the system (Griffiths 2015; Scheel and Squire 2014). The wider use of detention for men reinforces the image of male asylum seekers as a threat, as we will see in the next section, while women are represented as passive and powerless (Mountz et al., 2013).

Dario's quotation is also an example of how public discourses on refugees shape the imaginary of staff, who do not receive any specific training on questions of asylum and forced migration. It reflects a widespread idea, fuelled by media imagery, that the asylum system serves to divide the poor, persecuted refugee in need of protection from a bigger mass or flow of 'bogus' asylum seekers and profiteers who threaten public order as well as the welfare state and whose image is gendered and ethnicised. Images of hordes of migrant men arriving in Europe were present in the discourses of my interviewees, especially in the RP Bern, where I conducted fieldwork during what was being called the 'migration crisis': "There are so many who are coming!", said Emma (RP Bern) several times, while another explained the unbalanced numbers of incarcerations between men and women, saying: "This actually reflects the TV recordings! If a refugee boat from... North Africa lands in Italy, then it's almost only men" (Franziska, member of management).

Sometimes, staff members tell stories about 'good' refugees who have 'made it' in Switzerland despite the obstacles encountered as a way to further blame those who have not 'made it' and who are detained pending removal. An employee talked, for instance, about a Syrian refugee who studies at the university, works to finance his studies and refused social aid. Interestingly, he underlined that this person did not have a 'refugee permit' but rather a 'normal B permit'. Despite the fact that he was probably wrong, because recognised refugees do receive a B permit, it is interesting here to see that in his image, the 'true refugee' does not even require the status because he is willing to work and earn his living by himself. He ended the story by saying: "if only all of them would be like him!". He clearly failed to recognise the different opportunities that foreigners have depending on their origin and legal situation, as well as the different social capital they have according to their past experience. Ethnic minority staff are also sometimes considered exceptional examples of integration, which paradoxically reinforces the boundary between staff and detainees (Rezzonico 2020b).

This figure of the 'good refugee' who acts in good faith is counterposed to that of the 'undeserving migrant' whose actions are driven by bad faith. A staff member had written his final training dissertation on Nigeria and we had the following informal conversation as reported in my field notes:

"I say that despite all the problems there are in Nigeria, e.g. with Boko Haram, I never saw a Nigerian receiving asylum, to which [Name] immediately answers that they do not have any asylum motive, that it is only the 'bandits' who come here, not really the poor people. I ask him if he means from Nigeria or in general, and he says: 'in general!'. Then, he starts to explain that if they were poor people or people who are fleeing (I am not sure what term he used), they would arrive with their documents. Instead, they arrive without documents, most of them with fake names, fake dates, they were all born on the first of January, it is obvious that they are fake!" (Field notes, Bässlergut).

In this sort of discourse, undeserving (and thus detained) migrants are presented as people with no morals, who lie and try to abuse the system. Like illegality, undeservingness is understood as the result of (bad) choices or weakness, as in the context of unemployment (see Howe 1998 cited in Hall 2012).

The social construction of detainees as undeserving migrants based on their legal exclusion and supposed abusive behaviour is also reflected in discourses about the daily life of the prison representing detainees as demanding and arrogant (Rezzonico 2020a). Indeed, if actual need and responsibility intervene in the moral evaluation of deservingness, so too do attitudes towards support in the form of docility and gratefulness (van Oorschot 2000). One staff member of Bässlergut, Peter, related that the ways in which some detainees behave with me or other visitors and with staff was completely different: “The behaviour (...) up in the wing... or downstairs during visits, it doesn’t fit! Downstairs, they’re lambs... persons in need of help, and upstairs demanding, demanding, demanding”. When detainees do not comply with the expectation of being docile, passive and dependent, they are seen as displaying a ‘lack of gratitude’ that in the eyes of some employees is evidence of the detainees’ immorality and ‘inauthenticity’ (Hall 2012, see also Darley 2010 on the relation between gratitude and deservingness):

“They have fled from war, from famine, and then they fill the trash with food leftovers. That is questionable as well. Because the tap is running all the time... [in your country] you do not have the resources, you have to walk a few kilometres to the water and that is scarce, and here you let it run, because it comes from the wall, right? That’s what I don’t understand. (...) Also when Birchermuesli is on the menu, so traditionally Swiss food, ‘Oh no, that’s for the dogs’, I say ‘Yes, what do you eat at your place/in your country?’ (...) and then they try it and they like it! (...) for our culture, we have to eat that” (Jan, prison officer, Bässlergut).

This quotation implies that detainees should be grateful, reflecting their representation as (illegal and undesired) *guests* (Hall, 2010). Illegality and ungratefulness are used as markers of difference that create a moral boundary not only between citizens and non-citizens, but also between deserving and undeserving guests, the latter forming a powerful category of exclusion.

6.4.3. Race, culture and categories of (non-)belonging: “they have such a different culture”

As discussed above, staff consider immigration detention to be the most challenging detention type for several reasons, including problems of language and a condition of uncertainty and anxiety that also translates into acts of resistance and self-harming. In consequence, detainees are more difficult to handle, according to employees. Staff members often interpret detainees’ behaviour with a cultural lens, mostly differentiating between detainees on the basis of nationality, race, ethnicity or religion. In fact, these categories represent a tempting explanation for the different behaviours and reactions they observe among detainees (see also Bosworth and Slade 2014). During my fieldwork, it was quite common to hear very stereotyped ideas like “North Africans are aggressive and arrogant”, or “Georgians are mainly drug addicts”. The distinction between ‘Black’ and ‘North’ Africans was particularly common:

“There are big differences depending on the country of origin. Black Africa or North Africa, that’s where you notice the biggest differences. North Africans are much more demanding, (...) I don’t think it has anything to do with their faith. But often they are also addicts, drug addicts, which black Africans are not. (...) North Africans... take drugs, drink alcohol. Black Africans live in much healthier ways! (...) I get along better with black Africans because, I don’t know, they have a different relationship with women, (...) many of them call me ‘mama’ (...). And North Africans have more of an Arabic, Muslim mentality. So women... you need more conversations so that they really approach you” (Doris, prison officer, RP Bern).

Most staff members describe North African detainees – intended as detainees from Morocco, Tunisia and Algeria, who are highly represented in immigration detention – as the most difficult population to handle, always demanding and insisting, sometimes also insulting or aggressing staff

and seeking conflict. On the other hand, detainees from Sub-Saharan African countries are usually presented as one category, around which there is certain confusion, staff members talking about ‘black Africans’, ‘Southern’ or ‘Central Africans’. Many staff members have very simplified or rather ignorant representations of the African continent, as in the case of an officer saying that when he has an ‘African’, he tries to put him together with another ‘African’, “so that they can speak African together”. Black African detainees are represented as ‘cool’, ‘easy’, not making problems. One staff member said they move rather slow and act ‘the Bob Marley way’, while another told me: “those from Central Africa, you give them food, and they are happy”. These ethnicised and racialised understandings of detainees’ behaviours are institutionally reinforced through the organisation of national training in which prison staff are expected to learn how to deal with ‘African’ or ‘North African’ detainees as distinct categories of people, as seen above.

Doris’ quotation above also refers to different representations and ways of relating to women. The topic of North-African detainees as being less respectful of women was raised a few times in the RP Bern, which employed mixed staff. According to one male staff member, they sometimes do not accept female staff giving them orders, since “in these countries, the man is above and the woman below”. Gender equality is then mobilised as ‘cultural stuff’ to construct detainees as different and morally dubious (Duemmler et al. 2010), being presented as a value and an achievement of Swiss, or Western, society. Similarly, religion can also be used to construct a boundary between a civilised, democratic ‘us’ and an uncivilised, threatening ‘them’:

“The religious background also definitely plays a role. (...) An Orthodox Romanian or Hungarian, or Christian, Catholic, has been raised differently than a Nigerian or a Muslim from a Maghreb state. (...) Only WE know Christian charity [Nächsteliebe, literally love for the other]. Even with the whole refugee policy, few rich Arab countries, Muslim-ruled countries, receive refugees, Kuwait, Saudi Arabia, Iran, they don’t accept refugees. We take them in!”
(Jan, prison officer, Bässlergut).

In this discourse, altruism becomes a prerogative of Western, Christian societies which renders those cultures morally superior. Surprisingly, the argument is made with a reference to refugee reception policy of which the same employee seems to be critical in other parts of the interview, and of which immigration detention can be considered the flip-side.

Some discourses of staff members can be openly racist, as in the case of a staff member saying that “Black Africans are not *predestinated* for work”, and later commenting on a young black detainee who was providing good and fast work in the production workshop: “you wouldn’t expect that”. However, staff members try to rationalise such discourses in ways that do not seem racist to them, as in the following quotation:

“In pre-removal [detention], it’s usually... culturally, linguistically more difficult, or also... I’ll say... I don’t know how to describe it... From a hygienic point of view... not that those in immigration detention are... dirtier or something, but... um... a person who comes from Central Africa, here in winter, even if he comes in summer, he’s cold! He wears three, four trousers and... you smell that. And... they also have a different washing behaviour! You smell that, that’s... now it’s not meant in a bad or derogatory way, it’s just like that and... of course, if now you have four people in a cell and you have to open the cell door in the morning, that’s... like a real wave” (Peter, prison officer, Bässlergut).

The hesitation and self-justifying tone in which this employee talks about the ‘different washing behaviour’ of black African detainees are a reflex of the will not to be categorised as racist. In fact, the prison institution does not accept racism as a rule, and accusations of racism are a serious offence. Staff members often argued that detainees were racist toward each other, for example

‘Arab’ with ‘black’ detainees. Such allegation of racism fosters again the image of detainees as uncivilised, uneducated people, while Swiss society is depicted as politically and morally superior.

Besides differentiating between detainees on the basis of nationality, ethnicity, race or religion, staff members very often talked about ‘immigration inmates’ as a general category, often to describe them as the most demanding detainees, and sometimes also as arrogant, lazy, ignorant or sly people according to the argument made. For example, a prison officer said, commenting on the behaviour of a detainee who was about to be released and was cheerful: “you see how *they* are, one moment they want to kill themselves and break everything and one moment after they’re so happy, *they* are like small children” (Fieldnotes, RP Bern). The ‘they’ in this quote refers to a general ‘other’ who is represented by immigration detainees. Through the (sometimes implicit) use of such a legal-descriptive category as ‘immigration detainees’, staff members objectify the category of the excluded other – or the ‘crimmigrant other’ – representing the non-white, non-citizen.

The category of ‘immigration detainees’ is constructed and represented in a constant comparison with penal detainees, who in some discourses are idealised as the ‘good detainees’. In the following quotation, a prison guard explained why he prefers working with prisoners rather than with immigration detainees:

“[Penal prisoners] have their sentence (...) most of them have a family [to whom to go back] (...), and so they are more affable. (...) They think more socially, because they have more responsibility! (...) They just come from a family environment like mine, for example, like all of us! (...) I could be locked here as an inmate too, I was also young once, that happens fast nowadays! (...) So it’s a similar situation. I feel more connection to them. On the other hand, deportation [loud breath]. Usually, they have nothing left to lose. I mean, I understand their suffering. (...) If you come (...) from Africa or Syria or whatever to here, probably [through] a brutal way (...) you have (...) trauma. That’s probably also why they’re so exhausting. (...) And of course [they have] a completely different culture! Other lifestyles. (...) And they are extremely demanding! (...) Life is about giving and taking, (...) and people in immigration [detention] are not conscious of that (...). They take, take, take, take, (...), but they don’t give. And that’s exhausting!” (Max, prison officer, Bässlergut).

Max seems to feel closer to criminal offenders than to immigration detainees because he thinks that they have life experience which is similar to his own. People detained for criminal reasons have *done* something wrong, but they are recoverable and can be corrected. Detained migrants on the other hand are seen as inherently different from culture and background and therefore more difficult for Max to feel connected to. In fact, although many prisoners are foreign citizens, staff highlighted that they mostly speak some German, are more used to Swiss life and know better the country and the prison system.

The construction of ethnic and cultural boundaries can be understood as a way to support moral distancing and as one of the ways in which detention staff implicitly legitimise exclusion through stressing the foreignness and non-belonging of detainees. Boundary-making ultimately serves to maintain social difference (Barth 1969), and the exclusion of migrants helps to construct and reaffirm the boundaries of the nation and citizenship (Anderson 2013). We have seen how staff members, despite claiming not to be racist and rationalising their discourses through the use of legal categories or cultural arguments, implicitly or explicitly refer to race in many of their discourses about detainees. This is related to the function of detention that “helps constitute the nation along racial lines (...) and reproduces the ‘whiteness’ of the citizenry and the state, while naturalizing the illegality of non-white, non-citizen others” (Bosworth and Turnbull 2015). Through the essentialisation and reification of culture, race and ethnicity, coupled with notions of deservingness, criminality and threat, detained migrants are constructed as the ‘other’, who do not belong to ‘us’

and who are impossible to assimilate or integrate. Furthermore, the crimmigration context of institutions confining both immigration and penal detainees involuntarily sustains the stereotypes and racialised understandings discussed above through the construction of immigration detainees as the ‘bad detainees’, also relating to notions of gratitude and deservingness that were discussed in the previous section.

6.4.4. Understanding detention through the notion of ‘threat’: detainees’ criminal past and unknown identities

Besides (il)legality, (un)deservingness and race and culture, a further lens through which staff members understand immigration detention is security (see also Bourbeau 2019): in the eyes of staff, detainees have unknown identities and past and thus, they are potentially dangerous or threatening (see also Griffiths 2014a; Hall 2010). The contested identities of detainees are particularly salient in detention (Griffiths 2012), with state officials engaging in identification efforts that are necessary to negotiating and enforcing deportation, and some detainees attempting to conceal their identity or identity documents to avoid being deported. Those ‘unknown’ identities render detainees unreliable and suspicious for staff members, who often described the stories of detainees as unbelievable, accusing them of hiding their documents and true identity. One prison officer used the metaphor “walking in the darkness” to describe working in immigration detention, pointing to the insecurity felt in relation to such individuals with unknown identities and past. Discrediting or not believing the stories told by detainees is also a method for imposing moral distance (Gill 2016), as we have seen in section 6.3.3, resulting in lower capacity for trust (Bosworth 2014: 183, see also Hall 2010).

Through the notion of ‘the unknown’, detainees are rendered suspicious and potentially criminal, as shown by this quotation from an informal conversation held with a staff member in Bässlergut:

“The problem is, you don’t know who they are, they could have killed ten people in their country of origin and ten during their journey to Europe, or they could be rapists, or they could have done nothing bad, you just don’t know” (informal conversation, Bässlergut).

The relation with criminality is of course reinforced through the organisational and material context of incarceration. The practice of detaining migrants in ordinary prisons is productive of the securitisation of migration (Bourbeau 2019: 6), providing prison staff with an interpretation grid that clearly represents migrants – at least detained ones – as a security threat.

The fact that several immigration detainees have criminal records further strengthens this nexus, with prison staff often highlighting that although immigration detainees are not incarcerated for criminal reasons, many have served prison sentences in the past. Several factors can explain the relatively high proportion of detainees with criminal records¹⁶⁶: first, illegal entry and stay as well as the violation of an entry ban in Switzerland can be criminally prosecuted and can lead to a prison sentence (Art. 115 of the FNIA). Second, a criminal prosecution can be grounds for administrative detention (although even in this case, the goal of detention must be the enforcement of deportation), as well as the revocation of a residency permit and consequent deportation. Thus, foreigners who have been condemned for criminal offences are more likely to be detained and removed and are consequently overrepresented in the category of immigration detainees.

These are all aspects of crimmigration law (Stumpf 2006) which have practical implications for prisons. In both Bässlergut and the RP Bern, transfers between the two regimes are frequent, either

¹⁶⁶ It is difficult to say how many immigration detainees have been condemned for a criminal offence since there are no statistical data available on the subject. Among my interviewees, approximately half had served prison sentences, including for infractions related to illegal entry or stay or violation of entry bans.

within the same facility, or with another prison. Prisoners in the penal regime also regularly serve a sentence for illegal stay. In this context, prison officers like to highlight that immigration detainees “are not angels”, in the words of one officer, or:

“They aren’t all innocent, as people say or as it is implied in public. Many [people] (...) say ‘they haven’t done anything [wrong], they [just] don’t have a visa!’. Then I say: ‘yes, this is partly true, there are certainly those [who have done nothing wrong], (...) but there are also those [who have done] burglary, (x), drug trafficking and then... serve a prison sentence and then at the end of the sentence, they come into immigration detention! And among them there are even rapists, there is everything” (Jan, prison officer, Bässlergut).

The fact that some immigration detainees have been prosecuted for criminal offences becomes evidence of the potential danger of the whole category of detainees. Staff members also talk about aggressive detainees or relate events in which the violent behaviour of a detainee required the use of coercion, in order to give consistency to this image (see Ugelvik 2016b).

Such representation of detainees as threatening and dangerous, based on a wider rhetoric of ‘dangerousness’ used to justify coercive measures (Campesi and Fabini 2020), also serves to internally justify the security measures in place as well as specific techniques of surveillance that aim at detecting suspicious behaviour (see section 5.2.4). In the prison of Bässlergut, prison officers often preferred to stay in their office and watch detainees through the cameras located in the wing rather than being physically present. Watching ‘from a distance’ was supposed to enable them to observe while not being observed, and decipher detainees’ behaviour, as in this example drawn from my field notes:

“At a certain point, [Officer A] told [Officer B] to be silent and activated a microphone [in the corridor of the wing] because he had seen suspect images through the camera. He said that they [two detainees who were walking through the corridor and talking] were acting like they would tell each other something that they did not want [the staff] to know about. I did not understand exactly what made him think so” (Field notes, prison of Bässlergut).

This quotation highlights the role of suspicion and intuition in the work of prison officers, who deploy pre-emptive visual techniques of “bodywatching” to try to anticipate detainees’ actions (Hall 2012: 48, see section 5.2.4). Bodywatching both stems from and produces representations of the detainee as a threat. Bosworth (2014: 149) noted that in the British facilities she observed, “officers were often confused by the implications of holding detainees in secure environments, unsure about whether or not they might be dangerous. Why were they detained if they were not a threat?”. By blurring categories of immigration and crime, the use of ordinary prisons further reinforces this kind of reflection that is resumed in the circular rationale through which detention is rationalised: “migrants *might* be criminals, necessitating detention; migrants *must* be criminals, because they are detained” (Mountz et al. 2013: 527, see also Campesi and Fabini 2020). Such circular arguments are typical of total institutions (Goffman 1961).

The construction of detained migrants as potentially criminal reflects gendered and racialised representations of criminality which are reinforced through the symbolic use of the prison as a space of punishment. The fact that statistically, the population of immigration detainees shares several characteristics with the population of the criminal justice system – being predominantly male, young and of foreign nationality – contributes to blurring the categories. Racial and cultural stereotypes are particularly frequent towards detainees from countries with Arabic or Muslim majorities. The following quotation of an employee talking about ‘North African’ people is a good example:

“Basically, the law doesn’t interest them at all. If I want to steal something, then I steal, if I want to accuse somebody, then I do that, right? There are many who come (...) and have stolen something, whether it’s a mobile phone, a laptop or [something else] (...). They take everything! And if you talk to them then and ask them why they stole, [they answer] ‘that’s how it works [in our country]’” (Dario, prison officer, RP Bern).

Dario implies that some people have a socio-cultural inclination for crime. Here the process of othering is evident and is used as a way to legitimise exclusion. A nexus with terrorism was also present in a few conversations with staff members, reflecting a widespread source of anxiety within Western societies. During an interview, one staff member expressed a belief that Islam is related to terrorism, saying: “All Muslim people are not assassins [*Attentäter*], but every assassin recently was of Islamic faith!”. The representation of Muslim migrants as potential terrorists is reinforced by the fact that in both prisons, individuals suspected by the authorities of entertaining contact with members of ISIS were detained at the time of my research, in either penal or immigration detention. Certain migrants are then perceived as representing a greater threat in relation to their origin, their religion, and also their sex and age. This reflects a wider tendency of Western society to culturalise, ethnicise and socially externalise what is considered dangerous (Eckert 2008).

Othering is inherent in spaces of detention, that according to Bosworth (2014: 216) are “sites of estrangement” and alienation. Despite being rationalised through the necessity to make the unknown knowable (Mountz et al. 2013), they actually “seem designed to have the opposite effect, rendering those within unfamiliar” (Bosworth and Slade 2014: 182). The blurring of immigration detention and imprisonment fosters representations of immigration detainees shaped by securitisation and criminality. Despite this dominant view, some staff members felt differently about the nexus between immigration and criminality. They explained the over-representation of foreigners in prison and of persons with criminal records among immigration detainees in ways that were more sensitive to the social conditions of illegalised persons and related criminality with poverty and the impossibility of legally participating in the labour market without breaking the law. “I would probably have done the same thing”, said Emma, while Doris described what she considers a typical trajectory in which an asylum seeker is approached by drug traffickers on arrival in Switzerland:

“The whole village gathers in one place. I’m the youngest and the strongest, I’m sent on the journey. I can get as far as Switzerland. I make the [asylum] application. Then I get this blue identification document, it’s got an N on it. Now I want to work, because now I have a bed, I have food. In front of the asylum centre, there’s a BMW. I get to talk to those people. Well, he’s also not Swiss, he talks to me. Now he tells me: ‘I have a job for you. I’ll give you a hundred francs and you go to [Bern], buy a prepaid mobile phone and call me. Here’s my number’. I do that, I go, I buy a mobile phone... that’s cool. (...) Then they come with balls of cocaine. ‘Now you go and sell them, when you’ve sold them you call me and bring me the money’. The police make checks, people are brought here. For me, that’s... they just want work, they just want something better for their family, because they have promised their family that they’ll send money back. And then bang, here they are in jail. [That’s because] they’re exploited by drug dealers” (Doris, prison officer, RP Bern).

This quotation shows sympathy and understanding for people who become caught up in drug dealing as a result of traffickers’ attempts at exploitation. Not all employees have negative attitudes toward detainees with a criminal past. Doris felt the necessity to explain the link with criminality with sympathy, in order to make sense of her experiences. As we will see in the last section of this chapter, criticism arises among staff members concerning criminalisation fostered by immigration detention, especially with regard to conditions of detention.

6.4.5. Criticism of criminalisation and conditions of detention

Despite officers tending to defend the system in which they work, they sometimes also find space for criticism. Criticism about asylum and migration policy as being too restrictive in general emerged very few times during my fieldwork. On the other hand, the specific conditions under which detention took place were the object of a number of critical statements among staff members in the RP Bern, which has stricter conditions. Among staff members in Bässlergut, such criticism did not arise during interviews or conversations, the belief being rather that the conditions of detention were good, for some even too good with respect to the deterrent function that the measure was expected to exert over detainees.

The detention conditions of the RP Bern were criticised by many of its staff members, including the director of the prison who was well aware of its problems. Doris described the detention conditions as follows:

“In my opinion, the detention conditions for administrative detention are not good here. (...) It’s too small, there are no options. Administrative detention is actually confinement, but with free movement. I see it that way, there should be cooking facilities, for example, a small kitchenette in the living group so that they can cook for themselves. And not enclosure, a cell enclosure” (Doris, prison officer, RP Bern).

Doris gave many examples of these poor conditions in her interview. She explained that the infrastructure was too small and narrow, the electronic and airing systems were old and did not work as they should. She talked about the visiting hours which were too short and complained that they only took place on weekdays. She described the exercise yards as “a catastrophe: you’re walking in circles like a lion in a zoo”. And ended by saying: “Well, I myself would never want to be here!”.

A colleague of hers, Anton, had a very similar stand on the conditions of detention offered by the RP Bern. He made the problem even more explicit:

A: We are actually not a pre-removal prison. That’s not even theoretically possible, if we’re honest. There should be no immigration detention here. That’s not possible, that’s... in conformity with nothing.

L: Do you mean the infrastructure?

A: The infrastructure... Here it’s, it’s a remand prison. The people who are deported, they shouldn’t be here, if you ask me. That’s not right, I don’t agree with that. But... it doesn’t matter, we work here and we have to... go along with it (Anton, prison officer, RP Bern).

Anton continued to interpret why the cantonal government persists in using this prison building despite its being inadequate and non-compliant. He explained that the location in the centre of the city of Bern is practical for all the authorities that regularly visit the prison to speak with detainees, so that there is not enough political will to change this situation. Anton also has a very critical stand on the use of immigration detention as punishment, as appears in this quotation:

“You have to show people that we’re not... we’re not here to punish. This is our job, (...) we work with them, we are not allowed to punish them, they are already punished enough, in that they sit here, they don’t need more punishment. Yes, whether they are nice or not... it’s not our task to judge them” (Anton, prison officer, RP Bern).

His critical stance on the latent effect of punishment led him to oppose migration authorities when he saw that they were abusing their powers, as illustrated in section 5.1.3. Another staff member, Emma, was also against the practice of detaining migrants in ordinary prisons, because of its criminalising effect:

“And... personally, I just don’t think it’s the right solution to put these people in jail, but that’s... my personal opinion, because... if I go to a prison, then... the outside world will think ‘yes, he’s criminal, he has done something’ and perhaps this person is simply here because... because it was very difficult there for him to live or to live at all, he has fled and has probably already experienced much more than all of us together and then he comes here and is actually treated like a criminal” (Emma, prison officer, RP Bern).

Emma described conditions as practically identical in penal and in administrative detention. The fact that people return several times to Switzerland despite the harshness of detention and deportation procedures was, in her view, evidence of the fact that they experience very hard conditions elsewhere. When I asked how she imagined an immigration detention centre should be, she answered:

“Much different, yes. Well, I... I imagine that people wouldn’t be looked at as... as a mass, as far as possible, of course, because there are so many of them... but maybe also look at what that person is, right? They don’t all come for the same reason. Someone might come to work, others come because they are ill and want to have an operation here, one comes because he has no education and perhaps he wants to learn to read and write and that can be solved, this problem, without somehow, yes, how shall I say, without him becoming a criminal or anything” (Emma, prison officer, RP Bern).

Emma’s words are both a claim for humanity toward migrants and a critique of an immigration control system that criminalises migrants not only through detention, representing them as criminals, but also through omitting to provide any alternative to those migrants. However, such a critique of the system as well as more material critiques of detention conditions generally remain individual reflections or are discussed with a few peers, but do not provide any opportunity to promote change.

In this chapter, I have addressed how the institutional embeddedness of immigration detention in the penal system, while contributing to modulate migration and detention as insecurity domains (Huysmans 2006), impacts on staff members’ professional identity, role perception and understanding of immigration detention. Staff members are trained and socialised as prison officers. They are required to work – sometimes on the same day – in penal and immigration detention, carrying out the same tasks of control and assistance, surveillance and care. This material, practical and symbolic distinction-blurring between different forms of detention not only shapes the everyday experience of staff members, it also creates an analogy with imprisonment that underlies staff members’ understandings of immigration detention through lenses of illegality, moral value, security and crime. It also facilitates the establishment of moral distance from the detainees, accomplished through other structural-institutional elements, such as rotation of staff through the various areas and functions of prison work, or the mediation of the interaction through physical barriers such as the porthole or through request forms.

As we have seen, the fragmentation of the deportation system and the position of the prison institution and employees, separated from the decision-makers, facilitates moral distance intended as a lack of moral involvement in several ways. The prison institution is central to such a deportation system, however, the goal of enforcing deportation is sought by migration officers who, even when physically close – in Bässlergut, offices are placed within the prison building – are institutionally separated. In this context, prison officers have no decision-making power or influence on detainees’ fate – in terms of deportation or release. Often they do not have knowledge

of detainees' trajectories and individual situations nor do they have access to their immigration files. This makes it easier to avoid becoming involved in detainees' problems and feeling concerned about them. In fact, empathy can be a painful emotion for staff members, especially given their helplessness when it comes to deciding the fate of detained persons.

Distancing themselves from the pains of detainees is indeed also a psychological technique of self-care (Gill 2016), a defence mechanism that can be encountered in other professions which deal with persons who are suffering. We have seen that staff members use humour as a way to downplay and release the tension accumulated in dealing with detainees' anxiety and anger. However, while distancing themselves from detainees' individual situations and sorrows is both required by the institution and necessary for psychological well-being, indifference is also a matter of performance in prison work. Indeed, the social world of staff is shaped by a gendered image of prison work as dominated by masculine attributes of strength, rigour and detachment. This makes showing or talking about fear, for example, a complete taboo. In such a professional environment, staff members are allowed to display characteristics such as sensitivity and care and emotions like empathy and compassion only under specific circumstances, for example when children are involved.

As I have explored elsewhere (Rezzonico 2020b), staff members engage in boundary work in order to establish and maintain moral distance as well as to legitimise their work. Such boundary work is based on different types of categories such as race, ethnicity, religion and culture. More significantly, however, staff members resort to legal and moral categories of (il)legality and (und)deservingness to make sense of the confinement of immigration detainees and the state's effort to physically exclude them from Swiss territory. The notion of 'illegality' is especially powerful in constructing detained migrants as morally dubious and creating an analogy with prisoners, who are also confined for having violated the law. Such an analogy with prisoners, which is clearly suggested by hybrid spaces of confinement such as those under scrutiny, has the effect of symbolic and practical criminalisation on the migrants detained. The prison as a space of punishment affixes categories of criminality and immorality onto migrant detainees, which are reproduced in staff members' discourses. This can be understood as a direct consequence of crimmigration enforcement. Furthermore, immigration detention is based on a logic and discourse of the securitisation of migration that makes use of notions of unknownness and practices of suspicion to construct detainees – but implicitly also broader categories of migrants and mobility – as a threat, which is also reflected in staff members' views of detained migrants as potentially dangerous or criminal.

In the next chapter, I will deconstruct the category of immigration detainees, who are too often considered a more or less homogeneous group of people for exclusion. In reality, the category of immigration detainees hides a huge variety of legal situations and migration histories, which will be analysed with a focus on migrants' trajectories. Such a focus will also allow us to discuss the different uses of immigration detention by the state, for example to reduce or control mobility of asylum seekers and enable the functioning of the Dublin system, or to exclude unwanted migrants and even long-term residents. In the trajectories of individual migrants detained, I will show how categories of migration and crime, mobility and punishment, intertwine.

Chapter 7. The complex trajectories of migrants caught in detention

Jake, Hamid, Yusuf, Karim and the other detained persons I met during my fieldwork had little in common beside the fact that they were detained in view of deportation. They had different origins and stories, and they had become vulnerable to detention through various processes of illegalisation: a rejected asylum decision, a revocation of residency permit, a decision of transfer to a country held responsible for examining their claim of protection. This chapter explores the trajectories of these detainees and how the event of detention has impacted on them. It will explore the diversity of situations and trajectories encountered among detained migrants, despite the tendency of carceral institutions to erase differences between inmates (Goffman 1961). This analysis will also shed light on the different aims pursued by state officials through immigration detention.

With a strong focus on immigration detention spaces and daily life, this thesis runs the risk of encapsulating detention centres and experiences, reproducing a representation of detention facilities as rigidly bounded total institutions. Carceral institutions such as prisons and detention centres, however, have porous and permeable boundaries (Cunha 2014; Gill et al. 2013; Martin and Mitchelson 2009; Moran 2014, 2017; Turner 2016). They are connected to broader social systems and macro-economic processes – such as privatisation and capitalism – and to circuits of people, objects and practices (Gill et al. 2018; Hiemstra and Conlon 2017). The analysis of detained migrants' trajectories exposes the interconnectedness of spaces and practices. It avoids isolating migrants' experiences of detention and instead situates them in the biographies of detainees and in what Drotbohm and Hasselberg (2014) call the 'deportation corridor', shedding light on processes of illegalisation and exclusion as well as practices of policing and criminalisation that are intimately related to immigration detention.

The study of migrants' trajectories has allowed researchers to move beyond a traditional and sedentary view of migration as a linear displacement and settling down, and towards an understanding of the migratory experience as a process in which aspirations and destinations might change over time, and in which periods of mobility are alternated with periods of immobility (Schapendonk 2012, see also Fontanari 2016, Moret 2017). With the development of increasingly restrictive and violent measures of border control, in the last decades migrants' journeys have become not only more dangerous, but also more fragmented or interrupted (Collyer 2007; Wyss 2019). An important body of literature has flourished which sheds light on the dynamics of spaces and experiences of 'transit migration' (see Bredeloup 2012; Collyer 2007). This concept has been criticised for tending to essentialise the transit space as "a space to move 'through' towards another destination" (Collyer and Haas 2012: 476). The trajectory approach overcomes this critique by focusing on the "strong transformative dimension" of migrants' trajectories and emphasising "evolvment and process even in times of immobility", such as a period of incarceration or settlement (Schapendonk et al. 2018: 2).

Drawing on this body of research, I analyse migratory trajectories as being shaped by the interplay between migrants' agency, aspirations and tactics on the one hand, and border/migration/mobility regimes with their control practices on the other hand (Schapendonk et al. 2018). Social networks also play a fundamental role in shaping migrants' trajectories as they provide both the means and the motivation as well as constraints for continued movement (Collyer 2007; Wissink et al. 2017). Such networks are changeable and transient, including social relations both in the country of origin and destination but also those encounters made *en route* (Collyer 2007; Schapendonk 2012; Wissink et al. 2017). According to Wissink et al. (2017: 2), social networks shape the ways in

which migrants react to what they call ‘critical events’, which refers to those moments in a trajectory which provide new opportunities or constraints and thus induce potential change. This is the case in detention, where contacts outside can be an important resource for accessing legal or practical help. Furthermore, because immigration detention is a space of socialisation, the networks created during confinement can significantly impact migrants’ aspirations, shaping their projects of future mobility and strategies of avoiding control.

Practices and technologies of border and migration control also shape migrants’ trajectories (see Schuster 2005). They do this in both indirect ways – for example (re)orienting the journeys of migrants in order to circumvent such control – and in direct ways – obstructing the journey at the physical border of a state, stopping it with an arrest and subsequent confinement, and reorienting it through deportation to either the country of origin or a third country. The encounter of migrants with such attempts at control can be understood as a moment of friction (Fontanari 2016). Cresswell (2010: 26) understands friction as one of the six facets of mobility – alongside motive force, speed, rhythm, route and experience – and describes it as the process of stopping, which can be either forced or chosen. As argued by Schapendonk et al. (2018: 2), “spatial frictions emerge when mobilities are controlled, monitored, differentiated and blocked by means of visa regulations (...), border controls (...) and asylum and deportation systems”. In this sense, migrants’ trajectories and experiences can be understood as “arising from the lived encounters between the autonomy and subjectivity of migration with the tactics and technologies of bordering” (De Genova 2017: 25).

In this chapter I address the trajectories of migrants who were detained at the moment of our encounter, focusing precisely on the interplay between their projects and tactics of mobility and the diverse systems put in place to control them on various social and geographical levels. Based on detainees’ narratives of their trajectories, I focus on the moments of *friction* in which migrants’ journeys are stopped or obstructed, necessitating an adjustment or reorientation. I consider detention not only ensuing from an event of friction (such as a border or police control), but being itself a space of friction in which detainees are made to wait and are confronted with the state’s attempts to deport them.

The chapter starts by addressing asylum seekers’ trajectories of mobility within Europe as being strongly impacted by the Dublin system, which determines the state responsible for examining an asylum claim without taking into account the asylum seekers’ projects, preferences and social networks. This sheds light on the state’s use of detention for containing and disciplining the mobility of a specific category of unwanted migration – persons in search of protection – as well as strategies to resist such a system. The second part of the chapter focuses on arrest as a moment of friction between migrants’ mobility and the state’s attempts to control it. It considers the different ways in which detainees end up in detention and the specific event or decision that triggers incarceration, showing that detention often ensues from a police check and that even among irregular migrants there are different levels of vulnerability to detention according especially to gender and race. The third part of this chapter analyses some trajectories under the lens of crimmigration control, showing how measures of crime and migration control are interwoven not only in the law but also in the biographies of migrants, strengthening the main argument of this thesis. I will conclude by discussing how these trajectories reveal the dual use of immigration detention by the state, both to contain unwanted forms of mobility and to perform the exclusion of unwanted residents.

7.1. Trajectories of ‘Dubliners’: containing asylum seekers’ mobility, creating irregularity

Deportation has been described as a state practice of reallocating subjects to their proper sovereigns, sustaining “the image of a world divided into ‘national’ populations and territories, domiciled in terms of state membership” (Walters 2002: 282). At the time of my fieldwork, however, detention was often not aiming at enforcing removals to migrants’ country of origin, but rather to third states that were held responsible for the migrant, be it for examining their international protection need, for providing such protection, or for enforcing removals to the country of origin¹⁶⁷. Such third countries represented “surrogate sovereigns” – a term used by Walters (2002: 282) to refer to removals of stateless persons – to which Swiss authorities were trying (re-)allocate migrants through the resort to international agreements such as the Dublin III Regulation and the Return Directive as well as bilateral agreements with several countries.

A large number of such removals were ordered in application of the Dublin III Regulation, which establishes the criteria to determine which state is responsible for examining an asylum application filed within the territories of the states signatory to the Regulation. In fact, according to statistical data received from SEM, in 2016 detention was ordered under the Dublin procedure in 34% of cases (1,922 detention orders), meaning that almost 2,000 people were detained during that year awaiting a Dublin transfer. This number does not take into account some cases in which the person was transferred for the second time after having returned to Switzerland, as depending on the individual situation, another type of detention could be ordered in such circumstances. These, as well as the cases in which the person was detained to enforce removal to a country in which they had obtained international protection, cannot be quantified since such detailed statistics are not available.

Such widespread use of detention to enforce Dublin transfers is interesting as it moves away from the original justification through which detention was introduced into the Swiss legal system, which was to ensure the enforcement of deportations to countries of origin, being in most cases technically and diplomatically more difficult to enforce. As I will explain in the next section, the Dublin system is based on the idea that persons in search of international protection must not be given the ability to choose their country of asylum and should claim asylum in the country of first arrival. This does not happen in practice, however, as asylum seekers often decide to move further on their arrival in Europe, following their individual migration projects and networks, but also because of the high discrepancies existing between member states in terms of reception and protection rates. As we will see, for the authorities, detention becomes a necessary tool to discipline the mobility of asylum seekers and make the Dublin system work despite its inconsistencies and its lack of legitimacy in the eyes of asylum seekers, but also of civil society and governments (especially those of the states of first arrival).

Background information on the Dublin system

The Dublin system dates back to June 1990, when member states of the European Union adopted the Dublin Convention in order to prevent a phenomenon that had been referred to as ‘asylum shopping’ to qualify the trajectories of those people who applied for asylum in several countries,

¹⁶⁷ Asylum seekers with an open procedure, whose application has been rejected, or who still have to apply for asylum in another country being part of the Schengen-Dublin area are transferred according to the Dublin III Regulation. Beneficiaries of international protection (recognised refugees and persons with subsidiary protection), on the other hand, are transferred according to bilateral readmission agreements, since the Dublin Regulation does not apply to their cases.

sometimes collecting a series of negative decisions¹⁶⁸. At the same time, the Convention emphasised the need to avoid asylum seekers being referred from one state to another without any of these states acknowledging their competence to examine the asylum application, a phenomenon that had been framed as ‘refugees in orbit’. The Convention was replaced by the Dublin II Regulation in 2003 and by the Dublin III Regulation in 2013. Switzerland has been an associated state to the Dublin Regulation since 2008. Based on the assumption that every asylum application must be examined by only one Member State, the Regulation serves to establish the criteria and mechanisms for determining which is competent in every single case. These criteria are (in the following order of hierarchy): the presence of a family member¹⁶⁹ (Art. 9, 10 and 11 of the Dublin III Regulation), the possession of a residency document or visa for a certain country (Art. 12), and the geographical trajectory into the European space, including irregular entry and stay¹⁷⁰ (Art. 13).

In practice, the first country of arrival is usually the one deemed competent to examine the asylum application. In case of further mobility, the state registering a new application is allowed to transfer the asylum seeker to that first country if the latter has acknowledged its competence, either by responding positively or not responding to the Dublin request within the deadline. The ability of states to determine the responsibility of another is reliant on the use of technology, and particularly of the EURODAC database (see Broeders 2011; Schuster 2011a), where the personal data and fingerprints of asylum applicants and detected irregular migrants are gathered. The body thus becomes an important means of identification, and border and police checks targeting migrants assume a key relevance for the functioning of the Dublin system.

Since its association with the Dublin Regulation, Switzerland has been one of the countries which has made the greatest use of it. In 2015, the effectiveness of the Regulation was questioned by an evaluation showing that only 8% of accepted take back and take charge requests¹⁷¹ – to use the Dublin jargon – were actually enforced and resulted in actual physical transfers. Switzerland, however, was already transferring many asylum seekers at that time. In 2014, it was second only to Germany in the number of transfers (2,638), while the rate of Dublin requests resulting in an actual transfer was much higher in Switzerland (47%) than in Germany (13%) (AIDA 2015: 25). Countries like Germany and France have seen a steady increase of enforced transfers over the past decade (with three times more transfers in Germany and eleven times more transfers in France in 2019 compared to 2014), so in 2019 Switzerland was the fifth country in terms of numbers of transfers, which is still remarkable given the size of the country (AIDA 2020b).

In 2016, the main year of my field research, Swiss authorities transferred 3,750 asylum applicants to another Dublin State under the Dublin Regulation¹⁷². Switzerland was the third country in terms of transfers after Sweden (5,244) and Germany (3,968). Although, contrary to the latter – in the same year Sweden and Germany received respectively 12,091 and 3,306 applicants from other Member

¹⁶⁸ For a critique of the term ‘asylum shopping’ and its use, see Moore (2013).

¹⁶⁹ For adults, this category includes only the spouse or partner and minor children who are beneficiaries or claimants of international protection. For unaccompanied minors, it also includes siblings (Art. 8).

¹⁷⁰ This last criterion stipulates that “[w]here it is established, on the basis of proof or circumstantial evidence (...) that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection” (Art. 13(1) of the Dublin III Regulation).

¹⁷¹ ‘Take back’ requests are based on the fact that the person has already applied for asylum in the other member state, while ‘take charge’ requests are made where another member state is held competent for the examination of the asylum application according to the Regulation’s criteria, but the individual has not yet applied for asylum in that other country.

¹⁷² Official 2016 asylum statistics, accessible on the website of the SEM:

<https://www.sem.admin.ch/sem/fr/home/publiservice/statistik/asylstatistik/archiv/2016.html>. Downloaded on 30 October 2018.

States – Switzerland only received 469 (AIDA 2017)¹⁷³. The SEM rarely applies the family criterion or the humanitarian and the sovereignty clauses, which allow them to dispense with a blind application of the criteria and declare themselves competent for the examination of the application (AIDA 2016). The main criteria for requesting other states to ‘take charge’ or ‘take back’ an applicant are rather an asylum application in another country (8,759 requests from Switzerland in 2016, including 1,278 persons whose applications had been rejected by the other state), the possession of residence documents or visa and the journey through another Member State (a total of 6,173 requests related to the two last criteria)¹⁷⁴. The diversity of trajectories of the ‘Dubliners’ that I encountered in detention reflects these different criteria.

The Dublin system is based on a double assumption: that all member states guarantee the same access and quality of the asylum procedure and the same reception conditions (regulated in the Reception Directive); and that refugees should make their asylum claim immediately after arrival in Europe (that is, in the first country they enter). Any further independent movement is framed as illegitimate, indeed the 2016 Commission’s reform proposal for a Dublin IV Regulation foresaw specific sanctions for so-called ‘secondary movements’ (Picozza 2017a). Contrary to the first assumption, reception conditions, chances of being granted asylum, access to integration measures and social rights are highly diverse across national contexts, showing high discrepancy with the EU’s ambition to create a harmonised asylum reception system (Brekke and Brochmann 2015). This heterogeneity partly explains why refugees “try to make their way to countries in which they believe they stand a better chance of getting some kind of regular status and some assistance with accommodation” (Schuster 2011a: 403, see also Brekke and Brochmann 2015). Further mobility can be driven by these different chances, including employment opportunities, but also by the geographies of social networks and family ties and by colonial links or language skills that motivate preference for some country over others (Picozza 2017a; Schuster 2011a).

When asylum seekers follow their preference and engage in further mobility, they find themselves in a condition of “dublinability” (Picozza 2017a: 73). This means that the Regulation can be applied to their cases, transforming them into ‘deportable’ subjects (De Genova 2002), a condition that might make it necessary for them to move again. These are some of the reasons why the trajectories of ‘Dubliners’ are “fragmented, circular and multidirectional, and, most importantly, unpredictable” (Picozza 2017a: 75), as we will see in some of the following examples. This kind of ‘turbulent trajectory’ (Schapendonk 2012) is in contrast with a linear representation of asylum seekers’ journeys as composed of their arrival in a first country, the potential onward movement and the return to that first country. For this reason, it is particularly interesting to look at the trajectories of Dubliners to conceptualise the relationship between mobility and immobility, agency and migration/asylum regime, coercion and resistance.

