

## **Theorizing Irregular Migration: The Control of Spatial Mobility in Differentiated Societies**

Martina Cvajner and Giuseppe Sciortino  
*European Journal of Social Theory* 2010 13: 389  
DOI: 10.1177/1368431010371764

The online version of this article can be found at:  
<http://est.sagepub.com/content/13/3/389>

---

Published by:



<http://www.sagepublications.com>

**Additional services and information for *European Journal of Social Theory* can be found at:**

**Email Alerts:** <http://est.sagepub.com/cgi/alerts>

**Subscriptions:** <http://est.sagepub.com/subscriptions>

**Reprints:** <http://www.sagepub.com/journalsReprints.nav>

**Permissions:** <http://www.sagepub.com/journalsPermissions.nav>

**Citations:** <http://est.sagepub.com/content/13/3/389.refs.html>



European Journal of Social Theory

13(3) 389–404

© The Author(s) 2010

Reprints and permission:

sagepub.co.uk/journalsPermissions.nav

DOI: 10.1177/1368431010371764

est.sagepub.com



---

# Theorizing Irregular Migration: The Control of Spatial Mobility in Differentiated Societies

**Martina Cvajner and  
Giuseppe Sciortino**

*Università degli Studi di Trento, Italy*

## Abstract

This article claims that the study of irregular migration may be a strategic research material for the development of an adequate understanding of contemporary society. The field, however, suffers not only from a lack of reliable empirical data, but also from endemic undertheorizing. The article shows how the attempt to develop an understanding of irregular migration from within a general theory of modern society has positive consequences both for the clarification of the problems and for the design of research programs able to deal adequately with the phenomena. Particularly, it is argued that a theory of modern society centered on its form of differentiation may help to clarify both the political dimension of contemporary international mobility, the variety of irregular statuses existing in the foreign population of receiving countries, and the condition of inclusion and exclusion of irregular migrants.

## Keywords

borders, differentiation theory, immigration controls, irregular migration

Wir aber wollen über Grenzen sprechen,  
Und gehn auch Grenzen noch durch jedes Wort;  
Wir werden sie vor Heimweh überschreiten  
Und dann im Einklang stehn mit jedem Ort  
(Ingeborg Bachmann, 1956)

---

## Corresponding author:

Giuseppe Sciortino, Dipartimento di sociologia e ricerca sociale, U. Trento, Via Verdi 26, 38122 Trento, Italy.

Email: [giuseppe.sciortino@unitn.it](mailto:giuseppe.sciortino@unitn.it)

Irregular migration is a fairly recent phenomenon. The very same meaning of it would have been unthinkable two centuries ago; the basic juridical apparatus necessary to classify systematically international mobility in terms of a legal/illegal distinction is less than a century old (Plender, 1972; Ngai, 2004).

The spatial mobility of subordinates has always been a political concern for a variety of ruling elites and the whole history of political power is full of cases of unwanted, undesired, unexpected or unaccepted population movements. The idea that such movements should be considered primarily in terms of their having complied, or failed to comply with a certain set of abstract regulations is, however, new.

The notion 'clandestine' points towards a specific aspect of migration and appears for the first time in the nineteenth century. It is, however, nothing but an administrative term, a theoretical possibility or a trivial nuisance.<sup>1</sup> Among historians, there is still disagreement if the first use of the concept was made in the Soviet Far East in the 1920s (with reference to Korean and Chinese migrants) or in 1930s Palestine (with reference to Jewish migration). There are even historians claiming that for the first systematic use of the concept we have to wait until the 1950s in the US (with reference to Mexican migration).

The historical novelty of the concept highlights its extraordinary success. In a short time span, the distinction between regular and irregular migration has become pervasive, both in everyday practice and in political debates. This distinction has become the most prominent one in the policy debate and subsumes previous qualitative distinctions concerning immigration. Since the recruitment stop of the early 1970s in Europe, the intake of most new immigrants has happened in an unplanned and often unwanted manner. Slowly, a large set of interpretative frames, stereotypes, folk wisdom, icons and slogans accumulated, making irregular migration part of a complex symbolic discourse. The issue of irregular migration has produced political heat in several European countries. Along the years all unwanted flows, even those rooted in legal loopholes or in specific constitutional provisions, have been codified as irregular and, increasingly, as illegal. A growing number of undesired political outcomes are interpreted by European elites as a consequence of their failure to deal effectively with irregular migration. This notwithstanding, the study of irregular migration is heavily under-theorized and unable to provide a satisfactory analysis of the dynamics and structural significance of this form of spatial mobility (see first section). In this article, we show how the attempt to develop an understanding of irregular migration from within a general theory of modern society has positive consequences, for both the clarification of the problems and for the design of research programs able to deal adequately with the phenomena (see second section). In particular, we will argue that a theory of modern society centered on its form of differentiation may help to clarify both the political dimension of contemporary international mobility (third section), the variety of irregular statuses found in the foreign population of receiving countries (fourth section) and the condition of its inclusion and exclusion (final section).

## **Theorizing Irregular Migration**

The significance of irregular migration as a topic has not been matched with the development of an adequate conceptual and empirical framework. On the contrary, for

decades, researchers have complained that a thick fog surrounds the whole topic and that debates on the issue quickly became dialogues among the deaf (Portes, 1978; Dedecker and Slimane, 1991; ICG 1995; Miller, 1995; Ghosh, 1998; Cinar et al. 2000; Jordan and Duvell, 2002; Black, 2003; de Haas, 2007). It has been even argued that most current policy-oriented European research on the topic would not be acceptable as a term paper in any decent graduate school (Sciortino, 2004).

