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# **The obsolescence of detention: Versatility, expendability and plasticity in the field of immigration confinement**

Ana Ballesteros-Pena, Complutense University of Madrid, Spain

Cristina Fernández-Bessa, University of A Coruna, Spain.

José A. Brandariz, University of A Coruna, Spain

## **ABSTRACT**

Studies on immigration enforcement and bordered penalty frequently depict immigration detention as a system of confinement enforced in closed, relatively opaque facilities geared towards the expeditious deportation of non-citizens. This notion is actually a synecdoche of the diverse forms of containment and the varying, more or less dispensable roles played by detention practices within immigration enforcement systems. This paper challenges this perspective by considering prominent changes taking place in the detention field across Europe, which can be seen as signals of a gradual detention crisis. In this respect, it explores the versatility of detention practices, which have made the detention system particularly resilient. Despite this resilience, though, the paper unveils and maps the obsolescence of detention centric models of immigration enforcement, which manifests itself in the jurisdictions in which detention systems either are largely irrelevant or have been shrinking in the recent past. Additionally, the paper examines the consolidation of the hotspot archipelago in Mediterranean Europe, which has expanded the containment capacity of the border control apparatus and made it increasingly plastic. Yet the hotspot system is in itself an additional manifestation of the obsolescence of detention-centric models of enforcement. After having scrutinised these different dimensions, the paper concludes by exploring the promises and pitfalls of a changing detention landscape and suggesting directions for future research.

## **Introduction**

Actively participating in punishment and society debates, border criminology scholars have persuasively challenged conventional views on penalty, stressing that immigration enforcement practices such as migration policing, detention and deportation should be crucially considered in exploring the current penal landscape and examining the scale and intensity of penal coercion (Barker 2018; Bosworth 2019a; Bosworth, Franko and Pickering 2018; Franko 2020; Pickering, Bosworth and Franko 2015). The border criminology literature has also compellingly claimed that – at least in some jurisdictions – a dual criminal justice system is gradually consolidating, in the

framework of which noncitizen clienteles are targeted by an emerging model of ‘abnormal justice’ (Franko Aas 2014; Franko 2020), being excluded from legal safeguards and penal welfarism arrangements (Stanley 2018; Turnbull and Hasselberg 2017; Ugelvik and Damsa 2018).

Immigration detention has played a pivotal part in this academic conversation. Only some decades ago, immigration detention was still an insignificant phenomenon across Europe (see though Axster, this issue; Young 2021). This scenario has dramatically changed since the 1990s, when immigration detention emerged or re-appeared in many global north and especially European jurisdictions (Leerkes and Broeders 2010; García Hernández 2019; Turnbull 2017). The expansion of immigration detention drew the attention of the punishment and society scholarship, which begun to scrutinize its policies, practices, functions and impact in the penal landscape in different North Atlantic (Bosworth 2014; García Hernández 2014, 2019; Turnbull 2017) and continental Europe jurisdictions (Broeders 2010; Campesi 2013, Fernández-Bessa 2021; Esposito, Caja and Mattiello 2022; Lindberg 2022). Mary Bosworth’s work is critical in this regard, since it provides a granular examination of detention practices in the UK, scrutinising a wide variety of aspects such as the peculiar relationship between staff and detainees, the pains of immigration confinement and the futures of detention practices (Bosworth 2014, 2019b, 2022, 2023).

Despite the significant contributions of this literature,<sup>1</sup> comparative, cross-national analyses on detention are still rare (see though Canning 2019; Lindberg 2022), as they are longitudinal explorations on this changing penal subfield (see though Campesi 2013; Fernández-Bessa 2021). Consequently, this scholarship apparently relies on a typological notion of migration detention, which manages to represent neither the diversity of migration confinement across Europe nor the ways in which these practices are manifestly changing.

Policymakers, the public and the academic literature itself (see e.g. Hiemstra 2019) frequently embrace a notion of immigration detention which is actually a metonymy of the varied forms of immigration containment and the varying roles played by detention practices within immigration enforcement systems. In fact, the perspective describing detention as the widespread form of confinement enforced in closed, relatively opaque facilities geared towards the expeditious deportation of noncitizens is actually a synecdoche. This detention model, which is prevalent in certain jurisdictions, e.g. France, the UK and the US, is far from having a universal character. What’s more, there are manifest signs that beyond being inhumane (Aiken and Silverman 2021; García Hernández 2017) this model is becoming obsolete, not least because it has failed to adequately carry out the various extended border control and post-entry social control assignments it has been tasked with (Kanstroom 2007).<sup>2</sup> In other, relatively underexplored jurisdictions, new and more malleable ways of performing those assignments are emerging (see also Romero 2022).