Liza Schuster underlines that while the Dublin system cannot achieve the goal of distributing the asylum ‘burden’ more equitably between the different states, it causes “enormous suffering and damage to those seeking protection” (Schuster 2011a: 408), turning refugees into undocumented or ‘illegal migrants’ (Schuster 2011b). Despite some years having passed between her fieldwork and mine, I will show that her results still describe the experiences of those persons claiming asylum and being caught in the technicalities of the Dublin system. Furthermore, the Regulation affects not

¹⁷³ In 2019 there were 1,724 outgoing and 1,164 ingoing Dublin-transfers. SEM 2020, “Faktenblatt: Kennzahlen zu den beschleunigten Asylverfahren”, available at <https://www.sem.admin.ch/dam/data/sem/aktuell/news/2020/2020-02-06/fs-beschleunigte-asylverfahren-d.pdf>.

¹⁷⁴ Statistical data have been provided by the SEM to the OSAR for the completion of the AIDA country report on Switzerland (AIDA 2016: 26).

only those who are effectively ‘transferred’, but all those asylum-seekers who engage or wish to engage in further mobility following their arrival in Europe (Picozza 2017b).

The Dublin Regulation allows member states to detain an asylum seeker to ensure their transfer to the state competent for the examination of the asylum application when there is a significant risk of absconding (Art. 28 of the Regulation). Swiss authorities make great use of this opportunity. In 2016, Dublin detention was ordered 1,922 times, making up more than one third of detention orders and more than half of the 3,750 Dublin transfers that have been conducted¹⁷⁵. For several cantons, Dublin cases are even a priority within policies of detention (Miaz and Achermann 2021b). Such determination in ensuring that Dublin transfers are enforced can be explained by the fact that if the transfer has not taken place within six months of a positive response by the other state, the competence for examining the asylum application passes onto Switzerland. For this reason, federal authorities have established a system of sanctions for those cantons which do not enforce Dublin transfers (Art. 89b Asylum Act). Ordering detention to ensure enforcement of removals under the Dublin Regulation, thus, can be motivated by financial concerns to avoid monetary sanctions (Miaz and Achermann 2021b). While immigration detention has initially been introduced into law as a measure to enforce removals to the country of origin, in the last decade it has become a pillar in the implementation of the Dublin system in Switzerland.

This section is organised into three parts: the first sheds light on how the application of the Dublin Regulation can affect the trajectories of asylum seekers arriving in Switzerland, upsetting their plans and sometimes separating families. To do so, it outlines the different routes followed by those asylum seekers and the situations that pushed them to move further upon their arrival in Europe. The second part analyses more deeply a few trajectories of asylum seekers who have been navigating the Dublin system for some time, being subject to several detentions and/or deportations, in order to shed light on the sometimes paradoxical relations existing between mobility and immobility, control and agency, coercion and resistance. The third part concludes with some more general considerations on how the Dublin system undermines access to protection and produces irregularity and precarisation through hypermobility and criminalisation.

7.1.1. The routes towards Switzerland and the application of the Dublin Regulation

The high majority of detainees encountered during this research who were subject to deportation under the Dublin Regulation were to be ‘transferred’ to Italy. According to statistical data, 41% of Dublin transfers in 2016 had an Italian destination¹⁷⁶. There are two main reasons for this: one is the geographical position of Switzerland, situated directly north of Italy, which renders it an almost obligatory passage for those migrants who have reached Europe through the Mediterranean route and wish to travel north. The shortcomings of the Italian system of asylum reception represent the second main reason, since they render the life of both asylum seekers in procedure and those having obtained international protection extremely hard (OSAR 2016). In fact, most of my interlocutors had spent a relatively long time in Italy, either waiting for an asylum decision, or living with (or without) some kind of residency permit, and had left the country because of the difficulties of earning a living. However, their registration and/or residency status in Italy prevented them from

¹⁷⁵ Data from our statistics analysis compared with data from the SEM migration report. In 2019 there were 994 detention orders under the Dublin procedure (2019 AIDA report on Switzerland) and 1,724 Dublin transfers from Switzerland (2019 SEM migration report). See also section 3.1.2.

¹⁷⁶ Statistical data available on the SEM Website.

claiming asylum elsewhere, so they were effectively turned into irregular migrants as soon as they crossed an international border (Schuster 2011b).

During my fieldwork, which mainly took place in 2016, I also encountered several detainees who had been travelling to Europe through the so-called 'Balkan route'. Tenzin, for example, was originally from Tibet, despite his having been living in Nepal for a few years before starting his journey towards Europe. He wanted to join his mother, living in Switzerland, after a tentative official demand for family reunification that was taking too long for him to be content to continue waiting. He arrived in Basel and claimed asylum. In the meantime, he had lost contact with his mother, but he finally found her through contacts he had made in the city's largest Asian shop. He found out that she was working full-time and had a large apartment where she could accommodate him. Despite this, Tenzin's asylum demand was dismissed through application of the Dublin Regulation. Because he was already of adult age, he could not benefit from the protection of family provided by the Regulation, so a request to 'take charge' had been sent to Poland, where he would now be deported. A few days later the police came to the asylum camp in which he was living and took him to the prison of Bässlergut, where I met him in Spring 2016.

Despite the Regulation taking into account the presence of family members, its limited conception of 'family' undermines its potential for the protection of family ties. Indeed, only spouses and minor children are included, as shown by the case of Hamid. When I first met him in late Spring 2016 in the prison of Bässlergut, he looked anxious and almost tormented. Another detainee, touched by his story, encouraged him to talk to me, so he started telling me about his 'big problem'. Hamid was Iraqi and in his 20s. He had travelled towards Europe with his mother through the 'Balkan route', crossing Turkey, Greece, Macedonia, Serbia, Croatia, Slovenia, Austria and Germany before arriving in Switzerland at the beginning of 2016. A few months later, he was notified of a Dublin decision. However, this was not applied to his mother, who received instead a communication that she would be transferred to another canton (which usually means that her case would be examined within Switzerland). Twenty minutes after the notification, the police came to the asylum centre and arrested Hamid in order to bring him to Bässlergut. His mother initially refused the transfer to the other canton and visited him in prison a number of times. A prison officer told me that she cried throughout her visits. A few days later, however, she was effectively transferred to another Swiss canton.

During his detention, Hamid attended the legal consultation sessions available in Bässlergut and discovered that his transfer was actually planned to remove him to Italy and not to Germany as he initially thought. This made no sense to him – nor to any person following the news at that time, as the high majority of Iraqi nationals were travelling through the Balkan route. Despite his never having touched Italian soil, apparently a request had been (erroneously?) sent to Italy, which had not answered and had therefore tacitly agreed to Hamid's transfer. This case shows that the Dublin system gives states a leeway that can result in unjust, erroneous decisions (in this case, Hamid was set to pay for the lack of response from Italy). This also illustrates the importance of providing Dubliners with legal advice, since this enabled Hamid to contest this erroneous decision. Finally, it poignantly shows how the Dublin Regulation is applied in ways that cause "suffering and damage" (Schuster 2011a: 408) to refugees, particularly through family separation. Hamid was released a few days after our encounter, and I believe that his deportation to Italy was stopped. However, I do not know if he was able to remain in Switzerland with his mother or if he was finally transferred to Germany. What I do remember is the gaze of distress and worry in his eyes. He could not understand how the system of asylum would be so cynical as to separate him from his mother: "we are family!" he said with bewilderment. His mother was the only family member he had left, and

was psychologically unstable, as Hamid suggested with a simple gesture to his head, accompanied with the word “war”.

Despite the main itineraries in 2015-2016 being the Mediterranean and the Balkans routes, Spain was still a route into Europe for some migrants, usually departing from North-West Africa. This was the case for John, who came from a sub-Saharan country but had been living in Morocco for some years before boarding a boat bound for Spain in late 2015. The boat had risked sinking but was rescued by the Spanish coastguard. John was held in a detention centre in Southern Spain where his fingerprints were taken. After 40 days, he was transferred to an asylum centre, where he was told that he could stay for a maximum of three months. During his stay there, he met “a black man” who advised him to continue his journey towards Switzerland. John gathered some money through begging and, with the help of his new acquaintance, he bought a bus ticket to Geneva. At the border, he was stopped because he was suspected of drug dealing, he relates, but finally he was enabled to pursue his journey to Basel, where he claimed asylum. After approximately three months, he received a Dublin decision and two months later, he was detained in order to be deported to Spain. In another case concerning a Libyan journalist, it was the possession of a visa that was decisive for the Dublin decision and the consequent transfer to Spain.

These cases concerned young men who had not applied for asylum in the country of first entry (and thus could still apply) or whose asylum procedure – as in the case of John – was still open. On the other hand, some of the persons I met had moved to Switzerland consequent to a negative asylum decision by another state. This was the case for Prakash, a Sri Lankan national who had claimed asylum in Germany and whose demand was rejected after two years. He tried to legally challenge the decision, but when his second appeal was rejected, he decided to move to Switzerland, where he received a Dublin decision after approximately five weeks. I found a similar scenario in the case of an Iraqi national to whom Belgium had refused asylum, and an Algerian national who had received a negative asylum decision in Germany. For these individuals, a transfer raised fear of deportation to the country of origin and possibly also pre-removal detention.

Despite this heterogeneity of itineraries, as mentioned before, the high majority of detained ‘Dubliners’ had received a decision of transfer to Italy¹⁷⁷. Among these individuals, some had only transited through Italy on their journey to northern Europe. Many others had been residing – regularly or irregularly – in Italy for years. Most possessed a permit for humanitarian reasons¹⁷⁸ – that was abolished in 2018¹⁷⁹ – which was not a form of international protection but provided asylum seekers with a rather precarious status, since the permit had a validity of six months to two years and needed to be regularly extended upon re-examination of the case. Others had refugee status or subsidiary protection (meaning that formally, they were not removed according to the Dublin Regulation, but a Readmission Agreement with Italy), and others had a residency permit for work or family reasons. Indeed, some of the ‘Dubliners’ I met had family in Italy and were fairly

¹⁷⁷ Although this section is not based on quantitative data, I have collected the cases of 36 persons who had been objects of a Dublin decision, out of whom 23 had a decision of transfer to Italy.

¹⁷⁸ Most detainees simply talked about having ‘documents’ in Italy, often without being able to detail which kind of status they had. However, since the permit for asylum and subsidiary protection have a validity of five years, I assumed that those permits received following an asylum demand and lasting less than two years were humanitarian permits, which can have a length of six months up to two years, see <https://www.meltingpot.org/Il-permesso-di-soggiorno-per-motivi-umanitari.html#.W-QmuXpKjGI>.

¹⁷⁹ Humanitarian protection was deleted from Italian law with Decree 113/2018, entered in force on 5 October 2018. I will not discuss the modifications of the Italian asylum system since the introduction of the so-called Salvini Decree nor after the so-called Lamorgese Decree of 2020, as fieldwork for this research took place earlier.

well-established there. They used to work but had lost their jobs during or following the Italian economic crisis¹⁸⁰.

The majority of my interviewees had left Italy precisely because of the difficulty of integrating into the job market and the consequent hard life conditions. For instance, Nadir, a 22-year-old Moroccan national, had been living for more than five years in Northern Italy when he decided to try his luck in Switzerland. The company for which he had been working had dismissed him because of economic trouble. With his job, Nadir also lost his residency permit. He arrived in Switzerland at the beginning of 2016 and applied for asylum with the idea that he would look for a job, but after a couple of months, he received a Dublin decision and was detained in order to be returned to Italy, where he was living with his two brothers. He commented on his decision to go to Switzerland: “[I decided] at random... Yeah, I came here to try, maybe I find something, but here as well, it is hard to find a job. If you don’t have documents, you don’t have anything here”. Indeed, several detainees highlighted that it is harder to work irregularly in Switzerland than in other countries such as Italy or France.

The hard living conditions in Italy also concerned beneficiaries of different forms of international protection. Indeed, the Italian asylum system provides that after obtaining protection, foreigners are placed on an equal footing with Italian nationals. However, the Italian welfare system is fairly rudimentary and based on the assumption of family reliance. For this reason, beneficiaries of protection are not provided with accommodation or financial social aid (OSAR 2016, 2020). Among my interviewees, several had slept on the street at some point during their stay in Italy as a consequence of what Fontanari (2018) qualifies as ‘abandonment practices’.

The living conditions of asylum seekers returned to Italy under the Dublin system were even worse than those of other asylum seekers. Until 2015, the European Fund for Refugees had financed an accommodation programme for Dublin returnees. After the closure of those centres, however, the Italian system of reception did not provide any specific measure for this category of asylum seekers. Dublin returnees fell out of the system and in order to re-enter it, they needed to make a new request for accommodation to the *Questura* (police station) or *Prefettura* (prefecture, government representation at provincial level) (OSAR 2016), which could take a significant amount of time. Furthermore, those asylum-seekers who had been accommodated in an asylum centre and had left it without authorisation lost their right to accommodation, which is still the case in 2020 (see Art. 13 and 23 of decree 142/2015 of 18 August 2015)¹⁸¹. This was the case for André who, after being deported to Italy, returned to the asylum centre he had left only to be told that he had no place there anymore. With no place to go, he decided to immediately take the route north again. During his transit through Switzerland, however, he was stopped by border police and taken to Bässlergut for the second time, where he was detained in order to be deported to Italy again. In the case of André and many others, the secondary movement (for the second time) from Italy towards the North was motivated precisely by the ‘abandonment practices’ (Fontanari 2018) of the Italian system.

Secondary movements can, however, have different motivations and follow new aspirations, opportunities or ties. The story of Jamal, which is rather untypical, illustrates this point. Jamal was 20 years old when I met him in the RP Bern. He had left his birth country, Morocco, when he was 14 and had been living in Spain for some time, before moving to Sweden. There, he was received as

¹⁸⁰ Like other South European countries, Italy had provided many low-skilled work opportunities for foreigners until 2008, when the unemployment rate started to grow and concern more and more foreign nationals (Reyneri 2010, see also Bonifazi and Marini 2014).

¹⁸¹ They could demand of the Prefecture that they be provided with accommodation again, the Prefecture being able to accept or reject such a demand after having heard the motives of the asylum seeker to leave (OSAR 2016: 28).

an unaccompanied minor and was able to attend school and learn Swedish. During his stay in Sweden, he met a Swiss girl, who he later decided to visit. He reached Switzerland by train, transiting through Denmark and Germany. At first, he did not claim asylum, although he did once he was subject to a police check. He was assigned to an asylum centre, but left after a few hours in order to live with his girlfriend. After a couple of months, he was controlled again, this time on a train, and detained in the RP Bern. The reticence of Jamal to follow the rules of asylum reception was related to his will to determine his own life and avoid disciplinary control. His trajectory highlights how the Dublin system also interferes with projects of mobility that are not closely related to asylum, as Jamal was doing well in Sweden but had followed a personal, supposedly romantic relationship. This kind of transnational mobility and relationships are neither foreseen nor protected in the current European asylum and migration system. And indeed, despite Jamal living autonomously in a small Swiss town and being well integrated in its social life, a policeman's suspicion blocked the pursuance of his life project, causing his detention and operating as a point of friction in his trajectory.

The Dublin Regulation is a legally and technically complex instrument. The State Secretariat for Migration disposes of officers who are specialised in its proper application and specific training sessions are regularly organised for lawyers and legal advisors in the asylum field about the Regulation and how to contest Dublin decisions. Most persons arriving in Europe and claiming asylum are not aware of its existence or exactly how it works, like Jakob who was convinced that he would not be caught in the Dublin system since he had succeeded in avoiding fingerprinting on arrival in Italy (such illegibility of the legal system will be further discussed in section 8.3.2). If its specific provisions are difficult to grasp even for practitioners, the Regulation has very concrete and devastating effects on individuals and families, destroying migrants' projects, undermining access to international protection and separating family members. Furthermore, through the Dublin system, the act of seeking asylum is discredited and can be presented as illegitimate or abusive, while the state's goal of exclusion supersedes that of refugee protection.

7.1.2. Navigating the Dublin system: the trajectories of Nick, Jonas and Jake between (forced) immobility and (resistant) mobility

In the last section, I presented the impact that the Dublin system had on individual trajectories, determining their fate and causing high levels of distress for asylum seekers and their families, since their desires and aspirations are not taken into account in the determination of the state competent for the asylum demand examination. In this section, I want to further focus on the interplay between the migration/border/asylum regime – represented in this case by the Dublin Regulation – and asylum seekers' agency, which can take different forms than for other types of detainees being threatened with deportation to their country of origin.

As an example: Nick, a Nigerian national, had applied for asylum in Italy and had been living for eight months in Southern Italy in a large collective centre (CARA) – which is known for its precarious infrastructure and conditions – until he received a negative decision. He made an appeal, but despite that, he had to leave the CARA and lived on the street for some time. One day, he decided to leave for Germany. He stayed there for approximately one year, when he suddenly received a call from his lawyer in Italy who told him that his appeal had been admitted. Thus, he travelled back to Italy in order to pick up his new documentation. With his residence permit in his pocket, he took up his route to the North again and stopped in Switzerland (it was not clear during our conversation whether this was his intention or the consequence of border control), where he claimed asylum. After about six weeks, he was notified of a decision of transfer to Italy, and was consequently detained in Bässlergut and later removed.

Nick's story shows how different forms of voluntary and involuntary mobility intertwine in one single trajectory and have different motivational forces. He left Italy because the living conditions had become unbearable after the rejection of his asylum claim, and because he hoped to find a better situation in Germany. However, he subsequently returned to Italy of his own volition to obtain his residence permit after admission of his appeal. He was able to travel autonomously to Italy and to leave the country again, ending up in Switzerland, given the absence of systematic border controls within the Schengen space and the relatively low costs of mobility within it. A few weeks later, however, he was arrested and this time forced to return to Italy.

Nick's case also illustrates the "interplay between legality and illegality" that characterises many Dubliners' trajectories, "whereby obtaining papers in one country while 'illegally' living in another, at the very least, provides a guarantee against deportation 'back home'" (Picozza 2017b: 236). Indeed, Nick's intention was not to return to Italy and live there with his new residency permit, but to first ensure himself a regular status somewhere in Europe – in Italy – and then to move forwards to another country with better living conditions and work opportunities. Italy had very specific characteristics in this regard. As argued by Picozza (2017b: 243), it had a "double status: it could be a prison for those who have been previously identified there while wishing to go elsewhere (...). Yet, for others, Italy represents the only chance of being granted asylum". Despite this situation possibly changing since the abolition of humanitarian protection in 2018 and other further developments, it was certainly the case until recently. The 2015 statistics concerning the decisions of Italy and Switzerland about the asylum claims of Nigerians provide a case in point. Italy examined 12,568 demands of Nigerians, of whom 30% received some sort of protection, more precisely 19.6% were provided with humanitarian protection, 7.5% with subsidiary protection and 2.7% with refugee status (ANCI et al. 2016: 104-105). By way of comparison, the acceptance rate of Nigerians' asylum claims in Switzerland was 0.0%, while the rate of protection was 3.1%: out of 965 demands, 25 Nigerians were temporarily admitted (F-permit) and no Nigerian received refugee status¹⁸².

If Nick had a more ambiguous relationship with Italy which had provided him with a form of protection, the story of Jonas illustrates the other status mentioned by Picozza, namely that of Italy becoming a 'prison' for refugees. An Eritrean national, Jonas had arrived in Switzerland in the summer of 2015 after a long and arduous journey that had forced him into one month of detention in Libya and the dangerous crossing of the Mediterranean. He had a sister who had arrived in Switzerland two and half years before him and had been granted asylum. This had motivated him to join her, together with positive rumours he had heard about Switzerland. After a few months in an asylum camp, he was notified of the decision to dismiss his application: according to the Dublin III Regulation, Switzerland was not responsible for examining his asylum claim, rather it was Italy as country of first arrival in Europe. He was detained for the first time but consequently released, so he decided to continue moving and travelled to Sweden, which he reached some time afterwards. He spent a little less than one year there, but was finally deported to Italy in summer 2016. He related to me that the Italian authorities denied him accommodation with the following justification:

"At the airport the police received me, then I told them: 'Okay, give me accommodation', and they said: 'No, we are not giving accommodation to you. There is no accommodation for you here, because you said [to Swedish authorities] that you travelled through Italy. But your fingerprints are in Switzerland'. For this reason, I had to sleep on the street" (Jonas, detained in the RP Bern).

¹⁸² SEM data on examined asylum claims from 1.1.2015 to 31.12.2015, available on SEM's website: <https://www.sem.admin.ch/dam/data/sem/publiservice/statistik/asylstatistik/2015/12/7-20-Mouv-demandes-d-asile-a-f-2015-12.xlsx>. Visited on 9 November 2018.

He slept a few nights on the street, and then decided to return to Switzerland, where he applied for asylum anew, but was arrested again after a few days and deported to Italy after one month of detention. He described his deportation from Switzerland as follows:

J: From here they took me with handcuffs. And on the plane they also gave me my clothes. Then they said that I had to go back to Italy and to sign. But I refused to sign. Then they showed me a picture of someone with his feet and his hands tied and his mouth as well... (...). They told me that if I refused, I would be sent back to Italy like this. So I decided to just go. And in Italy they did the same to me like they had done when I came back from Sweden: they just left me on the street. Then the next day, it was cold and rainy, so I came back here to Switzerland. (...) Instead of sleeping on the street, it's better [to be] in a Swiss prison, that's why I came back.

L: So did you already know that you would go to prison?

J: I didn't have any other option, that's why I came (Jonas).

Despite being aware of the risk of incarceration, Jonas returned to Switzerland for the second time, but he was stopped again and detained again in the RP Bern, when our interview took place; he had been detained for six weeks at that point. At this juncture, however, he was determined not to return 'so easily': "if they want, they can send me there with handcuffs, otherwise I will not go", he said. His determination was also combined with a deep feeling of exclusion, which he expressed with these words:

"If I have to go back to Italy, for me it's like being thrown into a garbage dump. And I will come back again. Here in prison is better than in Italy" (Jonas).

Jonas' trajectory and words illustrate how Dubliners can variously resist the system to which they are subject: through resistance to deportation itself or through returning after deportation. Return mobility becomes a real form of resistance to the asylum system and border regime that we will call 'resistant mobility'. Repeatedly returning after deportation despite the risk of being detained and deported again is a way to challenge the Dublin system by reasserting control over one's mobility. In a very different context, Galvin (2014) shows how deportation of irregular migrants from Botswana to Zimbabwe does not stop them from returning to ensure their livelihood. She argues that "migrant workers do not experience deportation as a single event but as a constant threat to their transnational livelihoods and an unwelcome interruption to daily life" (Galvin 2014: 631). This analysis fits the situation of Dubliners as well and partly explains how some make use of their agency by perpetuating irregular mobility. On the other hand, migration authorities develop their own tactics to counter such resistant mobility in what have been conceptualised as 'practices of recuperation' (Scheel 2018). For example, in some cases they can threaten asylum seekers with deportation to their country of origin (which was difficult with Jonas since forced deportation to Eritrea is not possible), or with imprisonment for illegal stay. The latter happened to Jake, whose trajectory I wish to narrate here.

When I met Jake in the RP Bern in Spring 2016, it was the second time he had been detained in that prison. He came from Gambia, as had many other Dubliners who were removed to Italy. Jake had arrived in Europe in 2013, after an earlier tentative arrival that had been blocked in Libya when the war had started in that country, leading to repatriation in Gambia. He arrived in Italy and applied for asylum there. After a couple of months in an asylum camp in Southern Italy, he "got papers for one year", most probably meaning that he had been granted humanitarian protection under national law. At the beginning of 2014, he went to Switzerland: he arrived in Geneva and filed an asylum claim in the federal registration centre of Vallorbe. After the asylum interview, he was transferred to another camp, and after approximately one month, he received a Dublin decision and was transferred to the canton of Bern, which had been entrusted with the enforcement of his removal decision. However, Jake continued to stay in Geneva with a friend, disappearing from the view of

the Bern migration office. One day, he found himself under police control, was returned to the canton of Bern and detained in the RP Bern to await Dublin transfer. Two weeks later, he was deported to Bari in Southern Italy. Finding Italy tough, he decided to return to Geneva a few months later, in 2015. However, he was controlled again by the police and returned to Bern. This time, he was not detained: cantonal authorities reminded him of his illegal status, and allowed him to return by himself. In Italy, he extended his permit, and then decided to leave again, this time heading to Germany. In the train, he was controlled by border guards who, following fingerprinting, found out that he was wanted in the canton of Geneva for the criminal offence of illegal stay. He spent three months in a penal prison, and then was transferred to the RP Bern in immigration detention in view of his third removal. When I interviewed him, he had been detained for over a month. “Here you have no liberty, you just wait for the immigration to come and tell you. They don’t listen to your feedback”, he said, expressing his disappointment with the rigidity of the system, which takes no interest in his own aspirations and plans. “The law says I have to go to Italy, but I know more about Switzerland than about Italy. I will come back”.

A few months later, Jake contacted me from Rome and told me what had happened since our interview. He had been deported to Rome, but after a couple of weeks he had decided to try again to reach Germany. However, he was once again controlled close to the Italian-Swiss border, on Swiss territory, and charged again with illegal stay. Following that, he had to serve a prison sentence of a couple of months. At the end of the sentence, he was transferred to the RP Bern for the third time. While cantonal authorities were organising his removal, he was transferred to another detention facility within the canton of Bern (Witzwil), and then back to Bern, before being deported to Rome again. Between the prison sentence and the period in immigration detention, he had spent six months incarcerated this time. In March 2017, I was able to meet him in Rome. He was living in a squat without electricity, together with some compatriots. He still had some money which he had earned working during his prison sentence, and sometimes he found small jobs that provided him with some money. He was about to renew his Italian documents again, but he dreamed of leaving again right afterwards. Such hope had also motivated his second departure from Italy, as he had told me during our first meeting in the RP Bern:

“I won’t stay in Italy. I’ll go somewhere else. I’ll go to Germany. I want people, I want my family to be proud of me, I want to do something important, something that makes me happy. I would like to go to school. (...) I’d like to learn music engineering, and one day to have a professional recording studio. But to settle in Europe is very difficult. They charge you and put you in prison” (Jake, detained in the RP Bern).

Having been imprisoned for six months, this time his dreams were balanced with the fear of being imprisoned again. After our meeting in Rome, I lost contact with him for more than a year. Lately, however, I made contact again and learned that he had finally made it to Germany, where he was staying in an asylum camp. It had taken him almost one year of incarceration and three deportations and his story is no doubt not yet over.

Jake’s trajectory illustrates the interplay between his own aspirations, desires and plans, and the measures put in place by states to limit migrants’ agency and frame their migratory projects, which together make up the border and migration regime (Casas-Cortes et al. 2015; Eule et al. 2017). His back-and-forth movements and the alternation of moments of mobility and immobility were the result of that interplay: indeed, he reacted to every removal by leaving again. As his repeated incarcerations show, state authorities might resort to the penal system when deportation triggers return or resistant mobility after an enforced transfer. In fact, according to Art. 115 of the FNIA, illegal entry and stay can be punished by a prison sentence of up to one year. The issuing of an

entry ban, that is almost automatic in case of removal decisions¹⁸³, enables the resort to criminal law as its violation can also be sanctioned.

Jake's was not the only case in which a 'Dubliner' was sentenced to prison for illegal entry and/or stay. Robert, who was going to be deported to Italy for the third time when I met him, had just served a prison sentence of 50 days. During his third stay in Switzerland, he had been detained in immigration detention for approximately one and half months, but he had finally been released. A few days later, however, he was again controlled by the police and this time, he was criminally condemned. After serving the prison sentence, he was transferred to immigration detention again. He calculated that he had spent 200 days in prison, taking into account both penal and immigration detention. The stories of Jake and Robert show that immigration and penal detention can alternate in Dubliners' trajectories, and that state officials resort to the penal system when immigration detention has not been effective in dissuading and preventing asylum seekers' further mobility (this will be further discussed in section 7.3). Confinement, then, has not only a logistical function of facilitating removals, but also one of disciplining asylum seekers into accepting the effects of the Dublin regime, and punishing them if they do not. Through the use of penal sanctions, asylum seekers are actually made criminals and their protection claim presented as abusive, which supports the argument of an increasing criminalisation of migration conducts and, more specifically, of asylum claiming.

7.1.3. Disciplining asylum-seekers' mobility, producing irregularity: hypermobility and the precarisation of asylum seekers

Following Mountz et al. (2013: 528), immigration detention can be conceptualised as representing a contradictory spatial logic of mobility and containment: aiming at 'regulating' mobility through technologies of exclusion, identification and immobilisation, it results in the production of "new, highly mobile identities". In fact, detention "immobilizes migrants only to move them elsewhere, and moves migrants only to ensure their future immobility" (Mountz et al. 2013: 528). The production of new forms of mobilities is particularly manifest in the case of detention under the Dublin procedure. Despite an increasingly restrictive border regime for people seeking asylum in a period that many have qualified as a 'migration crisis', some of the narrated trajectories presented a high degree of mobility. They also show that detention and removal do not put an end to refugees' journeys, but become "just another hurdle to be overcome in the struggle to build a future" (Schuster 2011b: 1395, see also Schuster and Majidi 2014). Such trajectories of further mobility are rather invisible compared with the high visibility of refugees' inward movement to Europe (Picozza 2017a, see Tazzioli 2015), which are rendered spectacles by the media (De Genova 2013).

These trajectories of mobility are in part produced by the Dublin system, which is based on the false supposition of a homogeneous European asylum system, and which refuses to take migrants' aspirations seriously in terms of country of settlement. This results in a paradoxical outcome since "the Dublin Regulation was purportedly established in order to solve the issue of 'refugees in orbit', [but] the clash between its lengthy bureaucratic machinery and the self-determination of refugees resulted in an effect of hypermobility" (Picozza 2017a: 72). What is striking here is the evident contradiction between the goal of forcing immobility, on the one hand, and the effect of producing hypermobility, on the other, which shows that the migration regime is effectively shaped by the interplay of control practices and migrants' agency in a process of appropriation and recuperation in which policy and actions can have unintended effects (Scheel 2018).

¹⁸³ A migration officer in Basel-Stadt said that "if there is an entry ban, then we have to [order detention], there's almost always a detention then" (Franz).

If the Dublin system produces geographic mobility, it also results in status mobility (Schuster 2005: 758), the two being intimately related as a person can have a regular status in one member state and be irregular in another, navigating between legality and illegality (Picozza 2017a). In a sort of struggle between states that try to delegate responsibility for single asylum claims, refugees can sometimes “become caught (...) in a no-man’s land outside the law” (Schuster 2011b: 1396), being “stuck in transit” (Brekke and Brochmann 2015; Picozza 2017a, 2017b). Picozza (2017b: 245) analyses this condition as being “characterised by an ‘unresolved’ self-in-transit” in which migrants are “constantly facing the dilemma of whether a better life can be found elsewhere – or *elsewhen*”. She continues: “real life seems to be always postponed. Dubliners seem never to fully arrive at their destination. And so they restlessly keep moving” (Picozza 2017b: 245).

If detention has become an indispensable tool for disciplining asylum applicants and making the Dublin system effective, asylum seekers’ (hyper-)mobility acquires a dimension of autonomy and resistance in this context. However, at the same time, it “reflects the precarisation of refugee lives as a technique of governing that renders them perpetually mobile subjects” (Picozza 2017a: 75). In fact, through application of the Dublin Regulation, asylum seekers are turned into undocumented migrants (Schuster 2011b) and deportable subjects (De Genova 2002; Picozza 2017a), which increases their detainability, intended as the “possibility of being detained” (De Genova 2016: 6). More specifically, the Dublin Regulation “constructs the asylum seeker as a detainable subject, while also [simultaneously] limiting States’ powers of detention” (Costello and Mouzourakis 2016: 47). In fact, the Regulation provides states with a certain margin of discretion in the use of detention, but also restricts it through setting legal prerequisites for its use to respect the rights of asylum seekers.

Despite the Regulation’s formal aim of establishing which state is responsible for examining an asylum application, which shall ensure that every person has access to an asylum procedure and is given the opportunity to claim protection, it ends up undermining refugee protection in multiple ways. In fact, while the creation of categories is proper to asylum law, aimed at examining protection claims by distinguishing between ‘true’ and ‘false’ refugees, the specificity of the Dublin Regulation is its ability to create categories of exclusion without such examination. Through its implementation, access to asylum procedure and receptions conditions are restricted and contingent upon (im)mobility. Furthermore, even when applicants obtain formal protection, they become detainable and deportable by moving to another country, and they can lose their right of residence if they do not renew their documentation in time. Therefore, the Dublin system produces new forms of irregularity, sanctioning and sometimes even criminalising asylum seekers’ mobility.

A few considerations can be taken on the use of immigration detention to regulate the mobility of asylum seekers. Coercive measures were introduced in Swiss law to ensure the enforcement of asylum seekers’ removals to their countries of origin when their need for protection was denied. The introduction of detention under the Dublin procedure represents a shift in the use of administrative detention, that becomes a measure to deal with the mobility of asylum seekers *within* Europe. The legitimacy and necessity of such a measure of liberty deprivation with the scope of containing mobility can certainly be questioned. The fact that asylum seekers can rather easily revert deportation attempts through return or resistant mobility also raises doubts about its effectiveness. The question remains as to why authorities use immigration detention in Dublin cases. On the one hand, it makes it easier to organise and control the departure of those asylum seekers in the other Dublin state, which must occur within six months of the acceptance of that state to take charge or take back the applicant, otherwise the responsibility passes to Switzerland. This can be seen as one of the reasons why detention has become a normalised and trivialised instrument of asylum management within Europe. On the other hand, it could be argued that immigration

detention serves to show the power of the state and the limits of asylum seekers' agency, operating as a sort of punishment with the required effect of dissuasion. This is particularly the case with so-called 'Dublin-Repeaters', as this quotation of a migration officer of the Bern cantonal migration service suggests:

"The category Dublin 3, it's the so-called Dublin-Repeaters, people who have already been transferred under the Dublin procedure to a Dublin state. In these cases, you have to ask the Dublin state again whether they allow the transfer. (...) We send the protocol to the Dublin Office at SEM and they ask the Dublin state again. Then we can send the person again back to the Dublin state. Not all cantons take these people into detention, it is very costly and complicated. You can't book the flight immediately. It is even more complicated than the first time because we have to do everything. In the Canton of Bern we do it consistently, otherwise people never learn. These are actually people who are illegally present (...). And otherwise we can also notify a removal order [for their country of origin], then we can send them home" (Lucia, migration officer, non-recorded interview).

It appears fairly clear in the words of Lucia that the enforcement of removals for these 'Dublin-Repeaters' and the ordering of immigration detention take the form of a disciplinary measure aimed at sanctioning detainees for their unwanted and unauthorised mobility as well as sending the message that their irregular presence is not tolerated, which is presumably also intended to have a dissuasive effect. The alternative, to open a procedure of removal to the country of origin, also moves towards performing sovereign power, while punishing some sorts of mobility 'recidivism'. The comment of a representative of the special police forces in charge of enforcing removals in the canton of Bern, according to whom "*Repeaters (...) are usually deported on special flights, when it's possible (...) and not anymore through level 1, level 2, and so on*"¹⁸⁴, seems to confirm that harsher measures are used with those who resist the system through returning after deportation.

In this section, we have seen how detention is used as a tool to discipline asylum seekers' mobility and ease the workings of the Dublin system. We have discussed return mobility after removal as a way to resist such a system, however, such mobility is subject to criminalisation as violating an entry ban or residing illegally in Switzerland can be sanctioned with a prison sentence. While this aspect will be further discussed in section 7.3, the next section focuses on the moment and modalities of the arrest to shed light on further practices of bordering and criminalisation.

7.2. Legal exclusion and bordering practices: the arrest as a moment of friction

Among those detained under immigration law, there is a high diversity of personal situations and trajectories. Some individuals are detained in view of removal to a country where they have sought – or shall seek – protection, as related in the last section. Others have lost their right to stay following a divorce or a criminal condemnation, or following a negative asylum decision. And still others will have been living and sometimes working undocumented until they found themselves subject to a police check. In this section, I focus on the moment of the arrest as a moment of friction (Cresswell 2010; Schapendonk et al. 2018) in order to shed light on the circumstances that led to detention in a number of specific cases, and the ways in which migration control practices have interfered in migrants' projects and lives more generally. It will appear again that migration control is strictly interrelated with crime control and police practices that are discriminatory and make use of gender and racial profiling, which results in different levels of vulnerability to detention among migrants according to their gender and racialised physical attributes.

¹⁸⁴ Unfortunately, it was not possible to check this information with other sources.

It goes without saying that not every person who is deported has previously been detained. As this research focuses on immigration detention, however, only the trajectories of migrants who have been detained will be considered here. For the scope of this section, arrest can be divided into three main categories: planned arrests at the residence of the migrant (be this an asylum centre or apartment) or at the immigration desk; arrests ensuing from a police or border control; and transfers from criminal detention. While the latter will be discussed within section 7.3, the two first categories are discussed in detail here.

7.2.1. Planned arrest at the migrant's residence or at an immigration counter

For some of my interviewees, detention had been planned by their caseworkers at the migration office, who had mandated the police to go and arrest them at their residence. This mostly concerned those asylum seekers who had received a decision of transfer according to the Dublin III Regulation. In several cases, detention had occurred in the asylum centre immediately after the notification of the Dublin decision, as related by a detainee named Omar:

"I was in Basel, in the camp next door to here [Bässlergut]. (...) [One day] in the morning, I got up early. Security told me I had a transfer, [so] I gathered my luggage. I was waiting for my transfer when immigration came and told me I had a negative [asylum decision and] I had to leave Swiss territory. The police came, they handcuffed me and brought me here. No one told me why. (...) They told me that I have to go back to Germany, that I have Dublin, and said that I can't go back by myself" (Omar, detained in Bässlergut).

Several detainees related a similar story – being told that they were going to be transferred to another camp on the day of their incarceration so that they would attend the meeting and prepare their luggage. During my fieldwork, this was a ruse that I often saw used by migration officers. At the meeting, the detainee would be notified of a Dublin decision and shortly afterwards arrested and 'transferred' to immigration detention. In our conversation, it was clear that Omar had felt cheated by this communication. Thinking that he was being transferred to another centre, he was handcuffed and placed in a van in order to move some 200 metres, the asylum camp being located right next to the prison of Bässlergut. Hugely disappointed, he found it ridiculous that he had been transported in this way to end up so close.

Arrest occurring right after the notification of a Dublin decision was particularly common for those asylum seekers whose claims had already been rejected by other countries. Despite my not having had access to detainees' files and detention orders, my hypothesis is that the fact that they had avoided deportation in that country by fleeing into another country was considered evidence of the fact that they might abscond again in order to avoid deportation from Switzerland, thus justifying their detention. Interviews conducted with migration officers within the framework of our research project confirm this hypothesis (Miaz and Achermann 2021b). However, other asylum seekers had experienced the same fate despite not having received any decision in the other country. For example, André's experience at his first stay in Switzerland was very similar to Omar's, as previous to his detention he was not informed of the authorities' intention to return him to Italy and so he did not expect his arrest:

"[Two months after my arrival in the centre,] they took me and told me 'listen André, you have a transfer'. They didn't tell me they were coming to put me in jail. (...) I said 'you should have informed me the day before (...) to prepare myself, I'm not going to run away, I don't want to run away, I want to collaborate.' (...) They put me in a vehicle (...), a van (...) where the windows were tinted, it's as if you had committed an offence, they traumatise you! (...) So they take me to the big [asylum] centre. Uh... the lady, the immigration officer (...) gives me some

papers and tells me 'listen André, you have to go back to Italy because it's Italy that has your asylum application, you have to sign'. I said, 'I'm not going to sign anyway, do what you want, I'm not signing'. And then (...) the police (...)brought me here" (André, detained in Bässlergut).

André's detention was presumably motivated by his lack of cooperation, since he was unwilling to return to Italy and refused to sign the papers. Whether or not this would suffice to justify his detention is legally questionable, especially given the fact that his detention took place before the deadline for making an appeal against the Dublin decision. This occurred in a time during which the Federal Administrative Court admitted a number of appeals against SEM's decisions to detain asylum seekers accommodated in federal centres because those were not sufficiently motivated (see section 2.3). André contacted the legal advisor visiting Bässlergut, who, however, made no legal step as the removal was scheduled for a forthcoming date.

In other cases, arrest only took place several weeks after the reception of the Dublin decision. John, for example, had been transferred to another centre after he had been notified of the decision of transfer to Spain under the Dublin III Regulation. He relates that after approximately two months, he met immigration authorities, who told him that he could leave the country by himself. At a later meeting, they said that they would send him the flight ticket. On the day of his deadline for departure, he had still not received the ticket, so he asked the centre's staff, but they had no news. He relates that one week later, police entered the apartment he had been transferred to a few days before:

"On Tuesday, by nine o'clock, police people came. (...) I asked the policeman 'what's the problem, what do they need', and they said I should give my Ausweis [permit]. I said 'okay no problem', and showed them my Ausweis. Then they said I should take my bags, (...) they said: 'come with us'. You know, it's police people, you cannot argue with them. So (...) I said to myself 'I didn't do anything, so let us go'. They said: 'We are going to handcuff you'. 'Ok you're free, I'm in your country, you can do anything you want'. So... they put me in handcuffs and they brought me to (...) the police station, (...) and then they brought me here. (...) So I was here and I was worried. I told them I wanted to see the people from immigration, because (...) me and the immigration officers had an agreement that they would give me the ticket" (John, detained in Bässlergut).

John related that when he met the immigration officers again in the prison, they told him that he had received the ticket but had refused to leave, which he held was not true. He was very disappointed about the way in which the immigration authorities had handled his removal. He felt betrayed, which impacted his relations with the state and his future choices, and from that moment he had decided that he would no longer trust state authorities (see section 8.2.2).

As already mentioned, in a few cases detainees had been arrested at the immigration counter during a meeting with migration authorities. The people concerned were not expecting to be detained – otherwise they would have probably not attended the meeting – and therefore they felt that they had been tricked. Cantonal migration offices usually have a securitised room that they can use when they suspect a meeting is likely to end in a detention or in aggressive behaviour. Migration officers of Basel-Land showed us that room, explaining that it had a camera and security glasses, and could not be opened from the inside. It was probably in that room that Rémy was arrested a few days before I met him in Bässlergut. This young man of West-African origins had been living in Switzerland for many years despite a negative asylum decision. In the last few years, he had moved back and forth from immigration detention, and had also served several months of prison for illegal stay. His last release had occurred after he had refused a repatriation flight, and since then, he had been required to attend the migration office of Basel-Land every week with his 'white paper', a document that attested his status of rejected asylum seeker (see De Coulon 2014). One day, he

presented himself as usual, but this time he was arrested and detained. Two months later, he was deported with a special flight to his country of origin.

Having put himself into the hands of the police was particularly frustrating to him, and according to some other detainees this drove him mad, desperately shouting: “I put myself into prison!”. The migration office had presumably waited until a special flight to that country was available, and then planned the arrest. In fact, it is a common practice of migration officers to release detainees some time before they reach the maximum time of detention, so that in case a new opportunity arises for the enforcement of removal, they are still in possession of some detention time that they can order before the flight.

In fact, detainees who are released but are still subject to a deportation order are usually required to turn up regularly at a migration office in accordance with Art. 64e FNIA. This is meant to avoid absconding and is considered as an alternative to detention. In Basel-Stadt, this requirement can concern both the central office located in the city and the office situated in the building of the Bässlergut prison. According to an interview carried out with a representative of the Basel-Stadt migration office, it depends on where the caseworker is based: if the officer in charge is working in Bässlergut, the foreigner is required to announce himself at the prison counter. In this case, the immigration caseworker would usually meet him at the entrance, although sometimes the migrant is required to enter the prison space and follow him or her to their office. According to this migration officer, people are never detained under those circumstances: “we don’t use such tricks”, he explained. However, I know of at least one person who did experience that ‘trick’ – Yusuf, whose story will be related in detail in section 7.3.2. Symbolically, the need to present oneself at the prison counter while vulnerable to immigration detention is a powerful example of the disciplinary power exerted over migrants through control practices. This was reflected in the anxiety felt by ex-detainees who would have to visit and sign at the detention facility. In fact, this practice contributed to the creation of extended feelings of incarceration even after release (see Klein and Williams 2012).

7.2.2. Arrest at border or police checks: racial profiling, criminalisation and the embodiment of borders

The majority of detainees who told me their stories had not been arrested through an organised police intervention at their residence or at the immigration office, but rather as a consequence of police checks in the public space or border control practices. Practices of bordering not only occurred when individuals were crossing international borders – at border posts or in proximity of the physical border – but also while they were moving inland and/or carrying out their normal lives. Police checks occurred in public spaces such as parks, streets, railway stations and public transportation, originating from police or border agents’ suspicion, which often conflates suspects of crime, immigration and even terrorism (Shamir 2005, cited in Schwarz 2016).