It is often claimed that such a state of affairs is contingent upon the methodological difficulties of the subject. The limited understanding of irregular migration systems is said to be caused by the lack of adequate empirical evidence.<sup>2</sup> This claim is, however, hardly convincing: there is no reason to assume that (reasonably) sound empirical evidence on irregular migration cannot be produced. Actually, in many cases such evidence has already been produced (Singer and Massey, 1998; Blangiardo and Rimoldi, 2002; OECD, 2002; Massey and Capoferro, 2004; Engbersen, van San et al., 2006).

Some powerful actor, interested in muddying the waters to protect its vested interests, might otherwise be blamed for the lack of an adequate knowledge of the phenomenon. Recently, attention shifted from political economy (Portes, 1978; Freeman, 1994) to the legal system, the judiciary (North 1991; Cornelius et al., 1994) and included civil society and the NGO world (Augustin, 2007). Chosen by most critical theorists finally, there is always the short-cut option to refrain from both description and analysis and go directly to a political – and increasingly moralistic – evaluation that adopts fully externalist abstract criteria (Agamben, 1998; Rajaram and Grundy-Warr, 2004).

With the benefit of hindsight, it is easy to conclude that, albeit highly popular, none of the aforementioned strategies is able to provide a satisfactory conceptual framework able to deal with irregular migration. Those who choose the above-mentioned options are easily satisfied with very little, wasting a wonderful opportunity to turn irregular migration into a strategic research material (Merton, 1987).

The main stumbling block in the development of an adequate understanding of irregular migration is the current failure to differentiate research from both the policy-oriented ‘social problems’ tradition and the agenda of humanitarian and activist intervention. The current state of the research on irregular migration in Western Europe is above all a consequence of a lack of theoretical ambition (Bommes, 2003). In the following pages, we will try to document, *in corpore vili*, how a more theoretical approach to irregular migration, able to locate the latter within a general theory of modern society, can contribute to highlight a set of well-defined problems as well as to clarify some well-known intellectual puzzles. To do so, we have chosen – out of the rich smorgasbord of social theory – to develop an analysis of irregular migration rooted in an understanding of modern society as functionally and structurally differentiated. While we obviously think that differentiation theory has definitive advantages over the available alternatives, we wish to state our aim is to trigger a healthy theoretical competition, not to worship our chosen theoretical framework.

## Differentiation Theory and Migration Studies

The idea that modern society has to be defined by its peculiar form of functional and structural differentiation is indeed a very old one. It may be traced back easily to

Durkheim's *De la division du travail social* or Max Weber's *Zwischenbetrachtung*. In its contemporary usages, differentiation theory is usually – but not necessarily – associated with the functionalist tradition (Alexander and Colomy, 1990; Sciortino, 2008). The basic idea of this approach is that contemporary society has no head, no base and no center, but is articulated in a plurality of specialized subsystems that have their own set of symbolic codes, leading values, operational programs and regulative means. These subsystems do not have empirically differentiated actions, but rather differentiated interpretations and communications filtered by functional codes (Luhmann, 1982b, 2002). Whatever happens acquires a meaning only when resonating with the observational and operational codes regulating the operations within each subsystem. As a matter of fact, everything that happens may be processed by law in terms of lawful or unlawful, by economy in terms of having or not having possibilities to pay, by art in terms of beautiful or ugly, by science as true or false. Nothing keeps all these systems together in any special way and none of them may – in contemporary society – claim any special superordinate status. Each of these systems treats the rest of society as its environments.

Two general implications of such a vision are worth stressing: first, accepting that specific structural asymmetries may be empirically discovered, it radically eliminates any vague possibility of structural determination, even 'in the last instance' kind. Second, as there is no overall coordinating mechanism, all subsystems are at the same time autonomous and heavily constrained by (what they perceive as) the externalities of other subsystems. Finally, a differentiated society has no pre-defined role for the individual, no generalized criteria to prescribe the good life for him/her, nor any single special social relationship which the individual's status may be thought to depend upon.<sup>3</sup> To define contemporary societies in terms of its differentiation has interesting implications for the ways in which the dynamics of irregular migration may be conceptualized and investigated.

Before entering the discussion, it may be useful to stress that differentiation theory has – in migration studies – a very limited recognition. Since the same applies to almost all sectors of social theory, this is not surprising. Most advocates of differentiation theory recognize its limited diffusion, originating both in theory-construction problems and in the preferences embedded in the market for social theories. Once this is acknowledged, however, it may be worth stressing that differentiation theory is not a novelty either. Such a framework has been creatively used to investigate the relationship between spatial mobility and the dynamics of the welfare state (Bommes and Geddes, 2000), the uses of expert knowledge in migration policies (Boswell, 2008), the reasons for the lack of correspondence between societal interests and immigration policy outcomes (Sciortino, 2000), the coexistence in migration flows of transnational activities and assimilation processes (Bommes, 2005), the difficulties of EU migration policy (Boswell, 2008), the developmental presence of cultural segmentation in differentiated institutions (Alexander, 1990) and even some reasons for the limits of legal action in ensuring equal opportunities (Mayhew, 1968). In other words, enough work is being done to be sure that differentiation theory, albeit within a limited niche, can positively contribute to the development of a satisfactory debate on migration issues. In this spirit, our aim is to extend the uses of such a framework in dealing with two key topics in the study of irregular migration: the structural origins of irregular migration systems, rooted in

the mismatch between the international system of states and the complex set of factors governing human spatial mobility; and the micro analysis of irregular migrants strategies.