This paper aims to explore the various ways in which we may describe the current detention scenario as showing signs of obsolescence.<sup>3</sup> For these purposes, the authors build on their previous analyses on the versatility, expendability and plasticity of detention practices (Ballesteros-Pena 2022, Brandariz and Fernández-Bessa 2021; Fernández-Bessa 2021), keeping an eye on the blind spots of border criminology debates and the underexplored regions, in a sort of southern (border) criminology analysis.<sup>4</sup> In developing this analysis, the paper proceeds as follows. The ways in which immigration detention, its missions and its versatility have been theorised by the academic literature are examined in the next section. After an intermezzo exploring whether the coronavirus pandemic operated as an enabler of change in this field, the third section scrutinises the notion of expendability, that is, the decline of detention-centric models of immigration enforcement and the gradual consolidation of deportation systems that rely less and less on confinement practices. The fourth section, in turn, explores the unprecedented plasticity given to immigration detention by the proliferation of new forms of confinement and containment in extended border control areas. Finally, the concluding section recapitulates the lessons to be drawn for punishment and society studies from this analysis on the obsolescence of detention.

### **Versatility: Which question is detention the answer to?**

From a legal viewpoint, immigration detention is an immigration law instrument that aims to serve the purposes of the border control system, and specifically of the deportation regime (Franko Aas 2014; García Hernández 2014). In fact, immigration detention is legally considered as an administrative law precautionary measure to be imposed for the preparation of the eventual enforcement of a return order (Campesi 2013; see also Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008; Articles 15-18; Return Directive - hereinafter RD).

However, this legal definition does not exhaust the socio-legal and criminological debate on the nature and missions of immigration detention (Campesi and Fabini 2020; Falsone 2021). As a matter of fact, a number of influential theses have been elaborated to grasp the aims, both instrumental and symbolic, actually pursued by this immigration enforcement device.

In this regard, the crimmigration thesis (García Hernández 2018; Stumpf 2006) argues that the gradual convergence of immigration law and criminal law has enabled the utilisation of immigration law devices such as immigration detention and deportation to deal with criminal offences perpetrated by noncitizens. Crimmigration changes have resulted in the adoption of punitive, criminal law-like instruments and procedures in the field of immigration control (Eagly 2010; Legomsky 2007; Sklansky 2012). This thesis, therefore, concludes that immigration detention is being increasingly used for crime prevention purposes (García Hernández 2014; Turnbull 2017).

In contrast to this influential theory, another strand of the literature has scrutinised the purpose of immigration detention by giving prevalence to its role as an institution ancillary to the deportation machine. In this framework, various scholars have highlighted the deterrence aspects of detention policies. Some authors embrace what might be called a 'general deterrence' thesis, according to which detention practices aim to dissuade unwanted noncitizens from coming to, and staying in Europe (Bosworth 2019a; Campesi 2015; Hiemstra 2019; Leerkes and Broeders 2010). By contrast, another body of literature adopts a sort of 'specific deterrence' lens, which claims that detention practices aim to forcefully persuade noncitizens 'to leave', encouraging them to either collaborate in preparing their forced removal or sign in for so-called 'voluntary return' programmes (Hasselberg 2016; Leerkes and Kox 2017; Lindberg 2022; Martínez, Slack and Martínez-Schuldt 2018). In this regard, US scholars have singled out 'self-deportation' as the ultimate goal of immigration enforcement policies (Jain 2019; Provine and Zatz 2015). Needless to say, these specific deterrence goals require detention conditions to be particularly harsh.

Despite the significant academic effort invested in exploring detention practices from a dissuasion perspective, there is a consistent consensus among scholars working in various national settings that bordered penalty devices fail to serve deterrence purposes (García Hernández 2014; Hasselberg 2014; Hiemstra 2019; Leerkes and Kox 2017).

These deterrence theses seem to assume that immigration detention policies are based on significant institutional capacities guided by a well-planned law enforcement rationale. However, only certain national detention systems show signs of long-lasting consolidation and institutional stability. By contrast, in many jurisdictions these state control apparatuses are either too tiny or too unstable to play a significant role in developing extensive removal policies, let alone crucially contributing to enable immigration management policies. This critical shortcoming gives credit to theses stressing the modest role played by immigration detention practices. Considering the 'undeportability' deficit affecting various immigration enforcement systems (Campesi 2015; Fabini 2021, 2022; Leerkes and Broeders 2010), these analyses call into question the allegedly pivotal contribution of detention policies to the deportation apparatus. The Italian case is critical in this

regard. In Italy, the detention apparatus has been serving the relatively humble purpose of managing street-level public order, facilitating policing efforts to govern allegedly troublesome noncitizen groups (Campesi and Fabini 2020; Fabini 2022).

The teleological failures mentioned so far have led scholars to explore additional immigration detention goals, such as policing membership, strengthening national sovereignty and managing destitute groups (Bosworth 2019a; Leerkes and Broeders 2010).