In a certain number of cases, people were stopped while they were trying to cross the border, either entering or exiting Swiss territory without proper documentation. This was the case for Ted, who was living undocumented in Geneva, and who was going to visit a friend in Germany when he was controlled in the train and detained. It was also the case for Mehmet, a Turkish national who had travelled around Europe with a fake passport that Swiss border guards had detected at the border crossing point in Basel, while he was travelling from Belgium to Italy. Rami also used to travel often, living between Italy and France despite being undocumented, but was arrested at the Swiss-French border following a border check, which resulted in his deportation to Tunisia several months later.

Among my interviewees, not all had chosen Switzerland as their final destination, but some had claimed asylum following interception of their journey by border guards or the police. Nassim, for example, was directed towards Germany, where he had acquaintances, but was controlled on a train in Lucerne and was found to be without ticket or identity documents. He related:

“I was passing, as a passenger on my way to Germany, and I was controlled by the police in (...) Lucerne. (...) I’ve no papers, I’ve no train tickets. The police took my finger[prints]... They brought me from Lucerne to Chiasso. It wasn’t until (...) I did the finger[print]s that I decided to stay here. Because of that, I asked for asylum here. My destination was Germany! I wasn’t supposed to stay here. But when (...) the police checked me, fingered me, I decided to stay here” (Nassim, detained in Bässlergut).

Nassim’s story is a good example of how practices of control can impact a migratory trajectory through friction, inducing an unforeseen stopover, changing the migrant’s plans. Nassim’s asylum application in Switzerland was a reaction to a border check, which initially avoided his detention (he was detained later in his trajectory, as will be explained in section 7.3.1). Indeed, people who were stopped in the area of Basel and claimed asylum were generally brought to the federal asylum camp. Depending on the specific circumstances of the case, applying for asylum while in detention would also lead to release, as in the case of one detainee I met in Bässlergut who claimed asylum a couple of days after his arrest and was released with a *‘laissez-passer’* for the asylum camp located next door.

Several detainees were arrested while trying to cross the country and reach another state, particularly if they were found to have violated an entry ban. This was the case, for example, of those asylum seekers who had already been transferred to Italy under the Dublin III Regulation, but were still attempting to pursue their journey to the North, and were stopped in proximity of an international border (e.g. in Chiasso, Brig or St Gallen). This happened twice to Jake (his trajectory was analysed in detail in section 7.1.2), before he was able to cross the border and arrive in Germany. André instead related that when he entered Switzerland for the second time (the day after being removed to Italy) with Germany as a destination, the Swiss border guard provided a train ticket and advised him to pursue his journey without lingering in Zurich, where he had to change trains. In fact, he was controlled in Zurich and arrested, then brought to Bässlergut for the second time (he had been arrested in the asylum centre the first time as related above).

As the cases of Jake and André show, it is hard for some people, especially people of colour, to transit through Switzerland without being controlled. This is surprising since these borders are crossed by thousands of people every day, and can only be explained through racial profiling that drive the practices of border guards, despite this not being publicly acknowledged (see Häberlein 2019a; Naguib et al. 2017; Schwarz 2016). The term *ethnic or racial profiling* is used to point at such discriminatory practices of “stopping someone for questioning or searching on the basis of their ethnic or ‘racial’ appearance and not because of their behaviour or because they match an individual suspect description” (Goodey 2006: 207). This kind of discriminatory practice is not only common among border guards, but also among police forces. Indeed, it is well known that Swiss police and border guards disproportionately stop people of colour and other persons whose physical appearance looks foreign to them (Naguib et al. 2017). This was even signalled in the Lonely Planet guide to Switzerland¹⁸⁵. A clear legal provision against racial profiling is lacking in Swiss law and case law¹⁸⁶.

¹⁸⁵ In both the paper and online versions, the Lonely Planet guide to Switzerland states: “Swiss police aren’t very visible but have a reputation for performing random street searches of questionable necessity on people of non-European background or appearance” <https://www.lonelyplanet.com/switzerland/practical->

Racial profiling is defined as a form of structural discrimination (Schwarz 2016: 256) or structural racism (Häberlein 2019a). Naguib et al. (2017) note that a practice can be qualified as an instance of racial profiling “[w]hen police operations involving identity checks, observation and/or stop-and-search (also called stop-and-frisk) are directed against people due to their physical appearance, religious symbols or other external aspects, rather than due to legally justifiable suspicions”. As a consequence, certain categories of migrants become targets of heightened control through their profiling according to skin colour and racial and social markers (how they speak, dress, where they stay, and so on). Ethnic or racial profiling construct groups of ‘risky’ subjects and can be seen as one of the preventing mechanisms through which securitisation works, ‘sorting out’ subjects who are kept under heightened control (Bigo 2008). As a consequence of such police practices targeting spaces and people according to stereotypes and ethnic or racial profiling, not all detainable migrants are equally vulnerable to detention, the concrete risk of being controlled and detained being strongly related to physical appearance.

Experiences of bordering are very common inland, as random controls are frequently carried out in the public space, especially in public transportation and railway stations, but also on the street, following a particular geography of risk of which undocumented migrants must build a knowledge in order to avoid controls. In the following quotation, Jamal relates how he was controlled in the train and consequently arrested. He was waiting for the train to leave, when a person took a seat right next to him:

“It was secret police, he didn’t have a uniform. (...) Suddenly he came on the train and I was sitting here, he sat down, looked at me and I thought ‘why does this person look at me so much?’ (...) And I wanted to leave and change places, but he thought something bad... (...) so he came to me and said ‘ticket’. I gave him the ticket and asked him ‘who are you?’ He says ‘documentation’. I say ‘no, I’m not giving you my papers (...), show me the police badge’ (...), then he took it out, he had the badge (...), he says ‘you have to come down with me’. (...) I got off with him. (...) He says (...) ‘I’m going to search you. And then, if you have nothing, you can leave’. (...) He called another person who came. I went with them to the police station (...). I was there for two hours, they didn’t explain anything. Then (...) a person came to translate (...) they told me that I had to go to Bern (...) ‘go to Bern and then they will release you, just to make a control there, to take pictures and fingerprints, and then you can leave’. I came here [to the RP Bern], they took my photo, they registered me and took me upstairs [in the lift] (...), I thought ‘well I can go now’ and I said ‘can I go?’ And then I saw the doors like this [signalling closed] and I thought [expires] ‘oh, that’s very bad’” (Jamal, detained in the RP Bern).

Jamal related that when he entered the lift, he asked himself whether there was another exit on another floor. He only understood that he had been incarcerated when he was locked in a cell. However, he said that nobody explained to him what was happening or why he was detained until the next day.

To relate the train scene, Jamal uses many details, underlining that he had never experienced being subject to such intense scrutiny and suspicion. It is hard to explain what exactly made the policeman suspect him, whether it was his look, language, behaviour or some other factor. He had a young look and hairstyle, white skin and he spoke excellent Spanish, so he could be easily taken for a Spanish national, despite originating from North Africa. In the case of black men, skin colour and

information/directory/a/nar/f53b235b-b945-495c-a4a3-f82c11b9c38d/360810?lpaffil=lp-affiliates. Accessed 20 November 2018. According to an article from The Independent newspaper of 25 June 2018, Switzerland Tourism commented that this was an unsubstantiated and defamatory allegation, to which Lonely Planet replied that this allegation was updated in 2017 and that they received reports of such police activity.

¹⁸⁶ For an analysis of the legal situation, see <https://www.humanrights.ch/fr/dossiers-droits-humains/racisme/delit-de-facies/situation-en-suisse/situation-juridique-suisse>. Accessed 20 November 2018.

physical appearance are more clearly a source of police suspicion. Indeed, many of my interviewees had experienced racial profiling, and told me about it, as in the following quotation:

“The police, if they see black people, they ask ‘Ausweis’ [papers]. (...) Everywhere in Switzerland they do controls, they control black people. (...) They say we are criminals but we never killed, we never stole (...), they never arrested me with marijuana, they never arrested me with cocaine” (Jake, detained in the RP Bern).

Jake raises an important aspect of detainment here, relating identity controls with criminalisation. Indeed, black and brown men are not only often suspected of residing illegally in the country, but also, in many cases, of criminal offences and particularly drug dealing. Such stereotyping that relates drug dealing with ethnicity and race is productive of a racist discourse depicting black men as unscrupulous and without morals and providing justifications for exclusion. Skin colour and other physical traits mark some migrants’ bodies with a stigma that renders them constantly subject of suspicion and police scrutiny. Through their enhanced vulnerability to police controls, some racialised categories of migrants are criminalised in that they become the object of repressive action by police forces first, and then of judicial proceedings (Palidda 2011: 12), which will be further discussed under section 7.3.1.

Practices of police forces have been qualified as discriminatory (Parkin 2013), being led by negative stereotypes and focused on marginalised and ‘othered’ people (Palidda 2011). Pablo – a Latin American with brown skin – explained for example that he had been approached by a policeman in a railway station who ‘took him by the neck’, explaining as follows:

“Because the blacks [Negros in Spanish] – excuse the word – [for the police], the women are whores, the men are drug dealers. Latinos. The blacks, the Africans, they take them by the throat. Africans have a way of hiding drugs in their mouth and then eating them if they are controlled, so police take them by the neck so that they can’t eat them” (Pablo, detained in Bässlergut).

This quote points at police practices that Pablo has experienced as racist. It also addresses gender as a relevant category for profiling and police practices. Women are certainly less likely to be subject to police checks and detention. Certain categories of women, however, are more likely to be controlled than others. According to a legal advisor visiting a female immigration detention in the canton of Basel-Stadt, a significant number of the women detained had been working in the sex industry, which could have motivated their falling into police control and possibly also the decision to detain them. In fact, these women do not fit into the normative category of ‘victim’ to which migrant women are otherwise much easier associated than men (see also Esposito et al. 2021: 184). Police suspicion related to racial and ethnic categories merges elements of crime and migration and sometimes even terrorism (Shamir 2005). Migrants perceived as Muslim can be subject to heightened control, particularly if they attend religious places. This was the case for two detainees encountered in Bässlergut who had been detained during a police intervention in a mosque. According to newspaper accounts, the police operation was motivated by a lead received from a citizen that an irregular migrant was being housed in the mosque. However, one of the two persons arrested that day – whom I met in detention – related that when the police broke into the mosque, they claimed to be part of an anti-terrorist brigade. The large presence of different police corps (including a special unit, heavily armed), the public prosecutor and the immigration service, as well as the length of the intervention – more than one and half hours according to a local newspaper¹⁸⁷ – leads us to suppose that the operation merged objectives of migration control with crime and

¹⁸⁷ An article of the Basler Zeitung provides some details: <https://bazonline.ch/basel/stadt/die-terrorrazzia-die-keine-war/story/21339260>. Accessed 21 November 2018.

terrorism prevention. Indeed, that mosque was already under observation as extremists had allegedly attended it in the past.

Crime suspicion also provoked the detention of a man named Oliver. He was residing in an asylum centre and had already accepted a return to Italy after having received a Dublin decision. He was given three weeks to leave the country, and he was planning to leave before the deadline, just after receiving his paycheck for work provided in the centre. One day, he was walking in the city of Bern when he was stopped by the police:

“I was just crossing the road and I found two police people. So they said ‘control’, I said ‘ok’. They controlled me. They searched everywhere, (...) They just looked everywhere, yeah but they didn’t find anything with me. Yeah so (...) the police told me they brought a car to take me here [to the RP Bern]. I came here, they did investigation on everything, checked everywhere, they didn’t see nothing. (...) I was there, I know that they were talking with immigration. (...) After [they] finished, they told me to turn round. They don’t tell me why, they just told me to turn round. When I turned round, they handcuffed me, they told me that ‘you are here illegally so we are going to lock you up. Yeah, after that we will send you back to Italy’, (...) so that was when they brought me here” (Oliver, detained in the RP Bern).

There was no clear reason to detain Oliver since he was in Switzerland for the first time and had accepted the authorities’ orders to return to Italy. It is also questionable whether his detention was lawful¹⁸⁸. Oliver was stopped in the city centre in the middle of the day and searched, which was presumably motivated by his black skin colour and physical appearance. The extensive search to which he was subjected leads us to hypothesise that he was suspected of drug dealing. He was finally found clean, but still arrested after making contact with the migration office. Were it not for this police check, he would have been able to return to Italy without being detained. Instead, he had to go through that control which he experienced as degrading, and spend two weeks in the RP Bern, known for its tough detention conditions.

Again, analysing the moment of the arrest and the concrete event that originated detention confronts us with the blurring of crime and migration control. Migrants whose physical appearance looks foreign in the eyes of border or police officials embody the border in that even when they are far from the geographical border, they remain subject to control in the public space. In other words, they carry the border with them. Their body is not only scrutinised with suspicion, but their fingerprints are also of primary importance in attempts to identify them and decide on their fate. Considering police practices as related by those migrants who have experienced them also points at the ways in which race impacts on suspicion of criminality through negative stereotypes attached to some perceived race or ethnicity. It becomes difficult to detach suspicion related to migration and to criminality, as border and police corps have tasks related to both. The fact that government police powers are increasingly used for the purpose of controlling unlawful migration is one of the main elements of crimmigration law according to Stumpf (2015). As we have seen in this section, this has some concrete effects on individuals, and results in enhanced vulnerability to detention for certain people, mostly in accordance with their gendered and racialised physical appearance. As a consequence of bordering and policing practices based on profiling and negative stereotyping, black and brown men are disproportionally controlled, detected, detained and also deported. This finding is partly reflected in the statistics on detainees analysed in section 3.1, and points to the need to look at detention and deportation regimes as “modes of racist exclusion” (De Noronha 2020: 29). Whether it takes place in an asylum camp, at the migration counter or in the public space, the

¹⁸⁸ I advised him to ask for legal advice or contact the Swiss Red Cross, but he was deported before being able to receive any advice.

moment of arrest is experienced by those arrested as humiliating and stigmatising. Indeed, the modalities and materiality of arrest by police officers making use of handcuffs and transport in police vans with bars inside and tinted windows is productive of criminalisation in the sense that detained migrants are treated as though they were dangerous criminals. This will be reinforced through detention in carceral and often penal facilities in which they are locked up most of the time. In many cases, arrest ensued from a police or border check based on ethnic or racial profiling that is also motivated by mixed suspicions about migration and crime. In addition to planned arrests at the migrant's residence or at the immigration counter and arrests following a border or police control, the third route to immigration detention is transfer from penal incarceration. This specific modality will be discussed in the next section, which looks more closely at the ways in which immigration detention and criminal sanctions intertwine in individual life trajectories.

7.3. Dangerous others: how administrative and penal measures interweave in migrants' trajectories

I have shown in previous chapters that immigration and criminal law are entangled in many ways and that this is reflected in the organisation of immigration detention in ordinary prisons. In this section, I address the many ways in which immigration and criminal enforcement also intertwine in the biographies of migrants (see also Boe 2016; Turnbull and Hasselberg 2017). First, I discuss those cases in which entry to immigration detention was enacted from a criminal prison to show how criminal prosecution can indirectly result in immigration detention. Second, I analyse the trajectory of one long-term resident in Switzerland to show how a criminal offence can start a chain of events that develop into progressive exclusion, ending with deportation to the country of origin. Finally, I discuss how, partly as a consequence of the formal criminalisation of illegal entry and stay, criminal measures can be used with goals of migration control and enforcement.

7.3.1. Criminal prosecution at the origin of detention and experiences of the criminal justice system

We saw in section 7.2 that detention usually ensues from either a police arrest planned mandated by migration authorities or a police check in the public space. A third route through which a person can end up in immigration detention is transfer from criminal detention, which happened, for instance, to Nassim.

Nassim was 30 years old when I met him in Bässlergut. He had left his home country – Tunisia – more than ten years before and had been working in Libya, but a few years after the start of the armed conflict, he decided to leave. He crossed the Mediterranean and was planning to travel to Germany, but his journey was blocked in Lucerne, where he was controlled and found without any transport ticket or identity documents. He claimed asylum and was brought to a registration centre, and after a couple of weeks, was transferred to another asylum centre. He was living there, waiting for his asylum decision, when he was involved in a fight and consequently arrested. He explained during our interview that he had been aggressed by two men and had defended himself. He was detained on remand pending trial, while the two Swiss men who had fought with him had remained at liberty¹⁸⁹. The judge acquitted Nassim approximately two months later, because there was no

¹⁸⁹ It is worth highlighting here that foreign nationals, particularly if they do not hold a residence permit or do not have strong ties with Switzerland, are more likely to be detained prior to their trial as their risk of absconding is estimated to be higher (see Art. 221 of the Swiss Criminal Procedure Code; see also the decisions of the Federal Supreme Court ATF 125 I 60, consid. 3c, and 1B_318/2008, consid. 3.2). This aspect is further discussed in Achermann (2008, 2010).

evidence of his being guilty of starting the fight. However, during his imprisonment, his asylum claim had been rejected as it was deemed not credible. Thus, instead of being released, after the trial he was summoned by the cantonal migration office and consequently transferred to Bässlergut for immigration detention. This came as an unexpected surprise to him. Finally, several months later, he was deported to Tunisia¹⁹⁰.

Nassim had never wanted to remain in Switzerland. He had stopped only as a consequence of a border check. His incarceration following a brawl not only caused him to spend more than two months in pre-trial detention before being acquitted, but also prevented him from leaving the country by himself. Finally, the result of that brawl was his deportation. Nassim spent most of his time in Switzerland incarcerated, so he got to know Switzerland only from behind bars. He experienced the criminal justice system as unfair since he was the only man involved in that brawl who had been incarcerated, and since he spent a long time incarcerated despite being finally acquitted of any crime.

He claimed that during the hearings that preceded his trial, he had been treated in a discriminatory way. He said that his lawyer had told him that the public prosecutor was requesting the highest sentence for him, because he was an asylum seeker and had had a fight with a Swiss man. He also perceived some bias from the judge:

“Even the judge... I talk to him face to face, (...) and I feel he’s not fair. (...) Because I’m a Muslim, I come from North Africa and North Africans are not accepted, quite simply. It’s because of that” (Nassim, detained in Bässlergut).

Nassim had the impression that the criminal justice authorities had transformed him into a criminal by putting together a “big file” based on nothing, and that his case had been exaggerated because of a general suspicion directed at asylum seekers, particularly those of (North) African origin:

“I was attacked by two men and I defended myself, but I’m not a criminal. But the judge and the state here, they’re looking for a problem with me. (...) In my file it’s written that I am dangerous to the state, I am a big criminal and I am dangerous... (...) I’m Dracula. (...) They made a big case (...) because of five minutes with two men... (...) The state here, (...) I don’t know how [it] does it, but it makes the situation grow like I’m a serious criminal... I was even handcuffed and my feet too. (...) I spent two months and ten days there, (...) just like that (...) it’s not right... it’s racist! (...) It’s a racist act because I’m not Swiss or European [but] I’m an asylum seeker” (Nassim).

Nassim experienced his pre-trial detention as unjust and discriminatory. His experience resonates with Amir’s, who was held in pre-trial detention following a fight with a friend, during which he was found to be in possession of a knife. The prosecutor had asked for a prison sentence of nine years, while the judge finally decided to release him after seven months in pre-trial detention:

“He asked for nine years... because I’m a foreigner... [L: Do you think that... the prosecutor treated you differently?] Exactly. (...) It’s clear because there are many Arabs in prison who are detained for a long time for a small problem. Here, the Swiss who did the shit (...) are not in remand custody. No, they go home and when they need them, they call. Why can it not be like this for me? They said ‘we need an address’. I already had an address by the time they arrested me... So what’s this, then?” (Amir, detained in Bässlergut).

In a similar way to the experience of Nassim, Amir was released from pre-trial detention only to be transferred to immigration detention, where he spent several months before being released. In both cases, the transfer to immigration detention came unexpectedly and was very upsetting. Even when

¹⁹⁰ The last time I met him, he had been detained for five months. I heard that he had been deported six months later, so if this is the case, his detention lasted between five and eleven months.

transfer follows the end of a prison sentence, some interviewees – particularly in the RP Bern – have pointed to a lack of pre-information that causes high distress to detainees and is difficult for prison staff to handle (see section 5.1.2).

Among my interviewees there was also a man, Kevin, who related that he had been arrested while dealing drugs. However, instead of being detained on remand, he was held in immigration detention awaiting removal to Italy, where he was in possession of a residency permit. It was not clear from the interview whether or not a criminal prosecution procedure was initiated in the meantime. It seems here that immigration detention was rather used as a substitute for a custody measure, possibly because the offence was not serious enough to justify remand detention (he had been caught with two grams of cocaine). Ordering pre-trial detention might also have been considered too demanding or expensive, while on the other hand his deportation to Italy could be organised quickly and enforce his exclusion. This shows that crimmigration works in both directions, using criminal measures to sanction migration-related conducts as well as using measures such as immigration detention to prevent or fight crime. Kevin's story also illustrates a further link between immigration regulations and criminality. Having left Italy because he could not find a job, he was not allowed to work regularly in Switzerland. He started dealing drugs, which he told me he had not been planning and would never have considered before:

"I'm not a drug dealer. This happened because I have no alternative. (...) The short period I spent in Switzerland has not been easy for me. These three months have been the worst period of my life. Yeah, it has been difficult, crazy difficult. Because Switzerland is very expensive. (...) So, when you have no job in Switzerland... or no sort of income, you can't survive. I'm not proud of what I did (...) but when you are in a country, I don't have any brothers, sisters, friends here, nobody. I was on the streets all day by myself" (Kevin, detained in the RP Bern).

That Switzerland did not provide any opportunity to earn a living in an honest way was a widespread critique among detainees, as will be discussed in Chapter 8:

"I know people with no documents or papers who are illegal and have no right to work (...) what should that man do? He automatically has to steal. (...) Why not give him a chance? Give him papers! Let him try to work, to be a good man, a... positive man. Why do you make it negative and leave him like that in the mountains of [name of place]? (...) He will have to turn into a criminal (...). I'm a good man, but if you leave me outside without papers, without documents, what do I do? (...) I have to become a criminal, I change into a criminal, I change into a thief" (Nassim).

In this quotation, Nassim critically assesses the legal system in its exclusion of whole categories of migrants from the labour market, arguing that the state creates the preconditions for them to act criminally as they preclude the possibility of earning a living through legal work. This condition generates great frustration for Nassim, who feels automatically labelled as unwanted and pushed into illegality and criminality. Together with the criminalisation of immigration conducts, this is one of the ways through which a restrictive migration regime actually criminalises migrants by encouraging their making a living through illicit acts. This also results in enhanced surveillance and crime suspicion directed at asylum seekers and some racialised bodies, as discussed in section 7.2.2.

7.3.2. Illegalisation following criminal condemnation or prosecution: the story of Yusuf and his progressive exclusion

Among those detainees who had been residing in Switzerland for a long period and who therefore had strong social ties in the country, the majority had previously served a prison sentence or had been objects of criminal prosecution. The story of Yusuf illustrates how a person who has spent

most of his life in Switzerland as a regular resident is not immune to detention and deportation but can be progressively excluded from the country he considers 'home' following a criminal sentence.

Yusuf was in his 40s when I met him in detention. He had arrived in Switzerland as a teenager, a few years after his parents and his brother. His first marriage was very short; but then he married a woman of Turkish origin and they had a child. After 15 years of marriage, they broke up and a few years later, divorced. After the breakup, Yusuf had a very difficult time: he lived alone, was unemployed, and started to depend on social aid. In that period, he met some people who proposed that he become involved in drug dealing. One day he was caught dealing cannabis and condemned to a prison sentence of 15 months, of which he only had to serve half, and in semi-detention (i.e. being allowed to work outside the prison). At the end of the sentence, his B-permit (residence permit) was not extended and he received a removal decision. He appealed against that decision, but his appeal was rejected. Because his father was very sick in Switzerland and needed his support, the migration office extended the deadline for departure for a few months, and he was provided with a so-called 'white paper' to show to the police in case of control. His father died a few months later in Turkey, as his last wish had been to die there, and Yusuf could not attend his funeral since he would have been unable to return to Switzerland afterwards. This caused him enormous pain. After the death of his father, the deadline for departure was not extended anymore and he found himself undocumented and fearing removal. He continued to live in the same city, but hiding from the authorities. After some years, however, a policeman who knew him by sight stopped him. Fearing deportation, he claimed asylum, but was nonetheless detained in Bässlergut. It was there that I saw him for the first time, but at that time he seemed uninterested in my research so we did not talk a great deal.

Some time afterwards, I was walking in the city of Basel when I bumped into a group of three released detainees, among whom was Yusuf. The three of them had cohabitated in a cell. We sat down and started to chat. Yusuf was very friendly and started to tell me his story and how he had been released after the first time we had met. During a trial, after two months of detention, he had proposed that the migration officer in charge of his file release him on bail – which is not at all common in Switzerland – and this proposal had been accepted. Of course, this was only possible because Yusuf had a strong network in Switzerland and could rely on his brother to pay the bail. The condition posed by the migration service was that he had to turn up every week at the migration office. The difficult aspect of this was that in order to do so, he had to go to the prison of Bässlergut, where his caseworker was apparently based. This practice was common at the time of my fieldwork, as I related in section 7.2.1.

After his release, Yusuf had made a request of regularisation for humanitarian reasons – so-called 'hardship cases' (*Härtefälle*) – through his lawyer. A short time later, he received a letter requesting him to "wait for the decision abroad", which he felt unwilling and unable to do since he was undocumented and could not legally cross borders, unless he returned to Turkey. He felt fooled by the authorities and had a rather conflicting phone call with the person responsible for his case, who gave him another appointment. On the day of the appointment, another officer received him and after a brief discussion, he called the police and the result was that Yusuf was arrested and detained again.

It was then that I met him for the third time during my observations in the courtyard. He looked terrible. I could almost not recognise him as the same person I had met outside, as I wrote in my field notes:

"It was heartbreaking to see him there after seeing him outside. He was a different person, he looked thinner, weaker, with a grown beard and dressed in a tracksuit, a bit shabby. When I

saw him outside, he was different, well dressed, looking confident, he had offered me a drink with a firm gesture. I told him: 'oh no, what are you doing here?'. Looking sad and angry, he briefly told me what had happened. He came for an appointment with immigration and they arrested him, they said he had not followed the rules. He was very pissed off and incredulous" (Field notes, Bässlergut).

As related in my field notes, Yusuf was very angry and distressed. This time, he agreed to tell me his story in a formal interview and told me about the ways in which he had struggled and was struggling for his right to remain in Switzerland. He argued several times that he could not return to Turkey:

"[I told the migration officers:] I'm not going to Turkey. It's too dangerous. Firstly, I am a Kurd, I am from the Kurdish region. I am... politically, militarily wanted. As soon as I get to the border, they'll arrest me... and then you'll not see any sign of life from me. Where should I go?" (Yusuf, detained in Bässlergut).

He explained to me that he had not served in the military and that despite being almost 50, if he entered Turkish territory, he would be obliged to join the armed forces. This was particularly dangerous and inconceivable for him because the Turkish army was very active in Kurdish territory and fighting against Kurdish armed groups at that time. Yusuf knew that it was very hard for him to gain back his residence permit in Switzerland, but he remained hopeful. He also felt he still had some time, since he was determined to resist deportation attempts and there had still not been any attempt to force him to board a plane.

A couple of weeks after our interview, I received a call from Yusuf. His voice was trembling. He was in Turkey, a country in which he felt a stranger after 30 years living in Switzerland. He told me that one morning, he had been awoken up by a group of policemen who took him to a room where they bound and handcuffed him. He was led to Zurich airport and boarded a plane. He started to scream, but the pilot came and said he would fly him no matter how much he screamed. Yusuf started to hit his head on the screen in front of him until he had broken the screen and injured himself, but this did not stop the plane from taking off. On arrival in Istanbul, the Swiss policemen handed him over to the Turkish police. He spent two days at the police station, then was released with an order to present himself to the authorities of his hometown within ten days to enrol for military service. If he did not do this and was caught by the police, he would directly go to prison. After a few days, therefore, Yusuf decided to report to the authorities, and he finally had to serve his military service. For the first months, he was in a relatively quiet area, then he was transferred to an area closer to the armed conflict. After seven months of military service, he was relieved because he was diagnosed with a serious illness.

The story of Yusuf shows how exclusion in the case of long-term residents is a long, gradual and progressive process (see also Achermann 2008). Yusuf had been a 'normal' foreign citizen with a residence permit. He was employed, married and socially integrated in the region of Basel. His child has become a Swiss citizen. After his separation and divorce, however, he had a difficult time and during that period, became involved in illegal activities. As a consequence of his criminal conviction and prison sentence, he lost his residence permit. For some time, he lived undocumented in a situation of 'official illegality' (Achermann 2009b) or 'regular illegality' (De Coulon 2014), as he was still known by the authorities and had to report every few weeks. After the death of his father, he was ordered to leave the country and he started to hide from the authorities. When, a few years later, he bumped into a policeman who recognised him, he was detained, which represented a cessation of his previous life and confronted him with the possibility of deportation. Thanks to his strong ties, he was able to obtain release on bail, but after only a short period, he was detained

again. Eventually, he was physically, forcefully deported away from the country he considered 'home' and into a country, he said, in which he felt lost.

Yusuf's story illustrates the destructive effects of deportation on deportees' life and health as well as on their families (Peutz 2010; Soysüren 2013). Within this context, immigration detention becomes part of a state's project of exclusion, playing a significant role in deportees' stigmatisation, jeopardising their social networks and family ties, and symbolically affixing them categories of foreignness. Although I chose Yusuf's story to illustrate how a criminal offence can form the origin of the exclusion of long-term residents, several other detainees had similar stories and found themselves in the 'deportation corridor' (Drotbohm and Hasselberg 2014) as an indirect consequence of a criminal prosecution. If deportation is generally experienced as punishment despite its formal framing as an administrative measure (*ibid.*), for those (long-term) residents who are deported as a consequence of a criminal offence it takes the form of "punishment beyond the punishment" (Campesi 2015a: 444) or 'double punishment' (Fekete and Webber 2010). Authors have qualified deportation, when it is a consequence of criminal offence, as a "double jeopardy" that "violates human rights norms of nondiscrimination and presumptions of equality of treatment before the law" (Bhabha 1998: 615, see also Bosworth 2011; Peutz 2010). The fact that a criminal offence can result into the deportation of the offender is one of the main aspects of crimmigration law. It shows how crimmigration creates hierarchies of individuals within a sovereign country that are not all equally vulnerable to the state's penal power. Some are subject to a specific form of penal power that Franko (2020: 54) terms 'bordered penalty' and consists in "the intertwining of two forms of state sovereign power: the power to punish and the power to banish".

Originally sentenced to 15 months in prison, Yusuf in fact only had to serve half his sentence, and that was in semi-detention, able to go out to work every day. This suggests that he was not considered dangerous. However, the condemnation was sufficient to have his residence permit (B) revoked and his removal ordered, despite his having strong ties in the country, including a naturalised Swiss child. When having to decide on the fate of foreign offenders, state officials have to strike a balance between public and private interests. In this case, the public interest of protecting Swiss society from potential further offences was considered to prevail over the private interest of Yusuf to remain in the country in which he had been residing for 30 years and where his whole family (mother, brothers, sister, daughter and ex-wife) was residing. Despite the period of heightened repression and armed conflict in Turkey and the fact that Yusuf was Kurdish and had not yet served in the army (on the situation in Turkey for returnees see for example OSAR 2018), no obstacles to deportation were recognised, so the enforcement of deportation was considered reasonable under the terms of Art. 83(4) FNIA.

Achermann (2013: 104) characterises the interaction between state actors and foreign-national (deportable) offenders as a "struggle over exclusion" in which foreign nationals suffer from a situation of power imbalance, often feeling powerless and frustrated since they have "few opportunities to influence the decisions taken by migration authorities and courts" (*ibid.*: 104). This was certainly the case of Yusuf, who had to 'struggle' (in his own terms) for years in order to acquire a right to stay but was ultimately unsuccessful. Moral values and judgements enter into play in the examination of public and private interests, where "the criminal offence is regarded as an act of self-exclusion by which the person disqualifies him- or herself and which casts doubts on the person's moral integrity" (*ibid.*: 106). As briefly discussed in Chapter 1, deportation in Switzerland can currently also be ordered by a judge as a direct consequence of an offence, taking an even more explicit function of punishment.

It has been said that deportation is constitutive of citizenship as it reaffirms the normative boundaries of national citizenship (Anderson et al. 2011) and the cohesion of those who exclude (Achermann 2013). Kanstroom (2000: 1892) has noted that deportation policy is often motivated by the will to “cleanse” society “of those with undesirable qualities, especially criminal behavior”. The figure of the Foreign Criminal is particularly significant of such will to exclude, contributing to defining citizenship through an opposition to foreignness and ‘wickedness’ (Griffiths 2017). In fact this category is often a priority not only for enforcing deportation but also for ordering detention (Miaz and Achermann 2021b). Through practices of deportation and the lack of full protection from the deportation of denizens, citizenship becomes probationary and is “used as a means of policing and a tool of the criminal law” (Zedner 2010: 379). In fact, Yusuf’s trajectory sheds light on the fragility of the denizen’s status compared to that of citizens. While the residence rights of citizens are inviolable, denizens are not fully protected from deportation (D’Amato and Carrel 2017). Until the acquirement of citizenship – in exceptional cases, even after naturalisation (Gibney 2013) – foreign residents are always to some extent vulnerable to deportation (Achermann 2008).

Bridget Anderson (2013) suggests that citizenship is constituted through the opposing of the ‘good citizen’ to the ‘non-citizen’ and the ‘failed citizen’. Furthermore, she introduced the figure of the ‘tolerated citizen’ to point to the way in which, through a condition of contingent acceptance, certain categories of non-citizens are turned into the guardians of good citizenship. This condition of contingent acceptance is shared by a large part of the Swiss population, given the high proportion of denizens, intended as long-term residents who have not (yet) been naturalised (D’Amato and Carrel 2017)¹⁹¹. As opposed to citizens, denizens are not only subject to the state’s power to *punish*, but also to *banish* (Franko 2020). This specific form of penal power has a strong disciplinary dimension: it not only compels foreign residents to respect security and public order to ensure their right to stay, but also to comply with social norms. In other words, they must fit into normative expectations of ‘integration’ to retain their right of residence.

7.3.3. The use of criminal law as a means of migration control and handling of undeportability

Despite criminal and immigration procedures being formally separated and theoretically independent from each other, in practice they intertwine in many ways (Achermann 2010; Wichmann et al. 2010). As we have seen in the story of Yusuf, a criminal offence can have an impact on the right to stay, resulting even in deportation. Furthermore, the prospect of deportation will also influence the conditions of time served in prison, since efforts to re-socialise will lose significance for those foreigners who will not be released into Swiss society (Achermann 2008, 2010; Wichmann et al. 2010). Furthermore, Wichmann et al. (2010: 32) found that the two authorities strictly collaborate in cases of the deportation of criminal offenders. In the remainder of this chapter, I suggest that criminal prosecution is used in some cases with the purpose of immigration enforcement, particularly to handle two categories of detainees: people who formally have to leave the country but are practically undeportable since removal is reliant on their cooperation; and people who are transferred according to the Dublin Regulation but return repeatedly to Switzerland. The section starts with the complex story of Karim, whose administrative detention ended with a transfer to a penal facility as he was criminally prosecuted and later

¹⁹¹ The authors cite federal statistics from 2014, when 24.26% of permanent residents were foreigners; 62.4% of these foreigners were in possession of a C-permit (settlement permit) and 19.45% were born in Switzerland (D’Amato and Carrel 2017: 69). According to D’Amato and Carrel (2017), second-generation foreigners in Switzerland are less protected from deportation than in other countries such as Austria, France, Italy and Germany.

convicted. After having analysed the intertwinement of penal and administrative measures in his trajectory and how Karim experienced and interpreted it, I will draw from other cases to suggest that criminal prosecution or the threat of criminal prosecution are sometimes used as a way to force compliance, enforce removals and dissuade people from returning to Switzerland after removal.

Karim arrived in Switzerland for the first time in the year 2000. Following the rejection of his asylum claim, he was detained for four months and finally decided to return ‘voluntarily’ to his country of origin, Algeria. His return was marked by enormous difficulties, but thanks to an old acquaintance, he was able to find a well-paid job. Around this time, he started a long-distance romantic relationship with a Swiss woman, who came to visit him a couple of times. They decided to marry and move to Switzerland, so Karim arrived in Switzerland for the second time two years after his ‘voluntary’ return to Algeria. This time, he travelled comfortably and entered Swiss territory legally, receiving a residence permit due to his marriage. However, the relationship started to deteriorate and after a few years they broke up. Following the separation, Karim lost his residence permit and his removal was ordered. He was detained again, and immediately decided to return to Algeria ‘voluntarily’. Back in Algeria, this time he found it extremely difficult to reintegrate – he described that situation as a “nightmare” in the interview – and therefore he decided to travel to Switzerland for the third time, although without authorisation, which he succeeded in doing. After only two weeks, however, he was arrested and detained under immigration law. This time he was determined to stay: he resisted every attempt to deport him and spent almost one year in immigration detention. Three weeks after the second attempt to make him board a plane, he was transferred to another prison under pre-trial detention, since a criminal procedure had been initiated against him in another canton. At the trial, he was condemned to a prison sentence of two years, which he entirely served in a small local prison, legally inappropriate for such a long imprisonment.

The trajectory of Karim is interesting in various regards. He is the only person I met during this research who had made the journey to Switzerland three times from an extra-European country, illustrating the case of a deportee who will not stay still after removal (Schuster 2005; Schuster and Majidi 2014). It also shows that conditions post-deportation in the country of origin as well as the (social) ties established with the country that deports can trigger further mobility. Furthermore, it is interesting because separation after marriage is one particular method of becoming illegalised that has not yet been dealt with in this thesis. However, in the framework of this section, of most interest to the present analysis is the interweaving of administrative and penal procedures in his trajectory and personal experience.

As mentioned, Karim had already resisted the first attempt to deport him when he received a communication from the public prosecutor saying he was going to be prosecuted for several criminal offences. Karim firmly contested those accusations, and felt sure that this formed another attempt to convince him to board the plane when he was given the opportunity. Indeed, the authorities had already tried many other paths, including offering consistent financial return aid, but none of their attempts had succeeded. Karim was given another opportunity to board a plane a few weeks before his transfer to pre-trial detention and the start of the trial. Despite believing that the threat of prosecution was just another way to put pressure on him, he was also scared that immigration authorities would influence the penal process and lead to him being condemned as a punishment for not complying with their removal decision. The same had happened with the judge in charge of the detention order’s review, who – he thought – had been informed of those criminal accusations by the migration office with the aim of portraying him as a dangerous and deserving detainee:

“The judge, when he gave me three months, I said to him, ‘look, you may have a decision about me that [says that] I’m a thief and sexual harassment and bodily harm and all that. All this is wrong, I haven’t even been judged, I haven’t even been heard by a judge or a prosecutor. How can migration [officers] judge people like that? (...) you don’t write these things on an official decision that you give to the judge. Immigration (...) they have written this already before [the judgement] to smear me (...) they distort the acts to their own benefit” (Karim, detained in Bässlergut).

The decision to extend detention probably contained references to the criminal prosecution that had been initiated, since prosecution for crimes can motivate detention (see sections 2.1 and 2.3). However, Karim found it unjust that these accusations were mentioned despite their not yet having been the object of judgement. Despite considering himself innocent, he was worried about the prosecution because he thought that the migration office would try to influence the judgement:

“They are acting a little bit like mafia. They control everything, they exert control over the judge, the prosecutor... (...) They think I’m an idiot. No, I understood everything they’re doing, and I’m afraid of only one thing, the way they’re looking for things... (...) I’m afraid they’re acting like mafia. I’m afraid that they’ll put me in prison, in another prison that’s very harsh. Uh... whatever it takes, they’re going to accuse you of these things without being judged, without anything at all. That’s what we’re afraid of. It’s a kind of punishment for them, ‘ah, you don’t want to leave, come here” (Karim).

On the basis of his personal experience and especially of interacting with migration officers, Karim thought that his prosecution had been orchestrated with the aim of making him leave the country or punishing him for not doing so. Indeed, he was given the possibility of repatriation before being judged and sentenced, but he refused to board the plane. As already said, just a couple of weeks after that second removal attempt, he was transferred in view of his trial to a local jail with old infrastructure and few work opportunities. After a few months, the trial ended and he was condemned to a prison sentence of two years. Karim was acquitted of the most serious accusations, those that had motivated his remand detention. Nevertheless, he was condemned for an offence he had committed seven years before, when he was detained prior to his first repatriation. In addition to the 18 months for that offence, he was condemned to a further six months for illegal stay. The prosecution and condemnation for an offence that had occurred seven years earlier is hardly explainable, particularly since it would have been possible to prosecute Karim for that act before, while he was residing in Switzerland legally with a residence permit¹⁹². Furthermore, the fact that he was given the opportunity to fly back to Algeria after the prosecution had started suggests that for the authorities in charge, spatially excluding him from Swiss territory was more important than prosecuting him.

Because of his Algerian nationality, Karim was *de facto* ‘undeportable’ (Campesi 2015a). In fact, Algerians are known among state officials as the most difficult nationality to deport. Although a bilateral agreement exists between Switzerland and Algeria that facilitates repatriations between the two parties, this agreement stipulates that repatriations must take place on regular planes (Art. 4(3)), which excludes the use of special flights¹⁹³. Moreover, the national airline is particularly reticent to fly recalcitrant passengers, which renders the implementation of deportation with police escort

¹⁹² According to the Criminal Code, however, the right to prosecute is subject to a time limit of seven years if the offence carries a custodial sentence of less than three years (Art. 97(1d)), which means that in this case, they had almost, but not quite, reached the time limit.

¹⁹³ The agreement is available online at <https://www.admin.ch/opc/fr/classified-compilation/20061777/index.html>. Accessed 2 April 2021.

difficult should the deportee actively resist attempts to deport him¹⁹⁴. This means that Algerians are only deported with their compliance (see section 8.4.1). The migration office tried a series of strategies to make Karim comply with the removal decision. Karim experienced criminal prosecution as one of their moves in what he qualified as ‘a battle’ with the authorities.

Aliverti (2012a) has pointed out that criminal law is often used instrumentally to pursue objectives of immigration enforcement. Focusing on prosecution for immigration-related offences, she shows that criminal law is used primarily as a threat to force compliance, but in those cases where removal is difficult to enforce, it is also used “as an alternative sanction” (Aliverti 2012b: 426). She argues that both these uses represent “a disruption of the principles of certainty, equal treatment, harm to others and proportionality” (ibid.: 426). In Karim’s trajectory, criminal prosecution and immigration enforcement objectives have combined in a way that resulted in his incarceration for approximately three years. Despite his prosecution being supposedly not motivated by his immigration status, there are several hints which could lead us to think that it did.

From the perspective of Karim, he was threatened with prosecution shortly after the authorities’ first attempt to make him board a plane for repatriation, and he was actually transferred to remand detention a few weeks after the second attempt which he resisted. At trial, he related that his lawyer had told him “it would have been better if he’d boarded that plane”. He was finally condemned for something that had not motivated his remand detention in the first place. The conditions in which he served time were particularly restrictive: he spent his whole sentence in small-scale, local jails, inappropriate for such a long sentence. Observing the other prisoners being transferred to larger prisons with better conditions, Karim kept asking for a transfer, but this only occurred at the end of his sentence, and to another, similar local jail. Finally, he was offered again to return to Algeria after two thirds of his prison sentence, but he refused. The Swiss Criminal Code provides that dependent on good conduct, prisoners can be released on parole after having served two thirds of a sentence¹⁹⁵. However, this article is often only applied to foreigners with a pending removal order conditional on their acceptance of ‘voluntary’ return (Achermann 2008). Aiming at engendering compliance, this provision can be seen as another way in which state authorities use criminal law to enforce immigration rules (see Aliverti 2012a, 2012b).

Despite it being difficult to attribute intentionality to the authorities as I did not confront them with the way in which they handled the case of Karim, he certainly interpreted this series of events as an intention to punish him and force him – again – to leave. He also thought that immigration authorities had influenced criminal justice authorities by preventing his transfer, and during his three years of incarceration, he often repeated that Swiss authorities had aimed to destroy his life and his person, using psychology beyond administrative measures. In the end, both immigration detention and his prison sentence strongly impacted his mental health as well as his social network, deteriorating his strong ties in the local community, despite the new ties he built while detained.

If Karim’s case is rather uncommon with regard to the length of his incarceration and the fact that he was condemned for something done several years before, in most other cases I was confronted with during fieldwork, detainees had been condemned to a prison sentence solely for illegal stay, and this was particularly the case of those asylum seekers who returned to Switzerland after having been deported, which could happen several times in a row. The cases of Jake and Robert, which I

¹⁹⁴ See the interpellation of the MP Damian Müller “Handlungsoptionen bei Rückführungen nach Algerien” (Options for handling repatriations to Algeria) made on 25.09.2017 and the statement of the Federal council.