## **Beyond States and Markets: Territorial Borders and the Making of Irregular Flows**

For differentiation theory, society does not to be identified with political units such as nation-states: the boundaries of modern societies are the boundaries of communications that may differentially be codified by functional subsystems.<sup>4</sup> It implies that the only convincing societal reference is world society (Luhmann, 1982a). Differentiation theory thus largely escapes from the recent criticism of contemporary social theory as still marked by methodological nationalism (Wimmer and Schiller, 2003). Differentiation theory, moreover, assumes that each subsystem develops its operations according to its code and to the evolutionary possibility. It does not consequently assume that the 'national' scale is more 'basic' or 'normal' than any other. In this sense, it may easily acknowledge the kind of social relationships highlighted by transnational theorists (Bommes, 2005). In comparison to transnational theorists, however, differentiation theory has no need to interpret the existence of significant transnational relationships as an epiphany of a structural crisis of the nation-state, even less of its impending collapse. Indeed, it does not even need to present them as new: differentiated (modern) society has never functioned on the basis of a complete territorial alignment of the conditions for participations to all functional subsystems. Much of what is usually defined as transnational in international migration is actually quite an old phenomenon (Kivisto, 2001).

Differentiation theory starts from the assumption that world society is functionally differentiated, but that each subsystem has its own form of internal differentiations. Some systems, such as economy or science, differentiate in a way that weakens the significance of territorial distance. In a market economy, economic action converts territorial distances into prices; science capitalizes on the universalism of discovery,<sup>5</sup> whereas the political system differentiates segmentally, through the establishment of territorial borders separating states that are assumed to be homologous in their activities and aims (Luhmann, 1982a).

Within this territory, the capacity to deal with any problem is a basic expectation of the functioning of modern states. Consequently, within world society, there is a structural friction between the operations of subsystems working accordingly to different logics. While the development of some subsystems triggers or facilitates human mobility towards the areas where there is the highest clustering of positive life-chances, other subsystems are embedded in stable territorial distinctions between insiders and outsiders and entrusted with the task of regulating the impact on insiders of anything coming from outside. In other words, the processes supporting international migrations are transnational in scope, while the treatment of the externalities of the process is entrusted to territorialized political systems. Open economies and transnational networks produce consequences that are to be dealt within the framework of bounded polities. Even if it is not clear how much policies may actually regulate the flows, there is a generalized

expectation made on states to intervene effectively in transnational movements in the interest of insiders (Castles, 2004).

As regional inequalities in the world economy have markedly grown since the industrial revolution reaching an all-time high in the past thirty years (Maddison, 2001), migration flows have become increasingly patterned by a limited number of large-scale migratory systems linking territories characterized by a rich availability of various kinds of life-chances with specific sending areas (Massey et al., 1998; Manning, 2005). Given this configuration, receiving states have found themselves in a functionally very similar situation. As Aristide Zolberg observed more than a decade ago:

Although considerable attention has been devoted to variation among the contemporary immigration policies of capitalist democracies, the most striking fact about them is that, if one imagines a hypothetical continuum ranging from open to closed borders, they are all clustered very narrowly around the closed pole. (Zolberg, 1999)

If seen against the background of the growing demand for admission, border controls seem to be quite effective in regulating the access to the most privileged clusters of opportunities, preserving the privilege of natives. Control policies are also quite powerful in selecting among different streams of irregular flows, as the re-orienting of flows in Western Europe – toward the East-West direction and away from the Mediterranean – testifies (Cvajner and Sciortino, 2008). The effectiveness of political controls of global spatial mobility is potent but, however, limited. The functioning of other subsystems does reinforce the incentive to migrate even when immigration controls try to discourage it. And migration flows often acquire, within limits, a self-sustaining dynamics somewhat independent from the attempt at policy steering (Massey, 1999).

The development of irregular migration systems is rooted in the structural mismatch between the social and the political conditions for migration. For an irregular migration flow to develop, there must be a mismatch between the demand for entry, embedded in the international labor market, and the supply of entry slots, determined by the political systems. In the sending context, there must be a mismatch between widespread social expectations (usually called ‘push’ factors) and the capacity of local government to satisfy or repress them. In the receiving context, there must be a mismatch between the internal preconditions for migration (usually called ‘pull’ factors) and their interpretation within the political system. Transnationally, there must be a mismatch between the carrying capacity of the migration infrastructure and the monitoring and repressive capacity of states (Pastore et al., 2004). Irregular migration systems may be in fact defined as an adaptive answer to these mismatches.

Defined in such a way, it becomes clear that the development of an irregular migration system is never only the consequence of the control weaknesses of states. States’ claim of control over a territory is just a claim with various, but never complete, degree of implementation. The policies enacted by the state are only one factor in the establishment of a migratory system. Strong mechanisms of control fail once the opportunities to be gained through migration are strong and social preconditions for migration are amply fulfilled (Massey et al., 1998). Weak or fragmentary control policies may, however, be effective, when and if the demand for entries is scarce and limited or when other

options are more attractive. In other words, the relationship between migration flows and migration policies is not a matter of unilateral determination.

## **Immigration Control in a Differentiated Society: the Hierarchy of Irregular Statuses**

Critical theorists tend to define irregular migration only in relation to political will: the result is the description of a migration regime where at the bottom lies an undifferentiated category of excluded individuals, defined only by the denial of the membership privileges (Rajaram and Grundy-Warr, 2004). Such definition, however, would be useful only if political power was the only – or the superordinate – organizing principle of social interactions. This theoretical shortcoming produces two debilitating weaknesses: it adopts the Western self-description of the political system and renounces any attempt at understanding how it is possible, if such self-description is correct, that in Western Europe hundreds of thousands – maybe millions – migrants may live and manage their irregular status for years without significant problems, most of the times thanks to the systematic self-restraint exercised by democratic liberal states.<sup>6</sup> If the irregular migrant is defined as a *homo sacer*, how is it possible that hundreds of thousands of migrants treat their condition as a practical problem to be managed according to a logic of expediency?