In sum, these diverse academic perspectives suggest that detention systems are far from having a clear and precise mission, but are serving various, site-specific goals and following divergent paths. This means that immigration detention has been – or, has been said to be – the answer to many different questions. In fact, versatility is one of the most distinctive features of immigration detention, which has allowed it to adapt to changing migration flows, new political and social priorities, and variations of state capacities.

### **Intermezzo: The pandemic as an accelerating force of the obsolescence of detention?**

In contrast to conventional descriptions of immigration detention, many national detention systems have recurrently proven to be unstable and relatively fragile. One critical occasion demonstrating this lack of robustness was the coronavirus pandemic. State coercion systems did not elude the impact of such a public health event (see also Esposito, Caja and Mattiello 2022).

Specifically, the cross-border nature of return measures (Franko 2020) caused the implications of the coronavirus restrictions to reverberate across the entire European deportation system. Detention systems showed clear signs of frailty as well. Although some countries were reluctant to release noncitizen detainees, many global north countries implemented ambitious release programmes (Brandariz and Fernández-Bessa 2021), resulting in the number of detainees significantly declining in 2020 in jurisdictions such as Belgium, France, Germany, Greece, the Netherlands, Spain, Sweden, and the UK.<sup>5</sup> Spain, in turn, closed down all detention facilities over a four-month period in summer 2020 (Ballesteros-Pena 2022). This decline, though, seems to have been a short-lived intermezzo, especially in countries such as France, Greece, Italy, the Netherlands and the UK, where the annual number of detainees in 2022 was as high as in 2019. However, the detention system was still far from operating at pre-pandemic capacity in 2022 in countries such as Austria, Belgium, Spain and Sweden.<sup>6</sup>

The pandemic laid bare the relative vulnerability of the immigration detention system. In an unexpected win for the abolitionist playbook, many global north detention systems have been underperforming for a significant period of time, unambiguously showing that migration management policies do not collapse when a wide-ranging detention system is unavailable (see also Bosworth 2022). The implications of this intermezzo for detention practices in Europe still need to be fully explored. However, it should be acknowledged that the detention changes witnessed during the pandemic were not completely unexpected. The innovation and plasticity of containment practices, and even the relative expendability of the detention system, are the outcome of processes that had been ongoing for a while. In this respect, the pandemic may be described as an accelerating force. The signs of obsolescence of the detention system that had already surfaced before this intermezzo are going to be explored in the next two sections.

### **Expendability: Towards a post-detention-centric deportation system?**

The grey literature, and to a certain extent the academic literature on migration control and bordered penalty have generally embraced a detention-centric perspective, that is, a viewpoint in

which deportation policies crucially rely on, or are even dependent on the consolidation of wide-ranging immigration detention systems.

Certainly, there are reasons to espouse this viewpoint. Large detention systems have proven to be vital to develop expansive detention policies in various jurisdictions. The US immigration enforcement system is a good case in point. Its impressive deportation capacity is supported by an extensive network of detention facilities, which managed to confine more than 300,000 noncitizens per year from 2007 to the onset of the coronavirus pandemic (source: DHS; see García Hernández 2019). The annual number of detainees in the US immigration enforcement system surpassed the symbolic threshold of half a million for the first time in 2019 (Young 2021). It is less known that Mexico does not lag far behind (Campos-Delgado 2021). More than 100,000 noncitizens were detained per year in the Mexican so-called migration stations from 2014 to 2016 and again in 2018 and 2019. In the framework of the severe migration crisis that has been affecting Central American and North American countries in recent years, the number of detainees skyrocketed to more than 307,000 in 2021 and more than 444,000 in 2022 (source: Mexican Department of Migration Policies).<sup>7</sup>

Detention systems in Europe are far from having such a striking confinement capacity. Still, some national systems are notably extensive. The UK is an obvious reference in this regard (Bosworth 2014). Although the British detention apparatus has been slightly shrinking in the recent past, on average 28,063 noncitizens annually entered detention in the UK from 2010 to 2019 (source: UK Home Office).<sup>8</sup> In this respect, the UK system is second only to that of France (Fischer 2017). On average, the French detention system confined 48,833 noncitizens per year from 2010 to 2019 (source: La Cimade).<sup>9</sup> Specifically, the French detention apparatus has a marked (post-)colonial nature, since 48.1 per cent of the noncitizens detained from 2012 to 2021 were in custody in detention facilities located in the French colonies overseas, most notably in the African island of Maoré/Mayotte. Greece is an additional jurisdiction to be added to this list of capacious detention systems (Iliadou 2023), because the annual number of detainees peaked over 25,000 from 2017 to 2019, rising above 33,000 in 2022 (source: Global Detention Project; hereinafter GDP; see also Majcher, Flynn and Grange 2020).<sup>10</sup>