¹⁹⁵ “If the prison inmate has served two thirds of his sentence, provided this amounts to at least three months, he shall be released on parole by the competent authority if this is justified by his conduct while in custody and it is not expected that he will commit further felonies or misdemeanours” (Art. 86(1) of the Swiss Criminal Code).

presented in the section dedicated to asylum seekers under the Dublin procedure, are very good examples of this entanglement of criminal and immigration law and enforcement. Both were condemned for illegal stay and/or violation of an entry ban, which can be seen as a form of punishment for their resistance to immigration rules and enforcement in the form of what I have called ‘resistant mobility’ (see section 7.1.2). This is supported by the fact that the prison sentence is extended in case of recidivism, so at every return, deportees risk a longer prison sentence, which is intended to have a deterrent effect.

The usually longer timeframe of criminal prosecution in comparison with immigration enforcement facilitates the function of criminal law as a threat. Indeed, prosecution starts almost automatically when a deportee violates an entry ban (according to two migration offices interviewed). However, deportation is usually enforced before such prosecution for violation of an entry ban results in actual conviction. This was the case for André, who had returned from Italy after realising that he had lost his right to accommodation. When he returned to Switzerland, violating an entry ban, he was prosecuted and threatened with a prison sentence but was removed again to Italy before conviction. Had he resisted attempts at removal, this would have extended his stay and would probably have resulted in conviction. Should he have returned for a third time, he would also probably have been subject to that prison sentence. This happened to Jake who, returning to Switzerland for the second time after removal, had to serve a prison sentence of three months for illegal entry and/or stay in relation with the violation of an entry ban. After being removed and returning again for the third time, he had to serve another prison sentence of several months. Another detainee, Amadou, was deported to Italy in 2014 after two weeks of immigration detention. When he returned two years later, the police controlled him in the train and discovered that he had a prison sentence of 100 days to serve, which dated back to 2014, so he was imprisoned and at the end of his sentence, was transferred to immigration detention in the RP Bern, where I met him three weeks afterwards. In this as well as other cases, deportation could have been organised during his sentence, but this did not happen and he had to await deportation in detention. A few prison officers raised this critique, highlighting the lack of coordination between crime and immigration authorities in this sort of case, particularly when different cantons were involved as for Amadou (see also Achermann 2008).

Expanding on the concept of deportability (De Genova 2002), De Genova (2016) has suggested the term ‘detainability’ to refer to the condition of being vulnerable to detention and its disciplinary effect on migrants’ lives. This condition applies well to those individuals who are ‘undeportable’ because their identity is not fixed or because deportation can only be enforced with their consent, as is the case for Algerian nationals or Eritreans, who can only be repatriated voluntarily. One specific type of detention, called ‘coercive detention’, has explicitly the aim of forcing compliance in these cases (see section 2.3). The trajectories and experiences related in this section suggest that we can extend the condition of detainability to a sort of incarcerability that encompasses both vulnerability to immigration detention and to criminal prosecution and imprisonment. Since criminal prosecution for illegal entry or stay is subsidiary to the administrative procedure of removal, it can only be used when removal attempts have been unsuccessful and coercive measures have proven ineffective (see section 2.3). This is both the case of ‘undeportable’ individuals and of migrants who return to Switzerland after being removed, the latter being objects of prosecution for violation of an entry ban. In both cases, a resort to criminal prosecution can be understood as a counter-strategy of state officials to deal with migrants’ strategies to resist the deportation regime.

Incarcerability encompasses both administrative and penal types of liberty deprivation that are motivated or related to immigration enforcement. Like deportability, incarcerability exerts a disciplinary function on irregular migrants who are reminded of the sovereign power of states to

sanction their irregular presence on their territory. It renders migrants' lives more precarious and under constant threat of liberty deprivation. Illegalisation and criminalisation create 'disintegrated subjects' who are governed through the state use of discretion (Reiter and Coutin 2017) and through 'bordered penalty' as a form of penal power intertwining the sovereign power to punish and banish (Franko 2020). With incarceration, the state's power to control, detain, prosecute and deport work together in the exclusion of unwanted migrants.

This chapter has shown that the process of crimmigration intended as the intertwining of migration and crime control is reflected in the trajectories of migrants. In fact, all the main aspects composing crimmigration identified by Stumpf (2015) have been found in the analysis of such trajectories. First, the criminalisation of conducts related to migration regulation has resulted in prosecution and conviction on the grounds of illegal entry or stay for some of the research participants. Second, the fact that 'traditional' crimes have immigration consequences is clearly detectable in some trajectories like that of Yusuf, deported from Switzerland despite his very strong identity and family ties in the country. Finally, the use of police powers and criminal enforcement tools for controlling unlawful migration has been seen in the detection of illegalised migrants through police control who merge suspicion about immigration status and criminality, as well as in the highly criminalising practices and materiality of police arrest, making use of handcuffs and police vans. Even more poignantly, administrative and penal measures intertwine within individual trajectories, demonstrating that objectives related to migration enforcement, security and crime control can become blurred in practice. We have seen, for example, that threatening migrants with criminal prosecution can be used as a way to force compliance with migration decisions, while immigration detention can be used as an informal sanction to punish migrants, despite being justified through migration enforcement.

The focus on detainees' trajectories allowed me to illustrate how states' practices of control and migrants' strategies of resisting or overcoming enforcement impact on each other, triggering new forms of migrant mobility and the development of hybrid civil-penal sanctions towards them. The diversity of trajectories described also reveals the use that state officials make of administrative detention, which I argue is dual: on the one hand, immigration detention is used as a means to contain and regulate unwanted forms of mobility such as the mobility of asylum seekers within Europe; on the other hand, it serves to perform the exclusion of unwanted foreign residents, no matter how long they have resided in Switzerland nor how strong their ties to that country. Despite being politically and legally rationalised as a 'facilitator' of deportation, in both cases immigration detention also aims at exerting a disciplinary function, both in the sense of forcing detainees' compliance and deterring them from further deviant conduct. Well beyond the bars of detention, it works as a threat for a much larger population, reminding migrants that they can be incarcerated if they do not follow the rules and comply with state officials' decisions. Together with deportability, it also reminds denizens of their condition of contingent acceptance which makes it necessary for them not only to respect security and public order, but also to comply with social norms and expectations in terms of their 'integration' and financial autonomy.

As discussed in previous chapters, carceral facilities are total institutions that have the tendency to erase differences between detainees. Despite that, the chapter has shown a variety of situations and trajectories. The merging of different categories of unwanted migrants such as asylum seekers shortly arrived in search of protection and long-term residents having lost their right to stay – mostly as a consequence of criminal conviction – is quite productive in symbolic terms. It

associates the first with criminality and abuse, and it stresses the foreignness of the latter. These are two mutually reinforcing faces of the symbolic image of the ‘crimmigrant other’ (Franko 2020), defined precisely by his foreignness or otherness and by his danger or immorality. Detained persons strongly challenge both categories, highlighting either their not being criminal, or their being part of Swiss society. Immigration detention plays a fundamental role in the creation of the ‘crimmigrant other’ through spaces that criminalise and racialise the people moving through them, as well as through practices of surveillance, control and assistance that depict them as threatening, unpredictable and naturally different from an imagined ‘us’. Such production of the ‘crimmigrant other’ ultimately serves the purpose of justifying exclusion.

Chapter 8. Being confined: carceral experiences, claims of injustice and detainees' agency

Having analysed the trajectories of people ending up in detention, this chapter delves deeper into their everyday lives, asking how they experience and understand their detention as well as how they react to it. It shows how the specific conditions under which immigration detention takes place impact on their daily experiences and shape their interpretations of detention as a punitive measure addressed against them in order to force them to comply with orders and collaborate in their deportation as well as to dissuade them from returning after deportation. It will question how such experiences relate to or impact their representations of the law, the state and their legitimacy, as well as their legal attitudes of (non-)compliance and reactions to incarceration.

It has been argued by a number of scholars that despite its putative non-punitive aim, detainees experience detention as punishment and incarceration as an injustice (Bowling 2013; Campesi 2014a; Lietaert et al. 2014). Moving beyond this observation, this chapter analyses how perceptions of punishment and injustice are built upon embodied experiences of the legal system and daily encounters with bureaucratic practices and state representatives (Jones 2012; Sharma and Gupta 2006). In fact, immigration detention functions as a site of legal socialisation for detained migrants, in which they learn how the system of migration enforcement works, and meet the agents of the state (Ryo 2016b). Feelings of unfairness and injustice have important consequences for the legal attitudes of detainees, shaping the ways in which they react to incarceration and fostering their 'legal cynicism', which is understood as fundamental distrust in the intentions of laws and authorities (ibid.: 1015).

The chapter starts with a description of detainees' carceral experiences which are characterised by detriment (Moran et al. 2018), defined as the lived experience of harm. The infliction of harm is in fact the main, if not the only, defining feature of punishment (Fassin 2017) and therefore detriment and punishment are inseparable. More concretely, the chapter analyses spatial experiences of enclosure, isolation and exclusion and temporal experiences of waiting and uncertainty. It also looks into the social life of detainees, characterised by forced cohabitation with other inmates, leading to instances of both solidarity and conflict. This description of detainees' everyday intimate and embodied experiences of incarceration is fundamental for the chapter as they build the basis for detainees' understandings of the system of detention and deportation.

The second part examines the encounters of immigration detainees with agents of the state who represent, in one way or another, the state's efforts to exclude them. On the one hand, it addresses relations with prison staff in charge of daily surveillance but with no decision-making power over immigration files. On the other hand, it analyses interactions with migration officers in charge of enforcing deportation and deciding about detention and release from the point of view of detainees. After having described the context of those interactions – especially of notification of detention orders – I will pay particular attention to detainees' direct and lived experience of such encounters as void of dialogue, profoundly asymmetrical and unfair, as migration officers make use of tricks and threats as methods for achieving compliance.

Detainees' judgements of immigration detention will be at the heart of the third part of this chapter, focusing especially on critiques of the crimmigration system of control as stigmatising and on perceptions of discretionary decision-making on individual cases as based on arbitrary, unfair and sometimes racist choices. I will argue that we should take seriously detainees' claims of injustice based on such experiences of crimmigration and unfair treatment and I will analyse them as a

response to incarceration and as a way to oppose at least cognitively or verbally their condition of domination, without subjugating their will and minds to an exclusive migration system.

Toward the end of the chapter, I will examine more concrete forms of agency and resistance, addressing detainees' strategies to deal with migration officers and oppose resistance to – or in some cases, negotiate – deportation attempts on the one hand, and other forms of everyday resistance that try to subvert the daily regime of detention facilities on the other. The dichotomised relationship between compliance and non-compliance, resistance and resilience will be problematised with empirical data pointing at untypical forms of resistance to the system of deportation through instrumental compliance combined with further mobility or through what Ryan (2015) calls 'resilient resistance'.

8.1. Carceral experiences, detriment and punishment

We have seen in Chapter 7 how immigration detention shapes detainees' trajectories through friction that stops their movement and/or the life they were leading before arrest. The outcome of detention – deportation or release – also affects the future of detained migrants. Beyond this, the experience of detention is significant in itself as it impacts on detainees' emotional and social worlds, as well as on their bodies, self-esteem and worldviews. This first part of the chapter is interested in the lived experience of incarceration, considering its spatial, temporal and social components.

Moran et al. (2018: 12) consider detriment as one of the central characteristics of carcerality, which they understand as relational and experiential. They define detriment as “the lived experience of harm, as perceived by those suffering it”, where the focus is on the confiscation, by an agent who intends it, “of various types of opportunity or potentiality that would otherwise have been available, and whose loss is experienced as detrimental”¹⁹⁶. The carceral is also achieved through spatiality, more specifically through a spatial technology of confinement that contains those within while keeping others out (Moran et al. 2018). Enclosure within a certain space and exclusion from society – as well as from a series of opportunities and rights – are indeed the two characterising features of detention (Bloch and Schuster 2005).

If we take the carceral as a condition characterised by *enclosure* and *exclusion* imposed by the state and resulting in *detriment* as the experience of harm, it is not surprising that detainees experience and perceive detention as punishment despite its putative administrative and non-punitive goal. Several authors have pointed at the ways in which detention is experienced as *punishment* and is thus perceived as an injustice (Bosworth 2013; Bowling 2013; Campesi 2014a; Lietaert et al. 2014; Moran et al. 2018). Aas (2013) suggests that we use the adjective *punitive* rather than the noun *punishment* to describe those kinds of measures that are administrative in principle, but are intertwined with forms of crime control and enforcement. Whether punishment is seen as an aim or a side effect, immigration detention is clearly “*experienced as punitive* as well as merely intrusive, coercive, and exclusionary” by those undergoing it (Bowling 2013: 300).

In the following pages, I discuss the carceral experiences of migrants and show how they relate to feelings of punishment. I especially focus on the spatial experience of enclosure, deprivation and exclusion (8.1.1), on the temporal experiences of waiting and uncertainty (8.1.2), as well as on the social experience of incarceration, where the group can be both a resource and a source of additional detriment for detainees (8.1.3).

¹⁹⁶ As some forms of detriment are not totally intentional (for instance the lingering stigma of a previous prison sentence), the authors define intent broadly as “the decision-making of calculative governance” (Moran et al. 2018: 13).

8.1.1. Spatial experiences of enclosure, deprivation and exclusion

The condition of being incarcerated implies high levels of deprivation, which operates through the combination of enclosure and exclusion (Bloch and Schuster 2005). Detainees are deprived of their freedom of movement, but also of access to a variety of goods, opportunities and rights. This implies a strong restriction of the ability to make choices, even about small and banal details of their daily lives, such as what to eat or whom to meet, giving detainees the impression of being under overwhelming control as expressed in the following quotation:

“Prison life, let me say, is like... a cold life. You are living with nothing. (...) you chat maybe with only three people in twenty days (...) you cannot move around, yeah, everything you are doing is under control. (...) you cannot make the choice of your food, you cannot do anything you feel like doing, you cannot say ok, let me do this, let me do that. It's under [someone else's] control” (Robert, detained in the RP Bern).

Being unable to make one's own choices is one of the most arduous aspects of the carceral experience. One detainee, for example, stated that what he was missing most was his own music, since in prison he would only be able to listen to music that was playing on TV. Another interviewee who had been living for quite some time previously in an underground asylum centre known for its harsh conditions explained the difference between that camp and Bässlergut, looking very surprised by my question:

“Oh, yeah. You cannot compare life and death. Yeah, here [in prison] it's, here it's like death. You cannot compare life and death. (...) [The asylum camp] underground, (...) you can just sleep underground and then come out [when you like] and take fresh air, see people, if you want to go you can go, you know. But here, I cannot go out. It's like... like a person takes you inside a room and locks you in, you spend time in there for months you know. So even if [the camp was] underground, I prefer that” (John, detained in Bässlergut).

Detriment produced by deprivation of liberty is particularly strong in this quotation, as John compares enclosure to death. Despite the critical conditions of the underground accommodation which he had experienced previously, the idea that he could leave that centre if he wanted to helped him preserve a sense of control, while this was impossible in detention. The feeling of being restricted and controlled in every movement is a source of anxiety, as highlighted by Jonas (RP Bern), who described the way staff members look at detainees as “very intense”, pointing to their visual practices of surveillance. He explained that he felt under pressure when accompanied by guards in any movement outside the cell.

If detention implies deprivation and enclosure, it is also characterised by a certain monotony of space. It would be different to be confined in a neighbourhood or town than in a closed space such as a prison. Within the prison, detainees are allowed to move only in a limited and circumscribed space, and for most of the time, they are locked up in one room. In the RP Bern, enclosure in the cell can last up to 23 hours a day when the detainee is held outside the area called *Wohngruppe*, which instead allows for approximately five hours of free movement within it (composed of a corridor and cells, and lacking a leisure room). Several material and architectural aspects strengthen the feeling of enclosure in both prisons: the carceral space looks cold, lacking colours or decoration, and is characterised by the presence of bars and thick doors that are frequently locked and unlocked, producing a sound that is proper to the prison atmosphere. In the RP Bern, the cells' walls are covered with writing and messages from previous detainees giving the cell space a distressed atmosphere. Furthermore, the windows in the RP Bern cannot be opened, which the administration blames on the location of the prison in the city centre and the fact that detainees' screams could disturb the neighbourhood. This provision also, however, prevents fresh air from entering the

detention space. The prison is provided with an air circulating system, yet an old and deficient one, which results in poor air quality, particularly impacted by hot weather and detainees' smoke. Not only is the lack of fresh air unhealthy, it also reinforces the boundary between inside and outside the prison space and the feeling of enclosure. It confiscates even that small detail of normal life, symbolically suggesting that detainees are not even allowed to breathe the same air as the rest of society.

The only time during which detainees in the RP Bern can breathe fresh air is the daily walk in the exercise yard. However, this takes place in an outside space provided on the roof, which is covered in concrete. These conditions limit detainees' enjoyment of the walk, as this quotation illustrates:

"Here you go for a walk because [you] want to make contact with others. But the courtyard itself is locked in, (...) the walk itself is a... prison, it's locked. You only go there to make contact with others. (...) It is also so narrow, even for walking, it's so narrow" (Jonas, detained in the RP Bern).

The two exercise yards in the RP Bern are in fact quite small – the larger is 95m² and the smaller is 48m²¹⁹⁷ – and enclosed on each of the four sides with walls made of concrete. Air and sunlight only enter through a portion of the ceiling, and the sight of the sky is mediated by thick bars. The limited time and conditions under which detainees can walk led Jonas to comment that people "need more fresh air than food", pointing to the fundamental importance of breathing fresh air and outdoor activity. In his quote, however, air can also be interpreted as a symbol of freedom. Other detainees prefer to avoid going out at all, like a man who compared the small and crowded¹⁹⁸ space of the yard to "a room for monkeys". A staff member also described the courtyard as a space in which detainees could only turn around "like lions in a zoo". Such metaphors from the animal world are used to point to the process of dehumanisation of detainees in and through the carceral space (see section 5.1). Although the courtyards in Bässlergut are larger and a little more open, they are still covered in concrete on the ground and the four walls, allowing inmates to see the sky but not the surrounding landscape.

Isolation and contacts with the outside

If enclosure is one defining characteristic of detention, so is exclusion from the receiving society (Bloch and Schuster 2005: 493). Detention isolates individuals in many ways, removing detainees from their communities and from the infrastructure of advocacy, separating them from family and community networks, but also concealing them from view (Mountz 2012). Isolation results not only from enclosure, but also from specific barriers to contacts with outside. Detainees have the right to make calls and receive visits during their incarceration, however, these are restricted by lack of resources, privacy and sometimes by the will to hide their incarceration from loved ones.

A public phone is at their disposal in the common space of each prison wing in Bässlergut as well as in the *Wohngruppe* in the RP Bern¹⁹⁹, and is accessible for detainees during the opening time of

¹⁹⁷ National Commission for the Prevention of Torture, visit report of 2011. This, as well as the 2014 and 2019 reports on the RP Bern, strongly criticise the courtyards in relation with their size and architecture. All reports are available at <https://www.nkvf.admin.ch/nkvf/de/home/publikationen/berichte-der-kontrollbesuche/nach-kanton.html> (accessed on 24 June 2020).

¹⁹⁸ For women in the RP Bern, there is sometimes the opposite problem, as a woman who wants to walk might find herself alone. This happened in the RP Thun during my one-day visit, in which I personally accompanied a woman during the walk, as she would have been alone otherwise.

¹⁹⁹ Detained men who are held outside the *Wohngruppe* need to make a written request to staff in order to use another phone situated in a phone booth. While this option affords more privacy to detainees, it can also pose problems, as the person called might not answer at the first attempt, and the detainee might have to wait another day or two before being allowed to try again.

the cells²⁰⁰. Detainees in the RP Bern weekly receive a phone card to the value of 5 Swiss francs in case they do not have their own money. In Bässlergut, one free call is only allowed at the beginning of incarceration, and after that detainees must buy phone cards with their own money (owned at the arrest, received from outside or earned through work in prison). Their calls are free of charge only if they are addressed to their lawyer, migration or consular authorities. In those cases, staff members provide them with a phone card and often feel licensed to remain nearby in order to ensure that the detainee does not make any private calls with the card.

Talking on the phone in the common space is experienced as lacking privacy, as other detainees – and often staff members – are around. This can become problematic when the detainee wants to keep a phone call private, or when he is attempting to conceal incarceration from family members. Detainees sometimes raised the concern that they felt controlled, even when calling their family:

“[When we make calls], there are people around, and the police [guards] are also controlling... [L: Do they listen?] They always control when we make phone calls. (...) I talk to my father, ‘Is everyone okay, the family, everything is fine?’ (...) [but the call] is under control, I can’t, I don’t want to talk about other things, personal problems or anything else. No. Just, ‘everything’s fine, everything’s okay’, the essential” (Nassim, detained in Bässlergut).

As related here, the conditions of the call limit Nassim’s ability to converse freely with his family. Moreover, intercontinental phone calls are very expensive, and are not the usual way to reach family and friends. Outside the prison space, these contacts are facilitated by technology, as migrants can maintain networks for free using WhatsApp, Skype or Facebook, for example. In the prisons where I conducted fieldwork, including the four facilities I visited for one day, mobile phones are confiscated upon entry, and access to the Internet is neither provided nor allowed²⁰¹.

For those who are more connected in Switzerland, visits are an important way to counter isolation. In Bässlergut, detainees can receive up to 12 hours of visit per week, both during weekdays and the weekend²⁰². In the RP Bern, visits are limited to three hours a week, and are allowed only on weekdays and in the afternoon (between 2 and 4 pm), problematical for people working office hours and wishing to visit their loved ones. Another obstacle is represented by the need to register with an identity document, which prevents undocumented members of family or friends – including most released detainees – to visit. Detainees can also receive goods from outside²⁰³, like food, phone cards, clothes, books and money (which is transferred to the detainee’s account and can be used to buy items from the Kiosk or to retrieve upon exit).

When they receive a visit from outside, detainees are led to the visitors’ room. In Bässlergut, this is a large room equipped with a dozen tables and chairs, decorated with a few paintings and a plant. The windows are milk glassed, hiding the bars from view. Visits of convicted prisoners take place in the same room and conditions, but at separate times. In the RP Bern, immigration detainees receive visits mainly at the same time as penal prisoners in a dedicated space right next to the closed

²⁰⁰ This might cause time-related problems, such as that highlighted by a man detained in the prison of Realta. He was unable to call his daughter during the weekdays because he had to return to his cell at 4 o’clock, while she was still at school.

²⁰¹ A project was being developed in the prison of Zurich airport at the time of my visit, which would allow detainees to surf the Internet and use a limited number of networks or applications. The NCPT also regularly recommends cantonal authorities to investigate the possibility of allowing the use of mobile phones and the Internet in immigration detention.

²⁰² The main problem with visiting hours in Bässlergut is the simultaneity with work time on some days. If the detainee is working (e.g. because the visitor did not inform him of their visit), he is not allowed to attend the visit.

²⁰³ In Bässlergut, people who want to deliver goods have to complete a form and remain while staff check the goods, while in the RP Bern, they additionally need an identity document.

rooms (called ‘*parloirs*’) in which visits of penal inmates occur. Such space allows for three simultaneous visits and is composed of a table with a glass screen in the middle which separates detainees from visitors. Physical contact is possible over the glass, which only reaches eye height. In both prisons the visitors’ rooms are guarded, through cameras in Bässlergut, and through prison officers’ proximity in the RP Bern. Detainees experience this presence as rather oppressive: a detainee in Bässlergut explained that staff would keep crossing the visitors’ room in order to show their presence and make detainees and visitors’ feel more controlled. Most detainees in Bässlergut do not appreciate the obligation to wear their uniform trousers and slippers (they are not allowed to wear shoes), a security rule that aims at avoiding escapes through exchanging with visitors, according to staff members. Furthermore, in the RP Bern the glass separation reduces the risk of visitors smuggling unallowed materials into the prison. On the other hand, in Bässlergut prison officers sometimes do random strip-searches of detainees after visits in order to avoid smuggling, which is experienced by detainees as humiliating and unfair, given that it is based on subjective suspicion.

Detainees usually receive visits from family members and friends, but also from NGOs’ members and volunteers. In Bässlergut, volunteers of the NGO Solinetz as well as other volunteers forming an informal visitors’ group regularly attended the prison during visiting hours. In order to perpetuate their activity without becoming embroiled in the mechanisms of the prison and deportation, these volunteers work by means of word of mouth, asking detainees the names of other inmates who would like to receive a visit. Despite the existence of such groups, many detainees do not receive any visits, particularly in the RP Bern where there is only a group of volunteer visitors for detained women, but no equivalent for men. This lack of visits might result from few connections (regularly residing) in Switzerland. However, it is also related to shame and stigmatisation related to the prison, as many detainees do not want their relatives and friends to know about their detention or to visit them in their condition of captivity. As will be discussed in the next section, criminalisation through the prison space represents a further obstacle to detainees’ maintenance of social networks and relations that would have the potential to help them to ascertain their future perspectives, be it in Switzerland, elsewhere in Europe or their country of origin. Volunteering visitors’ groups represent an exception to this tendency, giving detainees an opportunity to build networks that can support them during and after detention.

Despite this exception, the aspects described so far construct detainees’ feeling of being isolated and excluded from society:

“That is actually no life, I mean, as a prisoner, you are nothing, you are out of the world. Okay, you have a TV in your room, but no, you are out of the world, you are captive. You’re in a small room, the door is closed. You know nothing [of what is going on outside]” (Yusuf, detained in Bässlergut).

For Yusuf, reading the news was an important way to counter such feelings of being “out of the world”. Not only did he read about international politics and follow what was happening in his country of origin, but he liked to read the Basel local news, Basel being the city he had lived in for more than half his life. Reading the newspaper every morning while drinking coffee was for him a way to reproduce some kind of normality while being detained and at the same time feeling and reiterating a sense of belonging to the community. Many other detainees underlined the importance of the media – particularly the news – to counter their isolation and exclusion from society:

“Every day you have to watch TV, watch the news. It’s not movies which are important, but the news, you have to watch TV and know what is happening in the world. I spent four months in prison. I don’t see the outside, I don’t know what is going on out there. News is so important” (Jake, detained in the RP Bern).

The TV is also a source of diversion and entertainment, as are novels that detainees can borrow from the prison library²⁰⁴. As one detainee evoked, immersing oneself in a novel is a way to escape from prison, at least inside the head. Media thus plays an important role in limiting or counteracting the feelings of isolation and exclusion that define the carceral experience, forgetting about confinement for a little time and participating indirectly in society. Even watching the world go by out of the window or talking about what is happening outside – for example, by asking me about it – reminded detainees of freedom, while at the same time underlining their own enclosure.

Prison stigma as a source of isolation

As already mentioned, limited contacts with the outside world is also related to the stigma that being in prison represents for detained migrants (Goffman 1963). In fact, many detainees do not want their relatives and friends to know about their detention or to visit them in prison. This is partly because they do not want them to worry about their condition, and partly for reasons of shame. In an effort to conceal their detention and try to preserve their identity from being spoiled by incarceration (ibid.), they tend to cut contacts with people outside and self-exclude themselves from their social networks. Robert, for example, was rather surprised by my questioning whether he had contact with others outside in terms of visits or calls:

“No, no, no, no. No, no, no, no. Never. (...) I don’t like anyone to come and visit me in prison. It is not good. Visit me outside, not in prison. (...) I don’t want anyone to visit me in bad conditions. I always want people to visit me in good conditions. [L: (...) you don’t want people to see that you are here (...)?] Yeah, I don’t want people to know this” (Robert, detained in the RP Bern).

Robert did not want to be seen in such condition of captivity, which attached to him a stigma related to crime and undermined his pride. The level of stigma related to prison and incarceration has enormous consequences for detainees’ networks, since they often prefer to hide their incarceration from family and friends, worrying about the suggestion or assumption of criminal behaviour. This risk was highlighted by a number of detainees, who argued that people did not know about immigration detention in their countries of origin:

“I can’t say I’m in jail. My mother’s old, I can’t tell her that. To them, it means I did something bad if I’m in prison” (Jakob, detained in Bässlergut).

“You know, my family, it’s only my mother and my youngest sister, I don’t want to make them so sad. Because in Africa if you say to somebody, ‘I’m in prison’, it will be a big thing. (...) So I just tell her that I’m under control (...) and they’ve taken my phone from me, so I cannot communicate with you, for maybe one or two weeks (...). But I don’t tell her that I am in prison, because maybe if I tell her that, it may give her sleepless nights (...). She would worry about me, because... I’ve never been to prison, I’ve never done anything that would land me in prison” (Oliver, detained in the RP Bern).

The will to avoid family members and other acquaintances knowing about detention is clearly related to the process of stigmatisation to which detainees are subject. Detention assigns them a double stigma related to foreignness and non-belonging on one hand, and to criminality on the other hand. The fact of being detained raises doubts about whether they have committed a crime, with

²⁰⁴ In the RP Bern, the system of book rental worked well (a volunteer was in charge of maintaining it, while staff would grant detainees access to this service). In Bässlergut, the library was not well managed despite being fairly well stocked. Detainees could theoretically ask for books (but were not allowed into the library), but in practical terms, they had difficulty borrowing books. In the RP Thun I also heard from a detainee that she had been waiting to borrow a book for a few days without receiving an answer. Having a prison library thus does not mean that access is granted to all detainees.

being detained in a real prison raising even more doubts. One detainee said that he had called his family and said he was in prison, but they would not believe him and were convinced that he had done nothing bad. In addition, as a consequence of the prison stigma, several fathers preferred their children not to visit, not knowing how to explain why they were there and being concerned about vicarious stigmatisation through attending the prison space. One interviewee, Hervé, related that when his son had visited, he had been very surprised at the conditions in which he was held: “But dad, this is like for criminals! There are cameras and everything!”. This had been very painful for him, and so he did not want his daughter to visit him. This has probably led him to be deported without seeing her. The experiences of criminalisation will be further discussed in section 8.3.1.

8.1.2. Waiting for the uncertain: the temporal experiences of detention

Confinement is not only experienced as losing control over one’s own freedom of movement and choices, but also over time (Griffiths 2014b; Turnbull 2014). As discussed in section 5.2, the days in detention are strictly scheduled – one of the defining characteristics of total institutions, according to Goffman (1969) – which is intended to maintain the prison order and structure detainees’ days in order to give them a sense of normality. Meal deliveries, walks, work (in Bässlergut), and the locking and unlocking of cells as the main time markers of the day are all outside detainees’ control. In this section, I discuss the temporal experiences of detainees as being characterised by boredom, waiting and the impression of losing important lifetime, as well as a strong feeling of uncertainty regarding what occurs and when, which represents the main difference with respect to the serving of a prison sentence.

Boredom, waiting and the feeling of losing time

Detainees mostly describe their daily life as monotonous and tedious, characterised by routine: “You’re just waiting for morning coffee, you’re just waiting for lunch, and you’re just waiting for dinner, otherwise you’ve got nothing to do”, argued Yusuf, a man detained in Bässlergut. Another said:

“The days here are all copies. It’s practically what happened yesterday, it’s the same thing that’s going to happen the next day. We expect nothing and we hope for nothing. We live in anguish, (...) here there’s no prospect... for the future and really the days are all the same. Whether it’s today or yesterday or the day before yesterday” (Karim, detained in Bässlergut).

During interviews detainees often answered my questions about a usual day in detention with very short answers, pointing at the monotony and emptiness of prison life:

L: How does a day in immigration detention, in prison, look? What do you do all day?

J: Twenty-four hours staring at TV. And sleep (Jonas, detained in the RP Bern).

This kind of answer was also a way of signalling the lack of meaning of the time they spent in prison, as I will discuss shortly. Lack of activities is one of the main characteristics of daily life in detention. In the RP Bern, the one-hour walk is the only activity planned, while detainees spend most of the day in their cell, either watching TV or interacting with other inmates in case of multiple cells. This is in strong contrast to the tight schedule of the day and especially of staff’s tasks (see section 6.2.1). For detainees, the lack of exercise is also a source of health issues such as backache, headache and insomnia, as a nurse explained to me. In Bässlergut, detainees can work for two and half hours a day from Monday to Friday, and have free access to the exercise yard for three hours each day, which enables a little more variety of space and activity.

The lack of activities, together with the state of chronic waiting in which detainees find themselves, render time very slow (Griffiths 2014b). Detainees often argued that a day in prison was like a

month or a year outside. In order to cope with the boredom and monotony of prison life, they tried to engage in activities that would make the time pass faster, such as watching TV or interacting with other inmates. Even work activities in Bässlergut were considered primarily as a way to ‘kill time’, besides being a source of earnings (see section 5.2.3). Playing and chatting with other inmates was also one of the main sources of diversion, be it in the exercise yard or in the prison wing. During the walk, detainees played table tennis, jogged or did other exercise, and discussed things in small groups while smoking cigarettes or drinking coffee or tea they had made in the wing. In the wings, they spent time chatting or playing cards, table football, or a handmade chessboard. Sometimes, detainees also prayed together. Another way to divert themselves from the monotonous everyday experience was to require a conversation with the chaplain, the medical team or any other person attending the prison. In this sense, I was also a source of entertainment for detainees, as they sometimes reminded me: “days are all the same, the only thing that changes, it’s you coming [laughing], that changes a little this routine”²⁰⁵.

Besides being monotonous, the time spent in detention was considered meaningless and useless. Griffiths (2014b) used the concept of *suspended time* to refer to time that is experienced as irrational, meaningless and endless, producing the feeling that one’s life is not progressing. Detainees mostly experienced detention as a rupture in their lives, an element that came as disturbing the pursuing of a life trajectory. Thus, it can be conceptualised as an element of *friction* in the sense given to the word by Cresswell (2010), namely as one of the six facets of mobility, that referring to the process of stopping. Detainees experience not only spatial (Schapendonk et al. 2018) but also temporal friction. They often feel like their lives are temporarily stopped or put on hold and they lose control over their lives. They are forced to wait for something that is decided or organised elsewhere, by stakeholders they hardly ever meet (see section 8.2.2), but constantly think and talk about. As Jake, awaiting deportation to Italy, put it:

“Here you have no liberty, you just wait until immigration comes and tells you, (...) until they book the ticket. (...) I wish we could go by ourselves; I wish I could buy a ticket and go to Italy by myself. I don’t wish immigration to put me in prison, to waste time, to lose energy, and send me back there. I would pay the ticket. I buy the ticket, I go there, I buy another ticket, I come back. We just want freedom. But here I have to wait, I have to sleep” (Jake, detained in the RP Bern).

Jake’s reference to sleeping is partly related to the fact that he did spend much time lying on his bed, sleeping or resting. Indeed, he stated that he tried to sleep as much as possible in order to reduce the length of the days. I would argue that this was a temporal strategy for Jake, which allowed him to shorten the amount of time he had to spend in a conscious state in prison. At the same time, referring to an obligation – “I have to sleep” – suggests the use of the image of sleeping as a metaphor for the condition of waiting, a condition strongly related to power and felt as disempowering. Accordingly, it was rather common to hear detainees say that they were “just sleeping all the day”.

Some detainees instead tried to cultivate their passions and/or do something useful during detention: writing music, drawing, getting fit or learning German. This kind of experience was rather marginal, however, which joins Griffiths’ observation that temporal uncertainty can have transformative and productive dimensions for rejected asylum seekers in freedom, but this hardly ever occurs in immigration detention (Griffiths 2014b). The author argues that “[a]lthough from the outside it appears that many detainees have an excessive amount of time, the extreme temporal

²⁰⁵ In two interviews, I also felt like the detainee had wanted to meet me only as a distraction, as he did not want to disclose any information about himself or his experience.

uncertainty that they experience means that this is only known with hindsight”, while during incarceration, “time feels oppressive rather than abundant” (2014b: 2004). Griffiths relates this feeling to the anxiety that is triggered by the possibility of removal. Not knowing either how long their detention will last or its outcome pushes detainees into a permanent state of waiting and uncertainty which disempowers them (Bosworth 2014; Griffiths 2013; Turnbull 2014), as we will explore in the next section.

Furthermore, time is an important component of the experience of detention as punitive. This is reflected in the remark of a detained man, according to whom migration authorities become stricter and detain more migrants in summer because detention is more painful in that season. In that way, he argued that detention would become “a double punishment” in summer.

The strong feeling of losing time was related both to the meaningless character of prison life and to losing essential lifetime, as the following quotation reveals:

L: What is for you the most difficult aspect of being confined (...)?

N: We're wasting time here. I'm not a 20-year-old or a 21-year-old boy. I am 32 years old, next month I'll be 33, and I'm looking to get on with my life, I'm looking to earn a living, I'm looking to start a family, to... to get married, I'm looking... I'm looking for... I'm looking for my future, and here... it's hard. It's a long time, two years in prison or one year... I mean... I haven't got anything. I came [to Switzerland], if I would've stayed maybe it was better. Now a year goes by like that and maybe the next year also, because (...) I even found a job but with permit N [asylum seeker], it's impossible. (...) I think I lost my future like that (Nassim, detained in Bässlergut).

Nassim had left home more than ten years previously. He had been working in Libya for several years, before deciding to reach Europe. The idea of spending up to two years in detention pushed further back again the moment at which he would be able to take his life back into his own hands. In his thirties, he had started to wish for a family, and to feel worried about not being able to do so. At the same time, he had been away from home for more than ten years, and he did not want to return without having achieved anything. Nassim was not the only detainee I met who had this feeling of losing essential time and being blocked in the project of founding a family, or excluded “from social ageing” (Griffiths 2014b: 1998).

For many migrants, detention becomes a space of waiting. However, its end – be it through deportation or release – in most cases does not solve the situation of uncertainty and precarity. In fact most detainees hope to be released, but even if this happens, in the vast majority of cases they remain ‘stuck’ (Turnbull 2014) without documents and under authorities’ surveillance, while not being allowed to work in a legal manner. This gives rise to feelings of being continuously detained even after release (Klein and Williams 2012). Thus, uncertainty – which will be discussed in the next section – does not always end nor is it reduced with release or deportation.

Living in a condition of uncertainty: detention as an emotional field

“Here, it's the everyday of a life without prospects and in a blur. (...) It's a life lived in doubt, there's a question mark about life” (Field notes, Bässlergut).

Several authors have pointed to uncertainty as one of the defining features of the detention experience (Bosworth 2014; Griffiths 2013; Turnbull 2014). Uncertainty is pervasive in immigration detention and shapes the ways in which detainees experience detention. Uncertainty has been also described as a “mode of governance” (Bosworth 2014: 185) and an aspect that is not accidental but critical to its functioning, serving to keep “people insecure, passive and pessimistic and to reiterate the indifference and power of the state” (Griffiths 2013: 280).

Uncertainty has a strong temporal dimension²⁰⁶ as detainees experience a “tension between anticipating constant change and fearing indefinite stasis” (Griffiths 2014b: 2001). It is also related to a lack of information and knowledge (Griffiths 2013). Indeed, many detainees who I met or interviewed were struggling to understand what was happening to them and why. The legal framework of migration control and particularly of immigration detention is little known and rather confused, even for those working within this field. The only people they can regularly ask about their cases are prison officers, who usually distance themselves by saying that they do not know anything about their case and that only immigration officers can provide them with those explanations (see section 6.3.1). However, access to immigration officers is not always granted rapidly, and suffers from several communication hurdles, as we will see later in this chapter. Legal advisors are also not easy to access – at least in the RP Bern – and so the only sources of knowledge are often the experiences and information provided by other inmates.

Beyond incomprehension of what is happening, the law being barely understandable and practices of migration officers appearing rather arbitrary for detainees (as will be discussed in section 8.3.2), uncertainty is clearly related to future prospects and fear of deportation or long-lasting detention. Detainees were constantly worrying about what immigration authorities were planning, wondering whether or not they would be deported, and if yes, where and when. As the following quotation shows, such uncertainty can be very painful:

“On my first night here, it was too much for me, I couldn’t sleep. Ehm... I think too much, yeah. [L: What were you thinking about?] I was thinking about, you know, when I will leave here and... what will be their plan, because they didn’t tell me anything, they just told me to sign a paper and so... I don’t know [if] they were taking me back to Italy or to my country. At that point I didn’t know anything” (Oliver, detained in the RP Bern).

Unsure whether he would be deported to Italy or to his country of origin, Oliver felt much distress on his first night in prison, before being informed of his situation the next day. Another detainee, John, was anxious instead about what would happen to him after deportation to Spain, since he did not have any network in or knowledge of that country:

“You know, persons in prison think a lot. Sometimes I think where am I going to stay because I don’t have any brothers in Spain, and I think where am I going to start now if I go back to Spain. How will it be? How can I find something to do there, you know? How can I make money (...) and then take care of myself? That’s what I think sometimes. (...) I don’t have any person there, I don’t have... I am homeless, jobless also. That’s what I think sometimes. (...) and I can’t fall asleep” (John, detained in the RP Bern).

As these quotations show, the experience of uncertainty – in this case combined with helplessness with regard to the authorities’ decisions – is highly distressing for detainees, provoking psychosomatic disturbances as confirmed by a member of the medical team in the RP Bern:

“[Psychosomatic problems] (...) clearly result from the fact of being locked up here, [and] that the future is often not sure. And from the fact that they have no future prospects, they are afraid of the future. This often shows up as psychosomatic... with everything you can imagine” (Lena, nurse, RP Bern).

Several detainees had sleeping problems, and some started to smoke in detention or increased the number of cigarettes they consumed: “if you don’t smoke you’re going to think until your head bursts”, said one. Detainees’ reactions to the pressure exerted by detention are diverse, ranging from outbursts of rage to depression, sleep and appetite loss. A significant number of detainees also harm themselves, as will be discussed at the end of this chapter (see also section 5.3.2). According to

²⁰⁶ This is particularly salient in countries like the UK where there is no time limit to immigration detention.

several staff members, the experience of uncertainty – what is going to happen next, and when it is going to happen – is the main difference between the experiences of immigration detainees and prisoners serving a sentence, who usually know when they will be released.

8.1.3. Solidarity and conflict under conditions of forced cohabitation

One of the main characteristics of incarceration is forced cohabitation with strangers. Detainees' experience is strongly impacted by their ability and will to create social relations, which can be both a resource and a challenge in detention. If social contacts allow time to pass faster and friendships to be built, they can also be a source of conflict because of the forced nature of cohabitation and continued contact in little space. Social contact with other inmates also results in detention becoming a space of information and experience sharing, where new projects of migration take form, and where detainees collectively try to make sense of their experiences.

The building of social ties partly follows perceptions of a common race, ethnicity or nationality. Some detainees talked about their co-nationals as 'brothers', or highlighted the stronger bond existing between black people: "With the Black, anytime we are together, even if we meet for the first time, (...) we get friendly... so we chat more yeah" (Oliver, detained in the RP Bern). Religious belonging can also be a source of solidarity despite different origins, according to some detainees. However, if bonds of solidarity develop more easily within such perceived categories of belonging, they also often transcend them. Other criteria that play a role are age and language. Special bonds can arise among age peers, but also across generations, as in some cases I observed in which a young detainee was taken under an older detainee's wing. Speaking a common language connects not only detainees of the same geographic origin, but also those with different cultural backgrounds, for example in the case of languages shared across national contexts or learned along the migratory path. Language can also be a barrier to social contacts, shaping some detainees' experience of isolation, especially when they cannot find any conversation partner.

Sharing a common experience of migration and incarceration, and often the same feeling of being unjustly incarcerated (see section 8.3.1), produces a sense of groupness that goes beyond the relationships between individual detainees and counters the process of alienation triggered by confinement. This also translates into acts of solidarity as we will see later in this section. When I asked him how he was getting along with the other detainees, Jake explained:

"We are one voice. We are all looking for freedom. Freedom is not a choice, it's a must. (...) I talk to people, from Guinea, Morocco, Algeria, Tunisia, Gambia, Nigeria... We have the same blood. [L: What do you mean?] We are all living here. We are a family. We call it family. (...) If I have a cigarette, I'll give it. We help each other. For example, my cellmate has money in his account, I don't have money in my account. If I need something... [I ask him]" (Jake, detained in the RP Bern).

Schapendonk (2012) underlines the transient character of the collective in migrants' experiences and trajectories, where social networks can be very dynamic and changeable. The united feeling of detainees highlighted by Jake is motivated by the observation of being in the same – bad – situation of incarceration. They form an "accidental community" (Malkki 1997: 99, cited in Peutz 2006: 219) characterised by forced cohabitation, as remarked by Kevin:

"We connect easily. (...) At the beginning... we introduced ourselves, we talked about, 'hey, what's your name?', 'my name is this, my name is that'. 'Where are you from?'. We introduced ourselves because we all know that whether we like it or not, we are going to be inside there, inside the room for a period of time. So we have to be... we have to be united, we have to live as brothers, so that we can have unity there" (Kevin, detained in the RP Bern).