From our point of view, it is correct to define irregularity as a specific relation to political power. The adjective ‘irregular’ does not belong to the descriptive domain of whole migration flows, but only to their interactions with states’ actions. As matter of fact, irregular migration is a case where Saint Paul is perfectly right: *where there is no law, neither is there violation* (Romans, 4:15).

States may, with a single stroke of a pen, turn hundreds of thousands of irregular migrants into legal foreign residents, as it has happened so many times in the recent past with the enactment of amnesties. Similarly, legislative reforms may turn previously semi-regular residents into irregular migrants, as it happened in many European countries to many foreign Jews through racial laws and to numerous *sans papiers* with the French immigration reform of the 1980s. Irregularity is first and foremost a juridical status that entails a social relation to a state (de Genova, 2002). However, this does not imply that the scope and impact of such status can be directly derived from the normative description of such a relationship. In a differentiated society, the states’ attempt to define *who* is the irregular foreigner takes place within a variety of constraints, produced both by the externalities of other subsystems and by the internal structure of the state’s organization. Irregular migrants are actually part of a very complex social stratification of statuses and situations through which substantial processes of social mobility – both upward and downward – are frequently recorded. As a matter of fact, irregular migrants are not members of an undifferentiated category: they are placed in a variety of social strata defined by very different social conditions. As we will see, some strata are made possible by the differentiation between political and legal systems; others by the relationships between each segmented political system and its environments, including both the consequences of other functional subsystems and the action of other political units.

The differentiation between legal and political systems is particularly conspicuous in the higher strata of the stratification. These are composed by migrants who are protected



from the repressive action of states by rules, constitutional and international, that the very same states have introduced (Joppke, 1999; Hollifield, 2006). This is the case of the asylum seekers that, according to the Geneva Convention, may not be held responsible for a clandestine entry even by states that consider it a crime. The flows of asylum-seekers, the main goal of the alleged 'control crisis' of the early 1990s (Cornelius et al., 1994), were dramatically curtailed by the restrictive reforms of the EU in the 1990s. Still, the number of asylum-seekers is sizeable, and most of them file their application when already on the territory, often after a considerable spell of time. As part of a remedial strategy, it is not unusual that the application is filed only after the migrant has been caught by the police. Similar considerations apply to migrants deserving humanitarian protection or shelved from coercive deportation by the *non-refoulement clause* of the Geneva Convention or by constitutional provisions. Again, there is evidence that such norms are often interpreted restrictively. Still, the figures say that in Western Europe there is a sizable number of migrants under humanitarian protection that, no matter if they comply or not with the regulations, are effectively protected from deportation.

A second set of mechanisms operates through the hiatus between the self-description of a sovereign power and the mundane reality of the actual organizational configuration of the state, embedded in a field where many other organizations operate. Seen as an organization, any state has procedural difficulties, pragmatic weaknesses and outright inefficiencies. Although these organizations may vary in terms of the effectiveness and efficiencies of their administrative infrastructure, all states operate through triage, postponement and issue avoidance. Moreover, the very same scope of modern states' operations creates a structural conflict among different policy priorities, immigration control being just one of many. Contrary to widespread belief, in the current practice of Western European states, immigration control is often a low priority: if there is a Fortress Europe, it is a fortress badly in need of maintenance, where a variety of foreign policy considerations takes precedence over the repression of irregular entries (Geddes, 2000; Finotelli, 2007). This is the precondition for the existence of several other strata of irregular migrants: they are protected not by the interaction between the political and the legal system, but rather by the configuration of the political system itself. This is the case of overstayers, semi-legal migrants and migrants easy to detect but difficult to deport.

A large number of irregular flows are made of migrants who enter the country legally by using a tourist visa or moving from countries where no visa is required. As a matter of fact, albeit maritime entries across the Mediterranean fit perfectly the requirements of news-making, tourist visas are the largest channel used by irregular migrants to enter the Union (Morawska, 2001; Finotelli and Sciortino, 2006; Monzini et al., 2006). The same practical operational limitation is at the root of the condition of those migrants who have a legal identity based on the rarity of substantial controls. A large portion is constituted by migrants who have legal identities thanks to documentation that, if checked substantively, would imply the loss of the legal status. We find here migrants married to people they hardly know, workers paying directly retirement contributions for fictional employment contracts, self-employed migrants declaring a higher income to match the conditions for family-reunifications, newly arrived migrants using the documentation of legal migrants who have returned home or moved to a third country. This segment is preconditioned by both migrants' mimetic attitude and the knowledge that in substantial terms documentation

controls is a comparatively rare event. Finally, the operational limits of states' action enable the stay of migrants who are easy to identify but difficult to deport – a fact that is a well-known secret among the European police forces. Those are the irregular migrants whose deportation would involve costs deemed too high in financial, diplomatic or organizational terms. These costs are contingent upon the resistance strategies of the migrants themselves, such as destroying documents, using multiple identities and performing credible threats about making trouble during the trip. These strategies, however, work only because they take into account the consequences of the segmental differentiation of the international political system. Even if in international law deportation is a very discretionary act, a very Westphalian power indeed, in practice, deportation requires some degree of collaboration from transit and sending countries that cannot be taken for granted. The overall number of deportations that appear regularly in newspapers have in fact a very high internal variance if broken down by country of origins.

At the bottom of the irregular hierarchy there are only those migrants who have a low social and economic capital. These are the migrants who move to a country where they cannot rely on kinship members, who have little updated information and few and weak contacts, who cannot afford reliable brokers, who rely in their survival strategies on philanthropic institutions and random encounters. It is a comparatively small segment, but highly visible (Diminescu, 2003). It provides the bulk of the irregular migrants identified during clandestine border crossings, they appear frequently in the news and they are highly over-represented among the migrants identified and deported. Having to rely more often on the philanthropic infrastructure, such a segment is easier to contact as well and thus over-represented among informants for qualitative research and among interviewees for social reporting. This may explain why the image of the irregular migrant in many analyses is strongly biased toward the atomistic careers of this kind of irregular migrants.