The immigration enforcement model developed in these jurisdictions is consistent with European Commission (hereinafter, EC) views, which have recurrently stressed the pivotal part played by detention policies in consolidating an effective return system in Europe. This perspective is epitomised by the 2015 EU Action Plan on Return (COM(2015) 453 final), which emphasised that ‘to meet their obligation to enforce return, Member States should use detention.’ This detention-centric model of immigration enforcement was unambiguously upheld by the EC Recommendation (EU) 2017/432 of 7 March 2017 on making returns more effective, which claimed that ‘detention can be an essential element for enhancing the effectiveness of the Union's return system.’ This Recommendation and the 2018 Proposal to amend the RD (COM(2018) 634 final) specified the paths to be followed to amplify the scope of EU detention systems. These include the extension of the maximum initial period of detention in certain countries, the authorisation of the detention of minors and families with minors – at least, in certain exceptional cases –, and more generally the need to ‘bring detention capacity in line with actual needs.’

In light of this sympathetic approach to immigration detention, there are apparently good reasons to challenge the very notion of obsolescence of detention. However, the detention-centric model epitomised by these EC documents and the aforementioned national cases is actually a synecdoche that falls very short of representing the wide diversity of immigration enforcement practices witnessed in European countries and elsewhere. GDP data show that many EU jurisdictions – at least, Croatia, the Czech Republic, Estonia, Finland, Ireland, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania and Slovakia - have relatively tiny immigration detention systems that confine some hundreds or a bit more than one thousand noncitizens per year (see also Majcher, Flynn and

Grange 2020).<sup>11</sup> This detention landscape might be seen as the confirmation of EC diagnoses, because many of these countries do not rank very high in deportation practices, either; actually, some of them feature a broad deportation gap (see Eurostat data). Still, some of these jurisdictions excel in deportation terms. Both Poland (Klaus 2020) and – to a lesser extent - Finland (Könönen 2022) show that national immigration enforcement systems may develop an extensive deportation system and have a narrow deportation gap without critically relying on widespread detention practices.

Interestingly, in some of the aforementioned countries such as Ireland, detention practices have been in a steady decline. The detention apparatus has also been shrinking in other European countries that are active on the deportation side. The Netherlands (Staring and Timmerman 2021) and Spain (Fernández-Bessa 2021) are two critical cases in which the detention system has been notably downsized since the late 2000s. Still, Germany is the most important case to be added to this list. The German detention system provides a suitable template of how a post-detention-centric model of immigration enforcement might look like. In stark contrast to France and the UK, Germany makes a relatively parsimonious use of detention measures.<sup>12</sup> What is more, the German system has significantly reduced the number of detainees at least since the 2000s, even in a period characterised by rising numbers of irregular newcomers and enforced deportations (source: Eurostat). This inspiring development is the outcome of the convergence of various factors. The *Bero and Bouzalmate* judgement of the Court of Justice of the European Union (C-473/13) of 17 July 2014<sup>13</sup> compelled the German authorities to put an end to their long-standing practice of confining deportable noncitizens in prison facilities, leading to a sort of logistical crisis in the German detention system (Kreuzkamp 2022; Majcher, Flynn and Grange 2020). In addition, a set of prominent legal reforms – such as the First (2017) and Second (2019) Acts to Improve the Enforcement of the Obligation to Leave the Country - and policy developments have given top priority to so-called voluntary returns (EMN 2018; Haberstroh 2021), resulting in new arrangements in which detention might play a relatively secondary role. In this framework, the German deportation apparatus has been increasingly relying on reception facilities since the mid-2010s (Kreuzkamp 2022).<sup>14</sup>

Although the long-term consequences of these changes in the German case still remain to be seen and recent developments show mixed signals (ECRE 2022; Graebisch 2019, 2022), this national case might prove to be particularly influential in the EU scenario. In contrast to the official rhetoric voiced in the mid-2010s, the EC discourse on detention policies appears to be more cautious in the last years, apparently championing a prudent approach to custodial measures. In the framework of the increasing priority given to voluntary return practices (see the EU strategy on voluntary return and reintegration of 27 April 2021; COM(2021) 120 final), recent pivotal policy plans – including the New Pact on Migration and Asylum of 23 September 2020 (COM(2020) 609 final) - are putting the emphasis on the development of alternatives to detention (see also Slingenberg 2022). In fact, the main goal in cases of forced return procedures seems to be ‘finding a good balance between increasing the availability and use of effective alternatives to detention, and ensuring that specialised facilities are available and well-equipped when detention is used’ (see the EC Communication on enhancing cooperation on return and readmission of 10 February 2021 (COM(2021) 56 final).

Potential institutional changes aside, the gradual emergence of a post-detention-centric model of immigration enforcement is also the outcome of widespread practices of political contention that have contributed to transform borders ‘from below’ (Segrave and Wonders 2019). In fact, advocacy groups and noncitizen communities have been constantly challenging immigration detention in many European countries at least since the turn of the century, developing various forms of border activism that have kept the political costs of detention practices high (Fernández-Bessa 2019).