This sense of being united by the same condition of incarceration renders most detainees happy when someone is released – “I am glad if my friend is free, because this is no place to live. Today it’s him, tomorrow it could be me” (Brad, detained in Bässlergut) – and to suffer for other inmates’ deportation, which reminds everyone of the risk of being deported. Sharing a feeling of uncertainty and worry about their fate, detainees spend a lot of time discussing their cases, trying to understand them better in order to anticipate what will occur and to develop the best strategies to cope with their situation. The prison thus becomes a space for sharing information and experiences that will impact future decisions on how to behave during an interview with the authorities, or what to do and where to go in case of release or after deportation.

Listening to others’ stories is not only a way of learning about the migration control system and how to better cope with it. It is also a source of distraction, in which listening diverts attention from one’s own problems and allows one to put them into perspective, sometimes realising that they are less serious than those of other inmates. Nassim explained this when I asked him what he talked about with the other inmates:

“We discuss... mostly about our situation. Almost all the time, people think about their situation, their future, their past, their incarceration... about their life, their family, sometimes people are sick, they think a lot... and like that... it’s much stress. (...) When [an inmate] listens to his friend’s problem, he forgets his own problem, maybe his friend’s problem is more serious than his own” (Nassim, detained in Bässlergut).

However, listening to other inmates’ stories can also be a source of stress, enhancing the fear of deportation or prolonged detentions that some have experienced. A few detainees stated during the interview that they did not want to hear the problems of the others as they had enough issues with their own. On the other hand, for many detainees, listening to the stories and experiences of other inmates was part of the learning process of detention, in which they said they had learned much about the world and human beings: “[We talk] about life, in order to learn, everyone here has his own story”, explained Jamal, who found it enriching and argued that prison cohabitation had made him more tolerant. Detainees also tried to grasp knowledge and make sense of their experience when they talked to each other, engaging in a collective attempt to understand specific cases as well as the general background of detention and deportation.

For Karim, who spent several months in detention and had seen many detainees coming and going, listening to their stories and trying to help them was not only an important source of distraction, but also a way to feel useful and raise his self-esteem against the strong disempowerment and alienation to which he felt subject:

“The detainees come one after another, each one tells his story, (...) and I am interested, to change [thoughts], I was always interested, why they are there and for how long and ... how I can help them, comfort them so that they spend their time here without fearing their fate or I let them reason in my own way. And for me it’s a question of escaping from my own problems, what I’m going through on a daily basis (...). And I try to help them with the administration, whether it’s in procedures, filling out a form, because here you can’t talk to a guard, (...) or to the administration, they don’t care if you can’t write. So I help them in that sense (...). And since I’m here, I’ve been doing that and for me it’s a way through which I try to forget” (Karim, detained in Bässlergut).

Feelings of solidarity therefore take both the form of information and experience sharing – which can be useful to ascertain how to act in such a difficult situation – and of concrete help such as completing forms, translating and explaining documents, or offering translation during conversations with staff or legal advisors. Some interviewees also said that they tried to comfort inmates who were feeling sad or desperate and prevent them from self-harming, or to encourage

detainees to resist detention and persist in their resistance to deportation (see section 8.4.2). More experienced detainees also often supported recently arrived detainees by explaining the rules – including the implicit ones – of the facility. This is also appreciated by staff since they can rely on certain inmates to explain the rules, although this can be problematic as it shifts the burden of this important task towards the inmates:

“They like to support each other (...). If I bring someone into the living group, I don’t need to explain much to him, only the minimum... afterwards they have enough time to help and explain to each other, so I have much less work than when someone comes to a single cell, then he asks me all the questions” (Stefan, prison officer, RP Bern).

On some occasions, solidarity can also take a material form such as distributing cigarettes, lending a phone card, giving clothes to a new detainee who has few, or helping another detainee to cut his hair. I saw detainees buying food or drinks from the Kiosk and distributing them to others who had no money to buy such items: in the RP Bern, for example, only one inmate in immigration detention earned money for cleaning the wing, and I saw him buy some products for his cell neighbour.

Social relations among detainees can also turn into real friendships that sometimes extend beyond the detention experience and last after release or deportation. Collyer (2007) has noted that the social networks created during trajectories are of vital importance to migrants, who are generally travelling alone. As evidence of this I mention Rami – a young Tunisian national – giving the contact of his brother, who was living in Italy, to an Eritrean man met in detention and who was going to be deported to Italy where he had no network. Rami told the Eritrean man that his brother would welcome him and give him a place to stay for the first few days. In Bässlergut, I observed other instances of friendship and solidarity, such as released detainees sending letters or bringing food or phone cards to their ex-co-detainees. A few released detainees told me they would like to visit their friends in prison as well, but they were not allowed to do so, because of their lack of documents. Moreover, some released detainees continued to meet and help each other outside the prison, or maintained contact after deportation. The example of Amir and Yusuf, who had been sharing the same cell for a few months, is eloquent in this respect. Coming from different parts of the world – Amir is Moroccan and Yusuf is Turkish – they shared the same faith and a similar experience as they have been living in Switzerland for several years, partly as undocumented, and learned German. Yusuf appreciated his cohabitation with Amir, qualifying it as one of mutual respect and brotherhood:

“We’re like brothers. Everything was perfect. I understood him, he understood me. We were like brothers. We ate from the same plate. (...) He had respect for me, I had respect for him. He prayed five times a day and I simply had respect for him [although I don’t pray myself] (...), when he started praying I would turn off the TV so he wouldn’t hear it. (...) Just respect (...), during two months. And (...) when he was released, he came to my place and (...) I said: ‘You’re staying at my place today and you sleep here’. (...) So every day we were in contact, he used to call me or I call him. We used to meet in [place] and have coffee” (Yusuf, detained in Bässlergut).

When Yusuf was released, he continued to bring cigarettes, food and phone cards to Amir, who was very thankful. After some time, Amir was released as well, and went directly to where Yusuf was staying, where he spent the first night. Over the following weeks, they continued to meet and help each other in several ways. When Yusuf was detained for the second time, Amir also brought him goods from outside, which he did for other detainees as well. Yusuf and Amir remained in contact even after Yusuf was suddenly and brutally deported to Turkey, at least for some time.

During his second period of detention, Yusuf had a totally different experience of cohabitation, characterised by lack of respect and tolerance. Indeed, during our interview, he kept returning to the problems he was having with his cellmates and how those rendered the experience of imprisonment harder:

"It's not easy to live in prison. You can imagine, this is a small room, sometimes we are three, sometimes four, sometimes five people. You're in a small room, (...) there are five people and no respect, I don't understand any language they are speaking, and... how can I tell... They're so... disrespectful. I'm there dining and he goes to the bathroom,... sorry, but to shit. And I'm eating. Either you do it before, or you wait till I'm done. So disrespectful!" (Yusuf).

He also spoke about another detainee who profoundly disturbed him because he was walking in the cell naked, which Yusuf considered to be totally disrespectful behaviour. Yusuf argued that detention is already a hard condition, and if you do not get along with your cellmates, it becomes almost unbearable. Indeed, forced cohabitation is regularly a source of tensions and conflicts, often provoked by seemingly banal things, which, however, can be important in detention, such as the use of the TV, participation in the cell's cleaning, the noise made by other detainees during the night or the need to share a newspaper. Moreover, staff members related theft of cigarettes and phone cards – as well as other items – as a source of conflict. The condition of stress and uncertainty also renders people less tolerant and/or more provoking.

Sometimes conflict takes a very personal form, as in the case of two longstanding detainees who hated each other and entered into open conflict a few times. Their dispute polarised some of the other detainees, who would support one or the other, creating tensions in the wing for a period of time. One was convinced that his 'enemy' had set his friends against him, and felt that this situation had turned into a "double prison" where feelings of enclosure and exclusion were reinforced and amplified by the lack of good contacts: "it's a prison within the prison!", he explained, trying to illustrate how he felt socially excluded at that moment.

On the other hand, a few detainees willingly tried to maintain distance from the other inmates in order to avoid problems such as the sanctions that can ensue from a conflict or brawl. Nassim illustrated this very clearly:

"In general, I avoid contact with people as much as possible, that's for the best. Because every time, contact with people... causes problems. (...) And me, my character, I'm calm, (...) I need to stay quiet, I don't like a lot of contact, a lot of words, I don't like it like that. (...) I want to stay quiet, I think it's better [than] contacting people, because maybe it will make problems or maybe I'll have to be isolated" (Nassim, detained in Bässlergut).

In a similar way to Nassim, Amadou, detained in the RP Bern, related that when his cellmates left, he asked to be moved to an individual cell, because of the risk of finding himself cohabitating with someone unpleasant and/or aggressive:

"With those, I used to get along well. They didn't like to clean too much but (...) apart from that, they had respect for me, I had respect for them. (...) But both of them left and you're alone there and someone else comes who is aggressive or whatever, you don't know, you could get into trouble with him. (...) I don't want to mess things up here or anything, you know. So I said to myself: 'wait, I'm going to write because there are a lot of empty cells here, I'm going to stay alone over there so I'm quiet, I don't have problems with anyone'. I'm just waiting for my sentence, just waiting for my removal, until they deport me" (Amadou, detained in the RP Bern).

Amadou tried to avoid conflict when he was annoyed by his cellmates' behaviour, be it because they would fight against each other, or because they would not let him watch the TV channel he

wished to. He preferred to stay on his own and read a book, in order to avoid problems. Later in the interview, Amadou mentioned that the potential for conflict or aggressive behaviour is relatively high because there are criminal offenders as well as psychiatric cases among the detainees. The presence of these two categories of persons can be disturbing for some detainees, not only because of perceived risk, but also because they feel that they have all been mixed together. This will be further discussed in section 8.3.1.

To conclude this point, the carceral experience has an important social component, in which social relations with other inmates can be both a source of diversion, friendship and help as well as a source of tensions and problems of cohabitation that contribute to make detention even harder to endure. Taken together, the spatial, temporal and social experiences of immigration detention are characterised by a loss of control over movement, time and social contacts that is very painful for detained migrants. Despite finding some sources of diversion and having positive encounters during detention, the experience of incarceration is inseparable from an experience of inflicted harm that is necessarily understood as punitive. Situating who is inflicting such harm in the name of the state and why they are doing so is not always easy to understand for detained migrants. This will be the topic of the next section.

8.2. Encountering state officials

The state is omnipresent in detention: it is represented by every material object preventing free movement, in every camera watching detainees, in every administrative file collecting information about them. As argued by Griffiths (2013: 265), it is “both a material force and illusionary creation”, which is highly present and simultaneously distant. Griffiths argues that the state in detention acts through intermediaries, referring especially to the private companies that run the majority of removal centres in the UK. In Swiss detention facilities, the state is more directly present through public-hired personnel working for cantonal security and criminal justice departments. Such state officials who are in constant contact with detainees, however, have no decision-making power over their condition of detention. They have not decided to detain that person, they have no power to release him or her, and often they have little information about their cases, as discussed in Chapter 6. On the other hand, the caseworkers of the migration office who are in charge of ordering detention and enforcing removals are usually based elsewhere and are rarely accessible for detainees. Even when they are close in geographical terms, as in the case of Bässlergut where the migration office occupied a few offices within the prison building, they feel distant for detained migrants who usually have to wait days before being able to meet them.

Research on ‘the state’ has tended to study either how the state is ‘produced’ by its agents, or how it is ‘consumed’ and impacts on the everyday lives of its citizens (Jones 2012). In this section I look at the connections and interfaces between state agents and state subjects (in this case, non-citizens), focusing on how the encounter with state officials is experienced by detained migrants. Rather than an object, an idea or a group of persons, the state becomes “a peopled state of momentary and spatialised encounters” (Jones 2012: 819). Encounters between non-citizens and state agents in charge of deporting them are best characterised by their significant asymmetry of power and agency, forming what Eule et al. (2017) have called ‘spaces of asymmetrical negotiation’ that are “constitutive of the European migration regime and of migration law in practice” (Eule et al. 2019: 5-6).

In this section, I describe and analyse how immigration detainees experience their encounter with state officials, namely prison staff and migration officers, to show how these contribute to their representations of the state, the law and their legitimacy.

8.2.1. Interactions with staff members

Prison staff members rub shoulders with detainees on a daily basis. Distributing food and materials, conducting security checks, accompanying detainees through the carceral space, and locking and opening cell doors, they both produce the condition of incarceration and provide for detainees' survival and needs. Staff members implement tasks of public competence and in Switzerland are state employees. As a consequence, they represent the state and its decision to deprive detainees of their liberty despite not being in charge of that decision. Such separation between those state officials in charge of enforcing deportation and deciding about detention and those who are in charge of their daily control and assistance can be frustrating for detainees. In fact, when they address prison staff with questions or claims about their detention, prison officers will most often answer that they have not decided about their detention, that they are not aware of their specific situation, and/or that they should address their questions to migration officers in charge of their file. We have seen in Chapter 6 how such separation facilitates staff members' moral distancing from the pains of the detainees, which can be seen in large part as a mechanism of self-care that serves to cope with the harshness of the job and context. I have also discussed how the interactions between staff members and detainees are strongly impacted by the institutional and material context in which they take place, assigning different roles to staff and detainees and setting up rules and habits to avoid or restrain deep and meaningful contact (Gill 2016; Goffman 1961). In this section, I address how detainees experience the relationships and interactions with staff.

With hindsight, I can see that many detainees showed some reluctance to talk about staff members, answering my questions in a very standard or generalised way. This was presumably related to the fact that they had seen or perceived that I had good relationships with staff members and wanted to avoid any problems that might be exacerbated by the strong power imbalance between them. Released detainees talked more openly about prison officers in the few interviews and conversations I was able to have with them. Despite mostly being hesitant to talk about staff members, most interviewees highlighted differences between them with regard to their ways of handling daily tasks, interacting with detainees and general attitudes. Amadou, for instance, suggested:

A: There are some who come and greet you with a smile, there are others who don't care about you. They are just doing their job. And if it's like that, then I also don't care about them. You don't care about me, I don't care about you. You just do your job, that's all.

L: And how do you know that certain people don't care about you?

A: Well, with the smile and with the gaze (Amadou, detained in the RP Bern).

Other detainees mentioned the gaze, the tone used and the greeting habits as some of the elements which exemplified the difference between staff members as well as impacting on their own everyday life. Detainees such as Jamal based their own judgements on observations of how staff members treated other inmates:

"There are good and bad ones. I just look at their faces and I already know what that person is like... (...) and how they are with the others, not with me, I look at how they are with the others (...). There are some who respect you, there are some who know why you are here and put themselves in your shoes, you know? (...) For example, someone who comes in the morning and says 'good morning, how are you?' and so on. Some others who open the door and give you food and look at you a little badly, and just go away. [L: And they don't say good morning?] No thanks, no good morning, no nothing. Or you say thank you to him and... he just goes" (Jamal, detained in the RP Bern).

As Jamal related a few minutes later, contact with staff members in the RP Bern is limited as officers only come when needed. The type of relationship that arises in Bässlergut is of a different nature since contact is more prolonged – both in terms of the length of detention periods and the more intense contact during longer open cells hours. This makes it possible for relationships of trust to emerge between individuals of the two groups, which sometimes resulted in the exchange of small favours, or in dialogues of encouragement, as related by Karim, who also described the significant differences between staff members:

“Guards (...), there are good ones and there are bad ones, like everywhere in life. There are good guards who understand my situation (...), and then uh... we have fun, when I’m with them, we make jokes (...) [For example], this one who came by, he’s very very nice, I have a lot of esteem for him (...) sometimes he makes me see reason, they tell me, ‘you have to resist, you’re going to leave, you’re going to get out soon (...)’. He tells me ‘you have to resist, that’s all’. [Third person enters the room, leaves and closes the door]. For example, this guy, he’s never smiled at me and he’s not understanding either. He’s like a robot that works and talks, that’s all. And who’s there for us. For him, it’s like we’re a herd that he has to manage all day and at night, he needs to get them into stables. That’s how he sees us. There are others who don’t, they respect you, they cheer you up, they make you see reason.” (Karim, detained in Bässlergut).

In the context of the more open regime and extended contact provided by Bässlergut, staff and detainees sometimes chat and joke, and even apparently play football or ping-pong together, the latter being rather sporadic and something which I never observed. At the same time, this closer relationship can also result in tensions between individual detainees and staff members. Given the asymmetrical relation existing between them, some detainees brought to my attention the ways in which staff members were able to use their power position against them, for example by provoking their reactions and then reporting and sanctioning them. According to several detainees, this type of behaviour was not tangible for me, as staff would behave differently knowing that I was observing them. Interestingly, this kind of remark was mainly made during conversations with released detainees who had escaped the relation of unequal power felt while incarcerated. Equally interesting, some staff members similarly argued that detainees would be much nicer with me or when I was around.

The asymmetrical and unequal power relationship is underlined in the following quotation drawn from Nassim, in which he underlines the impossibility for him to trust staff members because of their institutional role:

“There is that guard [short description], (...) he talks with the other [detainees], he is joking with them. He has a good relationship with the men, but not [with] me. I don’t like that relation because simply, in fact, he is ... he is the guard and I am the prisoner. It’s different. We can’t be friends. [L: Ok. Why?] Because simply, he is the guard, I am the prisoner. He is the European, I am the African from North Africa. It’s not equal. It’s not the same” (Nassim, detained in Bässlergut).

Nassim seems to consider the officer’s attempts to establish a more friendly and equal relationship as inappropriate or even manipulative, given the context of confinement and their respective roles. As a consequence, he preferred to limit contact with prison staff to the strictly necessary, as he explained during the interview. This was a strategy shared by other detainees, who talked about the fact that limiting contact with staff members would avoid problems, assuming that staff members could abuse their power in case of personal conflict or divergence with a detainee. Making reference to Europe and Africa in relation with inequality, Nassim critically points at the participation of prison staff – as state officials – in the border regime sustaining a global system of exclusion keeping (North-) African migrants out of Europe and depriving them of the opportunities

they could have in that continent. Indeed, in the context of immigration detention, prison officers represent the state and its decision to deprive them of their liberty in front of detainees. It is not surprising that a certain level of mistrust arises from this situation.

Despite this acknowledgement, a significant number of my interlocutors understood prison officers as not responsible for their situation and their role as being separated from immigration procedures. They mostly concentrated their anger towards migration officers, who are directly in charge of their deportation and have ordered their detention. This could be frustrating for detainees since prison staff members were those with whom they were in daily contact. This was also frustrating for staff members who had to manage detainees' anger while not having caused it. Several detainees even expressed a certain degree of understanding for prison employees: "they are normal people like me and you. They are working here", said a detainee, while others stated that staff were "just doing their job". Furthermore, working in prison is perceived as arduous, particularly for those individuals who are closer to detainees and feel empathy for them:

O: (...) It's not easy work, it's not an easy job. Even if you have feeling for somebody, you cannot help him, so that makes it difficult.

L: And did you have the impression that some of the people who work here are like this, maybe they would like to help you or they sympathise with you but...

O: The way they talk, the way they smile at us, I know they don't have any problems. So it's just, they are just following the rules and the regulations. (...) Maybe if this kind of situation was in their control, maybe some things may be different (Oliver, detained in the RP Bern).

In this last sentence, we can see how the boundary with staff is nuanced in the discourse of this detainee. Prison officers have to do their job and follow the rules but sometimes they are also acknowledged as individuals who have sympathy for the detainees and who may not agree with those rules or even with policies of detention overall. During an interview, talking about a few employees who were being kind to him, a detainee said that he would intervene in their defence if another detainee abused them. This is a way of understanding the interpersonal relationship as reciprocal, which I found both among staff and detainees, as some quotations show: "you just have to show respect, so that I show respect to you as well" (detainee, Bässlergut); "I see how the person behaves with me, in the same way I will behave with him" (staff, Bässlergut); "if you respect the person, he will respect you as well" (staff, Bässlergut).

Detainees acknowledge the asymmetrical relationship existing with staff members who are in charge of their surveillance. What differentiates staff members is how they handle such asymmetrical relationships. Staff members who are able to show empathy and who treat detainees fairly are the most appreciated. On the other hand, staff members' attitudes of avoiding or answering requests impolitely, making detainees wait to stress their dependency, or making random security checks are considered an abuse of that asymmetrical relationship. In this sense, the worst behaviour that an employee can display is to willingly try to provoke detainees in order to trigger a problem or sanction, which a few detainees mentioned as something which happens from time to time. If prison staff have a certain leeway in their daily work and attitudes towards detainees, however, the room for discretion that migration officers have in deciding whether or not to detain or release a person is experienced as very unfair, as will be discussed below.

8.2.2. Encounters with migration officers

While detainees are in constant contact with prison staff, they have much more limited contact with and access to the migration authorities who have decided to detain them. As has been highlighted in other national contexts, this is part of an institutional technique of distancing decision-makers and

protecting them from the potentially destabilising effects that continuous contact with detainees could have on their work in enforcing migration control (Bosworth 2014; Gill 2016). In Switzerland, this is also an effect of immigration detention being mostly situated within the prison system, increasing distance from the immigration enforcement field and authorities. However, the difficulty of reaching officers is highly distressing for detainees and contributes to the overwhelming uncertainty of the detention experience (see section 8.1.2).

The relationship between migration officers and detainees is characterised by divergent goals and a significant asymmetry of power. Such asymmetry is also reflected in differential modalities of contact, migration officers being able to meet detainees whenever they need to while detainees encounter difficulties in accessing the authorities in charge of their case. This results in a relationship that is mostly tense and conflictual. In the next section, I give some context on encounters between detainees and migration officers. I will then show that detainees experience such encounters as void of exchange – migration officers omitting to consider their point of view – and as asymmetrical spaces of interaction in which immigration staff try to use tricks and strategies to persuade detainees to comply with their orders and collaborate in their deportation.

Context of the interactions between migration officers and detainees

Detainees often meet migration officers in charge of their deportation for the first time at the notification of their detention order, which has to take place within 24 hours of incarceration. Such notification occurs in the form of a standardised talk – with the help of an interpreter if deemed necessary – in which migration officers should explain the aim and grounds for detention on the basis of the detention order, and provide information on the legal ways to challenge their detention²⁰⁷. The detainee has to sign a series of papers and receives a copy of the decision and an information sheet, theoretically in an understandable language. In reality, different migration services manage such talks differently. Even within the same canton, one authority said that they last 10 to 15 minutes, qualifying them as “not a real talk”, while another explained that it could last for up to two hours, as everything was explained in detail and first clarifications towards removal also took place at this first meeting.

In the weeks or months following this initial talk, migration officers summon a series of meetings with the detainee in order to organise his removal, for which they need the detainee’s collaboration. Detainees can also request a meeting with the migration office by means of a form, which the prison administration will send to the relevant authority in order for them to organise a meeting. In some cases, however, detainees said that their requests had remained without response or that the reaction had been slow. We saw in section 8.1.2 how the accessibility of authorities is important for detainees and how obstacles to access can strongly impact the uncertainty of detention. The asymmetry of power between detainees and the authorities who decide upon their fate is reflected in this situation in which the authorities have much easier access to the detainee than the opposite.

The setting in which meetings takes place also plays an important role in how the interaction between detainees and state officials develops (Jones 2012). In the RP Bern, interactions – including notifications of detention orders – can take place either in a rather aseptic office with minimal furniture on the ground floor or in the detention space, usually in an open area with a table just outside the cells. This latter option requires the presence of a prison officer, which according to an interviewed migration officer has a positive impact in terms of ‘credibility’ of the information provided to the detainee, staff members being perceived as more neutral with respect to the goal of

²⁰⁷ In the RP Bern, the officer submits a form through which the detainee can ask for legal advice or make contact with the Swiss Red Cross which provides ‘perspective and return advice’.

enforcing deportation being pursued by migration officers. Particularly short conversations, sometimes also notifications, take place in this way, since this is the most time efficient solution for the institution.

In a minority of cases, detainees are notified of their detention order in advance, at the migration office. This is more common in the canton of Basel-Land²⁰⁸. Interestingly, the migration office has the use of a special securitised room for this kind of talk, with a glass wall dividing the officer – equipped with a computer – from the migrant. The door on the migrant's side can be opened from the outside only, and there is a camera which allows viewers to watch the person even when he or she is alone in the room, which is allegedly intended to avoid self-harming. The use of this room epitomises the upcoming incarceration and sends the message that the person is considered potentially dangerous and/or recalcitrant, needing the state officer to protect him/herself. In a similar way, officers from Basel-Stadt often meet detainees for the first clarifications while they are held in waiting cells in Bässlergut, and communicate through the porthole, which symbolises hostility and criminalisation, and physically reproduces the power relation of the two interlocutors²⁰⁹. The notification of a detention order and any further meeting take place in the offices of migration authorities located within the Bässlergut prison building²¹⁰.

Communication and the feeling of not being heard

When migrants are notified of a detention order, state officials need to provide them with the opportunity to express themselves about that administrative decision, as part of the right to be heard which is a fundamental right of any individual in an administrative procedure (art. 29, par. 2 of the Swiss Constitution). It is the duty of the authority to acknowledge and take into consideration their statements. Interestingly, however, most detainees had exactly the opposite impression, namely that they were neither heard nor listened to by the migration officer who was notifying them of the detention order, and sometimes of the removal decision and entry ban. Such feelings continue in the weeks or months following the notification. In the words of one interviewee: “You just wait until immigration comes and tells you, they don't listen to your feedback”. The perception of not being considered or heard leads to feelings of injustice that will be the focus of section 8.3. Another detainee, named Jonas, had been feeling profoundly unheard. Indeed, when I asked him whether he had something to add at the end of our interview, he said:

“I have nothing to add, but I would appreciate if the Migration would also talk to me in such a detailed and extensive way [as you did]” (Jonas, detained in the RP Bern).

He related that the first meeting he attended after he arrived in the RP Bern had lasted ten minutes. The authorities ignored his request for an interpreter, so they had to understand each other through gestures (“with hands and feet”). Another time he had requested a meeting by means of a form, and again this took place without translation:

J: I told them that I needed a translation and they said they're not doing a translation. Then she asked me why I came back and I told her my situation, that there [in Italy] there's nothing for me. Then she said that whether [I] want to or not, I have to go back to Italy, that's it.

L: Okay. So you've had three conversations with the migration office?

²⁰⁸ The migration office in Basel-Land is situated in the town of Frenkendorf. The notification can also take place in a police post or in the prison of Bässlergut, however, in one of the two small rooms situated next to the visitors' room, as explained by a migration officer.

²⁰⁹ In one case, a detainee was in the disciplinary cell (it is not clear to me whether this was due to space constraints or because he had been behaving aggressively) and the conversation took place through a barred wall. This seemed to irritate the detainee, who was very nervous and angry.

²¹⁰ Basel-Land migration officers can also use these offices when they need to talk with detainees.

J: Yes (...). But they did not talk with me, they only did what they wanted to do (Jonas).

For Jonas, the refusal to organise translation was evidence of the lack of will to listen to him and to understand his point of view. He had the impression that whatever he said, it would not make any difference in the way the migration office dealt with his case. He clearly experienced those interactions as void of dialogue or exchange and therefore profoundly asymmetric and unfair.

The lack of exchange and communication is partly due to a language problem, as in the example of Jonas. The five different migration authorities I interviewed all said that notification takes place with an interpreter when this seems necessary, except when they already have a staff member who speaks the language needed²¹¹. The evaluation of the need to resort to translation, however, can differ between individual officers. Despite this not being an official option for translation, cases were related to me in which either a co-detainee or a prison staff member were asked to translate during such meetings. I even read in a decision of the cantonal Court of Coercive Measures that an Arabic-speaking prison staff member had been asked to translate during a hearing since the detainee (a Tunisian national) did not understand French. Such practices are highly questionable since those conversations are supposed to convey fundamental legal information, and they contain significantly confidential data.

Although the documents that are handed in at notification are translated into several languages (87 in the canton of Bern, according to one of these authorities), their content is mostly legal and not easy to understand. In addition, the question remains open whether the translations are really offered, since several detainees stated that they had received their documents in German only. A staff member also raised this question, stating that very often detainees received their papers in a language they did not understand:

“They just need to sign saying they’ve received them. Most of them have the papers but not in their language at all and there are also many people who have English as a second language, and they have them in French, and vice versa. And then (...) they’ve got a piece of paper that confirms their receipt and officially they are informed, they have the information on them, but simply in another language... [L: So only in German or also...] Sometimes in English, sometimes in French, but sometimes exactly in the language they don’t understand” (Stefan, prison officer, RP Bern).

Although Stefan does not say this explicitly, he raises the possibility that this is done willingly by some officers, who do not have any interest in detainees legally challenging their decisions. In any case, providing the documentation seems often to be only a formality, without any meaning for the person concerned.

During the interviews, I often realised that detainees had not received all the information they needed and were supposed to receive. For example, a number of detainees did not know about the possibility of making contact with legal or return advice. Some did not know exactly why they were detained, although migration authorities usually explained that through detainees’ denial and resistance to communication:

“We try to explain it to him. But we can’t force anyone to listen. Either he listens or he doesn’t listen. (...) And I sometimes get annoyed when... people in Bässlergut prison, they have the possibility to contact us. And when we get a note saying: ‘Yes, the inmate would like a visit in prison. He doesn’t know why he is here’. Then I have to say: ‘No, that’s not possible. He knows that. It’s what we explained to him at the notification, why he is here. We even explained to him

²¹¹ Language skills are very sought after in migration offices as they make it possible to spare money and time avoiding the appointment of external translators. For example, the Fremdenpolizei Bern boasted that they cover 14 languages.

what the prospects were, how things would continue, right? ... And then we go there and explain it again” (Remo, migration officer).

Certainly, the emotional charge of this encounter, together with the asymmetrical power balance that characterises the relationship between state official and detainee has an impact on the interaction, as we will discuss in the next section. In addition, it can be said that many migration officers have poor communication skills, as a few interviewees mentioned:

“This dialogue [between detainees and migration officers] does not work very well. (...) with a few exceptions, I find that they cannot really talk to people. They just can’t talk properly, (...) communicate. Communication means not only to convey information, but also to absorb what comes and to communicate again. For me that’s communication. And there, there’s no communication for me, (...) it’s information. (...) Also, they are not trained to do it (...), especially among civil servants, there is not enough conversation culture” (Diego, legal advisor).

The few observations I made of such interactions happened by chance during my days of observation in Bässlergut but mirror the tone of this quotation. I attended a couple of talks in which the migration officer spoke German or English, repeating again and again the same words despite the detainee seeming not to understand them, instead of using alternative phrases or gestures – or translation – to ensure understanding. I saw an entry ban notified by the officer simply saying “you have an entry ban for Switzerland”, and another time by using Google translate and making the detainee read on the screen: “*proibição da entrada*”. Only once did I hear an officer explain to the detainee what an entry ban was. This was an entry ban for the whole Schengen area, and the officer explained that the person had to remain in Germany, and if he was controlled in another country, he could be arrested and immediately deported to Germany. After that, she asked the detainee if he agreed that she would write “I will respect this”, he agreed and then signed the paper.

Such differences in the ways in which officers dealt with detainees had a huge impact on the subsequent reaction of the detainee. For instance, one officer called detainees by their surnames and always started interactions by asking how they were doing, shaking hands if the talk took place in her office. On the other hand, I heard one of her colleagues use the word ‘chef’ (boss) to address a Latin American detainee, which I found irritating since it sounded mocking:

“[The migration officer] talks to him through a porthole: ‘Chef, do you speak English or Spanish?’. He says English. The officer continues: ‘Last Friday, you go to Germany’. The detainee doesn’t seem to understand him, he says, ‘Friday I go? I go or I don’t go to Germany?’ [The officer] says ‘today you go to Germany’, but then keeps asking about last Friday, he also tries with ‘viernes pasado’, but the two don’t understand each other [probably he wants to ask him why he came back to Switzerland after being brought back to Germany the Friday before]. The detainee gets pissed off at some point and starts screaming in Spanish and insulting him. [A prison staff member] intervenes and calmly tells him he should sign this paper that says he’s going to Germany today. The detainee takes it, he seems to have calmed down a bit, but then he tears it up and throws it on the floor through the porthole” (Field notes, Bässlergut).

While the detainee was rather nervous, it seems that the lack of language and communication skills exacerbated the situation and caused the detainee to explode with rage, as he could not understand whether he was going to be released or not, and he might have felt like the officer made fun of him with his tone and his naming him ‘chef’ (boss). The prison officer tried to intervene by using another tone of voice and explaining that if he signed the paper stating he would leave Switzerland and return to Germany, he would be released, but the detainee tore it up in an attempt to show dissent to his detention and the way in which the migration officer was addressing him.

Beyond questions of communication, the feeling of not being heard is also related to the perception that migration officers apply the law without taking into account the singularities of detainees' cases and their experiences:

"They are not supposed to do anything just because (...) [it's in] the law, no, because even though the law... (...) the law is made by human beings so (...) they have to consider some people and look at their case. If their case is very serious, they have to know how you are going to be and take another step for the person. You see? But they don't care, they just take you back there [to prison]. Whether there you feel hungry or whatever... they are not concerned, (...) they say it's the law. (...) It's human beings that made the law, not God so... (...) even God can to change his mind sometimes, yeah (...) But you know, Switzerland immigration they are very harsh" (John, detained in Bässlergut).

In this quotation, John condemns the way in which migration officers hide behind the law instead of looking into the individual cases of migrants, acknowledging that they have a margin of discretion of which they should make better use, in his opinion. He also points at the lack of empathy expressed during such conversations, as he perceived migration officers as not caring about his situation following deportation to Spain where he had no social network on which he could rely.

In conclusion, detained migrants tend to experience the interaction with migration officers – especially the notification of the detention order – as an encounter void of exchange and interaction, carried out in a way that is not concerned with channelling all the relevant and necessary information to the detainee. On the other hand, and depending on the individual situation, such encounters – especially those aimed at planning removal – can be experienced as spaces of negotiation in which migration officers attempt to convince detainees that it is in their interest to collaborate, although such attempts are often interpreted as unfair tricks and threats, which is the topic of the next section.

Raising distrust: asymmetrical spaces of interaction

The encounter between the migrant and the state official responsible for enforcing their removal represents an asymmetrical space of negotiation (Eule et al. 2019; Eule et al. 2017) in which the interlocutors have different goals and different means to reach them. Only in a minority of cases do both have the same objective of enforcing the removal decision as quickly as possible, which happens for example when removal is easy to organise and the detained person plans to return or move forward after his removal. In most cases, detainees try their best to avoid deportation and make the task of deporting them harder.

During meetings, migration authorities need to convey a series of information to detainees, not least because this is a legal obligation. Yet the conversations with detainees also have the goal of gaining their compliance, requiring 'persuasion work' (*Überzeugungsarbeit*) as one interviewed migration officer called it. This can consist, for example, of trying to convince the detainee that flying with a scheduled flight would be better for him than waiting three months in detention and being deported on a special flight (Lucia, migration officer). In this sense, communication is the key to reaching the migration office's goal, as the desired outcome is compliance:

"The credo is always 'as little coercion as possible', because with coercion... you achieve nothing (...) We rather try to explain to him through conversation (...) what the situation is. (...) Because if they don't cooperate, we are always the losers in the end... so you have to be aware of that, right? The greatest thing is that you achieve cooperation, that he realises that and also knows that 'these are decisions that have been made (...) and I have to go now', right? That he is reasonable. That is the highest measure of success" (Kurt, migration officer).

Another authority stated that they usually explain that without the detainee's cooperation, detention would last longer, up to 18 months (Remo, migration officer). Despite migration authorities sometimes justifying these statements through the need for transparency towards detainees, they also clearly use them for the aim of persuasion. For instance, migration officers explained the existing levels of deportation enforcement with the help of a flyer that illustrated the various forms and conditions of enforcement, as Jonas and others related:

"On the plane (...) they said that I had to go back to Italy, and have to sign. And I refused to sign. Then they showed me a picture of someone with his foot and his hands tied and his mouth as well... (...). Then they told me that if I refused, I would be sent back to Italy like this. Then I decided to just go" (Jonas, detained in the RP Bern).

Detainees clearly perceive and interpret these illustrations as fulfilling more than an informative role, as a sort of threat to force their compliance. According to one detainee, a copy of that flyer was to be found in every cell in Bässlergut until some detainees tore them up. Nassim also related a migration officer showing him pictures of men who were being deported tied up and wearing a helmet. He specified that during that interaction he had handcuffs on:

"That's the way he talked to me, the man from Migration. He said, 'I've sent many men like you, (...) handcuffed like this, with helmets' and he gave me (...) pictures (...) and he said, 'either you leave forcefully or you have to spend two years in prison here'. (...) He spoke to me as if I had a problem with him... as if he knew me from before. (...) He was nervous and like that, he is... strict, tatata, 'you have to leave or you have to stay here for two years in prison'. He's not normal" (Nassim, detained in Bässlergut).

Nassim detected profound hostility in the behaviour of the migration officer, whose efforts to pressure him in his view were personal and dictated by prejudice, as he later explained. Most detainees consider this kind of persuasion working through threat as unprofessional and unfair. Such experience of the interaction with migration officers is in sharp contrast with the expectation of state officials practising ideals of fairness and equality before the law. As a matter of fact, trying to foresee migration officers' tricks and interpret their intentions is one of the main activities and the main topics of discussion among detainees.

Such 'tricks' have enormous emotional consequences for detainees, as in the case of Koffi, a young Western African migrant who had been living in Switzerland for many years and who was out of his mind after having been arrested at his weekly appointment with the migration office, considering that he "had put himself into prison". Another research participant asked me whether I was doing my PhD in psychology, as he thought that this was probably the most relevant discipline to understand what was going on in detention. He argued: "those of the immigration, I have the impression that they have studied psychology. They show you that you don't have any prospects, so that you want to leave and look for a living elsewhere, that's their goal" (Karim, Bässlergut). In order to illustrate his point, he related one of his conversations with a migration officer, who had tried to obtain his compliance by proposing three different deals within one single meeting (see also section 7.3.3). This conversation is summarised in my field notes thus:

"At first, the person from the Migrationsamt [migration office] showed him pictures of how a removal under different levels of enforcement takes place. (...) Karim told him he did not want to see those pictures and added 'if you want to do this, do it without me', then he said 'are you threatening me or what?'. After this first attempt, the person from the Migrationsamt told him that if he agreed to return to Algeria, they would give him 2000 francs. As a third proposal (still within the same meeting!), he told him that if he signed a declaration that he would leave Swiss territory, they would release him. Karim told them to stop talking to him and let him go back to his cell. When he finished telling the story, I asked him: 'And how come you didn't sign?', and

he answered without hesitation: 'It's a trap! So that they can start again from zero [in the counting of the duration of detention]'" (Field notes, Bässlergut).

Karim had a very clear opinion on migration officers and their work. For him, their objective was to devalue people and progressively destroy their person, making them understand that they had neither hope nor future prospect. The 'trap' he talks about in the quotation was legally imprecise, since only in the case of a new deportation procedure – usually in the case of exit and re-entry in the national territory – is it possible for the authorities to re-start the counting. However, Karim was convinced that state authorities were able to find ways of diverting the legal provisions and did not trust them at all. Karim and Nassim were not the only detainees who had the impression of having been treated with hostility and even racism. Such a feeling was common among detainees and was reinforced by the interpretation of differential outcomes of migration officers' practices as evidence of unequal treatment based on racism, as we will see in section 8.3.2.

However, distrust is not only to be found in detainees' attitudes. The asymmetrical relationship represented in interactions between detained migrants and migration officers can be characterised in both directions as a relation of mutual suspicion, as shown in the following quotation relating the officers' assessment of the risk of absconding:

"In these borderline cases where you have to believe the person [that he is not going underground]... you have to feel it. You look at the overall circumstances. It's a file that you have to judge. For example, an employee says, 'I believe him'. I'll ask: 'Criminal record?'. He says 'Yes, he has some'. Then I have doubts. (...) We have experience and knowledge about people. This is a personal estimate, it is our daily work and routine. We hear so many stories! (...) For example, someone says he has a girlfriend in [town]. I say: 'Call her!'. 'Yeah, I forgot the number'. [Then I think:] 'Mh, that's weird'. Or he says he slept at a friend's house. 'Where?', 'I don't remember, big street'. [I consider that] not so believable" (Franz, migration officer).

These are only some of the techniques that migration officers use to elicit information from migrants and evaluate their credibility. As appears in the quotation, criminal records are also used as evidence that the person is not trustworthy. In some migration services, cases are allocated according to geography, whereby every team member is a country specialist. Lucia explained that this specialisation allows them to better deal with migrants with different origins:

"You can't talk to an Albanian the same way you talk to a Nigerian. If you only want one-way communication, it doesn't matter. But sometimes you have to ask the good questions, for example to know if the person is really a Sierra Leonean. If you want something from them, you have to be able to talk" (Lucia, migration officer).

Here we see how culturalised understandings of migrants' behaviours can impact practices of detention and deportation. Migrants are aware of the tricks and techniques used by migration officers and develop their own tactics to counter those. One such technique is to refuse the contact with migration authorities in order to avoid being put under psychological pressure. I met one detainee who never spoke during meetings with migration officers, nor with language experts or consular authorities, which made it impossible for them to determine his nationality and deport him. These strategies will be further discussed in section 8.4.1.

Suspicion is also perceptible among migrants and is certainly reinforced by their incarceration. I have already related the story of John (see section 7.2.1), who was outraged by the lack of honesty and reliability of migration officers, who had said they were going to send him a ticket to Spain and arrested him instead. John had trusted them and consequently he felt betrayed by their actions. He talked about immigration authorities not only as 'very harsh', but also as immoral, relating it to a

lack of faith: “these people, they don’t believe in God, if you are afraid of God, you don’t do it, put people in prison like that”. When I asked him if the detention experience had changed his person, he answered:

J: No, no matter where I will be, I am still the person I am, but (...) I learnt several things.

L: What did you learn?

J: Like, you know, [that] you don’t have to trust, you don’t have to trust government or even people, because I put all of my trust in them, (...) and now they put me in prison here. (...) If [I would have known] that it [was] going to be like this, I was supposed to leave that house. But I thought [we had] our agreement so that’s why I didn’t leave the place. So I don’t trust anyone now, even yourself (John, detained in Bässlergut).

John’s personal experience of migration authorities as violating their agreement negatively impacted his view of the system of migration control as a whole, raising his mistrust of authorities and modifying his attitude towards their orders in a way that would make him less compliant in the future. This ties in with the finding of Ryo (2017), who argues that detainees’ perceived obligation to obey immigration authorities is strongly related to their evaluations of procedural justice and fair treatment. Detainees’ attitudes of (non-)compliance and resistance towards deportation that will be discussed in section 8.4 are significantly related to their understandings of the migration enforcement system as unjust and migration officers’ decision-making on detention as unfair and mostly arbitrary. Such understandings are the topic of the next section.

8.3. Claims of injustice and detainees’ critique of the crimmigration system

Detainees experience, react to and cope with their confinement in different ways according to their personality and past trajectory, the conditions they find in detention, their network of relations, and so on. However, there is one feature which all detainees I met have in common: the feeling of being subject to injustice. As I have already pointed out, this feeling is mostly related to the fact that they experience detention as punishment, despite the fact that legally speaking, immigration detention is not punishment (Bowling 2013; Campesi 2014a; Lietaert et al. 2014). In this chapter, I dig into this shared feeling of injustice and identify its key components, but first shall briefly discuss what is meant here by ‘injustice’.

Injustice is a matter of judgement, be it individual or societal. A *feeling* of injustice or a ‘sense of injustice’ is something that is common to every human being and that takes hold at a very early age (Simon 1995). We could be tempted to define ‘injustice’ as the opposite of justice, i.e. as an absence of justice. However, this definition presupposes a prior ideal of the abstract concept of justice. To experience or condemn something as an injustice, we do not need to appeal to some prior ideal of justice, and thus I suggest that we follow Barnett (2018) in considering injustice not as a deviation from justice, but rather as a condition arising from an experience of injury or wrong.

Barnett’s theoretical and critical work on the ‘priority of injustice’ is a very useful starting point to consider injustice and understand how it shapes experiences of immigration detention (Barnett 2017, 2018). Barnett calls for conceptual priority to be given to injustice in order to understand and investigate the dynamics of political life. In this endeavour, he suggests focusing on how *claims* of injustice are articulated, claims-making being “the dynamic through which relations of domination are challenged” (Barnett 2018: 318). Analysing such claims and their spatial configurations therefore allows for a situated analysis of power via those affected by domination (Barnett 2017).

As pointed out by Young (1998: 40; cited in Barnett 2018: 323), “[t]o invoke the language of justice and injustice is to make a claim”. Indeed, justice talk is above all rhetorical as suggested by Pitkin:

“[t]he meaning of ‘justice’ has to do with what people intend to convey in saying it, not with the features of the phenomena they say about it” (Pitkin 1972: 173; cited in Barnett 2018: 323). Claims-making is necessarily an intersubjective process through which individuals or groups verbalise, explain and justify their contestation of a situation perceived as unjust. This explains the importance of discourses about injustice in my exchanges with detainees and confirms the relevance of analysing how these are articulated.