## **Inclusion and Exclusion: Survival Strategies in Differentiated Societies**

A further implication of a differentiated society is the dissolution of any generalized criteria for inclusion or exclusion from society, as well as the dissolution of any idea of 'total' social membership. Modern society is consequently not characterized by the inclusion of some people and the exclusion of others, but rather by a generalized possibility of societal inclusion accompanied by the existence of a plurality of irreducible criteria that define the conditions for inclusion or exclusion from the operations of specialized subsystems.

Applied to irregular migration, this means that an immigrant's legal status is significant, indeed relevant, only when and if – and to the degree to which – the legal reality constrains the relationships and actions of the actor (Coutin, 2000). An irregular status acquires different meanings regarding the amount and types of transactions where the legitimate residence of the transaction's partner may be considered significant: it is very low in the case of many daily life interactions and for many types of consumer actions, it is fairly widespread in its access to many utilities and markets, it is often endemic in the access to housing and labor markets, it is exclusive in the case of political rights and access to the means of legitimate movements.

Sociologically speaking, the most interesting feature of irregular migration is the evidence it provides about the possibility of being fully excluded from the political system and still being able to carry on a great deal of social interactions. Irregular migrants are able, albeit with much more existential difficulties, to generate income through work, find places to sleep, fall in love (and sometimes reproduce and raise children), establish personal relationships, buy household appliances and even represent themselves in the public space (Cvajner, 2008).

To acknowledge such a reality does not mean to deny the classic view that political power and positive law are fundamental institutions of modern societies that provide basic preconditions for the functioning of social transactions: to carry on a life on the basis of a systematic evasion of political decisions and legal identities is indeed quite difficult. A very good proof of the soundness of this position is that very few migrants are able to stay irregular for many years. This, however, does not usually discourage migration but only settlement: many migratory projects assess opportunities in terms of a much shorter time span. And it does not imply that a limited number of actors may develop survival strategies that, while assuming the existence of political power and legal action in their environment, are based not on participating but rather in avoiding doing so. The survival strategies of irregular migrants are both based on the systematic uses of the social spaces created by the differentiation of society and by the creative adaptation of other social resources that make up for the lack of inclusion in the political system.

In order to generate an irregular migration flow, several preconditions must be fulfilled: it is necessary to have a sizeable informal economy, a gray market for lodging and accommodation, a wide variety of services accessible without a certified identity and many social networks that are independent of the political definition of legitimate membership. Most of these elements are not necessarily specific to irregular migrants. Some of these resources are actually utilized by resident foreigners as well, others may be shared with lives of natives holding similar socio-economic insertions.

Albeit the great variety of contexts, these conditions are rooted in and made possible by the basic social differentiation. As the functioning of differentiated subsystems is independent of political decision, they treat the legal condition of the migrants not as a given, but as a condition to be codified and acted upon according to their specific functional codes. For example, in economics, an irregular status is nearly always translated into the possibility of charging a higher price for goods and services, making irregular migrants particularly attractive for certain niches of the retail industry. In more formal terms, it is possible to state that the social significance of an irregular status is not established directly by the relationship with the sovereign will, but rather by two social features. It is contingent upon two elements: first, the quality and quantity of the social transaction for which there is a legal requirement to use a certified identity and, second, the degree of implementation of these norms in the concrete social context.

States may use political power to define the conditions for social transactions. In some places, to cure an irregular patient is a serious risk for the health professional, in others it is little more than a bureaucratic nuisance, still in others an expected outcome. In some countries, a landlord too keen in checking the papers of a prospective host may face risks (as his/her behavior would be considered discriminatory) while he would receive praise in others. In the former USSR, the clerk checking the identity of the buyer of a gherkin

jar performed a routine operation, while the same behavior would not be expected in France even from the most zealous anti-immigration politician. The ability of the states to place risky burdens on potential transactions, however, is far from being absolute. The burden that an effective control policy of control would place on key social transactions does impose on states a variety of self-restraints that are used by irregular migrants.

How do irregular migrants operate in their daily activities? How do they establish a certain degree of subjective predictability in a risky environment? A likely answer is: irregular migrants forge functional equivalents to what in many natives' lives is provided by the access to political power and legal recognition. As said before, such alternatives are limited and often imply a great psychological stress and high risk for the migrants' personal safety. But they are more effective as may appear at first glance, as the history of irregular migration systems in the past few decades amply testifies. A main source for the survival strategy of the irregular migrant is provided by membership of social networks. The role of informal networks in sustaining migration is a well-known fact (Tilly and Brown, 1967) and they are even more important in the case of irregular migration. Contrary to the usual vision of irregular migrants as atomized individuals pushed by epochal crises, the process of irregular migration nearly always requires a high level of social capital (Morawska 2001; Engbersen et al., 2006; Cvajner, 2008). It is a reasonable assumption that irregular migrants face a much lower risk of being detected if they can rely on relatives or friends who are legally resident foreigners or citizens. More generally, even temporary or seasonal patterns of migration are usually embedded in a complex social structure that provides information, contacts or other practical assistance linking sending places to opportunities in the receiving society. Studies of irregular migration flows have already shown how the presence of relatives in the receiving country is crucial in the process of irregular migration, as they may provide the migratory knowledge or the basis for the trip (Pastore et al., 1999). Finding a job in the informal labor market, having access to a fairly secure housing condition, being informed on which kind of services may be accessed without risk, up to having an address for the telephone bill: there is quite a wide range of preconditions for a successful irregular stay that are contingent upon the availability of people in the receiving country willing to face some risks on behalf of the irregular migrant. Social capital, moreover, is also necessary to replace legal protection in a variety of working arrangements. Most jobs available to irregular migrants are temporary in nature and often based on payment after completion. As in most shadow relationships, risks of guile and malfeasance are endemic. In short, irregular migrants are in the kind of situation where free riding and defaulting on contracts could be easier, since interaction is unlikely to be repeated more than once. As Robert Axelrod has convincingly argued, cooperative behavior is greatly enhanced by repeated interaction (Axelrod, 1984). Such a social mechanism explains why so many irregular migrants do establish employment relationships through the use of middlemen: what would be one-spot interaction for individual employers and employees turns into two chains of repeated interactions linking both the irregular migrant and the employers to shared obligations through a third party.