These acts of resistance (Lindberg 2022) should be credited for having undermined the political legitimacy of the detention apparatus.

Additional blueprints for a post-detention-centric model – actually, for a detention-free model - of immigration enforcement may be found outside Europe. In contrast to the frequently assumed global nature of detention (Macías Rojas and Tazzioli 2022), immigration detention does not exist either in Chile or elsewhere throughout South America (Ceriani Cernadas 2017). Paradoxically, though, Chile has been championing a hard-line approach to immigration enforcement since the early 2010s, in the framework of which the number of enforced removals was largely on the rise until the coronavirus outbreak (SJM 2022). However, Chilean authorities have developed such a system without resorting to detention measures, giving vital preference to the deportation of sentenced noncitizens, who are incarcerated until the day of their repatriation (Brandariz, Dufraix and Quinteros 2018). Indonesia, in turn, has witnessed an intriguing decarceration turn since 2018, when detention practices were abolished. This shift gave rise to a new system of containment based on alternatives to detention, which despite being less inhumane has proven to have significant shortcomings (Missbach 2017, 2021).

### **Plasticity: The proliferation of new forms of containment across Europe's southern border**

Beyond these cases in which detention has an increasingly secondary role within the immigration enforcement system, there is an additional emerging phenomenon that is signalling the obsolescence of detention. Southern European countries such as Italy, Greece and Spain had long been countries of emigration and it was not until the last decades of the twentieth century that they started to receive migrants (Cachón 2009). As destination countries, they have long been characterised by unstable mobility management policies and poor regulations (López-Sala 2007), certain tolerance to irregular migration and the pivotal role played by the sizeable informal economy sector in providing labour insertion for newcomers (Cachón 2009; Calavita 2005), e.g. in agriculture.

This scenario, in which labour migration and allegedly lax mobility policies took centre stage, changed with the 2010s surge of asylum. Initially in Italy and later in Greece and Spain, the three Mediterranean countries have been receiving an increasing number of asylum applications.<sup>15</sup> Furthermore, the three countries have ranked among the top five EU countries in number of accepted applications in recent years, along with Germany and France.<sup>16</sup> As a result, new practices for managing human mobility have surfaced across Southern Europe. These practices are characterised by the emergence of humanitarian logics and its convergence in varied combinations with punitive and coercive measures, along with their short-lived character, their changing nature and functions and the lack of a formal legal framework. Long-standing forms of detention in closed facilities have given way to a more complex landscape of practices and sites of confinement, characterised by their plasticity. Plasticity (see also Ballesteros-Pena 2022) refers to the fact that systems of confinement have moved from a stable condition, including a physical infrastructure, legal frameworks and guidelines of functioning to mechanisms of containment characterized by flexibility and fluidity. Plasticity combines two main features: adaptability and resistance. Therefore, containment practices can quickly respond to changing circumstances, such as a temporary increase of arrivals, by creating improvised facilities, frequently having a makeshift nature. As quick as they appear they can also be dismantled. Their logics, functions and the actors involved can also vary depending on the specific spatiotemporal context. At the same time, the practice of confinement, while evolving towards more malleable and blurred mechanisms, is still enduring despite its unstable character.

In Southern Europe, hotspots are the most widespread example of this complex set of confinement and containment settings. The 'hotspot approach', launched by the 2015 European Agenda on

Migration (COM(2015) 240 final), has the declared aim of supporting EU external border countries facing significant migratory pressure in the initial reception, identification, registration and fingerprinting of asylum seekers and migrants. For this purpose, national authorities work in coordination with EU agencies deployed on the ground. This approach has been declaredly implemented in Greece and Italy, although other EU member states can potentially adopt it. Spain has not formally embraced the hotspot approach; however, from 2017 it has developed its own local version of the hotspot apparatus: the so-called Centres for the Short-term Attention of Foreigners (CATE, for their initials in Spanish).

These new facilities are frequently characterised by a lack of regulatory framework (Barbero 2021; Campesi 2018a; Papoutsi et al. 2019). Furthermore, this policy approach lacks a clear definition of what a hotspot 'actually is and does' (Pallister-Wilkins 2020, 992) beyond its vague description as a strategy aimed to reinforce the capacity of member states to deal with external border crises (2015 European Agenda on Migration). In Spain, there is no formal characterisation of CATEs beyond the idea that migrants are detained for the first 72 hours upon arrival by sea. Along with them, an increasingly complex typology of migration camps and humanitarian centres surface and resurface in the main areas of arrival, particularly the Canary Islands and the Andalusian coast in southern Spain (Ballesteros-Pena 2022). In these facilities, we can find undocumented migrants that have received a removal order along with asylum seekers waiting to be transferred to other facilities. This unstable and flexible nature exemplify the adaptability component of the plasticity condition.