Analysing such claims of injustice is not only a matter of understanding how detainees experience detention but is also about enabling them to voice their judgements and treat them as moral and political agents. Detainees are provided with few opportunities to make such claims towards people who are neither prison staff nor co-inmates. In this sense, my presence and role as an external visitor and researcher interested in their opinion acted as an activator of such claims and encouraged their articulation. For Barnett, giving priority to injustice and taking injustice claims seriously involves treating the research participants democratically, “as free and equal citizens” (Barnett 2018: 324).

Exploring the articulation of claims of injustice is also important to understand how detained migrants understand the system in which they are captured and how they relate to the law and state authority. I have already referred to Ryo’s suggestion that immigration detention functions as a site of legal socialisation for detainees, which fosters legal cynicism understood as “fundamental distrust” in the intentions of laws and authorities (Ryo 2016b: 1015). Ryo shows that legal cynicism arises as a result of a) the experience of detention as punishment, b) the view of law as ‘inscrutable’ and c) of legal outcomes as arbitrary. For each of these arguments, she discusses structural/institutional factors – such as the conditions of detention or the inaccessibility of legal information – as well as interactional factors related to experiences with staff members or migration authorities.

In the following section, I engage in a similar endeavour, attempting to present the different elements that compose detainees’ feeling of injustice. I argue that the experience of crimmigration, intended as the blurring of migration and crime control, is the main source of such feelings of injustice and can be articulated in three main claims of injustice: that incarcerating people for migration control is not legitimate; that measures adopted in handling migrants are stigmatising and criminalising; and that detention conditions are punitive. In the second part of this argument, I address the illegibility of legal practices and especially how the lack of transparency on the decision-making processes of migration officers and judges reinforces legal cynicism and a sense of being subject to unfair decisions and treatment by state agents.

8.3.1. Experiences of crimmigration and injustice

Many detainees are not aware of the legal framework which allows their detention and they struggle to understand what rendered them detainable, how they could have avoided detention and what they could do to achieve release. All share a sense of injustice drawn from the simple fact that they are deprived of their liberty for reasons related to immigration control rather than criminal justice. Starting from that feeling of injustice, they draw some conclusions about the law and legal system that reinforce their legal cynicism. In particular, detainees are aware of the exceptional character of immigration detention as a non-penal form of deprivation of liberty that can only apply to non-citizens. The mere existence of legal provisions allowing detention on the grounds of immigration regulation contradicts the basic assumption that deprivation of liberty in a democratic country serves to punish criminal acts. The criminal and securitised framework in which confinement actually takes place was also clearly interpreted as disproportional. This brought many of my

interlocutors – some of whom came from countries where they had experienced high levels of corruption and even dictatorships – to express disappointment related to this legal measure that did not correspond with their previous image of Switzerland as a democratic country with a strong humanitarian tradition.

“I’m not a criminal”: Practices of detention and policing as non-proportional and illegitimate

Claims of injustice are first and foremost based on the observation of being incarcerated without having committed any crime, as deprivation of liberty is generally the consequence of a criminal offence. My interviewees often started conversations by highlighting that they were not criminals, and for this reason, they did not deserve incarceration: “I feel bad here (...) because I didn’t do anything I need to pay for. If I had done something wrong... I could pay for it here (...) [but] something burns inside you [because] you know that you haven’t done anything, (...) this looks very unfair to me”, said Jamal, detained in the RP Bern. Answering my question about the most difficult aspects of detention, another detainee said:

“You know, what (annoys) me most is because of prison... because of the fact that I didn’t commit anything [a crime], you know. If I committed something, if I was in prison, fair enough (...) but sometimes I think, what did I do to deserve to be here? I didn’t deserve to be here. That’s what I think sometimes” (John, detained in Bässlergut).

In both Jamal and John’s quotations, the choice of the words ‘pay’ for a fault and ‘deserve’ to be in prison clearly refer to the vocabulary of retribution related to the criminal justice system. The actual use of prisons and the strong embeddedness of immigration detention in the criminal justice system aggravates detainees’ feeling of injustice, since they feel de facto treated like criminals, and understand this situation as one in which the state is punishing them for no crime, as we will see in the following sections.

Detainees perceive the immigration control system in Switzerland as very harsh, starting with police controls that are much more strict and focused on racialised minorities (see section 7.2.2), and consequently, their experiences compare unfavourably to those they had in other countries, where the police more often turn a blind eye when encountering individuals without documents. Italy, for instance, is often described as a country where it is hard to find a job and earn a living, but where it is more easy to live undocumented: “Here it’s not like Italy, in Italy they let you go, for example if you’re on a train, they catch you without a ticket, they say ‘next time you’ll be arrested’ and they let you go, but in Switzerland they don’t” (Pablo, detained in Bässlergut). Another detainee described the harshness of Swiss policemen: “they shouted in my face: ‘stay still, go there, stay here, undress!’, and every time, they fully undress you! Four times they undressed me! (...) They put handcuffs on me that were so tight, they hurt me! They’re racist!” (Rami, detained in Bässlergut). Rami compared this behaviour with that of Italian police who in his words would “treat you well, like if you were a child”. Reflecting a widespread idea, another detainee argued:

“It’s only in Switzerland [that you can] be in prison because of papers [L: Italy doesn’t do it?] No, (...) Italy can’t do that. In Italy people (...) are good to everybody. (...) In Italy you only go to prison when you commit [a crime]” (Robert, detained in the RP Bern).

It is not only Italy, however, that is considered more lenient with irregular migrants. Several detainees expressed their view that Switzerland is the harshest – in one case, it was described as “the number one racist” – country when it comes to migration control:

“It’s just that I see the difference, a lot of difference with other countries. For example, Germany, France, Belgium, when an illegal enters there, the police help him. He comes in [and

says], 'Look, you can't enter here, in 24 hours you have to get out of here and you can't stay here, you have five days to leave'. Well, they help you a little bit. Not here, here an illegal person is brought directly here [to jail]. That's it [expires]' (Jamal, detained in the RP Bern).

On another occasion, during a conversation with several detainees in the courtyard of Bässlergut, one related that he had been travelling with a fake passport throughout Europe, but only the Swiss border guards realised that it was a fake. He commented: "maybe Swiss police are more intelligent", to which another detainee who had been sitting to the side and listening to the story, angrily reacted: "it's not that they are more intelligent, they don't like foreigners!", repeating this several times. As a matter of fact, racism – be it structural or related to individual state officials – is the ultimate explanation of immigration detention for many detainees.

Some detainees explained this through the fact that Switzerland had "too much money", which explained why they would engage in such an expensive practice to deport an irregular migrant, a goal perceived as unimportant. Through this discourse, detainees presented immigration detention as nonsense, an exaggeration or 'over-reaction', as qualified by a detainee, challenging its legitimacy and proportionality. It is interesting to note that one unintended effect of immigration detention is precisely that of reproducing an image of Switzerland as a rich country where there is so much money that you can spend it on unnecessary luxuries such as detention pending deportation.

Most detainees were profoundly disappointed by the practice of immigration detention. For instance, a Libyan journalist detained in view of his Dublin transfer to Spain said sadly: "I fled from Libya not to end up in prison, and now that I arrived here, I find myself in prison" (Ali, detained in Bässlergut). Some detainees overtly expressed their moral judgement of the practice of detaining asylum seekers or undocumented migrants, articulating claims of injustice as in the following transcription from my field notes:

"Z. and a guy I don't know yet (A.) arrive in the courtyard. The first thing A. tells me when I explain to him what I'm doing is: 'it's not right, what they do is not fair, this is not law! (...) Can they do it by law, putting people in jail because they don't have papers?'. While we were talking, Z. would often shake his head and say 'it's not normal!', 'it's not possible', 'what kind of justice it is?' or something like that. (...) Soon after, A. said, 'The law is the same for everyone? Pfff!'. And Z: 'What kind of country is this?!'" (Field notes, Bässlergut).

Not all detainees were so critical about immigration detention as a practice, however, and not all critiques were articulated as injustice claims. For example, during an interview with Nadir, a young man of Moroccan origin who was detained in the RP Bern, I found it hard to ascertain his judgement of the situation in which he found himself. When I asked him the reason why he was detained, he answered:

N: I'm illegal.

L: But how do you find this personally? Do you find it right, normal?

N: I find it right, no? Fair. Yeah, it's right, if one is illegal, he's illegal. That's the law, isn't it? (...) Maybe they make a rule, give you a piece of paper and if you don't leave, then they take you to jail. That's the right rule for me. Not that they put you in jail the first time (Nadir, detained in the RP Bern).

For Nadir, the real problem was that he had not been previously informed of the possibility of detainment. He did not challenge the legitimacy of pre-removal detention per se, but rather its use without giving an alternative to the person who is required to leave the country. When I asked him why he thought the authorities ordered detention in the first place, he answered that "they wanted their country clean... with the rules", and wanted to discourage those persons from coming back.

On the other hand, certain detainees articulated their critique in a much more political way, qualifying immigration detention not only as injustice, but even as torture, especially when directed towards asylum seekers:

“The asylum seeker who... who’s already traumatised, who’s already upset, (...) who suffered injustices, who suffered violence, who came to Switzerland. He doesn’t want, he doesn’t want to be tortured, because this is, I think this is torture here. (...) To torture a person, it’s not necessary to beat him up or deprive him of food, the fact of putting him in detention is enough... (...) Because he’s already shocked. He’s already been through a lot of things, humiliation, and you lock him up and without a reason, because he has come to seek asylum. For me it’s torture, in fact. It’s discrimination. It’s injustice, really, that’s the word” (André, detained in Bässlergut).

By qualifying immigration detention as torture, André has re-appropriated the vocabulary and norms of international human rights law to make his point that it is an illegitimate practice. In the quotation, he makes some interesting rhetorical moves in that he highlights the paradox of a state system that is meant to provide international protection to refugees fleeing from violent dictatorships but ends up ‘torturing’ them itself. This makes him question representations of Western countries and especially of Switzerland as an achieved democracy that functions by the rule of law and aims toward protection of human rights. André inverts current discourses in which torture is used to differentiate between uncivilised states or dictatorships that resort to such barbarian practice and modern democracies that avoid any such measure, implicitly highlighting that the treatment of foreigners blurs such boundaries.

When comparing the discourses heard in the RP Bern and Bässlergut, I observed that detainees’ claims were much more clearly articulated in Bässlergut. This can be explained through a few elements: first, the Bässlergut facility provides more space and time for detainees to group, exchange opinions and collectively discuss their situations. Second, there are detainees incarcerated for longer, who have developed more constructed opinions on what they daily observe in detention, and who also discuss their views with recently arrived detainees. Third, I had a much closer relationship with detainees in Bässlergut, whom I met regularly during my observations, while interviews with detainees in the RP Bern occurred without any previous contact, so detainees were generally more reluctant to express open critique.

Besides questioning the legitimacy of immigration detention, detainees were critical and sceptical about its goals. To most it was clear that the real goal of detaining migrants was deterrence, preventing them from returning. However, they challenged the effectiveness of detention with respect to this informal aim:

“You know, with refugees, even [if] every day you bring refugees to prison, you cannot stop illegal people being in Switzerland, because they keep coming (...). Maybe some people you detain won’t be back illegally but some will return, when they don’t find any place to stay, they will come back” (Oliver, detained in the RP Bern).

In this quotation, Oliver raises doubts about the deterrent effect of immigration detention when the alternative for many migrants is living on the street. The story of Jonas, narrated in Chapter 7 (7.1.2), illustrates this point. By referring to ‘refugees’ in his speech, Oliver appropriates the international human rights vocabulary, pointing at the forced nature of migration and challenging both the effectiveness and legitimacy of detention.

Prison stigma and experiences of criminalisation

Detainees' feelings of injustice are not only related to the deprivation of liberty, but also to the material conditions in which they take place, as we have seen in section 8.1.1. In the cases under scrutiny, immigration detention takes place in institutions that are formally prisons. On a symbolic level, their architecture and design, composed of tight corridors, iron doors, bars and locks, strongly conveys messages that are related to punishment (see Jewkes et al. 2017). At the same time, the experience of incarceration is highly criminalising for detainees: be it in the way they have been controlled by the police, their arrest with handcuffs and transportation in police vans, the entry procedure, the body searching and being locked up in cells, immigration detainees feel treated exactly like criminal offenders:

Omar: They told me about the negative, the police came, they handcuffed me, they brought me here. Nobody told me why. It's not good for my reputation, to end up in a prison like that. I'm not a criminal! I'm an asylum seeker, they've the right to refuse my demand, but not to put me in prison! (...) It's two different institutions, asylum and prison. And they brought me in handcuffed!

L: How did you feel when they handcuffed you?

O: I felt like a criminal! As I go along [through the system], I come into contact with people, there are people who are here because of crime. Maybe if I go out, I will go out a criminal.

L: And what happened when you arrived here?

O: The same thing as with the other inmates, with the criminals. The search and all that. Also, they have the same way of talking (...) as with a criminal. The guards, they don't know your story, they see you as a criminal, because you're in prison! (Omar, detained in Bässlergut)

The use of handcuffs is experienced as especially criminalising, since handcuffs are a visual symbol of crime prosecution and are conceived for dealing with criminal, dangerous subjects. For this reason, being handcuffed is upsetting for most migrants and can be even physically painful, as related by several detainees:

Oliver: (...) they made my handcuffs overly tight, (...) I told him that is too tight, he told me that no, it's just five minutes.

L: Was it the first time that you had worn handcuffs?

O: Yeah it's the first time I was handcuffed.

L: How did you feel about it?

O: It's too painful [laughing]. Because I even have marks on my hands so... it's really painful, he told me that 'it's only five minutes'. I told him that I'm not going anywhere, I don't do nothing man so... It's better you make it somehow better, yeah. He told me 'very soon you will reach [the prison]' (Oliver, detained in the RP Bern).

In the reported dialogue, the policeman dismissed Oliver's pain by saying that they would soon arrive at their destination. Handcuffs are not only symbolically related to punishment, but they are experienced as punitive themselves because they inflict physical pain. The use of handcuffs is a strong demonstration of the state's power and monopoly of the legitimate use of violence, which, however, is seen as illegitimate because it is unnecessary, non-proportional and criminalising.

Detainees entering the RP Bern or Bässlergut were always handcuffed. When brought in by Securitas, hands were secured at the front (the private company does not have the right to handcuff behind the body), while the police could also handcuff behind the back, which is even more uncomfortable. When being transferred to another prison, the hospital, the embassy or the court, detainees were also always handcuffed. In a few cases, the police used foot cuffs as well. For instance, one man related that the police wanted to foot cuff him for the transfer from pre-trial to

immigration detention, although in the end they only used handcuffs since a prison staff member complained that foot cuffs were unnecessary. The detainee commented:

“[They said] ‘it’s for security’. But what security? There are three of you, this big, like dinosaurs. What am I going to do? I’m like a toothpick and you, you’re like a dinosaur. (...) What do you want me to say?” (Amir, detained in Bässlergut).

Amir considered such supposed security measures as non-proportional. This is often interpreted as a way of displaying power and intimidating detainees. In another case, the police foot cuffed a detainee in order to transport him to the hospital, where he had a medical visit for an eye disease. This person related that he had both foot cuffs and handcuffs behind his back, and that those were kept on during the medical visit, while the next day at another medical visit, the handcuffs were moved from behind to the front for the duration of the visit. Despite my not having the opportunity to clarify this case with the police or prison staff, this practice appeared particularly disproportionate, since there seemed to be no evidence of this detainee being potentially violent.

Anybody who would see a man with his hands and feet cuffed, escorted by policemen, would think he was a dangerous criminal offender, presumably the reaction of those observing the man in the hospital where he went for treatment. The use of handcuffs, but also transportation in police vans, practices of body searching and incarceration itself, all attach to migrants’ bodies a stigma related to criminality and danger. Furthermore, the prison as the space of punishment *par excellence* is inherently stigmatising. Indeed, for most people, being incarcerated in a prison means being criminal or, at least, being suspected of crime. This was clearly stated by Omar in the quotation above, when he said that being in prison was “not good for my reputation”. Jake was also worried about his record being inscribed in databases: “with all these informatics systems, in Italy, they will know that I was in prison. It’s not a good sign!”, he said. A prison officer working in the RP Bern analysed this situation as follows:

“If they get into a prison somewhere, then... the outside world will think, yes, he’s criminal, he has done something whereas this person is perhaps simply here because... because it was very difficult for him to live there, [and] he has fled” (Emma, prison officer, RP Bern).

Reflecting this idea, a young detainee asked me if I was afraid the first time I came into the detention area, and when I said “no, why would I have needed to be scared?”, he said: “because many people think we’re criminals”. We have seen in section 8.1.1 that stigmatisation also has enormous consequences for detainees’ networks outside the prison, since they often prefer to hide their incarceration from family and friends, worrying about the presumption of criminality.

The mix with criminality occurs at various levels: if the placement in prison and the proximity of criminal offenders serving their sentence is felt to be criminalising, so too is for some the fact of being detained together with other migrants who had served a sentence before:

“This is an important topic (...): why do they send people who have served sentences and put them with us, you can’t do that. (...) It’s traumatic to be with them, they are people without conscience. (...) And the fact of being confronted with them makes you feel like a criminal too! (...) I have nothing to do with them, I only have an administrative problem. Why are you mixing us up? We shouldn’t get mixed up. They have two stations, they have to make one station for criminals and one for non-criminals” (Karim, informal conversation).

The point raised by Karim is that detaining people with and without a criminal past together produces further confusion about the difference between immigration and penal detention, which has an impact, for instance, on staff members’ perception of immigration detainees. Karim feels that such mixing has a criminalising effect on those who have not been prosecuted for crime since it raises suspicion of past criminality. In fact, we have seen in Chapter 6 that staff members often

reminded me that some immigration detainees have been convicted of crime prior to their administrative incarceration. Karim also expressed the concern that criminal offenders might have a bad influence on younger detainees who could end up pursuing criminal behaviour. Karim's demonising discourse about ex-offenders might actually be read as an attempt to distance himself from them (Hall 2012; Michalon 2015), rejecting the criminalised identity affixed through the prison space.

Detained persons do contest their criminalisation in various ways, challenging the detainee's identity and rejecting the process of merging with criminal prisoners. Besides regularly reminding any external interlocutor of their not being criminals, they often highlight that this is the first time they have been incarcerated:

"I have never been in prison, neither in Nigeria, nor in Italy or elsewhere. I have never committed a crime. They can ask in Italy if I have been in prison. In Italy I never had these problems, I have never been to the commissary" (Albert, detained in Bässlergut).

"In my whole life, it's the first time they've locked me up in my whole life!" (Jamal, detained in the RP Bern).

The fact of having never been incarcerated in the past, very frequently expressed by detainees, is used as evidence of the fact that they were never criminal offenders and do not pertain to this world, which points at the illegitimacy of their detention. Several detainees made a specific point of distancing themselves from prison life, for example through avoiding the use of prison clothes, or highlighting that they lacked any previous prison experience since this was the first time they had found themselves in jail:

"I don't have anything to tell you because I haven't much experience in prison and it's... few [little] time and the first time. So I don't know many things about prison you know. I used to watch prison on television because I like to watch movies" (John, detained in Bässlergut).

"I don't know much about how prison works, I don't want to know much, we don't come by choice" (Jake, detained in the RP Bern).

Detainees also challenged their stigmatisation through stories that gave value to their person, for example through highlighting their altruistic nature and relating how they helped other detainees. Jake explained how he was helping his brothers and sisters back home, sending them money for their study, commenting: "Not all of us are 'waste people'!". Later, he added: "I want people, I want my family to be proud of me, I want to do something important, something that makes me happy. (...) I have a role to play in society, everybody has a role to play!" (Jake, detainee in the RP Bern). Through their discourses, detainees demanded to be seen as individuals beyond their immigration status: "'illegal', 'immigrant', that's anonymous. I have a name and a surname!", argued one detainee.

Furthermore, for some detainees who had resided in Switzerland for years and who had strong family and social ties within the country, the additional stigma related to foreignness and non-belonging was especially painful. They challenged this in various ways, for example underlining their integration in the local community, like a detainee who said that he couldn't walk in the city without stopping every few metres because he knew someone. Another detainee underlined the strong ties he had with citizenship because of the Swiss nationality of his child. He related that during an argument with an immigration officer who had told him to go "back home", he had answered: "going back where? My children are Swiss like you!". Highlighting that prison or migration staff were not themselves 'real Swiss' is also a way to nuance boundaries between citizens and non-citizens: "Here they are all foreigners, a Swiss wouldn't do this fucking job! Opening and closing people in, what job is that", said a detainee in an informal conversation.

Another day, I had a conversation with two other detainees in the walking yard who were talking about the employees of the immigration office:

“K. started saying that at the immigration office ‘there are no Swiss (people)! There are only Croats, Slovaks, (...)’. T. agrees with him: ‘there are no real Swiss there’. So I ask what’s a ‘real Swiss’, and he says ‘it’s someone whose parents are Swiss’. (...) K. says ‘those people are racists, the Croats, the Slovaks, they’re racist. Swiss people are not racist, they are not like that, I know Swiss people, I used to have a Swiss boss, colleagues... they are not racist’” (Field notes, Bässlergut).

In this detainee’s discourse, it is possible to read a kind of resentment against migration officers who get to decide on his deportation despite potentially having themselves a migration background. The reference to ‘real Swiss’ – that are idealised in his discourse – blurs the boundaries between citizens and non-citizens, and highlighting his ties with ‘real’ Swiss people is a way for this detained young man to challenge his exclusion.

“This is a high security prison!”: Punitive conditions of detention

We have already discussed how practices such as handcuffing can be experienced as punitive, and how the prison space is symbolically related to punishment. Following several pieces of research and scholars, it can be acknowledged that immigration detention is experienced as punitive (Bosworth 2013; Bowling 2013; Campesi 2014a; Lietaert et al. 2014; Moran et al. 2018), and this is even more the case when it takes place in ordinary prisons. The material conditions of detention indeed play an important role in detainees’ experience of punishment (Ryo 2016b), impacting on their perceptions of incarceration:

“These people are not criminals. It’s an administrative prison. People come here to claim asylum, and you force them to be locked up. At least, you could use milder means of immigration detention, so that they don’t feel so humiliated. Like in Frambois [detention centre in Geneva], they open the doors at 8am, they close at 9pm. They have rooms, when you enter, it’s not a cell. And they’ve grass, if you can sit on grass, it makes you feel a little good, psychologically. Look here, there’s just concrete and bars. It’s a high security prison. On top of all that, they give you this food so you die slowly. So they use every means possible to crush the person in here... to show them that they should never come back here. So that’s their goal, yes, never to come back here, and I think that’s cruel” (Karim, detained in Bässlergut).

In this quotation, Karim compares the conditions in Bässlergut to those in Frambois (Geneva; see Box 1 in section 3.2.1), where he spent one or two days before one of the attempts to deport him. He points at the longer time of cells’ opening – we should add that during that time, detainees in Frambois can move within the whole carceral space, including a yard outside – and the different materiality of the prison space. He compares the carceral space of Bässlergut, made of concrete, bars and cells, to the one in Frambois, with rooms and lawn. He qualifies the first as humiliating, and the latter as making you feel ‘psychologically’ better. For Karim, there is no doubt that the conditions are intentionally punitive so as to perform a deterrent effect.

That the conditions of detention are stricter than necessary to pursue the goal of immigration detention is an opinion shared by many experts, including the National Commission for the Prevention of Torture, which expresses criticism with respect to the infrastructure and detention regime in many of their visit reports, including their 2017 report on Bässlergut²¹². Many detainees interpret this situation as manifesting a clear intention to punish them for coming to Switzerland or

²¹² The Commission criticises, for instance, the closing time of cells at 5pm. Report available at <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2017/bs-baesslergut/bericht-baesslergut.pdf>. Accessed 2 April 2021.

for not complying with their removal order. Several detainees were also surprised to discover that their conditions of detention were more punitive than those provided to criminal offenders. Yusuf, for example, had been sentenced to prison for dealing drugs and had served his prison sentence in semi-detention, which he described as “no prison” but rather “a five-star hotel”. For him, life in semi-detention was completely different from the conditions in which he was detained in Bässlergut, so he experienced immigration detention as far more punitive than his prison sentence. Amadou had a similar feeling, as he had been in prison before, where the conditions were much better than in the RP Bern: he was able to work, walk twice a day, and use automatic vending machines during the day. Through work, he could also spare some money for his release: “it was much better, especially if you have to stay for some time, that’s much different”, he commented.

Realta, a semi-open prison that I presented in section 3.2, was particularly mentioned as a space in which detainees felt treated unfairly worse than criminal convicts. Indeed, in that prison, immigration detainees do suffer far more restrictions of liberty than criminal offenders, and they are well aware of this, as my field notes reporting a short conversation with some detainees reveal:

“The request [by a detainee] to have language or other courses led to a discussion about the execution of criminal sentences. [The detainees] were well aware of the fact that in the penal sector of the prison, there are training opportunities, and every day they see penal prisoners going out, going to work, walk, etc. There was a common consensus that ‘criminals’ are treated better than they [immigration detainees] are and have more opportunities. A man from Turkey then said: ‘it’s obvious, it’s because we are from the third world, whereas criminal detainees are from the second or first world. People from the third world, they can treat them like that’. (...) Then he added: ‘they think that we come from the jungle, that we are inhuman, only sub-humans can stay here, they think that we are all terrorists’” (Field notes, Realta).

Detainees here discuss their conditions compared to those of prisoners serving a sentence. The latter have more work and education opportunities because their incarceration is supposed to aim at re-socialisation, while immigration detention has exclusion from Swiss territory as the ultimate goal. In the dialogue reported here, the fact of being held in stricter, more punitive conditions than criminal offenders is interpreted through the dehumanisation to which migrants coming from certain parts of the world are subject. For the man I quoted, the conditions in which they are held must have been designed for subjects that are represented as inferior. The perception of punishment and injustice is strongly related to interpretations of the system as motivated by a racist view on migrants and society, which will be discussed below.

If detainees experience their detention and the specific conditions in which it takes place as punitive, they usually attribute intention to the state in this respect. In detainees’ perceptions, the real aim of immigration detention was dissuading people from returning and punishing them if they did so:

“I understand that they make you suffer so you don’t come back to Switzerland. (...) They make me suffer so that I don’t return (...) When I think about returning, I’ll think, I’ll be in that place again, and I’ll be there for a long time, so no” (Jamal, detained in the RP Bern).

Length of detention is particularly interpreted as punitive. Jamal, who was going to be deported to Sweden, did not understand why the process took so long: “Well, I don’t get why they keep you waiting here for so long (...) I didn’t do anything, I have a fingerprint, and I have to be here a month and a half, so it’s harder for me, you know?”. Another hint of the intended punishment of immigration detention is contained in this idea expressed by Karim:

“Immigration detention in summer, it’s very hard. And migration officers are professional in that they look for people who are illegal in summer. In winter they leave them [on the street]

and in summer they go searching for them. Because in summer, one day is like two days. Do you know what I mean?" (Karim, detained in Bässlergut).

Many negative aspects were understood as being intentionally shaped by the authorities, such as the humiliating entry procedure or the bad food. From time to time there was even a rumour that staff would put medicine in the meals that made detainees want to sleep and that led to stomach problems. Moreover, detainees' experience of interaction with migration officers as hostile and unsympathetic reinforced this impression of immigration detention being used as punishment.

As we have seen in the last pages, feelings of injustice – articulated in what we have defined as injustice claims following Barnett – arise from perceptions of detention practices as non-proportional, illegitimate and stigmatising, and of detention conditions as punitive and criminalising despite their administrative, non-penal nature and their alleged non-punitive aim. Throughout this section, it has been clear that the spatial and material context of the prison – understood as a space of crime control and punishment – are a strong element of such feelings of injustice and are the basis for most detainees' claims. In the next section, I will look at feelings of injustice that are based on representations of legal and administrative practices of decision-making on the subject of detention.

8.3.2. The illegible and arbitrary character of administrative and judicial practice

Detainees find it hard to understand what is happening beyond the bars, at the migration office. Not only is the law inscrutable to them (Ryo 2016b), but practices of migration enforcement agents are illegible (Eule et al. 2019), lacking transparency in the eyes of detainees. Detained migrants are aware that their detention has been decided upon by some individual migration officer, using their margin of discretion (Miaz and Achermann 2021b). This perception is reinforced through interactions with migration officers during the detention order's notification and further meetings aimed at organising removal. During these interactions, migration control takes a personified, individualised form and detainees feel themselves to be the object of a specific act and choice that they perceive as unfair or unjust.

Detainees' perceptions of migration officers' work are based on two main elements. On the one hand, in the everyday life of detention they observe the outcomes of officials' decisions: who is detained, who is released, who is deported. These observations make a solid basis for interpretations that see migration officers' practices as based on preconceived and sometimes racist ideas. Discrepancies and inconsistencies in the outcomes of such decisions – for example one detainee remaining incarcerated while another has been released under very similar conditions – result in the perception that migration officers' decisions lack transparency and are arbitrary. On the other hand, perceptions of migration officers are based on the concrete and embodied experience of interaction with them and in particular how they feel treated by migration officers during such exchanges, a topic we have discussed in section 8.2.2.

In this section, I discuss the illegibility of law and legal practice, then turn to examine detainees' evaluations of migration officers' work and use of discretion, finishing by addressing judicial practice as experienced by detainees during hearings aimed at the judicial review of detention orders.

Illegibility of law and practice

Many detainees struggled to understand the legal framework of administrative detention in terms of legal bases, grounds, aim and length of detention, or detainees' rights and detention conditions. In

particular: what made them detainable? What did they do wrong? These questions arise despite immigration authorities having allegedly provided such information. As we have seen in section 8.2.2, however, the notification of a detention order is not always as informative as it could be and is usually experienced in a rather confrontational way. Information provided by prison staff is not always accessible and mainly concerns the facility's internal rules. One of the theoretically available sources of information for detainees is represented by the external organisations providing legal and return advice as described in section 5.4. However, access to such organisations is not guaranteed and many detainees – especially in the RP Bern – did not even know about the possibility of making contact with them.

Under these circumstances, detainees try to obtain reliable information in any way they can. This includes asking me: indeed, my exceptional presence as a researcher was seen as an opportunity to better understand their situation and future prospects, and many of our conversations revolved around that topic (see section 4.3.2). Very often, other detainees represent the main source of information. As I pointed out in section 8.1.3, detainees spend large amounts of time talking about their respective experiences of migration control, their meetings with migration officers and strategies to reach their goal of release.

Illegibility of law and legal practice is one of the main characteristics of the migration regime and is highly productive since it shapes the actions of all actors involved, as argued by Eule et al. (2019: 113): “due to the complexity of the migration law enforcement, migrants as well as legal advisors and state officials base their actions on rumours and informal ideas of the law”. Such illegibility of law is felt by detainees not only concerning administrative detention per se, but also regarding related legal fields such as asylum and the regulation of foreign nationals' stay. In particular, the Dublin system was at the core of many of our conversations, since its method of functioning is hard to grasp and full of technicalities (see section 7.1 on trajectories shaped by the Dublin system). For Jakob, for instance, his inability to understand the system was particularly painful. An Eritrean national in his late twenties, he had reached Europe on a boat and had succeeded in the difficult task of avoiding fingerprinting. When he was told that he was about to be returned to Italy, the country responsible for examining his asylum claim, he was not only very upset, he was also unable to understand why this was the case despite his having left no fingerprints in Italy. This provoked high distress, in addition to the fact that he had left his country after having spent a year in prison, only to find himself deprived of his liberty again in Switzerland.

According to Ryo (2016b), the belief that legal rules are ‘inscrutable’ by design is one of the main views that composes detainees' legal cynicism. If legal rules and practices are mostly illegible for detainees, their outcomes are tangible and transform into embodied experiences of incarceration, giving rise to a series of claims of injustice that will be discussed in the next section.

Inconsistencies, unfair treatment and racism

Migration officers' actions and decisions lack coherence and fairness in the eyes of detainees, and their legal outcomes are viewed as arbitrary (see also Ryo 2016b). This is related to the discretion of migration officers when trying to enforce a deportation order, including the decision whether or not to detain someone, and under which circumstances to release them. Not only did detainees often ask themselves why people were detained, sometimes they could also not understand how and why a certain detainee had been released. Constantly talking about their respective cases and sharing with other detainees their experiences with migration officers, they observed many differences in the situations of detained migrants, for example with regards to the length of detention or the possibility of release, and tried to find explanations for those.

Detainees' explanations or interpretations of state officials' practices were often related to racism. Immigration detention was seen as a measure concerning disproportionate numbers of certain nationalities and aiming at keeping certain categories of migrants out of the country. This was particularly tangible in the discourses of detainees from North-African countries, some of whom had observed the high presence of 'Arab' and/or 'Muslim' migrants in detention and explained this as a consequence of Islamophobia, prejudice against Muslims and fear of terrorism. Furthermore, they had the impression that detainees from North Africa would remain for significantly longer periods in detention than other groups: "why do black people stay here for two weeks, the others leave quickly, and only us Arabs remain here? Look, only Morocco, Tunisia, Algeria..." said a detainee during a conversation in the exercise yard, and another answered: "that's racism! They make you feel they are against us".

Despite North Africans staying longer in detention on average²¹³, this is at least partly a consequence of lacking or ineffective migration partnerships or readmission agreements, which renders obtaining documents and organising deportation more difficult for certain nationalities, as well as the enhanced difficulties of interaction and negotiation with the consular authorities of Maghreb states. Moreover, many detainees of Sub-Saharan origin were deported to a European country – those removals are easier for cantonal authorities to enforce – rather than their country of origin. However, this difference was mainly interpreted as the outcome of unequal treatment by migration officers led by racist behaviours and decisions:

"That's how I see it, it's racial punishment. And they don't judge the person, they judge the origins of the person before anything else" (Karim, detained in Bässlergut).

Karim continues by explaining that he had heard migration officers talking about how they treated Algerian nationals 'in a very special way', meaning a particularly harsh way.

Those detainees who had gone through prosecution through the criminal justice system reported very similar experiences about the practices of prosecutors, perceived as arbitrary and influenced by xenophobic ideas (see section 7.3.1). They also struggled to find coherence in the observations they made of that system. For example, in the case of Ahmed, a detainee who had served a prison sentence for illegal stay and had spent 17 months incarcerated (adding together criminal and administrative detention), while he had met a man who told him he had transported 80 kg of marijuana, and was released after two months of prison.

At the subjective level, for many detainees, this feeling of racism can be seen as a continuation of the experience of xenophobia when they were at liberty. Nassim, for example, had often felt that he was viewed badly and suspected of criminality within Switzerland because of racist stereotypes. He said that on public transport, people would hold onto their bag or pockets when they saw him because they think that "Arabs are thieves". According to Nassim and other detainees, the terrorist attacks that had occurred in the year 2015 in Paris and 2016 in Brussels, Nice and Berlin had heightened European Islamophobia and hostility towards Muslims, which also impacted on how Western states deal with Muslim migrants, focusing on their exclusion:

"The people, the Europeans say that terrorists are North Africans, it's the Muslims, the Arabs... they've made tough policy with them, they're trying as much as possible to get the men, the Arabs, out of Europe. They simply don't like Arabs, they don't like Muslims. (...) Terrorist acts, the last one in Nice and recently in Germany (...), because of that, the States, the Europeans, they change the relationship with the Arabs, the Muslims. Because of this, they are harder on the Arabs and Muslims" (Nassim, detained in Bässlergut).

²¹³ The average length of detention in the period under examination for our statistical analysis (1.01.2011 to 30.09.2017) being 22 days, it was 24 for Moroccan, 32 for Tunisian and 48 for Algerian nationals.

Several detainees also felt that they were treated with hostility and even racism by migration officers. One described a specific migration officer as having “the gaze and tone of Blocher” (a Swiss politician of a far-right party, known for xenophobic campaigns, among other things). Referring to the same political party, another detainee said: “Those who work at immigration, they’re all SVP [right-wing populist political party], if they’re not SVP, they don’t get hired! They have to be angry with foreigners, they have to hate them, they can’t be soft, they have to be tough. I couldn’t sleep if I did their work”. Robert was also explicit about experiencing racism in his encounters with migration officers. When I asked him to describe their interactions, he said:

“I see that they are racists, (...) they don’t like black people. (...) Yeah, this is how they look like. [L: (...) How can you see that they are racists?] (...) Because sometimes, the way they behave, the way they talk to me. That is why” (Robert, detained in the RP Bern).

The impression that migration officers are making decisions based on racist prejudice and in more general arbitrary ways is a strong determinant of legal cynicism among detained migrants which impacts their will to comply. The perception that migration judges almost systematically confirm detention orders is seen as evidence of a system that aims at exclusion rather than justice.

Judicial reviews and hearings

If interaction with migration officers is central to how detainees understand detention, so is their relationship with judicial authorities in charge of reviewing the legality of detention orders. As explained in section 2.4, detention orders must be reviewed within 96 hours by a judicial authority, with the exception of detention under the Dublin procedure. Every canton needs to establish a judicial authority in charge of this task²¹⁴, which sets a date for an oral hearing once they are informed about a new detention. Hearings take place either in specially arranged rooms within the prison space or in the court’s locale. Despite Bässlergut having access to such a room – situated between the detention area and the offices of the migration service – only hearings of Basel-Stadt take place there, while detainees of Basel-Land are transported (with handcuffs) to the Tribunal in Liestal. In the RP Bern, the court room is situated in the prosecutor’s building next door. A prison officer leads the detainee through a roof passage between the two buildings and locks him or her in a designated cell, from which the police collect the detainee and bring them to the hearing.

The hearing is led by a judge and attended by the detainee, sometimes accompanied by a legal representative, and usually by a translator and a migration officer, depending on the canton²¹⁵. A clerk is in charge of the transcript, while two policemen are also in attendance for security purposes. Hearings last for approximately half an hour, according to a migration officer: both the detainee and the migration officer – when present – have the opportunity to express themselves and their concerns. After the hearing, detainees from Basel-Land are brought back to the prison and receive the decision by post, while detainees from Basel-Stadt are asked to wait a little and are notified of the Court’s decision immediately after the hearing. The latter practice is interpreted by many detainees as evidence of the fact that the decision is already made before the hearing.

In fact, most detainees I discussed this with were very sceptical about the role of judicial authorities. Despite judicial control being intended to preserve the rights of detainees in front of administrative authorities, some detained migrants found the mere existence of such hearings criminalising, since

²¹⁴ In Basel-Stadt, it is the *Appellationsgericht* (through the figure of the *EinzelrichterIn für Zwangsmassnahmen Ausländerrecht*); in Bern, the cantonal *Zwangsmassnahmengericht*.

²¹⁵ According to my interviewees, the migration office of Basel-Stadt usually does not represent itself during hearings, Basel-Land and *Fremdenpolizei Bern* do, and the *Migrationsdienst* makes a decision on a case-by-case basis.

they reminded them of criminal hearings. Moreover, many expressed the view that judicial control was a mere formality, without holding any possibility of actually changing their situation:

“I [had] already understood, (...) because I also had other mates or friends who have been in the same situation. And I already know what’s going on, (...), I knew everything, he was talking and I didn’t hear anything. Because it’s already decided. Let’s say he’s a judge... not a [real] judge, (...) because you don’t have a lawyer, you have no right to talk. So I talk and he says, ‘oh stop, don’t talk. I’ll finish, then you talk’. He finished, signed, and said ‘go away’. (...) [L: But he made you talk later?] No, no, nothing [laughing]. Yeah, I heard what he said and I left. (...) Let’s say it was already decided, it was already finished, it was just formal, (...) a formality. Yeah, let’s say... a farce” (Ervin, detained in Bässlergut).

The judge usually confirms the authorities’ decisions²¹⁶ (the migration office of Basel-Stadt said that this happens in 95% of cases), which is interpreted as a lack of independence by most detainees. On top of this, some specific practices of the Court arouse suspicion. In particular, the fact of writing the judgement immediately after the hearing, as occurs in Bässlergut, was highly suspicious for many detainees who asked themselves how it was possible to write a decision in a few minutes, as Yusuf expressed for example:

“On Friday the detention judge came. And then I told the same story again. But... the judge is also... I was talking, talking, talking, for ten or fifteen minutes, and I went away for three minutes, to a small room, when I came back there was already a dossier in front of me. Already a ten-page dossier in front of me, on the table. Already printed out. Within three minutes. Is that possible? No, it can’t be. Everything decided within three minutes. Everything is already prepared, the dossier, yeah, everything’s already prepared” (Yusuf, detained in Bässlergut).

Besides the perplexity raised by the speed of the decision, several detainees did not feel listened to during the hearing, such as a man who was very disappointed by the short length of the hearing (“it lasted just two minutes!”), during which, according to him, only the migration officer had talked, and not the judge. Another detainee called it “a cinema”, referring to a scene where actors were just playing their prescribed roles. He was particularly disappointed because his officially appointed lawyer had made an appeal against a decision of the judge, and now he needed to pay 1,000 francs of court fees – which he had started to pay at a rate of 70 francs per month – because the appeal had been rejected. The fact that the judgement contained several parts identical to the initial decision, and mistakenly mentioned another nationality, showed further evidence of copy-pasting, and was a clear sign to the detainee that the appeal had not been taken seriously by the court. Profoundly disappointed in the judicial system, he decided to refuse to attend any further hearing since he perceived them as useless besides being tiring and frustrating.

We have seen in this section that detainees mostly perceive migration authorities’ decisions as opaque, sometimes even arbitrary or based on racist prejudice. The fact that they have a margin of discretion in the decision to detain – a decision that has enormous consequences for the person detained – is often interpreted as a sign of the arbitrary nature of the system, which produces unfair legal outcomes that are mostly confirmed by the judges in charge of judicial reviews. Ryo (2017) argues that detainees’ perceived obligation to obey immigration authorities is strongly related to their evaluations of procedural justice and fair treatment. Detainees’ perceptions of arbitrariness and unfairness result in enhanced legal cynicism, which clearly undermines their will to comply with the authorities and their orders.

²¹⁶ Miaz and Achermann (2021a) found significant diversity in the work and effect of such courts, with judicial review being only a ‘formality’ in some cantons and largely limiting the power to detain in others. See also Campesi and Fabini (2020) and Ryo (2016a) about the role of judges in other national contexts.

8.4. Agency and resistance in the deportation system

We have seen that detainees experience detention as an act of injustice, based on unfair decision-making and unjustly based within prisons. The closed and securitised nature of carceral institutions, together with detainees' limited rights and legal opportunities as a result of their being undocumented, lead to detainees possessing very little agency (Bosworth 2014). However, this does not mean that they passively endure deprivation of liberty. Despite the few options that remain open in those in detention, detained migrants find ways of expressing – verbally and bodily – their dissent and try to resist the system of deportation. Furthermore, in interactions with migration authorities, detainees deploy strategies to impact their fate, both in order to avoid deportation and to shorten detention and negotiate conditions of removal. Although avoiding deportation usually entails physical resistance, shortening detention can also imply collaboration with the authorities in order to enforce removal as quickly as possible. Compliance here becomes instrumental, especially for those migrants who are planning to return to Swiss territory as soon as they reach the removal's destination.

Many scholars working on immigration detention have focused on acts of resistance within detention centres, challenging Agamben's idea that subjects are reduced to 'bare life' in a space of exception such as the detention centre. The major critique of the application of Agamben's theories to detention centres is exactly its inability to account for power mechanisms and resistance in detention spaces (Bailey 2009; Puggioni 2014a; Rigo 2017). These critiques are often based on a Foucauldian conception of power relations, according to which power is always accompanied by resistance (Foucault et al. 2008; Hall 2012; Puggioni 2014b) and should consequently "be analysed through the lens of the dialectic between those trying to enforce and those resisting rules" (Campesi 2015a: 448). In this sense, scholars like Alex Hall (2012) and Giuseppe Campesi (2014a, 2015a) have proposed to study the "micro-physics of power" in detention, looking at how "[t]he detention centre regime as an apparatus of control is constantly being undone and contested by staff and detainees alike" (Hall 2012: 11). This approach also draws on the notion of 'tactics of the weak' developed by De Certeau (1990) and Scott's (1985) conceptualisation of 'everyday resistance', which we will address below. Resistance in detention can take the form of collective protest (Bailey 2009), hunger strikes (Conlon 2013; McGregor 2011; Pfeifer 2018), escape (Grewcock 2010) and self-mutilations (Fischer 2014; Puggioni 2014b). The focus on resistance intended as visible acts of protest, however, risks obfuscating other forms of agency in detention, which often pass by as invisible and imperceptible ways of resisting or sabotaging the functioning of detention centres (Hall 2012) as well as the specific absence of resistance in the form of instrumental compliance or resilience to detention. Indeed, some detainees accept deportation only because they know that they will return (as we saw in section 7.1.3), and as I will shortly discuss adapting to prison life can be a way to resist the system of detention and deportation, challenging its underlying deterrent function.