Another important source of alternative arrangement is provided by a differentiated economy through the provision of a generalized inducement in the form of money. The availability of financial capital can play quite a large role in the process of acquiring a tourist visa or in making a successful irregular entry. The willingness to pay makes a

difference in securing a tourist visa and/or forged passports. It makes a difference in clandestine entries if the migrants who can pay more may afford more professional and reliable services. The emphasis of the role played by financial capital in securing a safe entry, however, should not imply that the availability of capital becomes less important in the subsequent phases. As a matter of fact, many migrants may acquire significant resources through market channels: in each European cities there are tenants willing to offer shelter to irregular migrants in exchange for a higher rent, employers willing to hire irregular migrants in exchange for a lower salary or more flexible schedules, brokers willing to provide faked documents or fiscal numbers for a fee. In the case of housing, as well as services, an irregular status does not mean exclusion, but rather inclusion at a higher price. Markets evaluate migrants as economic opportunities: if their irregular status deters some providers, it induces others to exploit the differential chances for economic gain.<sup>7</sup> Differential pricing is not the only market-type channel that provides an infrastructure for irregular migrants. Markets may even provide functional substitutes to juridical and political structures. Through payments, migrants may buy the enforcement of working contracts (through the involvement of a specialized third party) as well as the settling of minor disputes through the recourse to informal judges (Alt, 1999). Money can also buy institutional identities, through the services providing various kinds of faked documents. Market channels are particularly relevant for those migrants who cannot rely on structured networks, thus having to pay for a wide range of services, including information and advice. In many other cases, however, market channels are complementary and often overlap with social networks.

## **Conclusion**

In this article, we have claimed that the structural significance of irregular migration is not yet matched by an adequate attempt to provide a satisfactory theoretical framework. We claimed that the lack of such framework has more to do with the scarcity of theoretical ambition than with methodological or political difficulties. We have consequently tried to show how the adoption of an adequate theory of modernity – that we have identified in differentiation theory – may clarify many issues open for researchers interested in understanding the growing reality of irregular migration theory. In particular, we have argued that to analyze irregular migration within a vision of modernity as differentiation helps to highlight how the structural preconditions of irregular migration are not to be seen as pathology or an imperfection but rather as part and parcel of the very same organization of world society.

We believe, of course, that our theoretical choice does effectively provide the needed theoretical anchorage and that the selection of issues we have developed in this article provides convincing evidence for this. The main task of a theoretical offer, however, is to stimulate the search for alternatives. And the main advantage of social system theory is to force the practitioner to wonder if what it is seen could not, actually, be seen differently.

## **Acknowledgments**

Most of the research for this article has been carried out within the framework of a research project sponsored by CRS with funding from the Provincia Autonoma di Trento. The article has been

jointly conceived and written by the two authors. According to Italian academic folkways, the authors acknowledge that Martina Cvajner has written the odd pages and Giuseppe Sciortino the even. We wish to thank for their help and comments the following colleagues and friends: Michael Bommes, Raimondo Catanzaro, Claudia Finotelli, Ferruccio Pastore and Gianfranco Poggi. We gratefully acknowledge the general intellect of the H-MIGRATION network for their constant supply of interesting information.

## Notes

1. The oldest reference we have found so far is the voice 'Einwanderung' of the *Allgemeine Encyclopaedie der Wissenschaften und Kuenste*, where the author writes about clandestine immigration just to specify that it is difficult to repress, particularly if newcomers are similar to locals and borders cannot be completely sealed (Bosse, 1839).
2. Interestingly, admitting the lack of reliable evidence does not imply in contemporary society any injunction to stay silent. On the contrary, it increases the chances of further communication. The very same claim we do not know is acceptable only as a premise for promising that, if our requests are accepted, it will surely be possible to know the phenomenon adequately.
3. For Luhmann, the main advantage of differentiation theory is that it dissolves any search for an embedded emancipatory potential (Luhmann, 2002). Other differentiation theorists, however, have tried to develop a critical theory compatible with and rooted in differentiation theory (Alexander, 2006).
4. Talcott Parsons's notion of a system of societies already points to the limits of any identification of societies with political units, i.e. nation-states (Parsons 1971; 2007).
5. It does not imply, of course, that within such systems there are no processes of territorial clustering: they exist and they are actually increasing their salience, as the growth of regional economic inequalities and the growing concentration of cutting edge scientists and professionals in a limited number of places in the world testifies (Maddison, 2001). But they do not require a fixed territory to operate, and they may flexibly adjust to changes. They differentiate functionally in sectors and disciplines.
6. As matter of fact, some states – among others Nigeria, Libya, Kuwait and Thailand – have shown in recent years that contemporary states can indeed dismantle long-established migratory systems and repatriate hundreds of thousands of foreign residents in a few days. These examples, moreover, show that such capacity does not require extensive bureaucratic infrastructures or late-fashion technology. The ordinary old tools of the Leviathan may suffice.
7. An estimate of the differential pricing for services rendered to irregular migrants would tell us much more on internal controls than any statistics on the random checks by some state's agency.