Although hotspots and hotspot-like facilities are understood as allegedly provisional responses to mobility crises (Barbero 2021; Boza and Pérez 2019; Campesi 2018b), the model has quickly generalised (Campesi 2018b; Papoutsi et al. 2019) with constant adjustments and modifications. In the case of Spain, humanitarian centres run by NGOs in the Canary Islands have changed their targeted populations several times in the last few years. For instance, humanitarian facilities initially deemed to host male newcomers ended up receiving women and children due to the changing demographics of sea arrivals. Additionally, in the smallest Canary islands, CATEs do not have a stable physical infrastructure, being recurrently established and dismantled in harbours and industrial buildings with substandard conditions. Thus, these new mechanisms of confinement and containment combine their structural condition, since they are increasingly consolidated as an enduring part of the system - thus, resistant - and their adaptable character.

Humanitarian and punitive logics are present in these diverse sites, regardless of their declared nature. Scholars and oversight bodies have documented coercive practices taking place in hotspots and CATEs, such as extended detention periods and the use of force for the collection of biometric data (Campesi 2018a; Defensor del Pueblo 2021). Still, the humanitarian logics of care coexist in these facilities with the logics of control of unwanted populations. In fact, the reception nature resulting from their legal role as humanitarian response to increasing arrivals is further strengthened by the prominent part played by NGOs and international organisations in running the hotspot system.

As a matter of fact, the diversity of facilities has resulted in the proliferation of new actors playing different roles: together with NGOs, several international organisations such as a UNHCR are active in Greece, whilst European agencies such as Frontex play a part in the management of hotspots and Spanish CATEs. The implications of this multiplicity of actors are diverse. They can end up creating a 'surrogate state' like in Greece (Moschopoulos 2023), superseding state migration management capacity – temporarily, until they leave the country. Additionally, in Greece but also in Spain, NGOs end up having a conflicting relationship with other actors in the field, such as social movements and the migrants and asylum seekers they are supporting. Frequently, these non-state actors must enforce governmental decisions that run counter to their values and reduce their autonomy of action. Additionally, managers and front-line workers can adopt contradictory approaches in dealing with the situation on the ground. In sum, contrasting perceptions and strategies

(Panebianco 2019) from different state and non-state actors interact and overlap within these facilities.

In this mutable landscape of containment sites, screening processes are also malleable. Hotspots in Italy and Greece perform a process of social sorting separating the 'deserving' asylum seekers from the 'underserving' newcomers that are channelled into removal procedures and socially and economically segregated (Campesi 2020; Heyer 2022; Papoutsis et al. 2019). This process of categorisation involves a high degree of discretion, which is further increased by the structural ambiguities of the system itself (Heyer 2022). Similar deficiencies can be found in Spain, where classification processes also take place in CATEs to separate the national groups with high odds of being deported (Moroccans and Algerians), that are redirected to detention facilities, from potentially undeportable groups (Fernández-Bessa 2021), that are transferred to camps and other humanitarian facilities.

The academic literature has interpreted the emerging archipelago of sites of migration management and enforcement in different ways. Campesi (2018b) identifies different logics at play in the evolution of the reception system in Italy. In his approach, hotspots follow a logic of containment because they detain people in border zones, under an uncertain legal status and in substandard conditions. Challenging the analysis of detention as confinement, Tazzioli (2020) refers to 'governing migrant's mobility through mobility' as a technology of governance aimed at directly or indirectly keeping migrants on the move, disrupting their autonomous trajectories and containing them beyond detention (see also Tazzioli 2018; Tazzioli and Garelli 2020). Thus, more than just keeping asylum seekers in detention, this technology hinders and disrupts their mobility through different strategies.

This distinction between confinement and containment appears to have significant implications, which deserve to be further scrutinised (Cornelisse 2022; Macías Rojas and Tazzioli 2022). These studies, though, overlook that the gradual consolidation of the hotspot archipelago is in itself a revealing signal of the obsolescence of detention. In fact, rather than being smoothly extended (Mattiello, Caja and Esposito 2022), the detention-centric model is being superseded by a plastic apparatus that more effectively reacts to the pressing needs of European mobility policies. Hotspots do not straightforwardly serve any of the goals of the detention system examined in a previous section. In stark contrast to the outspoken detention-centric stance adopted by the EC Recommendation (EU) 2017/432, the hotspot apparatus devaluates the relevance of deportation purposes in countries featuring broad deportation gaps, leading containment, screening and registration goals to take centre stage. This shift cannot be disconnected from a European immigration enforcement scenario in which so-called secondary movements are a critical concern (Gülzau 2021; Karamanidou and Kasperek 2022) and intra-EU deportations, namely the return of Dubliners, are garnering increasing traction (Brandariz, Klaus and Martynowicz 2023).