This section starts by discussing the agency of detained migrants in their interactions with migration officers as well as during deportation attempts by the police. The section critically addresses the relationship between compliance and non-compliance in dealing with the authorities, arguing that deportation is partly a matter of negotiation (Eule et al. 2019) and detainees have some power to resist the deportation machine (Campesi 2015a), despite such power depending hugely on the individual situation and country of origin of the detainee. In the second part, I discuss acts of everyday resistance that take place in the daily life of detention, through which detainees try to revert the power exerted on them and disrupt the daily functioning of detention facilities.

8.4.1. Resisting or negotiating deportation

Most detainees have very little agency and few cards to play in their interaction with migration officers. Interactions with migration officers and judges can be crucial moments in which detained migrants can try to negotiate terms of deportation or adopt strategies that could undermine migration officers' ability to enforce removal. Taking into account the unequal and asymmetrical distribution of power among the actors participating in these interactions, Eule et al. (2019) conceptualise such encounters as '*spaces of asymmetrical negotiations*'. Such unequal and asymmetrical relationships are even stronger, in many aspects, when the migrant is already detained and his situation characterised by deprivation and exclusion. We have seen in section 8.2.2 that such meetings are often experienced as lacking exchange or any attempt by the authorities to listen to the detainee. At the same time, once in detention the motive to collaborate with the authorities is often lacking, as detainees have already been deprived of their liberty and collaborating means facilitating the state officials' work to deport them.

The strategies of migrants to avoid deportation and obtain release are sometimes successful. For instance, Yusuf tried to negotiate his release by proposing during a judicial hearing that he pay bail against his absconding (if he did abscond, the migration authority would keep the money). The judge asked the migration authority whether they could consider that alternative, and following their consent, Yusuf was released. However, this is not an option, financially, for most detainees, who rather focus efforts on avoiding identification, refusing to provide identity documents or information on their identity or nationality. In some cases, they try to trick immigration authorities, for example in the case which was related to me by several individuals of a detainee who had feigned his nationality and upon arrival at the airport of his supposed country of origin had started to speak another language which had resulted in his being flown back to Switzerland. In the case of a detainee I met during my research, his consistent refusal to talk with the migration office had made it impossible for the clerks to identify him and provide him with a *laissez-passer* from any country. Taking advantage of the difficulties encountered by migration authorities to identify him and deploying a well-thought-out strategy, he was able to produce a condition of 'de facto statelessness' (Campesi 2015a: 447, citing Wilsher 2012) that rendered him undeportable and finally resulted in his release after several months of detention.

Another key focus for the deployment of resistance strategies is the moment at which policemen arrive at the detention facility in order to remove the detainee. Under these circumstances, detainees try to resist police attempts to catch them, first, when they are still in their cell, for example by spreading excrement on their body, which is a rather common practice according to some staff members. If such an act is understood as degrading for the detainee, it is also so for the police or detention staff who must deal with the dirty and stinking body by forcing him to shower before taking him to the transport. However, resistance to deportation attempts most often takes the form of self-harming through cutting arms or other parts of the body or ingesting sharp or inedible and toxic substances, which can occur at any stage of the deportation attempt – in the prison space, in transport, at the airport or in the plane – despite a whole apparatus of control being in place to avoid such events. These are the most explicit ways in which self-harm becomes a matter of strategy as it directly attempts to avoid deportation. However, as we will see later, understanding acts of self-harm as purely strategic is an oversimplification. Attempts to undermine the police ability to deport can also take creative forms as is seen in the case of one of my interviewees, who put all his clothes in the toilet so that he could not exit the airport bathroom.

Such acts of physical resistance are mostly effective when deportation is planned according to level 1 or 2 of enforcement, but become more difficult when they occur on a special flight. Even when

they occur on a scheduled flight, however, such acts can be ineffective, as in the case of Yusuf – his story is related in section 7.3.2 – who started screaming and injuring himself as soon as he boarded the plane, hitting his head on the screen in front of him. Usually a similar situation would lead to the pilot refusing to take such a recalcitrant passenger on his flight for safety reasons. However, this did not happen to Yusuf since the pilot decided that he could and would fly despite Yusuf’s behaviour.

Resistance to deportation attempts can be more or less effective according to the individual situation and the nationality of the detainee. In some cases, resisting first attempts will only prolong detention and result in the organisation of a special flight. However, while special flights to some countries – for example Nigeria – are organised with regular frequency, special flights to other countries are impossible because they lack the agreement with the government of that other country, and others are very expensive and difficult to organise, or take place very rarely. It is in those cases that resistance to deportation attempts is the most effective, especially if forced deportations are not possible such as in the case of Algeria, which only readmits nationals who are willing to return.

The case of Algerian nationals in Switzerland well exemplifies the argument made by Campesi that detainees “possess an extraordinary ability to resist and undermine the deportation machine” (2015a: 429). Aware of the difficulties that authorities encounter in their endeavour to enforce deportation, through resisting removal attempts they produce a condition of ‘undeportability’ (see also section 7.3.3), engaging in a struggle with the authorities and turning removal centres into a site of resistance (Campesi 2015a). The example of Algerian nationals is also best suited to show how detention is transformed into “a form of de-facto punishment for non-cooperation” (ibid.: 448). In fact, the average length of detention for Algerian nationals is significantly higher than that for other nationalities, with 48 days compared with 22 days on average for all nationalities. Representing 3% of all detentions in the time period that we examined in our statistical analysis, Algerians are the most highly represented nationality (with 22% of detentions) among those detained for more than nine months, and the second (with 12% of detentions) among those detained for three to nine months. Algerians are also one of the nationalities with the lowest rate of detentions ending with deportation (54% of cases, including also removals to third countries, compared to 81% on average), showing that they often successfully oppose their deportation. However, not all detainees possess such power to resist deportation in the Swiss context, since Switzerland has bilateral readmission agreements with many countries to which irregular migrants can be deported against their will. Given this situation, Algerian nationals have greater room for negotiating with authorities than most other detainees.

The story of Abel, an Algerian man detained in Bässlergut, well exemplifies this. Abel was initially very uncooperative. He told me that migration officers came every day to talk to him, but he refused to talk to them. He commented on his situation in a provocative tone: “I’ll stay here. I can stay 18 months, I’ll not leave. Here, it’s like a hotel: you sleep well, you eat well... I’ll not die. And here, you don’t have the stress [that you have outside]. I can stay one year, it’s okay, anyway they cannot remove me to Algeria – Morocco, Tunisia, maybe, but not Algeria”. Being ready to spend years in detention – or at least saying so – is a strategy to indicate to migration officers that detention would be too expensive and lack success, which could bring about his release. A couple of weeks after this conversation, however, I heard that Abel had accepted return to Algeria, and had been able to negotiate a significant amount of financial support for his return that is usually impossible to obtain once in detention. I was not able to talk to him to understand his choice and I do not know how he felt with regard to returning to his country of origin, however, it is evident that his position as an Algerian allowed him to negotiate better terms than another detainee from another country, who could be forcefully deported.

Compliance and non-compliance with migration authorities

The extent to which one decides to collaborate with migration authorities differs from detainee to detainee. Non-compliance is an important notion with regard to immigration detention since it can be grounds for detention. Pinkowska (2017) argues that non-compliance is not always the result of a choice or an autonomous act of resistance for the migrant concerned. Some behaviours are classified as non-compliance despite being involuntary and resulting from misunderstandings or lack of information by the migration officer in charge (ibid.). She argues that in these cases, invoking non-compliance can be used as a tool of domination to motivate the extension of detention periods. Following Pinkowska's endeavour, in this section I try to move beyond a simplistic view on compliance and non-compliance and show that in the field of detention and deportation, the relationship between the two is a complex one.

Compliance with rules and authorities is usually seen as related to perceptions of legitimacy of such rules and authorities. In her study of the legal attitudes of detained migrants, Ryo (2017: 120) found that "the detainees' perceived obligation to obey U.S. immigration authorities is positively related to their evaluations of procedural justice, as measured by their assessments of fair treatment while in detention". Moreover, she found that "vicarious procedural justice evaluations" based on other detainees' stories are as important as judgements about their own experience as fair or unfair treatment. As has been discussed in section 8.3, detainees experience their detention as unjust and punitive despite its administrative aim, the legal framework as inscrutable, and migration officers' decisions and outcomes as opaque and arbitrary. This clearly has important consequences for their motivation to comply with the authorities and collaborate with or rather resist any attempt at identification and removal.

The decision whether or not to collaborate partly depends on the extent to which the rules, the authorities and their ways of handling detainees are perceived as legitimate by the latter. This is especially manifest in the attitude of Nassim, who was strongly determined to refuse any form of collaboration with the authorities who were trying to deport him, despite the threat of long-term detention. When I asked him if he would have been able to provide documents proving his identity, such as a birth certificate, he answered:

"Of course. They're with the family. But it's not, it's not right. I have to leave the country, and I'm bothering my family to send me ID, a birth certificate, in order to leave. And I said I am Tunisian, why does migration tell me 'we have to look, you'll leave with the consulate'. Okay, do your thing with the consulate. Why are you bothering me? Do you want me to leave? Do your thing with the consulate. I'm Tunisian, I said I'm Tunisian. I didn't say I'm from Libya, or I'm Algerian, or Moroccan, or Syrian or I don't know. I told the truth. And if you want me to leave, talk to the consulate, don't bother me. It's not my job" (Nassim, detained in Bässlergut).

As the quotation shows, Nassim considers it absurd that he is required to collaborate in his own deportation, which is planned against his will. He has respected the procedure by telling the truth about his nationality, but perceives it as nonsense that he is required to help migration officers to exclude him, making it easier, quicker and cheaper for them while at the same time burdening his family. For him, it seems to be a question of pride and dignity. In addition, the hope of release is never completely relinquished until one is actually deported. Another research participant related that when the migration officer in charge of his file started to show him the flyer explaining the levels of deportation enforcement, he refused to look and stated that if they wanted to deport him, they should do it without his help.

On the other hand, some detained migrants accept the plan of the migration authorities and start to collaborate with them, as in the case of Hervé, who had struggled for years to remain in

Switzerland, where he had two children, but one day decided to stop struggling and accepted deportation. Interestingly, this change in behaviour reflected a change in discourse with regard to the system of exclusion. Indeed, he was originally very critical, until one day I heard the a conversation between him and another detainee, which I recorded in my field notes:

“At a certain point, Hervé, who was playing ping pong, joined us and chatted with us for a while. A. was talking about ‘the immigration’ [office] as usual. Hervé said, ‘It’s not the immigration, it’s politics! They can’t accept everyone. It’s politics. Immigration, they’re defending the country’. (...) I ask him what he means, (...) what they’re supposed to be defending the country from. He replies that it’s an economic issue: ‘Borders are economics. Immigration is defending their people. For example, permit B is the work permit. If you don’t work, they give you another one. You really have to integrate into the labour market’” (Field notes, Bässlergut).

Hervé had been living in Switzerland for a long time and had lost his right to stay because he had been dependent on social aid for too long. It seems that he had started to perceive some legitimacy in the system and responsibility for the way he had handled his situation, reproducing the dominant discourse that sees irregular migrants as undeserving of social rights and protection (see Borrelli et al. 2021).

Finally, the will to comply or not to comply with orders and collaborate with the authorities is strongly related to the perception of what awaits the individual following deportation. In particular, I focus on the instrumental compliance that can be enacted by detainees who know that they will be able to return to Switzerland or move forth to another country. In such cases, detainees usually provide the necessary documentation and information swiftly, in order to shorten their detention and be removed as soon as possible. However, such compliance did not usually ensue from a perception of the legitimacy of the system, but as a way to minimise the effects of detention by shortening its length and returning to liberty as quickly as possible. Ervin, for example, knew that his deportation to Albania could be quickly organised and did not resist it because he planned to return after spending time with family and friends there, as he had already been able to do in the past. Compliance in these cases – especially if combined with return mobility (see section 7.1.2) – can be seen as an unconventional or unexpected form of resistance against the system of exclusion and deportation which actually undermines the authorities’ power to control migrants’ movements. On the other hand, in cases in which deportation is felt to be irreversible and its consequences totally disruptive, the prospect of long-term detention can be seen as worthwhile if it reduces the chance of deportation.

8.4.2. Detainees’ acts of everyday resistance

As the state’s power is felt strongly in detention, so is it contested, giving rise to acts of resistance that can take extreme forms such as putting one’s life at risk. In this section, I consider detainees’ acts of everyday resistance, arguing that detainees’ resistance is best understood as an interplay between acts of non-compliance and protest, as well as strategies of instrumental compliance and hidden protest. Scott’s concept of everyday resistance will help us to shed light on the less visible ways in which detainees attempt to contest and undermine power in detention spaces (Scott 1985). Acts of self-mutilation and hunger strike will be discussed as extreme forms of physical protest and methods for destabilising the daily functioning of detention centres. Toward the end of the section, I explain adaptation and resilience to be forms of resistance themselves since they undermine the deterrent effect that detention is supposed to exert and sometimes even succeed in the avoidance of deportation altogether.

Protest and sabotage of prison life

Detainees have different methods to challenge their detention, including institutionalised forms of legal action (Spena 2016) such as requesting judicial review of a detention order in those cases where this does not occur automatically (e.g. in the case of detention under the Dublin procedure), appealing against the decision of the judge or filing a request for release. If successful, these actions can all lead to release despite not providing the migrant with a right to stay. Legal action can also be undertaken with the aim of challenging deportation and providing for a right to remain in the country, for example through appealing against a removal decision, claiming asylum, filing an application for re-examination of an asylum claim or revision of a judicial sentence, or making a demand for regularisation. Most of these legal possibilities, however, are dependent on access to legal advice and representation that is not ensured in detention facilities, as already discussed. Many detainees that I interviewed had not engaged in any legal action for this reason.

Resistance in detention centres can also take the form of collective protest. Focusing on the Australian context, for instance, Bailey (2009) has found that detainees capitalise on their previous political experiences and activism in their countries of origin or former residence to organise collective resistance, implementing “tactics and skills developed in struggles outside the camp” (2009: 120). By doing this, they refuse to abandon their politics and “struggle to retain a political life in the face of the extreme biopower of the camp” (122). Group protest rarely occurs in Swiss immigration detention, perhaps related to its scattered form, but it can trigger high levels of uncertainty for the institution. In 2007, a group of detainees in Bässlergut set their cells alight in protest against their incarceration and the exacerbation of the national legal provisions regarding immigration detention, which extended the maximum length of detention pending deportation from 9 to 24 months. There was a series of fires, according to one employee of Bässlergut, until one larger fire completely destroyed one of the wings. Following this episode, cantonal authorities decided to limit the capacity of the detention centre. At the time of my research, I only heard of one other collective protest having occurred in Bässlergut, when a group of detainees refused to return to their cells at the end of their walk. According to the staff members who related this episode, the protest was short-lived following the intervention of special police forces.

While collective protest in the form of demonstrations or riots inside detention facilities does not often occur in Switzerland when compared with other national contexts, individual forms of protest are far more common. Detained migrants show dissent through verbal protest (mainly with staff members) and acts of physical resistance such as refusing to move, shower or follow the guards’ orders, to sign or undergo a security check. Staff members usually react to these acts of manifest opposition with sanctions or through the use of physical coercion that forces the detainee to follow the order (see section 5.2.5). Such acts of rebellion are therefore rather risky for detainees, who often prefer other methods of resistance against the system that daily oppresses them. Indeed, resistance does not need to be public or manifest to be conceptualised as such, as Scott’s (1985) concept of everyday resistance will help us to show.

Based on anthropological research in a Malaysian rural village, James C. Scott (1985: xvi) investigated the prosaic but constant ways in which the peasantry struggled against those seeking “to extract labor, food, taxes, rents, and interest from them” through “the ordinary weapons of relatively powerless groups: foot dragging, dissimulation, desertion, false compliance, pilfering, feigned ignorance, slander, arson, sabotage and so on”. As is usual with dominated or subaltern groups, these forms of everyday resistance undermine power while avoiding any direct confrontation with authority. They require little or no coordination or planning and make use of

implicit understandings and informal networks (Scott 1985). These are ‘tactics of the weak’ that need to be played in the field of the enemy and in the space controlled by him (De Certeau 1990).

The daily life of detention centres is full of instances of such kinds of everyday forms of resistance that are invisible or imperceptible but attempt to undermine power and destabilise the functioning of the facility. Hall (2012: 86) argues that detainees contest the regime to which they are subject through “minor acts of sabotage and critique” that form precisely the ‘weapons of the weak’. She mentions, for example, whispered subversions and sly commentary that ridicule staff members, or practices such as hiding at roll calls, generating small delays and refusing to eat. During my observations, I sometimes came across such actions and behaviours that could be understood as acts of everyday resistance. Most were played through interaction with staff, for example calling for employees several times so that staff would have to keep going back and forth between the office and the detention area, or generating delays by being late or walking slowly. Resistance also consisted of grumbling when following an order or whispering comments that the staff member could not hear or in a language he would not understand.

Small acts of sabotage are also well represented by the act of tearing up the sheets showing how a special flight takes place, which were previously to be found in every cell in Bässlergut. A staff member of Bässlergut also said that sometimes detainees would remove all their property and refuse to return to their cell at the end of the day, which would delay the finishing time of the employee. These are all forms of everyday resistance through which detainees aim to assert power despite their lack of agency.

Self-harm, hunger strike and threat of suicide

Other forms of resistance enacted by detainees use the body as an instrument of dissent and resistance through self-inflicted harm in the form of self-mutilation, self-harm or refusal of food or medicines. These acts produce undisciplined bodies that have the potential of disrupting the general control and biopower exerted over detainees (Fischer 2014). The relationship between acts of self-harm or self-mutilation and resistance is difficult to conceptualise. In this discussion, we follow Puggioni (2014b) who suggests that rather than acts driven by desperation (Ellermann 2010) or acts of bare life (Agamben 1995; Edkins and Pin-Fat 2005), such acts can be read as acts of ‘bodily resistance’ through which detainees act politically despite attempts to render them silent and powerless through the politics of the camp. Puggioni draws on the concept of ‘acts of citizenship’ to argue that “to *act politically* is precisely to engage in claiming rights that individuals do not formally possess and/or rights which they formally possess but are unable to use” (2014b: 567), which fosters her original argument.

Self-harm can be both active or passive, the former consisting of self-injuries through cutting one’s body or ingesting toxic liquid, and the latter of avoiding or refusing to eat, drink or take medicines. During my fieldwork, I heard about detainees cutting their forearms or wrist, drinking shampoo, ingesting a razor or a self-made blade, and about a man who had pushed a broomstick into his throat. Such acts can go as far as putting the detainee’s life at risk although according to several staff members, most attempts at self-harm are rather aimed at drawing attention than ending life, such as was seen in the case of a detainee who had hanged himself but had immediately rung the intercom. Interpreting such extreme acts of physical self-harm in this way is, however, an arduous task, since it runs the risk of oversimplifying detainees’ intentions and experiences. Sometimes acts of self-harm can be used as tactics to obtain release, transfer to another facility or to avoid removal (Hall 2010), or to show dissent and malaise, but often they are not rationalised or explained as acts

of resistance, and they can also result from a depressive or anxious state related to past experience and/or detention.

Another form of self-harm that can be understood within the framework of resistance is food refusal or hunger strike. Hunger strikes are a form of counter-conduct (in Foucauldian terms) through which migrants become political subjects (Conlon 2013). McGregor (2011) has provided an account of the large strike organised by Zimbabwean detainees in British removal centres in 2005, exploring the opportunity structure that rendered it possible – namely, the deteriorating diplomatic relationship between the UK and Zimbabwe, and the existence of an institutionalised and politicised Zimbabwean diaspora in the UK – and discussed the potential of strikes to create new connections but also divisions and distress among detainees. Collective and/or organised hunger strikes are intrinsically and manifestly political in that they invert the biopower that the detention regime exerts on detainees to make a certain number of requests or claims and let them be heard. In the more individualised and less publicised forms which it can take in detention, food refusal is still a powerful way through which detainees can disrupt a core task of the detention regime (Hall 2012: 90-91), putting their lives at risk. Indeed, we have discussed in section 5.3.2 how a whole apparatus is in place to monitor those detainees who endanger their life through self-harm or food refusal.

Even in its individualised forms, food refusal can be enacted by detainees as a tactic to acquire wants or needs, for example a transfer to another cell or facility. In other cases it aims at being taken to the hospital, where help might be sought (Puggioni 2014b). One detainee told me he had tried to injure himself in order to be transferred to the hospital so that he could obtain a medical certificate testifying to the violence he had suffered in the hands of the local police. However, food refusal is not always so easily classified as a tactic or an act of resistance since this might not be the only and first intention of detainees. Karim, for example, stopped eating a few times during his detention, but he kept underlining that this was no hunger strike, as he simply lost his appetite and did not want to eat. Karim's reluctance to define food refusal as hunger strike could also be related to the internal procedures that are foreseen in case of hunger strike which might even more deeply deprive him of his freedoms. However, it also points at the difficulty of defining food refusal and more generally acts of self-harm as simply resistance acts.

Hunger strikes have been analysed by Pfeifer (2018) as acts of 'becoming flesh', which make "visible how racialized violence is enacted on the refugees' bodies" (461) while opening an arena for reclamation *through* the body. As we discussed in section 5.3, the detainee's body and survival become a field of struggle in which practices of control, resistance and protection interplay in complex ways. Indeed the management of acts of self-harm becomes paradoxical in that it involves humanitarian treatment of the suffering body and at the same time regain of control over such an undisciplined body (Fischer 2014). Reverting the asymmetrical relationship of power existing between staff and detainees, and making use of the main source of anxiety for the institution as a whole and especially for staff members, acts of self-harm can be conceptualised as acts of everyday resistance that employ the few possibilities available to detainees as weapons or tactics of the weak (De Certeau 1990; Scott 1985). Through such acts, detainees contest and undermine power – although those can also justify new forms of heightened surveillance and coercion enacted by the institution – and act politically despite attempts to silence them (Puggioni 2014b).

Resilience as a strategy to resist the deportation machine

Resilience is understood as the individuals' or societies' ability to adapt in the face of adverse conditions. In this sense, surviving in prison requires a certain level of resilience. In this section, I argue that resilience can be a specific form of resistance in immigration detention, both to the

intended deterrent effect of detention and to the deportation machine as a whole. Resilience and resistance are often conceptualised as mutually exclusive. However, scholars such as Bourbeau and Ryan (2018) have challenged this view, arguing for the need for a relational approach that understands resilience and resistance as being, on some occasions, engaged in mutual assistance. Based on research carried out in the Palestinian occupied territories, they discuss how staying in Palestine despite hardship and keeping one's home and land is one way of acting with *sumud*, a Palestinian word to describe adaptation, coping and perseverance. In other words, *sumud* is about how Palestinians shape their daily activities "to make life 'normal' in the context of the 'abnormal' occupation" (Bourbeau and Ryan 2018: 231). In those circumstances, "adaptation is not to be confused with acceptance" (233), and resilience can provide a condition for resistance.

Adapting in a situation of domination and/or heightened control involves forms of calculated compliance and conformity that can be part of everyday resistance, as argued by Scott (1985). We have already seen that (instrumental) compliance can sometimes be seen as an unconventional or unexpected form of resistance against the system of exclusion, especially when it is combined with return mobility that is also a form of resistance to such a system. Adapting to daily life in detention as a form of resilience can also be a surprising form of resistance. First, it undermines the deterrent effect that detention is supposed to exert and allows detained migrants to resist attempts at deportation. Moreover, in some cases, it can lead to release either because the maximum duration of detention has been reached, or because deportation is not possible and detention is too expensive or no longer legal.

We have seen in this chapter that resistance to deportation attempts is most effective (in the sense of avoiding removal) when the enforcement of deportation is technically or diplomatically difficult, as in the case of Algeria, a country that only readmits nationals who are willing to return. For those detainees who can produce a condition of 'undeportability' as in the case of Algerian nationals, immigration detention centres are turned "into the battleground of their daily resistance against the deportation machine" (Campesi 2015a: 448), not (only) through open resistance or rebellion, but also through resilience to the condition of captivity. If detention is used as 'de-facto punishment' for non-cooperation and as a tool to force collaboration (Campesi 2015a), detainees who are able to adapt to life in detention without changing their minds regarding repatriation are actually undermining state power, in particular the state's ability and efficiency to deport.

This does not come without much suffering for detainees, whose stay in detention can be extended time and again. However, as opposed to most Anglo-Saxon countries where immigration detention has no time limit (Mainwaring and Cook 2019), for migrants detained in Switzerland release is unavoidable after 18 months of immigration detention when deportation attempts have not been successful²¹⁷. Thus, for some detainees, adapting to detention is the only alternative to deportation, as explained by Karim:

"At the beginning, it's very hard. The first week is for everybody very very hard. And then after a month, two months, three months... you get used to it, that's it. Because we see that it's destiny that puts us here and we don't think about the migration [office] or anything else. We just think that, for example, for me, given what I've seen in my past, I know that I have no choice but to stay in prison as long as they want. That's the point. And personally, (...) what am I gonna do about it? (...) I don't have [future] prospects. (...) They can keep me for two years, three years, four years, ten years, I have no choice. I'm not leaving" (Karim, detained in Bässlergut).

²¹⁷ As related before, however, migration authorities usually release the person a few months before the time limit in order to save some of this time in case anything in the detainee's situation changes and deportation becomes possible.

This discourse of not having a choice can be read as an answer to the idea that is dominant in the political realm as well as among detention staff that detention is a consequence of detainees' choice not to leave the country voluntarily. Karim remained loyal to this declaration and never accepted the migration office's offers to end detention and be repatriated with financial return help.

Resistance in the form of resilience – or 'resilient resistance' (Ryan 2015) – requires from detainees that they develop effective coping strategies that allow them to survive in detention: engaging in close friendships with other detainees, recreating a sense of routine and normality, reducing contact with staff members and/or with other detainees to avoid problems, finding ways to escape mentally and distance themselves from the reality of detention – for example through reading, drawing, writing music or watching TV – or making contact with the outside world through phone calls and visits. Religious faith is also important to many detainees to support their resilience and nurture hope for release. Such hope is fundamental for detainees' resilience and is fuelled through the observation or rumour of other detainees having been released in similar situations. Encouragement by others can be a huge source of strength, as Karim related:

"[We] have to comfort each other, to say 'It's okay, you'll be leaving soon'. That's what I did with the others and they say the same to me, 'I hope you're going out, I hope you're going to rebuild yourself'. (...) They comfort me, they give me hope. (...) [When I tell them my story] they say 'hey, you have to stay here in prison, huh, you have to last (...) Stay one year, two years. Resist'" (Karim).

The way in which other inmates encouraged Karim to 'resist' by remaining in prison is a clear indication of the fact that resilience can be a form of resistance to the system of exclusion, the latter being constructed by the combination of the practices of detention and deportation.

In this chapter, we have considered immigration detention centres and practices from the point of view of their primary subjects: detained migrants. I started by describing their spatial, temporal and social experiences, showing how despite being rationalised as an administrative, non-punitive measure, immigration detention is deeply experienced as punitive. In fact, detainees experience loss of control over movement, time and social networks as very painful and their incarceration as unjustified based on their lack of criminal convictions. With the immigration system being based on geographic and social distinctions that create categories of unwanted migration, this is highly frustrating for those migrants who reach Swiss territory with the aim of finding a job and earning a living. The legal system justifying their detention is often illegible and the threat of deportation is constantly felt in the tedious everyday experience of detention. While those state officials in daily contact with them – prison officers – are not in charge or most of the time even aware of their immigration file, access to migration officers is restricted. Contact is mainly experienced as either void of exchange or aiming at forcing detainees' collaboration through tricks and the threat of using coercion or extending detention.

Migrants detained in prisons are aware that they should not be in such institutions, which are part of the criminal justice and prison system. We have seen in this chapter that they are critical of such a 'cimmigration system' merging crime and migration control and treating them as if they were criminal offenders. This profound feeling of injustice has a strong impact on the ways in which they interpret the system of deportation and how they react to it. Finding no legitimacy in this exclusionary immigration system and in the work of migration officials, whom they experience either as distant and blindly applying the law – especially when it comes to Dublin transfers – or as

personally and unfairly targeting them for exclusion, they feel no motivation to comply with removal orders unless doing so would allow them to end detention as quickly as possible and then move or return again.

Both the decision to detain and the conditions of detention are perceived as unjust. Consequently, detainees contest their incarceration through verbally articulated claims of injustice and through everyday forms of resistance. The former consists of contesting the legitimacy of detention as a measure of migration control, its carceral and punitive character, its criminalising effect and its being based on arbitrary and racist decisions. Claims of injustice are verbalised with staff members or external visitors like myself. However, there are few opportunities to collectively or even individually make those claims heard in the public space. The body therefore becomes the ultimate means through which detained migrants can express dissent and protest or try to impact their situation and avoid deportation. Bodily and other forms of everyday resistance attempt to sabotage and disrupt the everyday life of detention institutions or challenge its deterrent goal. Both through moral critique and counter-conduct, detained migrants resist the subjugating effect of incarceration and act as political and moral agents (Puggioni 2014a; Ryo 2016b).

During their time in detention, migrants are persistently reminded that they are unwanted. They learn that the state is not on their side, that the image they had of Switzerland as a state ruled by law and taking care of people is only valid for citizens, while as outsiders they possess very few rights and their liberty can be deprived on the grounds of their unwanted and unlawful status. The state becomes an antagonist against which to struggle. Acting as a space of legal socialisation, immigration detention fosters negative ideas about the state in the form of legal cynicism (Ryo 2016b, 2017), providing what Justice and Meares (2014) have called – referring to the criminal justice system – ‘a civic education in anticitizenry’.

Conclusion

During the course of this thesis, I have explored how immigration detention as a legal measure of migration enforcement is enacted in ways that give rise to particular spaces, practices and experiences. The implementation of immigration detention is based on a series of assumptions about migration, citizenship and sovereignty, and (re)produces representations of migrants, their desirability and deservingness. Assuming that to achieve a better understanding of what immigration detention *is* and what it *does*, I needed to explore its everyday life and experiences, I chose to adopt an ethnographic approach focusing on a multitude of perspectives both in terms of the actors involved – staff members, detained people, NGOs, migration officers – and data collected – including legal and institutional material, observation of spaces and practices, institutional and individual discourses.

Immigration detention has been described across national contexts as a practice positioned between the administrative and penal fields of state action (Campesi 2020; Fischer and Darley 2010). The use of a criminal type of measure for immigration enforcement is per se an instance of crimmigration (Stumpf 2006). The Swiss context offers a valuable case to study the dynamics of such merging or blurring between criminal and migration law and enforcement. As opposed to the practice within other countries, the carceral nature of confinement is neither hidden nor disguised in Switzerland, and the influence of the penal sphere in the daily practices of immigration detention is particularly visible. In fact, we have seen that the use of ordinary prisons for the purpose of immigration detention is widespread in Switzerland, where immigration detention can be described as institutionally embedded in the penal system.

This thesis has explored in detail how migration control and crime control become blurred in and through practices of immigration detention, where crimmigration has served as an analytical lens to study such blurring. Rather than limiting the focus of the research to the legal aspect, however, I have included institutional and spatial practices as well as experiences and discourses of the various actors involved. Throughout the thesis, I have analysed the dynamics of crimmigration to show how crimmigration law and enforcement operate in practice and with what consequences for individuals, institutions and society.

The use of prisons in many Swiss cantons can be partly explained through federalism, and in fact this is a form taken in several other federal states (the USA or Germany until a few years ago, for example). Even when it is driven by economic or practical concerns, this is not a neutral choice. It is based on and reproduces certain representations of migrants, which this thesis has explored. The political choice to subsume immigration detention to the prison service – the exploration of which would deserve future research – has given rise to hybrid spaces of confinement, incarnating the state's penal and immigration power through the operation of different detention regimes simultaneously. In this conclusion, I would like to summarise some of the main results of the research into the ways in which migration and crime control are blurred in such hybrid spaces of confinement and the consequences of such blurring.

The blurring of crime and migration control in hybrid spaces of confinement

Throughout this thesis, I have discussed the manifold ways in which crime control and migration control are blurred in and through immigration detention. This starts from the legal framework and the arguments that have served for its development. As presented in Chapter 2, discourses on security and criminality as well as on alleged abuses of the asylum system have been important

drivers in the political discourses and parliamentary debates leading to the expansion and toughening of this practice. We have seen how, since its introduction into immigration law in 1986 (although forms of confinement directed at foreigners also existed prior to this date), immigration detention has evolved into a complex framework including eight different types of detention, each detailing the grounds on which a foreign national can be detained. It is interesting to note that, at the legal level, a distinction is made between the aim of detention – to ensure the enforcement of deportation, which presupposes that deportation is possible at least within the maximum term of detention – and the grounds for ordering detention, which include different forms of non-collaboration, abusive behaviour, threat to public order and criminal prosecution.

The merging of categories of crime and migration is also inherent in state bureaucrats' decisions to detain migrants. We have seen how immigration detention, despite being defined and rationalised as a practice of migration enforcement, assumes informal functions related to crime control such as incapacitation and crime prevention (Campesi and Fabini 2020; Leerkes and Broeders 2013). The administrative detention of criminal offenders to facilitate the enforcement of their removal is a formal or informal priority of several cantons (Miaz and Achermann 2021a). This was made explicit during the Spring of 2020, in the midst of the outbreak of the COVID-19 pandemic. While some cantons released all migrant detainees due to the impossibility of enforcing deportations within the foreseeable future – by way of example, the detention centres of Frambois and Favra were reported to be empty in April – a number of cantons explicitly stated that they would release detainees awaiting deportation, except for those with criminal records. This choice was politically and legally legitimised through a different assessment of the principle of proportionality, the state's interest in excluding criminal offenders being considered to be of greater importance than the individuals' right to freedom.

Such blurring of crime and migration enforcement is also particularly manifest at the institutional level. In fact, the most interesting feature of Swiss immigration detention is that in most cantons immigration detention facilities are placed under the cantonal prison service and in many cases subordinated to carceral institutions that are mandated with confining convicted or remand prisoners. Both the Regional Prison of Bern and the Prison of Bässlergut are placed under the cantonal prison service and are denominated 'prisons'. They are managed as prisons and staffed with uniformed prison officers, whose professional identity and socialisation are strongly shaped by penal understandings of confinement, as discussed in Chapter 6. We have seen that the RP Bern was originally a remand prison which also currently confines a lower rate of convicted criminals and immigration detainees, the latter composing one fifth of the total capacity of the prison. The facility of Bässlergut, on the other hand, has modified its name to 'prison' since it started to temporarily confine criminal convicts besides immigration detainees in 2011. Since the facility's expansion terminated in 2019, Bässlergut is composed of two buildings – one for the serving of prison sentences, the other for immigration detention. The new common imposing entrance bears the inscription "*Gefängnis Bässlergut*" (Prison of Bässlergut) in bas-relief and is easily visible from the street, especially by asylum seekers accommodated in the federal asylum centre situated right next to it. The choice of vocabulary and the use of facilities for different forms of confinement associates immigration detention with the penal field. This is a clear example of how institutional practices frame migration as a security issue, modulating an 'insecurity domain' (Huysmans 2006).

The blurring of crime control and migration control is manifest in the resulting spaces of confinement that are of a hybrid nature. The space of the prison is imbued with meaning related to security and punishment, while the contiguity with criminal forms of confinement clearly contributes to obscuring the line between the two. Specific spatial practices also play a key role: the interchangeable use of common spaces such as visiting rooms or the use of a cell for different

detention regimes, for example, create confusion and blur distinctions between criminal and immigration detention. The rotation system of staff between different floors and detention areas, explicitly intended to prevent close relationships with detainees, also has the effect of conflating distinctions between different types of confinement in everyday prison work. Through contiguity with criminal forms of confinement and the reliance on security practices of surveillance, the incorporation of immigration detention in penal prisons frames migration enforcement as a security issue. The use of prisons has therefore the effect of normalising the securitised nature of confinement.

The legal, institutional and spatial blurring of migration and crime enforcement clearly impacts on prison staff's understandings of immigration detention through the lenses of illegality, undeservingness and as a matter of security (see section 6.4) as well as on detainees' perceptions of being unjustly punished and treated like criminal offenders, a principle that they strongly contest (see section 8.3).

Finally, we have seen how measures of crimmigration control are also apparent in the individual trajectories of detainees. As seen in Chapter 7, there are multiple instances of conduct related to migration regulation having resulted in criminal prosecution, as well as examples of more 'traditional' crimes having immigration consequences in terms of revocation of permits and deportation. According to Stumpf (2015), these are two of the key aspects of crimmigration law. Furthermore, we have seen how objectives relating to crime and migration enforcement are sometimes blurred in the decisions of state officials, showing that objectives related to migration enforcement, security and crime control can become conflated in practice. Finally, the use of police powers and criminal enforcement tools for controlling unlawful migration – the third main aspect of crimmigration law according to Stumpf – has been discussed, showing how police practices are based on racial profiling and suspicion about immigration status and criminality. Retracing some migrants' trajectories has enabled us to see how administrative and penal measures can alternate over time and have destructive effects for some of the individuals concerned. I have also discussed the ways in which state officials can threaten migrants with criminal prosecution in order to force compliance with migration decisions, or order immigration detention as an informal sanction to punish uncooperative migrants, despite detention being justified through migration enforcement and not as punishment. The intertwining of administrative and criminal measures within individual trajectories is also illustrative of how crimmigration works in practice, with the different goals and temporalities of the two systems intersecting in ways that are productive of crimmigration experiences.

Crimmigration is usually defined as the merging of criminal law and migration law or the intertwining of crime control and migration control. Rather than a process of *merging* or *intertwining*, the analysis of everyday spaces of detention shows a more nuanced way in which crimmigration manifests itself, consisting in the *blurring* of these different forms of state control. It is such blurring that produces confusion among prison staff, detainees and practitioners in relation to what precisely is sought in immigration detention and why. It is such blurring that allows the creation of spaces of punishment despite defining them as non-punitive. It is such blurring that is productive of representations of migrants as unknown and threatening, representations that participate in the securitisation of migration and render their exclusion more acceptable or even justified.

The logics and specificities of immigration detention

It has been argued that immigration detention has its own internal logics despite displaying many similarities with criminal forms of incarceration (Silverman and Massa 2012). While this thesis has shown such similarities with strong empiricism and has even shed light on the merging of these two forms of confinement in Swiss prisons, it has also discussed the particular ambiguity of this measure in terms of framework and purpose. As opposed to penal imprisonment, immigration detention lacks a clear purpose to be pursued through the experience of confinement. While the serving of a prison sentence has the aim of correcting convicted criminals and preparing them for life after release – a process in which prison employees play an active role – the only formal purpose of immigration detention is to facilitate the enforcement of deportation. The prison administration, however, is in charge of neither organising nor enforcing removals, which are respectively a task of immigration authorities and the police. In other words, the goal of immigration detention is pursued outside the carceral space, with the prison playing the passive role of keeping these people at the disposal of migration authorities, thus becoming a “purely custodial institution” (Campesi 2015: 441).

Following from this situation, we have discussed the consequent biopolitical logic of keeping detainees alive and ‘fit to fly’ as being central to immigration detention. In fact, acts of bodily resistance that put at risk detainees’ physical integrity or threaten to do so are among the most common and disruptive forms of resistance for the detention facilities, which have put in place standardised procedures to prevent and handle these actions. We have also discussed how other logics define the everyday acts of governing detainees, especially those related to discipline that is proper to any total institution but in the case of immigration detention, take forms similar to those of penal imprisonment. In particular, we mentioned the transposition of logics and measures related to security and surveillance on the one hand and discipline and sanctions on the other, from other types of incarceration such as pre-trial and correctional detention.

Such importation of measures from the penal into the immigration control field is constitutive of crimmigration law and enforcement. The crimmigration lens provides further underpinnings to understand what happens within this transposition. According to several observers, the importation of criminal law measures into civil immigration law often occurs without importing the procedural guarantees that are characteristic of criminal law (Legomsky 2007; Stumpf 2006). This is related to criminal law being based on the presumption of membership, which is not a feature of immigration law. Such loss of protective measures is characteristic of the crimmigration process and is well reflected in practices of immigration detention and particularly through the lack of systematic legal representation in immigration detention procedures as opposed to criminal forms of detention which give right to legal representation at the latest after ten days of detention (Businger 2015). As opposed to penal procedures, legal assistance in immigration detention is not conceived of as a right, but is provided within a humanitarian perspective from NGOs palliating to such a gap. Legal advice and representation, however, are not accessible to all detainees, who often remain without options in terms of legally contesting the discretionary decision to detain them. Furthermore, the leeway of NGOs providing legal advice is limited by the system in which they operate and their need to collaborate with state authorities, running the risk of co-optation.

The everyday experiences of detainees and prison staff having been one of the main foci of this thesis, I want to provide an overview of the most significant aspects related to immigration detention. In terms of many of these aspects, the experience of immigration detention is very similar to that of imprisonment. Detention being an intrinsically spatial practice, it functions through confinement and enclosure, depriving detainees of choices and opportunities and isolating them

from their families and communities as well as from networks of support. Several material and architectural aspects such as bars, thick doors and locked windows strengthen such feelings of enclosure and oppression. The carceral experience also has a strong temporal component. This is particularly significant in immigration detention, where time is characterised by discontinuity and an alternation of different temporalities. In particular, there are frenetic and stressful moments caused by deportation attempts or incidents occurring in the detention area, which lie in sharp contrast with a daily life characterised by monotony, routine and boredom for both detainees and staff members. Despite the tight daily schedule, life in detention is characterised by a lack of activities for detainees. Even for staff members, some tasks are strictly scheduled while others are rather passive, consisting in being accessible for detainees, watching them and waiting for the need to react. Both staff and detainees experience waiting as well as anxiety deriving from their anticipating potentially disruptive events such as deportation attempts or attempts to self-harm. Time feels out of control for both, and it feels irrational and meaningless for detainees (Griffiths 2014), representing a friction or rupture that puts their lives on hold.

The uncertainty – especially about the future – that characterises the daily experience of detained migrants (Bosworth 2014; Griffiths 2013; Turnbull 2014) has a strong impact on the daily functioning of detention facilities and the work of prison staff, which is characterised by a feeling of insecurity (see also Fischer 2014; Hall 2010). Both staff and detainees' days are shaped by unpredictable events. Some of the most disruptive actions for the prison are detainees' attempts to self-harm, which can be seen as acts of despair, as strategies to avoid deportation or as a way to show dissent and resist the oppressive system of detention and deportation. These actions, challenging the biopolitical rationality of government as already discussed, produce anxiety among staff members (Fischer 2014), who hugely fear suicide attempts. As discussed in section 5.3.2, the measures taken by the institution to handle these cases blur the line between repression and protection. This was especially the case in the RP Bern, where the same cell is used for protecting detainees from self-harm and for punishing renitent detainees. The fact that self-harm can also be understood as an act of resistance further questions the use of protective measures having a punitive aim or effect.

The topic of resistance has been addressed in further detail in Chapter 8 which shows that detained migrants are not merely passive objects of the regime of detention nor of the deportation system. Despite their little room for manoeuvre, detainees often find ways to resist the deportation machine through tactics to avoid their identification and through physical resistance to removal attempts by the police. They also strongly contest their criminalisation, and display a variety of small acts of sabotage and resistance, also involving forms of self-harming as mentioned above. Resisting the deportation regime does not always, however, imply physical or visible resistance to detention practices. On the contrary, it sometimes consists of adapting to the detention regime so as to be able to reach the maximum duration or the moment in which migration authorities will decide that detention is not worthwhile. I have called this behaviour – following Ryan (2015) – 'resilient resistance'. The ability to successfully resist the deportation machine by producing a condition of 'undeportability' (Campesi 2015) and through resilient resistance very much depends on the nationality and situation of the person concerned. In those cases in which a certain degree of collaboration is needed to enforce deportation, immigration detention facilities become "the battleground of their daily resistance against the deportation machine" (ibid.: 448). However, we have seen that resisting the deportation regime can also imply opposing no resistance to deportation itself. In cases such as those presented in section 7.1.2, especially where removals were taking place within Europe, detained migrants can choose to collaborate with their removal in order to shorten

their detention and be able to further move once they have arrived at their post-deportation destination. I have called these ‘strategies of resistant mobility’.

The fragmentation of the deportation system and the central role of the prison

The fact that immigration detention is institutionally placed under the cantonal prison service and in many cases is subordinated to carceral institutions mandated with confining convicted or remand prisoners is not only productive of the ‘cimmigration context’ of confinement, it also has other secondary effects which lie in the delegation of the task of migration control enforcement to institutions placed outside the migration service.