## References

- Agamben, Giorgio (1998) *Homo sacer: Sovereign Power and Bare Life*. Stanford, CA: Stanford University Press.
- Alexander, Jeffrey C. (1990) 'Core Solidarity, Ethnic Outgroups and Structural Differentiation: Toward a Multidimensional Model of Inclusion in Modern Societies', in Jeffrey Alexander and Paul Colomy (eds) *Differentiation Theory and Social Change*, pp. 267–93. New York: Columbia University Press.
- (2006) *The Civil Sphere*. Oxford: Oxford University Press.

- Alt, Jörg (1999) *Illegal in Deutschland*. Karlsruhe: Jesuit Refugee Service.
- Augustin, Laura (2007) *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*. London: Zed Books.
- Axelrod, Robert (1984) *The Evolution of Cooperation*. New York: Basic Books.
- Black, Richard (2003) 'Breaking the Convention: Researching the "Illegal" Migration of Refugees to Europe', *Antipode* 35(1): 34–50.
- Blangiardo, Giancarlo and Rimoldi, Stefania (2002) "'Una finestra sull'irregolarità": oltre gli stereotipi?' in Asher Colombo and Giuseppe Sciortino (eds) *Stranieri in Italia. Assimilati ed esclusi*. Bologna: Il Mulino.
- Bommes, Michael (2003) 'The Shrinking Inclusive Capacity of the National Welfare State: International Migration and the Deregulation of Identity Formation', *Comparative Social Research* 22: 43–67.
- (2005) 'Transnationalism and Assimilation', sowi-online e.V., available at [http://www.sowi-onlinejournal.de/2005-1/transnationalism\\_assimilation\\_bommes.htm](http://www.sowi-onlinejournal.de/2005-1/transnationalism_assimilation_bommes.htm). Accessed 10.12.2008.
- Bommes, Michael and Geddes, Andrew (2000) *Immigration and Welfare: Challenging the Borders of the Welfare State*. London: Routledge.
- Bosse, Paul von (1839) 'Einwanderung', in *Allgemeine Encyclopedie der Wissenschaften und Kuenste*. J. S. Ersch and J. G. Gruber, vol. 32, pp. 374–76. Leipzig: Gleditsch.
- Boswell, Christina (2008) 'Evasion, Reinterpretation and Decoupling: European Commission Responses to the "External Dimension" of Immigration and Asylum', *West European Politics* 31(3): 491–512.
- (2009) 'Knowledge, Legitimation and the Politics of Risk: The Functions of Research in Public Debates on Migration', *Political Studies*. 57(1), forthcoming.
- Castles, Stephen (2004) 'Why Migration Policies Fail', *Ethnic and Racial Studies* 27(2): 205–27.
- Cinar, Dilek, Gachter, August et al. (2000) *Irregular Migration: Dynamics, Impact, Policy Options*. Vienna: European Centre for Social Welfare Policy and Research.
- Cornelius, Wayne, Philip Martin, et al. (1994) *Controlling Immigration: A Global Perspective*. Stanford, CA: Stanford University Press.
- Coutin, Susan (2000) *Legalizing Moves: Salvadorean Immigrants' Struggle for U.S. Residency*. Ann Arbor: University of Michigan Press.
- Cvajner, Martina (2008) *Emigrazione e cambiamenti nella vita sentimentale e sessuale delle donne. Uno studio sulle migranti dall'Europa orientale*. Dipartimento di Sociologia e ricerca sociale. Trento, Università di Trento.
- Cvajner, Martina and Sciortino, Giuseppe (2008) 'Dal Mediterraneo al Baltico? I cambiamenti nei sistemi migratori italiani', in Raimondo Catanzaro and Giuseppe Sciortino (eds) *La fatica di cambiare. Rapporto sulla società italiana*, pp. 33–53. Bologna: Il Mulino.
- Dedecker, Renee (1991) *L'immigration clandestine. Base de données bibliographiques annotées*. Bruxelles: Academia.
- De Genova, Nicolas (2002) 'Migrant "Illegality" and Deportability in Everyday Life', *Annual Reviews of Anthropology* 31: 419–47.
- de Haas, Hein (2007) *The Myth of Invasion: Irregular Migration from West Africa to the Maghreb and the European Union*. Oxford: International Migration Institute.
- Engbersen, Godfried, Marion van San, et al. (2006) 'A Room with a View: Irregular Immigrants in the Legal Capital of the World', *Ethnography*, 7(2): 209–42.