### **Conclusions: Promises and pitfalls of a changing detention scenario**

The versatility of detention practices has surely contributed to the resilience of detention systems, which may pursue diverse goals and meet different sets of expectations. However, detention policies are not set in stone. In fact, the coronavirus pandemic unveiled the relative vulnerability of detention arrangements. This paper shows that significant changes are unfolding in this field.

The successive mobility crises affecting the Mediterranean area lay bare that detention practices have failed to fulfil their extended border control tasks (Kanström 2007), aimed at shielding EU's southern external borders. Against the backdrop of the increasing relevance of asylum phenomena across southern Europe, the detention field has shown its plasticity in this sphere, giving shape to innovative forms of containment, in which detention is intertwined with reception and border

control goals meet humanitarian aspirations. Epitomised by the hotspot approach, in this framework screening and sorting purposes take centre stage, rather than deportation goals.

Still, current detention changes are also being fuelled by processes taking place away from external borders. Many European jurisdictions have long used detention measures sparingly. In addition, in a deportation scenario in which so-called voluntary returns are taking centre stage, other countries such as Germany and the Netherlands show a decreasing reliance on detention. In addition, two global south countries as diverse as Chile and Indonesia epitomise two different detention-free models of immigration enforcement, respectively relying on the prison system and alternatives to detention.

The implications of the exploration of detention changes carried out in this paper for punishment and society conversations on bordered – and ordered (Franko Aas 2014) – penalty are twofold. Initially, it has implications of conceptual nature. The detention cases explored here show the marked diversity of the current detention and immigration enforcement landscape. In addition, this paper challenges the viewpoint according to which the emergence of the archipelago of hotspots and short-term facilities gives rise to a continuum of confinement (Aradau and Tazzioli 2021; Campesi 2018b), to a sort of net-widening shift that essentially extends the scope of the detention system (Esposito, Caja and Mattiello 2022). Certainly, this perspective has significant value for advocacy purposes, since it puts the spotlight on the gross human rights violations characterising current immigration enforcement policies. However, these advocacy benefits come with conceptual costs. This viewpoint obfuscates the analysis of continuities and discontinuities, of what is new and what is obsolete in the field of immigration enforcement. It blurs the boundaries between detention and additional forms of containment (Macías Rojas and Tazzioli 2022; see also Cornelisse 2022; Tazzioli 2023), thereby overlooking the different missions, actors and practices separating them, and the shifting migration control rationales operating on the ground.

Additionally, this exploration has implications of normative nature that may have an impact on reformist and abolitionist agendas. Punishment and society scholars have decried ‘catastrophic’ perspectives on penalty, which risk to overemphasise rising punitiveness and penal excess phenomena (Hamilton 2014; O’Malley 2000). In a similar vein, this paper aims to draw attention to the increasing expendability of detention practices and the promising aspects of the current detention scenario. However, the emerging detention landscape has a Janus-faced character. It certainly supplies cognitive and policy tools for detention abolition, which may leverage the national cases in which detention either does not exist or is increasingly dispensable. However, it also has a threatening dimension, represented by the proliferation of public security-based regulations, so-called voluntary returns and harmful alternatives to detention. EC legal proposals such as the 2018 RD proposal show the increasing relevance given to ‘public order’ and ‘national security’ considerations in grounding detention measures (see also EC’s 2017 Action Plan on Return; Graebisch 2019). The Canadian system unambiguously shows the bleak detention scenario to which these regulations may lead (Ballesteros-Pena 2021; Wallace, this issue). It is well-known as well the many human rights risks posed by so-called voluntary return programmes, which operate as a form of soft deportation (Kalir 2017). In addition, recent policy changes have not significantly eroded the detainability of noncitizens (De Genova 2019, 2020), which is enabled by unreformed legal frameworks that still statute extensive detention powers. Moreover, compelling ethnographic studies have shown the harmful nature of various alternatives to detention, especially mobility restrictions and electronic monitoring – which nonetheless do not seem to be widely used in Europe (EMN 2021) - that seriously affect the psychological and even physical well-being of newcomers (Sanchez-Boe 2020; Sanchez-Boe and Mainsah 2021).

In short, the current migration enforcement landscape is not destined to put an end to detention practices. However, it is characterised by the increasing momentum gained by relatively parsimonious forms of immigration enforcement such as so-called voluntary returns and

alternatives to detention, as well as by the emergence of post-detention-centric models of enforcement that increasingly rely on reception facilities and prison facilities to prepare deportations. In developing its research agenda on immigration enforcement, punishment and society studies should consider this shift. The current scenario opens new paths to develop an anti-carceral state agenda, which nonetheless should avoid *digital confinement* and other punitive arrangements prepared to eventually fill the detention vacuum (Missbach 2021).