Such institutional separation from the actors in charge of organising and enforcing deportation is highly productive in terms of the functioning of the ‘deportation machine’ (Fekete 2005). Prison officers have no power to detain or release and most of the time have poor knowledge of the individual files and situations of detainees. Yet they are the people who daily rub shoulders with detainees and represent the state’s power to exclude in the eyes of detainees. This is very frustrating for detainees who have numerous questions about their detention and what awaits them when they are incarcerated. At the same time, this situation is fairly comforting for prison staff as it allows them to avoid the responsibility for the situation of individual detainees and their experience of harm. It also allows staff members to use their position strategically, avoiding controversial questions by reminding detainees that they have neither knowledge nor power over their situation and that detainees should make contact with the migration office to clarify their questions.

This delegation of immigration detention to actors of the prison service can be seen as part of an institutional technique of distancing decision-makers from the people about whom they make decisions (Bosworth 2014; Gill 2016). Such distance is not meant in geographical but rather in institutional terms. For detainees, gaining access to migration authorities is neither easy nor immediate, as they sometimes have to wait for days for a conversation following a request.

Such fragmentation is productive of moral distance and a dilution of responsibility (Enjolras 2010; Gill 2016). Those in daily charge of assisting detainees do not feel any responsibility for their situation, while those who have ordered detention, in addition to highlighting that they are only applying the law, neither see nor feel the destructive effects of their decisions on the people concerned. Meeting them for short appointments that can take a conflicting character, the relationship often develops into a hostile one that eases migration officers’ indifference of the plight of detainees.

The institutional separation and the specific nature of immigration detention also results into a situation in which detainees’ actions within detention have little or no influence on their file and future prospect, unless they achieve resistance to deportation attempts. As a consequence, as several staff members pointed out, “they have nothing to lose”. This stands in opposition with the situation of remand or convicted prisoners whose conduct while in detention can significantly impact on their sentence and time of release. Lacking a similar incentive and feeling a profound sense of injustice as well as high levels of anxiety provoked by fear of deportation, immigration detainees behave in ways that are interpreted by prison staff as demanding and arrogant, which is considered as evidence of their inherent bad or immoral character. Immigration detention thus becomes the most challenging detention regime for prison staff.

Situated at the core of the deportation system, prisons operating immigration detention maintain the illusion of not being part of it or being only at its margins. It is precisely this institutional separation that allows the prison to play a key role in the deportation system.

Functions and uses of immigration detention

This thesis has shown that there is an inherent tension or contradiction between the legal purpose of immigration detention being solely the enforcement of administrative decisions related to migration control and its form and experience as inherently punitive. This tension needs a critical examination. The scientific literature has already outlined that as a state practice, immigration detention serves other informal functions besides the official one of ensuring deportation enforcement. According to Leerkes and Broeders (2013), immigration detention also serves functions of deterrence of illegal residence, incapacitation from committing crimes or disturbing public order, and managing popular anxiety by symbolically asserting state control over irregular migration. It has also been argued that detention is “a disciplinary and punitive instrument designed to shape the conduct of a category of migrants in terms of both immigration and crime control objectives” (Majcher and de Senarclens 2015) and forcing them to collaborate with deportation (Campesi 2015).

Analysing the individual trajectories of detainees and how detention has affected them has revealed itself to be a productive way of reading into the aims of state officials in ordering immigration detention. When analysing such trajectories, it is striking that this measure concerns only a minority of rejected asylum seekers awaiting deportation to their countries of origin. In fact, most asylum seekers detained at the time of my field research were being returned to European states under the Dublin Regulation, while many other detainees were either beneficiaries of international protection being returned to European countries, especially Italy, or foreign nationals who had been residing in Switzerland for a long time, mostly with a residency permit that was later revoked or not extended for various reasons, such as a divorce, a criminal conviction or a strong dependence on social aid. The widespread use of detention in Dublin cases forces us to question the legitimacy of immigration detention at all. Rather than a measure facilitating the reallocation of subjects to their ‘proper sovereigns’ (Walters 2002), detention becomes a normalised instrument of asylum seekers’ mobility regulation and part of the asylum procedure. It also shows how such a measure can be used for other objectives than those for which it had been developed. For the authorities, such kinds of removals are often a priority (Miaz and Achermann 2021a) because they are easier to enforce and provide for evidence that they are doing their job.

The use of detention for Dublin cases also contributes to securitising asylum and presenting asylum seekers as abusive, undeserving and representing a security and criminal threat. When used against people returning to Switzerland after having been removed to Italy or other neighbouring countries, detention assumes an even more explicit punitive aspect, being often accompanied by prosecution for illegal entry and the subsequent issuance of a prison sentence. In other cases where detention is extended because removal could not take place without the collaboration of the detainee, approaching the maximum length of 18 months, detention clearly takes the form of punishing non-compliance and forcing the individual into compliance. One specific type of detention presented in Chapter 2, coercive detention, is even rationalised through the detainee’s lack of cooperation which would justify detention because it renders deportation impossible in practice. While the only licit legal aim remains the enforcement of removal, coercive detention evidently has a punitive function.

We have discussed in Chapter 7 that the multiple use of immigration detention to manage different types of non-citizens – asylum seekers in search of international protection, denizens convicted of crime, etc. – is productive of categories of exclusion. In particular, I have argued that the use of immigration detention by state officials is dual: on the one hand, it is used as a means to contain and regulate unwanted forms of mobility such as the mobility of asylum seekers within Europe; on the other hand, it serves to perform the exclusion of unwanted foreign residents, no matter how long they have resided in Switzerland nor how strong their ties to that country. We have seen that in both cases, detention is intended to exert a disciplinary function both on those it directly concerns – forcing them to collaborate with the authorities and deterring them from returning – and on those to whom it might apply, namely every ‘detainable’ person but also a larger population of non-citizens who are reminded of their condition of ‘contingent acceptance’. As ‘tolerated citizens’, they are reminded of the need to respect public order as well as social norms and expectations in terms of their ‘integration’ and financial autonomy, and thus turned into the “guardians of good citizenship” (Anderson 2013: 6).

Effects of crimmigration in terms of stigmatising, criminalising and securitising migrants

Besides participating in the fragmentation of the deportation system, the allocation of space within ordinary prisons for the purpose of immigration detention has a strong effect of symbolic criminalisation (I use the adjective *symbolic* so as not to confuse it with forms of substantive criminalisation, but it is as much *material* as it is *symbolic*). Meeting new detainees during my research, they took great and immediate care to state that they were not criminals, implying that their condition suggested otherwise. In fact, the prison as a symbolic space of punishment attaches a stigma to those detained (and, to a lesser extent, to those working in the prison context, as seen in section 6.1.2). The stigmatising effect of detention on detainees works particularly through their association with criminals, as seen above.

The embodied experience of confinement has effects on detainees’ health and bodies, some of which might be visible even after release, while detainees might also experience continued feelings of incarceration and lack of freedom (Klein and Williams 2012). Furthermore, the fact of having been detained will be visible in a number of documents concerning the migrant, and the people met and habitus learned in detention will often render them identifiable as ex-detainees. Having been detained in a facility denominated a ‘prison’ albeit serving different purposes raises doubts on whether the person was detained under immigration law or criminal law. This also has significant impact on detainees’ networks, visible through many detained men not wanting their family to find out that they were detained or to visit them in that condition so productive of shame.

For detained migrants, detention in prison without any conviction for crime is experienced as part of a broader system of criminalisation that presents them as a threat deserving special attention and security measures. The process of criminalisation starts well before detention. It is visible in police practices based on racial profiling and conflating suspicion related to migration regulations and crime. It is also manifest in the ways in which asylum seekers are handled in semi-closed asylum centres with security systems and personnel as well as in border police practices of fingerprinting and body-searching. Apprehension or arrest is also a moment of material criminalisation, in which migrants are handcuffed by uniformed police staff and transported in police vans in the same ways as criminal suspects.

All these practices work together to ‘sort out’ certain categories of migrants considered as threatening and subject them to enhanced control in a peculiar and contemporary form of

surveillance that Bigo (2008) names ‘ban-opticon’. Both police practices and immigration detention function through preventive modes of control based on evaluation of risk and therefore reinforcing the perception of migrants as a security threat. As discussed in Chapter 4, the securitised nature of the prison space also strongly impacted my own field research. Through their confinement in penal institutions, migrants are constructed as a threat from which the state has to protect society. These practices (re)produce representations of migrants – or certain categories of migrants – as potential criminals and as undeserving outsiders, participating in the securitisation of migration.

As discussed in Chapter 8, such symbolic criminalisation occurring in spaces and practices of detention is strongly contested by detainees, who continuously repeat that they are not criminals, and give rise to a profound feeling of injustice that is articulated through claims that reappropriate the vocabulary of human rights, justice and international protection to qualify themselves as refugees and immigration detention as torture.

Immigration detention as punishment

This thesis has shown that deprivation of liberty is experienced as detrimental but also as punitive, which confirms the observations of various researchers (Bosworth 2013; Bowling 2013; Campesi 2014; Lietaert et al. 2014; Moran et al. 2018). The specific conditions under which it takes place in Switzerland – in a securitised and carceral environment, in co-presence with penal inmates – shape detainees’ understanding of immigration detention as a measure to punish them and deter them from returning. It also reinforces their feeling and claims of being subject to injustice. Through the embodied experience of incarceration and through their encounters with agents of the state – especially migration officers in charge of enforcing their removal – detained migrants strongly feel sovereign (discretionary) power and the state’s efforts to exclude them. In this regard, they attribute an intention to the state, claiming that the conditions were intentionally designed as punitive so as to perform a deterrent effect. The feeling of injustice that ensues from that experience strongly impacts on their reactions to such efforts and their will to comply with the authorities’ decisions.

These perceptions of punishment are hardly surprising, given that prisons “are more powerfully imbued with meaning and less open to polysemic reading than many other types of buildings” (Jewkes et al. 2017: 293). On a symbolic level, their architecture and design, composed of tight corridors, iron doors, bars and locks, strongly convey messages that are related to punishment. Given that people convicted of crime are held in the same facilities and under very similar – sometimes even better – conditions of detention, the statement that immigration detention is neither punitive nor punishment is not credible. Furthermore, I have previously discussed how immigration detention in single cases can blur the official goal of enforcing deportation with informal functions of dissuasion and repression of resistance attempts.

We can conclude that independently from the legal framework that presents it as a non-punitive measure and from the political intentions behind this practice, immigration detention must be understood as punishment in practice, at least in the ways it is implemented within the Swiss context. In his book on punishment, Fassin (2017) denaturalises the nexus of causality and the relation of proportionality that is expected to link crime and punishment. There are crimes not punished and – more importantly for us – there is punishment without committed crime. Criminal law being based on social conventions of what is to be defined as crime, Fassin shows that in the French context (similarly to the USA) criminal enforcement has evolved in a way that reflects the will to target specific categories of people for repression, where repression plays a significant role in the reproduction of inequalities. Given that punishment presumes a relation of alterity or

otherness, the act of punishment creates moral and social distance between those who punish and those who are punished. In the case of migrants detained in view of deportation, such moral and social distance created through punishment participates in the legitimization of exclusion.

The crimmigrant other and the legitimization of exclusion

Bosworth (2013: 158) argues that immigration detention suffers from a ‘legitimacy deficit’ that arises from a ‘gap’ between the operation of its institutions and their purpose. Such a gap “troubles the assumption inherent in much criminological literature that we can understand what custodial institutions are *for* by examining what they are *like* (Crewe 2009)” [italics in original]. This situation means that a constant task of legitimization is needed. In this section, I suggest that as opposed to other national contexts in which legitimacy is sought through hiding the carceral nature of detention and distancing from the vocabulary and conditions of the prison, in Switzerland the embeddedness of immigration detention in the penal sphere of state action performs a legitimising function on such measures of exclusion.

This is well reflected in the discourses of staff members struggling to make sense of immigration detention. We have seen in section 6.4 that prison staff understand immigration detention through four main discourses. First, they understand it through the analogy with imprisonment and the resort to notions of ‘illegality’ that attribute blame or responsibility to the detainee for their condition, detention being seen as a ‘necessary evil’ to handle foreign nationals not complying with the orders of Swiss authorities. Second, immigration detention is understood as occurring at the end of a probatory path in which migrants have proven to be undeserving of the state’s protection or residence right, which turns them into abusers of the asylum or migration system. Third, categories of race, ethnicity and religion are mobilised to make sense of immigration detention in discourses that present detainees as ‘non-members’ who can neither belong to nor integrate into ‘our’ society and are therefore excludable. Finally, they understand immigration detention through the reference to detainees’ alleged ‘unknownness’ which creates suspicion, constructing detained migrants as threatening and potentially dangerous or criminal. When discussing these understandings, I have argued that these are strongly related to the ‘crimmigration context’ in which detention staff work and that they can also be seen as ways to build legitimacy for their work in immigration detention (see also Ugelvik 2016b).

As total institutions, immigration detention facilities have the tendency to erase differences between detainees constructing a homogeneous category of inmates independently from their various stories and backgrounds. The category of ‘immigration detainees’ is a heterogeneous one, as seen in Chapter 7, comprising long-term residents, recently arrived asylum seekers caught in the net of the Dublin system, undocumented workers and foreign criminal offenders and others. These people have little in common except that they are all unwanted foreign nationals whom the state wants to exclude. The merging of these different categories of unwanted migrants in a context that blurs categories of crime and migration is highly productive of a figure of social exclusion that Franko (2020) has named the ‘crimmigrant other’.

The crimmigrant other is a hybrid figure of exclusion defined by foreignness, otherness and an alleged threat posed to security and the moral order, being placed outside the community of value upon which nation-states claim their legitimacy. What defines the crimmigrant other is the special type of penal power to which he (or she) is subjected: ‘bordered penalty’, that combines the state’s power to *punish* and to *banish*. As hybrid civil-penal spaces of confinement conflate these two areas of state power, they are constitutive of the ‘crimmigrant other’, which is also a gendered and

racialised category. The use of penal power allows the connection of exclusion to issues of morality. In fact, the crimmigrant other is a penal subject similar to ‘delinquent’ in that it is his life and not his acts that define him (Franko 2020).

The immigration detainee is the ‘crimmigrant other’ *par excellence*. He is formally not a criminal, but is always suspected to be one. In the imagination of the general public, the detained migrant must have done something wrong to deserve deprivation of liberty and must be a threat to public security in order to be incarcerated. This figure constructs migrants as potentially dangerous and morally dubious, justifying the use of coercion and preventive security measures. According to Franko (2020: 198), “the crimmigrant other becomes a mode of transforming questions of global privilege into a question of criminality and an issue of maintenance of the moral order. He or she becomes a symbolic representation of justified social exclusion”.

Immigration detention is not only a measure of sorting out ‘dangerous’ subjects and controlling their mobility, it is also an instrument for reasserting state sovereignty through the definition and confinement of categories of exclusion that merge categories of alterity, non-belonging and criminality and that are gendered and racialised. While the production of the ‘crimmigrant other’ has the symbolic effect of legitimising the exclusion of unwanted migrants, it is also constitutive of citizenship in that it reaffirms the moral boundaries of the nation and the national order of things. Practices of immigration detention and deportation also remind non-citizens of their deportability and transform them into the ‘guardians of good citizenship’ (Anderson 2013).

A look at the past and a look into the future

In November 2014, immediately after I started my PhD and started to think about studying practices of immigration detention, the Swiss Federal Council mandated an independent expert commission to investigate the use by Swiss cantons of administrative detention as an instrument of social welfare between 1930 and 1981. This had followed a public ceremony held a couple of months previously in Bern, during which Federal Councillor Simonetta Sommaruga had acknowledged the injustice represented by such coercive measures and had officially apologised to the victims. Prior to 1981, administrative detention was a form of deprivation of liberty outside the criminal justice system, used by cantonal administrative authorities to confine persons who did not conform with the expectations of modern society: alcoholics, prostitutes and people considered ‘dissolute’ or ‘indolent’. Between 1930 and 1981, an estimated 20,000 to 40,000 people were administratively detained under a fuzzy legal framework allowing cantonal authorities to deprive them of their liberty on the grounds of perceived immoral conduct or threat to public order (Independent expert commission on administrative detention 2019). The Expert Commission concluded that such confinements were ordered with a very large margin of discretion, leading to arbitrariness, and that the subjects had no legal remedies to oppose such administrative decisions.

The parallels that can be drawn between administrative detention as a measure of the welfare system until 1981 and as a measure of immigration enforcement today are numerous and have probably already come to the mind of the reader. Both are “measures for the deprivation of liberty in a closed facility, with no direct connection to a criminal act, and ordered by decision of an administrative authority” (ibid.: 38). Both employ a wide margin of discretion. Both are situated within a legal hybrid space between criminal and civil law (welfare in one case, immigration law in the other). Both target marginalised groups, trying to manage ‘undisciplined’ subjects who do not conform with the expectations of state and society. Both result in people suffering profoundly and durably from their experience and struggling to understand the justification for their detention. The

following quotation from a conversation between two adolescents administratively detained in a juvenile reform facility in the 1960s, drawn from the final report of the Expert Commission (ibid.: 38), could easily be heard in an immigration detention facility today:

“(...) Are you an administrative detainee? – A what? (...) But I didn’t do anything! I haven’t committed any crime! I was never convicted by a court! (...) – (...) Listen! You don’t have to have a conviction, or commit a crime, to be an administrative detainee. It’s enough if just one person, one of the social services, or a cantonal administration issued a decision”.

I found the same expression of surprise in the reactions of certain immigration detainees I encountered during my research. Another point of convergence between these two forms of confinement is that despite their administrative character, administrative detention in the past – very much like in the present – was often executed in penal institutions, blurring distinctions between criminal offences and deviant or unwanted behaviours.

In an effort to historicise deportation, Walters (2002: 275) has compared contemporary removals with past forms of expulsion such as exile, criminals’ transportation to colonies or transfer of ethnic minorities, noting that during the past centuries there has been a “gradual restriction of expulsion to aliens”. We can argue the same with respect to administrative detention. The abolition of this measure for citizens in 1981 has not been reflected by the same development in immigration law. On the contrary, during the 1980s and 1990s, immigration detention has been institutionalised and is the object of a progressive shift towards a harsher system, especially with the extension of its duration from 30 days to 24 and then 18 months. The abolishment of coercive welfare detention and the replacement with ‘involuntary commitment’ – the use of which is more regulated and which provides for more legal protection – was induced by international pressure to conform to the standards set by the European Convention on Human Rights.

Despite Switzerland not being part of the European Union, the Swiss legal system does not evolve in national isolation. As a state with sovereign power over non-citizens present on its territory, it is also obliged to follow human rights standards and since the association with Schengen/Dublin, Switzerland is also bound to certain dispositions of European law, such as the Return Directive or the Dublin III Regulation. Conformity with the Return Directive already obliged the Swiss government to reduce the maximum length of detention from 24 to 18 months in 2008. In 2018, a delegation of the Council of the European Union visited Switzerland to evaluate the application of the Schengen *acquis* in the field of return policies. In its recommendations, published on 14 May 2019, it recommended – among other things – to “amend provisions of national law, and take immediate measures to ensure that detention for the purpose of removal takes place in practice and as a rule in specialised detention facilities, and that prison accommodation is used only as an exceptional measure, as prescribed by Article 16(1) of Directive 2008/115/EC” (Council of the European Union 2019). The 2014 evaluation had already criticised the formulation of Article 81(2) FNIA, following which, it was decided to amend that article and state explicitly that detention shall take place in detention facilities intended for the enforcement of immigration detention, unless in exceptional cases. As explained in Chapter 2, the newly formulated law article entered into force on 1 June 2019.

On 31 March 2020, the Federal Supreme Court issued a judgement interpreting Article 81(2) and setting higher standards and clearer rules for the administrative detention of migrants in view of their deportation (Judgement 2C_447/2019). Partly based on case law of the European Union Court of Justice, the Federal Supreme Court stated that executing immigration detention in dedicated facilities is an obligation and must be understood as the norm, while separated accommodation in penal institutions must be exceptional, well-motivated and of very short duration (a few hours or

days). If we take this judgement seriously, most of the facilities used by cantons to hold migrants under the FNIA would be highly inappropriate and the detention of a large majority of persons I encountered during my fieldwork would now be unlawful.

It is still too early to see what impact this judgement will have on the national landscape of immigration detention. While carrying out detention in specialised facilities should enable the establishment of more open conditions of detention, the concrete design of facilities and their regimes also very much depends on the representations and assumptions on which they are based. The building of the Zurich airport prison dedicated to immigration detention and the prison of Bässlergut have both been designed specifically for immigration detention, but based on penal architectural and organisational models, which was very much related to dominant political and public discourses in the 1990s that represented asylum seekers as abusers of the system, involved in criminality, and more generally as a threat (Rezzonico 2020). Furthermore, the establishment of such higher standards could also lead to an increase in the capacity of immigration detention facilities, contributing to the normalisation of this measure, while the improvement of their conditions could facilitate its legitimisation. At the same time, such development toward a centralisation and specialisation of detention facilities could open up new possibilities for collective actions to claim and resist detention and deportation.

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Graph 5: Length of detention and enforcement of removal

Graph 6: Capacity and use of different regimes in the RP Bern (2015)

Annexes

Annex 1: Description of the project sent to four facilities



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*Dissertationsprojekt von Laura Rezzonico
Doktorandin NCCR – on the move/Zentrum für Migrationsrecht
Universität Neuchâtel
Juli 2015*

Praktiken, Erfahrungen und Wahrnehmungen der Ausschaffungshaft in der Schweiz

Das vorliegende Dissertationsprojekt ist Teil des von Prof. Dr. Christin Achermann geleiteten Forschungsprojekts „Restricting Immigration: Practices, Experiences and Resistance“, welches im Rahmen des Nationalen Forschungsschwerpunktes NCCR – on the move „The Migration-Mobility Nexus“ durchgeführt und vom Schweizerischen Nationalfonds finanziert wird (siehe <http://nccr-onthemove.ch/home/>).

Ziel der Studie und Forschungsfragen

Die Ausschaffung von MigrantInnen ist ein stark politisiertes Thema in der Schweiz. Dennoch ist nur wenig über die persönlichen Erfahrungen der Auszuschaffenden sowie über das Leben und die Arbeit in der Ausschaffungshaft bekannt. Diese Studie hat zum Ziel, die Praktiken, Erfahrungen und Wahrnehmungen von verschiedenen AkteurInnen, die an der Ausschaffungshaft beteiligt sind (Inhaftierten, Anstaltsangestellte, Anstaltsleitung, externe BesucherInnen usw.), zu untersuchen. Durch eine Ethnographie in zwei bis drei Ausschaffungshaftanstalten zielt das Projekt darauf ab, einen Einblick in den Alltag der Ausschaffungshaft zu erhalten und die Komplexität dieses Phänomens zu erfassen.

Das Dissertationsprojekt interessiert sich insbesondere für drei Bereiche:

- Erstens wird die **institutionelle Dimension** der Ausschaffungshaft in der Schweiz untersucht. Dafür werden die rechtlichen Grundlagen, die institutionelle und räumliche Organisation, sowie die verschiedenen Koordinationsinstrumente auf der regionalen und nationalen Ebene analysiert.
- Zweitens zielt das Projekt darauf ab, das **Alltagsleben in der Ausschaffungshaft** zu erfassen und sowohl die Praktiken von verschiedenen AkteurInnen, als auch die Interaktionen, die in diesem Raum stattfinden, in den Blick zu nehmen. Insbesondere werden in der Studie folgende Fragen gestellt: Wie ist das Leben in der Ausschaffungshaft organisiert? Welche formellen und informellen Normen existieren? Welche Strategien haben die AkteurInnen entwickelt, um mit dem Freiheitsentzug zurechtzukommen? Und wie können die Beziehungen einerseits zwischen der Gruppierung der Inhaftierten und andererseits zwischen den Inhaftierten und den Angestellten beschrieben werden?
- Drittens werden die Perspektiven der AkteurInnen bezüglich ihrer persönlichen **Wahrnehmungen und subjektiven Erfahrungen** analysiert – sowohl der Inhaftierten als auch der anderen beteiligten Personen (Anstaltsangestellte, AnwältInnen, NGOs, SeelsorgerInnen usw.). Insbesondere wird untersucht, wie die betroffenen MigrantInnen ihre Inhaftierung verstehen, wie sie den Freiheitsentzug erfahren, und wie die Anstaltsangestellten die Ausschaffungshaft und ihre Arbeit darin wahrnehmen.

Methodologie

Die Studie stützt sich auf eine Ethnographie in zwei bis drei Haftanstalten und setzt zwei Hauptdatenerhebungsmethoden ein: die teilnehmende Beobachtung und persönliche Interviews.

Teilnehmende Beobachtung: Teilnehmende Beobachtung in einer Haftanstalt durchzuführen bedeutet, an ihren täglichen Abläufen teilzunehmen und in diese Realität einzutauchen, idealerweise in einer intensiven und andauernden Art und Weise. In dieser Studie könnte dies durch eine tägliche Präsenz während ungefähr zwei

Monaten gelingen. Andere, weniger intensive Modalitäten sind ebenso denkbar. Die Forscherin sollte die Möglichkeit haben, Zeit sowohl mit den Inhaftierten als auch mit den Anstaltsangestellten zu verbringen. Hierzu sollte sie auch mit anderen, externen beteiligten AkteurInnen Kontakt aufnehmen. Die Beobachtungsorte sind vielfältig und umfassen z.B. Gemeinschaftsräume, Spazierhöfe und für das Personal reservierte Räume.

Interviews: Interviews werden mit verschiedenen Personen (Inhaftierten, Anstaltsleitung, Angestellten, Behörden, NGOs, SeelsorgerInnen, Besuchervereinen usw.) organisiert. Die Interviews dauern ungefähr eine bis zwei Stunden. Die Forscherin kann falls nötig den Einsatz eines Dolmetschers/eine Dolmetscherin organisieren.

Weitere Methoden: Zusätzliche Methoden, z.B. eine deskriptive Statistikanalyse und Dokumentenanalyse können ebenso eingesetzt werden.

Auswahl der Anstalten: Die Anstalten werden so ausgewählt, dass sie die Vielfalt der Ausschlaffungshaftanstalten in der Schweiz reflektieren. Die jeweilige Grösse, die vorhandenen Haftregime, kantonale und regionale Besonderheiten und die Präsenz von Männern und/oder Frauen werden bei der Auswahl berücksichtigt. Zusatzinformationen werden in anderen Anstalten durch Anstaltsbesichtigungen und Interviews mit den Leitungspersonen gesammelt.

Haltung der Forscherin und Forschungsethik

Respekt und Flexibilität: Die Forschung wird unter den von der Leitung gestellten Bedingungen durchgeführt und die Details werden mit der Anstalt ausgehandelt; die Arbeit der Angestellten und das Funktionieren der Anstalt werden mit Respekt behandelt und so wenig als möglich tangiert.

Zustimmung und Information: Alle InsassInnen und Angestellten werden über das Ziel und die Methoden der Forschung informiert und entscheiden frei, ob sie an der Studie teilnehmen wollen. Eine Infoveranstaltung wird am Anfang organisiert und wenn nötig wiederholt. Die Interviews werden nur mit der Zustimmung der Interviewten aufgenommen.

Anonymität und Datenschutz: Alle persönlichen Daten werden anonym und vertraulich behandelt und die Interviewten werden in den Publikationen unkenntlich zitiert (im Falle von öffentlichen FunktionsträgerInnen: so weit wie möglich unkenntlich). Auf Wunsch können auch die Anstalt und der Kanton in den Publikationen anonymisiert werden. Falls gewünscht, wird ein Datenschutzvertrag abgeschlossen.

Transparenz: Die Ergebnisse der Forschung werden der Anstaltsleitung und den Angestellten bei Interesse vorgestellt und eine Kopie der Dissertation wird nach Abschluss abgegeben.

Kontakte

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Annex 2: Letter sent together with the description (example RP Bern)



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Neuchâtel, 3. Juli 2015

Anfrage betreffend einer wissenschaftlichen Studie in der Ausschaffungshaft

Sehr geehrte

Seit September 2014 arbeiten wir an einem Projekt im Rahmen des vom Schweizerischen Nationalfonds finanzierten Forschungsschwerpunktes NCCR – on the move „The Migration-Mobility Nexus“. Prof. Dr. Christin Achermann ist die Projektleiterin und Laura Rezzonico ist Doktorandin im Projekt. Als Teil dieses Projektes schreibt sie eine Dissertation über ein spezifisches Migrationsthema: die Praktiken, Wahrnehmungen und Erfahrungen bezüglich der Ausschaffungshaft in der Schweiz.

Als Sozialanthropologin interessiert sich Laura Rezzonico vor allem für das alltägliche Funktionieren der Haftanstalten: Welche Akteure beteiligen sich daran, welche Praktiken und welche Interaktionen finden in diesem Raum statt? Und welche persönlichen, subjektiven Wahrnehmungen und Erfahrungen haben die Akteure? Um die Realität der Ausschaffungshaft in der Schweiz zu verstehen, haben wir entschieden, uns nicht nur an einer Perspektive zu orientieren, sondern die Perspektiven von verschiedenen beteiligten Gruppen – Anstaltsangestellten, Inhaftierten, externen BesucherInnen usw. – unter anderem durch Interviews zu erfassen. Eine Teilnahme am Alltag der Anstalt ist aus methodologischer Sicht die beste Art, das Leben und Arbeiten in der Ausschaffungshaft von innen zu verstehen. Im Anhang finden Sie genauere Informationen über die Methodologie und Ziele des Forschungsprojekts, dessen Durchführbarkeit selbstverständlich zusammen mit den Anstalten zu bestimmen ist.

Das Regionalgefängnis Bern wäre aus unserer Sicht aus mehreren Gründen eine spannende Anstalt, um diese ethnographische Studie durchzuführen: Erstens sind dort verschiedene Haftregime in einer Einrichtung vertreten. Die Ausschaffungshaft ist nur ein Teil davon, was möglicherweise bestimmte Herausforderungen darstellt. Zweitens sind sowohl Männer als auch Frauen in Administrativhaft, wohingegen sich in den meisten anderen Ausschaffungsanstalten nur Männer befinden. Drittens ist der Kanton Bern ein interessanter Fall, da er mehrere Ausschaffungsgefängnisse hat und hier offenbar öfters Versetzungen von Inhaftierten stattfinden; dies



SWISS NATIONAL SCIENCE FOUNDATION

The National Centres of Competence in Research (NCCR)
are a research instrument of the Swiss National Science Foundation

erfordert eine bestimmte Koordination zwischen den Anstalten. Insgesamt wollen wir unsere ethnographische Forschung in zwei bis drei Haftanstalten durchführen, die über die Schweiz verteilt sind.

Es ist uns bewusst, dass die Präsenz einer Forscherin einen gewissen Aufwand erfordern würde, obwohl sie persönlich versuchen wird, sich diskret und unauffällig zu verhalten. Wir denken aber, dass eine solche Studie auch für Sie von Interesse sein kann. Die Ergebnisse (natürlich anonymisiert) würden Ihnen vorgestellt werden, was Ihnen und Ihren Mitarbeitenden einen Aussenblick auf Ihre Institution ermöglichen könnte. Ein spezifisches Angebot für die Angestellten (z.B. Weiterbildungen oder Vorträge über das Ausländerrecht, das Asylwesen oder z.B. Interkulturalität) und für die Inhaftierten (z.B. Filmdiskussionen, künstlerische und musikalische Aktivitäten, Sportturniere, Lesungen und andere Projekte) könnte je nach Bedürfnissen und Möglichkeiten durchgeführt werden. In diesem Rahmen verfügt Laura Rezzonico bereits über viel Erfahrung, da sie mit einem Studierendenverein (GESEPI) solche Aktivitäten in der Strafanstalt Bellevue (Gorgier, NE) organisiert hat.

Wir würden uns sehr freuen, mit Ihnen die Möglichkeit, Feldforschung im Regionalgefängnis Bern durchzuführen, während eines persönlichen Gesprächs zu besprechen. Hierfür möchten wir gerne vorschlagen, einen Termin nach dem 10. August zu vereinbaren. Wir werden uns erlauben, Sie in den nächsten Tagen anzurufen, um die Möglichkeit eines Gesprächs zu diskutieren.

Mit freundlichen Grüssen

Laura Rezzonico

Prof. Dr. Christin Achermann

Annex 3: Information sheet for the staff, RP Bern



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Info-Blatt: Eine Studie über die Ausschaffungshaft wird im RG Bern durchgeführt

Wer bin ich?

Ich heisse Laura Rezzonico, ich bin Sozialanthropologin und doktoriere an der Universität Neuchâtel bei Prof. Christin Achermann. Ich bin Mitglied des schweizerischen Forschungsschwerpunktes „nccr-on the move“.



Was mache ich im RGB?

Ich schreibe meine Dissertation über die Ausschaffungshaft in der Schweiz. Ich führe meine Studie in verschiedenen Anstalten durch, eine davon ist das Regionalgefängnis Bern.

Was untersuche ich genau?

- Das Alltagsleben und die täglichen Abläufe der Ausschaffungshaft
- Die Praktiken und Erfahrungen der verschiedenen beteiligten Personen (Inhaftierte, Anstaltspersonal, Besucher, Rechtsberater usw.)

Wie gehe ich vor?

Ich werde Interviews mit den verschiedenen Akteuren durchführen, um ihre Sichtweisen kennenzulernen. Ich möchte auch so viel wie möglich am Alltag der Anstalt teilnehmen und die verschiedenen Abläufe und das Zusammenleben beobachten.

Warum ist diese Studie wichtig?

Die Ausschaffung von MigrantInnen ist ein stark politisiertes Thema in der Schweiz. Dennoch ist nur wenig über die tägliche Realität der Ausschaffungshaft sowie über die persönlichen Erfahrungen der Auszuschaffenden und der Anstaltsangestellten bekannt. Wissensproduktion in diesem Bereich ist darum wichtig und kann zu Veränderungen in der Praxis führen.

Was brauche ich von Ihnen?

Ich würde gerne mit mehreren Anstaltsangestellten und anderen Personen, die im Gefängnis tätig sind, ein Interview führen. Es handelt sich um ein 1 bis 2-stündiges Gespräch, in dem ich Sie über Ihre täglichen Aufgaben und Arbeitserfahrungen befrage und Sie in einer offenen Art und Weise darüber erzählen. Die Teilnahme ist selbstverständlich freiwillig.

Was garantiere ich Ihnen?

Respekt, Transparenz und Flexibilität sind Teil meiner persönlichen Haltung. Die Interviews werden nur mit der Zustimmung der Interviewten aufgenommen und die Daten werden anonym und vertraulich behandelt.

Für weitere Fragen stehe ich Ihnen gerne zur Verfügung:

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Annex 4: Information sheet for the staff, Bässlergut



National Center of Competence in Research –
The Migration-Mobility Nexus
nccr-onthemove.ch



Information: Eine Studie über die Ausschaffungshaft wird im Gefängnis Bässlergut durchgeführt

Wer bin ich?

Ich heisse **Laura Rezzonico**, ich bin Sozialanthropologin und doktoriere an der Universität Neuchâtel bei Prof. Christin Achermann. Ich bin Mitglied des schweizerischen Forschungsschwerpunktes „nccr-on the move“.



Was mache ich im Gefängnis Bässlergut?

Ich schreibe meine **Dissertation** über die Ausschaffungshaft in der Schweiz. Ich führe meine Studie in verschiedenen Haftanstalten durch, eine davon ist das Gefängnis Bässlergut.

Was untersuche ich genau?

- Das **Alltagsleben** und die **Arbeit** in der Ausschaffungshaft
- Die **Praktiken und Erfahrungen** der verschiedenen beteiligten Personen (Inhaftierte, Gefängnispersonal, Besucher, Rechtsberater usw.)

Wie werde ich vorgehen?

Die Daten werden in zwei Phasen gesammelt werden: In der **ersten Phase** (Mai-Juni) werde ich auf die Sichtweise und Erfahrungen der **Ausschaffungshäftlinge** fokussieren. Dazu werde ich Zeit im Spazierhof verbringen und versuchen, dabei mit den Häftlingen ins Gespräch zu kommen. Zudem werde ich Interviews mit Häftlingen (mit Dolmetschern falls nötig) und Gruppenaktivitäten organisieren. In der **zweiten Phase** (September-Oktober) werden die Sichtweise und die Erfahrungen der **Mitarbeitenden** im Zentrum stehen. Ich werde die Mitarbeitenden begleiten und die täglichen Abläufe beobachten. Dazu werde ich mit einigen Mitarbeitenden (die sich freiwillig dazu bereit erklären!) Interviews führen. Ich werde auch andere beteiligte Personen wie Anwälte, Seelsorger, usw. interviewen.

Was bedeutet das für Sie?

In den nächsten Wochen werde ich regelmässig ins Gefängnis kommen. Sie werden mich also oft sehen. Ab August/September suche ich Mitarbeitende, die sich für ein **Interview** zur Verfügung stellen. Es handelt sich dabei um ein ein- bis zweistündiges Gespräch, in dem ich Sie zu Ihren täglichen Aufgaben und Arbeitserfahrungen befrage. Die Fragen werden relativ offen formuliert sein, so dass Sie möglichst frei darüber erzählen können. Die Teilnahme an die Studie ist **freiwillig**. Wenn Sie nicht daran teilnehmen möchten, melden Sie dies bitte der Leitung. Auf diese Weise kann meine Beobachtungstätigkeit so organisiert werden, dass Sie davon nicht tangiert werden.

Warum ist diese Studie wichtig?

Die Ausschaffung von MigrantInnen ist ein stark politisiertes Thema in der Schweiz. Dennoch ist nur wenig über die tägliche Realität der Ausschaffungshaft sowie über die persönlichen Erfahrungen der Auszuschaffenden und der Anstaltsangestellten bekannt. **Wissensproduktion** in diesem Bereich ist darum wichtig und kann zu Veränderungen in der Praxis führen.

Was garantiere ich Ihnen?

Respekt, Transparenz und Flexibilität sind Teil meiner persönlichen Haltung. Die gesammelten Daten werden **anonym und vertraulich** behandelt.

Für weitere Fragen stehe ich Ihnen gerne zur Verfügung!

Bitte kontaktieren Sie mich unter folgender E-Mail Adresse: laura.rezzonico@unine.ch

Annex 5: Information sheet for detainees, Bässlergut (English version)

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Hello. My name is **Laura Rezzonico** and I am a doctoral student at the University of Neuchâtel.

I am carrying out a study on **immigration detention** in Switzerland.

I am looking for detained persons who would like to **talk to me** about their situation.



Would you be interested?

Please register here and give this paper to the prison officers:

Name:

Mother language:

Preferred language for the interview:

A study on immigration detention

Who am I?

My name is Laura Rezzonico, I am a social anthropologist and a doctoral student at the University of Neuchâtel.



What am I doing in Bern regional prison?

I am carrying out a study on immigration detention in Switzerland. I am interested in understanding the experiences of detainees as well as of prison staff and other involved persons.

What subject would I like to discuss with you?

- The daily life in detention
- Your specific situation
- Your personal experiences in detention

What will the interview be like?

The interview will last between 1 and 2 hours. I will ask you some open questions. You could tell me about everything you want. If you agree, I would like to record the interview. Otherwise, I will just take notes.

In which language will the interview take place?

You can speak English, German, Italian, French or Spanish with me. If you would prefer to talk in another language, I can organize the presence of an interpreter.

Why should you participate to this study?

Many people in Switzerland know very little about immigration detention and cannot imagine what it is like to be detained. Therefore, your contribution is important in order to let people know about life in immigration detention. Your participation is voluntary. There is no reward and I can unfortunately not help you to change your legal situation.

What do I guarantee to you?

Everything you will tell me will be handled anonymously and confidentially. It means that: a) your name will not appear in the publications; b) it will not be possible to relate your statements to you; c) the prison staff will have no access to the content of the interview.

Annex 6: Information sheet for detainees, Bässlergut (English version)

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on the move



Information: a researcher in Bässlergut



Hello. My name is **Laura Rezzonico** and I am a doctoral student at the University of Neuchâtel.

I am carrying out a study on **immigration detention** in Switzerland.

During the next weeks I will come frequently to the Bässlergut prison. I would like to **observe** how the **daily life and work** in immigration detention look like.

You can freely decide if you want to participate in this study or not. If you don't want to participate, you can say it and I will **respect your decision**.



You can speak English, German, Italian, French or Spanish with me. If you would like to participate in this research but you can't speak these languages, you can announce yourself for a personal interview which will be organized with the **presence of an interpreter/translator**.

You will find **more information** about the research in the next page. For any other information, please ask me directly when you see me.

Who am I?

My name is Laura Rezzonico, I am an anthropologist and a doctoral student in social sciences at the University of Neuchâtel.



What am I doing in the Bässlergut prison?

I am carrying out a study on immigration detention in Switzerland. I collect part of the data in Bässlergut. I am particularly interested in the daily life in detention and the experiences of detainees as well as of prison staff and other involved persons.

What does it imply for you?

In the next weeks, I will come regularly to the Bässlergut prison. That means you will often see me. However, you are not forced to talk to me. You can freely decide if you want to participate in the study or not.

How can you participate in this research?

You can participate in the research in different ways. Between May and September I will spend time in the courtyard, where you can get in touch with me. You can also announce yourself for a longer personal interview. This interview will take place in another room, with an interpreter/translator if necessary.

Which subjects would I like to discuss with you?

- The daily life in detention
- Your specific situation
- Your personal experiences in detention

What can I do for you?

Unfortunately, I can't help you to change your legal situation. The only thing I can do is listening to you and create moments of dialogue and exchange.

Why should you however participate to this study?

Many people in Switzerland know very little about immigration detention and cannot imagine what it is like to be detained. Therefore, your contribution is important in order to let people know about life in immigration detention.

What do I guarantee to you?

Everything you will tell me will be handled anonymously and confidentially. It means that: a) your name will not appear in the publications; b) it will not be possible to relate your statements to you; c) prison staff will have no access to the content of the interview.

Annex 7: Examples of interview guides

Ich:	Bedanken. Doktorandin in Sozialwissenschaften, Unine
Projekt :	Forschungsprojekt an der Unine, Teil des nccr-on the move (finanziert SNF)
Diss:	Ziel zu verstehen, wie die Administrativhaft in der Schweiz funktioniert und welche die Sichtweisen der verschiedenen beteiligten Personen (Angestellten und Inhaftierten,...), ihre Wahrnehmungen und Erfahrungen sind.
Interview:	Ziel des Interviews: zu verstehen, worin deine Arbeit besteht, welche Aufgaben du hast und welche persönlichen Erfahrungen du im RG Bern gemacht hast. Ich möchte heute allgemein über deine Arbeit reden und nicht nur über die Ausschaffungshaft. Ablauf: Ich habe einige Fragen vorbereitet, die ich dir gerne stellen würde. Diese Fragen dienen vor allem dazu, um das Gespräch anzuregen. Offene Fragen. 30. Die Reihenfolge ist flexibel und die Konversation kann auch andere Themen behandeln als die, die vorgesehen sind. Einfach ein Gespräch. Dauer: Anderthalb St. bis max. 2 St. Vorgesehen. Ok für dich? Das Ziel ist eigentlich, dass du von deinen persönlichen Erlebnissen erzählst. Du kannst deine persönliche Meinung geben. Du vertretest die anderen Angestellten nicht, du sprichst jetzt nur für dich. Wichtig: ich möchte deine berufliche Erfahrung verstehen, und auf keinen Fall deine Arbeit oder das Gefängnis bewerten. Aufnahme: Wenn kein Problem, Aufnahme. Das würde mir erlauben, zu dem, was Sie gesagt haben, zurückgehen zu können, ohne mich zu irren, und während des Interviews nicht alles aufschreiben zu müssen. Das würde auch das Gespräch angenehmer machen. Datenverarbeitung: Die Daten werden anonym und vertraulich behandelt. Falls ich ein Zitat von diesem Gespräch für eine Publikation benutzen würde, dann wird es anonym sein und werde ich versuchen, dass du unerkennbar bist. In deinem Fall (Leiterin) wird es aber nicht immer möglich sein. Dafür ist folgendes wichtig: Falls du etwas erzählen möchtest, von dem du auf keinen Fall willst, dass irgendjemand es mit dir in Verbindung bringen kann, dann sagst du dies bitte während des Gesprächs. Ich kann in diesem Fall die Aufnahme abbrechen und eine solche Aussage werde ich keinesfalls als Zitat verwenden. Der Inhalt des Interviews wird nicht für Drittpersonen zugänglich sein, zum Beispiel für die Anstaltsleitung. Nur meine Betreuerin Prof. Christin Achermann und meine Kollegin Jana Häberlein werden Zugang zu der Transkription haben. Andere: Du darfst selbstverständlich diejenige Fragen, die dir nicht gefallen, nicht beantworten. Du darfst auch jederzeit entscheiden, das Interview abzubrechen. Ich bitte dir, keine Vor- und Nachnamen der Inhaftierten während des Interviews zu erwähnen, so dass sie besser geschützt sind. FRAGEN (Ablauf oder andere)? Anfangen – Aufnahmegerät einschalten