- Finotelli, Claudia (2007) *Illegale Einwanderung, Flüchtlingsmigration und das Ende des Nord-Süd-Mythos*. Münster: LIT Verlag.
- Finotelli, Claudia and Sciortino, Giuseppe (2006) 'Looking for the European Soft Underbelly: Visa Policies and Amnesties for Irregular Migrants in Germany and Italy', in James F. Hollifield and Uwe Hunger (eds) *Herausforderung Migration - Perspektiven der vergleichenden Politikwissenschaft*, pp. 249–80. Münster: LIT Verlag.
- Freeman, Gary P. (1994) 'Can Liberal States Control Unwanted Immigration?' *Annals of the American Academy of Political and Social Sciences* 534: 17–30.
- Geddes, Andrew (2000) *Immigration and European Integration*. Manchester: Manchester University Press.
- Ghosh, Bimal (1998) *Huddled Masses and Uncertain Shores: Insights into Irregular Migration*. The Hague: Martinus Nijhoff Publishers.
- Hollifield, James F. (2006) 'The Emerging Migration State', *International Migration Review* 38(3): 885–912.
- Hollifield, James F., Baringhorst, Sigrid, and Hunger, Uwe (eds) *Herausforderung Migration - Perspektiven der vergleichenden Politikwissenschaft*. Münster: LIT Verlag.
- ICG (1995) *Illegal Aliens: A Preliminary Study*. Geneva: Inter-governmental Consultations on Asylum Refugee and Migration Policies in Europe, North America and Australia.
- Joppke, Christian (1999) *The Domestic Legal Sources of Immigrants Rights: The United States, Germany and the European Union*. Firenze, EUI Working Paper SPS n. 99/3.
- Jordan, Bill and Duvell, Frank (2002) *Irregular Migration: The Dilemmas of Transnational Mobility*. Cheltenham: Edward Elgar Publishing.
- Kivisto, Peter (2001) 'Theorizing Transnational Immigration: A Critical Review of Current Efforts', *Ethnic and Racial Studies* 24(4): 549–77.
- Luhmann, Niklas (1982a) 'Territorial Borders as System Boundaries', in Raimondo Strassoldo (ed.) *Cooperation and Conflict in Border Areas*, pp. 235–71. Milano: F. Angeli.
- (1982b) *The Differentiation of Society*. New York: Columbia University Press.
- (2002) *Theories of Distinction: Redescribing the Descriptions of Modernity*. Stanford, CA: Stanford University Press.
- Maddison, Angus (2001) *The World Economy: A Millennial Perspective*. Paris: OECD.
- Manning, Peter (2005) *Migration in World History*. London: Routledge.
- Massey, Douglas S. (1999) 'International Migration at the Dawn of the Twenty-First Century: The Role of the State', *Population and Development Review* 5(2): 303–22.
- Massey, Douglas S., Arango, Joaquin et al. (1998) *Worlds in Motion: Understanding International Migration at the End of the Millennium*. Oxford: Clarendon Press.
- Massey, Douglas S. and Capoferro, Chiara (2004) 'Measuring Undocumented Migration', *International Migration Review* 38(3): 1075–102.
- Mayhew, Leon (1968) *Law and Equal Opportunity: A Study of the Massachusetts Commission Against Discrimination*. Cambridge, MA: Harvard University Press.
- Merton, Robert K. (1987) 'Three Fragments from a Sociologist's Notebooks: Establishing the Phenomenon, Specified Ignorance, and Strategic Research Materials', *Annual Review of Sociology* 13, 1–29.
- Miller, Mark J. (1995) 'Illegal Migration', in Robin Cohen (ed.) *The Cambridge Survey of World Migration*, Cambridge: Cambridge University Press.



- Monzini, Paola, Pastore, Ferruccio et al. (2006) 'Schengen's Soft Underbelly? Irregular Migration and Human Smuggling across Land and Sea Borders to Italy', *International Migration* 44(4): 1–25.
- Morawska, Ewa (2001) 'Gappy Immigration Control, Resourceful Migrants and *Pendel* Communities', in Virginie Guiraudon and Christian Joppke, *Controlling a New Migration World*. London: Routledge.
- Ngai, Mae (2004) *Impossible Subject: Illegal Aliens and the Making of Modern America*. Princeton, NJ: Princeton University Press.
- North, Stuart D. (1991) 'Why Democratic Governments Can't Cope with Illegal Immigration', paper presented at OECD International Conference on Migrations, Rome.
- OECD (2002) *Measuring the Non-Observed Economy: A Handbook*. Paris: OECD.
- Parsons, Talcott (1971) *The System of Modern Societies*. Englewood Cliffs, NJ: Prentice-Hall.
- (2007) *American Society: A Theory of the Societal Community*. Boulder, CO: Paradigm Publishers.
- Pastore, Ferruccio, Paola Monzini, et al. (2004) *L'Italia promessa. Geopolitica e dinamiche organizzative nel traffico di migranti verso l'Italia*. Rome: CeSPI.
- Plender, Richard (1972) *International Migration Law*. Leiden: A.W. Sijthoff.
- Portes, Alejandro (1978) 'Toward a Structural Analysis of Illegal (Undocumented) Immigration', *International Migration Review* 12(4): 469–84.
- Rajaram, Prem K. and Grundy-Warr, Carl (2004) 'The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia, and Thailand', *International Migration* 42(1): 33–64.
- Sciortino, Giuseppe (2000) 'Toward a Political Sociology of Entry Policies', *Journal of Ethnic and Migration Studies* 26: 213–28.
- (2004) 'Some Critical Points in the Study of Irregular Migration', *IMIS Beiträge* 24: 17–44.
- (2008) 'Functionalism and Social System Theory', in Bryan S. Turner (ed.) *The New Blackwell Companion to Social Theory*, pp. 106–23. London: Blackwell.
- Singer, Audrey and Massey, Douglas S. (1998) 'The Social Process of Undocumented Border Crossing among Mexican Americans', *International Migration Review* 32(3): 561–92.
- Tilly, Charles and Brown, Harold C. (1967) 'On Uprooting, Kinship and the Auspices of Migration', *International Journal of Comparative Sociology* 8: 139–64.
- Wimmer, Andreas and Schiller, Nina G. (2003) 'Methodological Nationalism, the Social Sciences, and the Study of Migration: An Essay in Historical Epistemology', *International Migration Review* 37(3): 576–610.
- Zolberg, Aristide (1999) 'Matters of State: Theorizing Immigration Policy', in Charles Hirschman, Philip Kasinitz, and Joshua DeWind (eds) *The Handbook of International Migration: The American Experience*, pp. 71–93. New York: Russell Sage Foundation.

## Bios

**Martina Cvajner** is a post-doctoral Fellow at the Department of Sociology, Università degli studi di Trento, Italy. Her research interests are migration studies and the sociology of sexuality.

**Giuseppe Sciortino** teaches Sociology at the Faculty of Sociology, Università degli studi di Trento. His research interests are migration studies and social theory.