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<sup>1</sup> This paper crucially relies on the punishment and society and border criminology literature. By contrast, other strands of scholarship such as deportation studies, and migration studies more generally are not thoroughly explored. Unfortunately, gaps and insufficient dialogue – certainly, together with promising cross-disciplinary conversations – still characterise the relation between the various academic perspectives developed in this field.

<sup>2</sup> Daniel Kanstroom (2007: 5) claims that 'there are two basic types of deportation laws: extended border control and post-entry social control.' The extended border control model is chiefly focused on the control of territory as a basic feature of sovereign power and mainly targets border-crossing activities and specifically irregular entry. By contrast, the post-entry social control model is 'often not directly connected to visa issuance, admission, or immigration processes at all'; it is actually aimed at governing the conduct of newcomers 'for a specific period following the time of admission.' Post-entry social control schemes create 'probation' or 'guest' models, which are epitomised by legal provisions proscribing criminal conduct (Kanstroom 2007: 5-6).

<sup>3</sup> We are grateful to Kelly Hannah-Moffat for suggesting us the term obsolescence as the most appropriate notion to convey the ideas developed in this paper.

<sup>4</sup> By southern border criminology we understand the convergence of the calls to expand the boundaries of border criminology debates (Bosworth, Franko and Pickering 2018; van der Woude, Barker and van der Leun 2017) with the southern criminology proposals (Carrington et al 2019) to bring peripheral voices into criminology conversations.

<sup>5</sup> These data are taken from corresponding national databases (sources: European Council on Refugees and Exiles, <https://ecre.org/ecre-publications/>; German Parliament, <https://www.proasyl.de/thema/faktenzahlen-argumente/statistiken/>; IBZ. Office des Etrangers, <https://dofi.ibz.be/fr/figures/rapports-annuels>; La Cimade, <https://www.lacimade.org/publication/>; Spanish MNP, [https://www.defensordelpueblo.es/informes/resultados-busqueda-informes/?tipo\\_documento=informe\\_mnp](https://www.defensordelpueblo.es/informes/resultados-busqueda-informes/?tipo_documento=informe_mnp); UK Home Office, <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2022/how-many-people-are-detained-orreturned>). All these online sources were last consulted on 16 March 2023.

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<sup>6</sup> See the national databases mentioned in the previous endnote, as well as *Garante Nazionale* ([https://www.garantenazionaleprivatiliberta.it/gnpl/pages/it/homepage/pub\\_rel\\_par/](https://www.garantenazionaleprivatiliberta.it/gnpl/pages/it/homepage/pub_rel_par/), accessed 16 March 2023); Global Detention Project (<https://www.globaldetentionproject.org/regions-subregions/europe>, accessed 9 October 2023). In the US, the annual number of detainees fell by 58.6 per cent from its all-time record in 2019 to 2021 (source: DHS; <https://www.dhs.gov/immigration-statistics/enforcement-actions>; accessed 16 March 2023).

<sup>7</sup> See [https://portales.segob.gob.mx/es/PoliticaMigratoria/Direccion\\_de\\_Estadistica](https://portales.segob.gob.mx/es/PoliticaMigratoria/Direccion_de_Estadistica) (accessed 29 March 2023).

<sup>8</sup> See <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022/how-many-people-are-detained-or-returned> (accessed 29 March 2023).

<sup>9</sup> See <https://www.lacimade.org/publication/?type-publication=rappports-sur-la-retention-administrative> (accessed 29 March 2023).

<sup>10</sup> See <https://www.globaldetentionproject.org/countries/europe/greece#statistics-data> (accessed 9 October 2023).

<sup>11</sup> See <https://www.globaldetentionproject.org/regions-subregions/europe> (accessed 9 October 2023).

<sup>12</sup> The 2010s deportation to detention ratio was 1 deportee per 2.66 detainees in France and 1 to 0.65 in the UK, showing in both cases a strong reliance on detention measures. By contrast, it was 1 to 0.06 in Germany over the same period (sources: Eurostat, GDP).

<sup>13</sup> ECLI:EU:C:2014:2095. See <https://curia.europa.eu/juris/liste.jsf?num=C-473/13&language=en> (accessed 1 April 2023).

<sup>14</sup> We thank Aino Korvensyrja for having drawn our attention to this specific development of the German system.

<sup>15</sup> The annual number of applications peaked in Italy in 2017 (128,850 applications), in Greece (77,275 applications) in 2019, and in Spain (117,945 applications) in 2022 (source: UNHCR, Eurostat; see [https://www.europarl.europa.eu/infographic/asylum-migration/index\\_en.html#filter=2022](https://www.europarl.europa.eu/infographic/asylum-migration/index_en.html#filter=2022); accessed 9 October 2023).

<sup>16</sup> Source: Eurostat. See <https://ec.europa.eu/eurostat/databrowser/view/tps00192/default/bar?lang=en> (accessed 10 April 2023).