

Section D: a *Tertium Genus* of Incarceration? Case-study on the Transgender Inmates of Sollicciano Prison¹

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Abstract

Starting from the consideration that prison is one of the traditional areas of mandatory gender segregation, our paper presents a socio-legal analysis of the condition of transgender inmates and of the policy choices (or the lack of them) concerning their incarceration in Italy, based on our case-study of Section D of the Italian Prison of Sollicciano, Florence.

Two empirical considerations prompted our study. The first is related to the sources of law in the current global legal landscape, where different solutions are being adopted: from undifferentiated imprisonment in male penitentiaries, to the informal creation of special sections for transgender inmates, as in the case of Section D.

These different scenarios share the same conceptual roots: normative binarism and the resulting impossibility of engaging in a political discussion concerning the condition of transgender inmates. Therefore, the second consideration lying at the heart of our study and defining its theoretical and practical framework consists in the necessity of interpreting the complex relations between law and gender, and prison and gender.

Our study will unfold by laying out the most problematic issues around the incarceration of transgender people, with the aim of initiating a public discourse that will replace the current political and public aphasia on this topic.

¹ Translated from Italian by Teresa Ciuffoletti. Quotations originally cited in Italian are translated into English by Teresa Ciuffoletti, MA North American Studies, Freie Universität Berlin.

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1. Introduction

The social space of the prison, along with the military and with public toilets,⁴ is regarded as one of the sites in which mandatory binary sex segregation has persisted throughout history (Cf. Cohen). Prisons, however, are faced with a phenomenon which resists assimilation into this spatial-ideological arrangement and defies the well-established normative binary which has reproduced itself over time in carceral topography. As politicians and legislators around the world realized long ago, one of the most effective methods to avoid the acknowledgment of a social reality (and consequently the recognition of related rights) is to deny its existence (while implementing those repressive measures seen as a necessary tribute to the prevention principle).

The condition of transgender inmates globally is evidence of the failure of essentialist policies, grounded on normative binary categories, and the reduction of the social world to the male/female opposition. Employing theory, i.e. critically rethinking the categories of our social space, seems the most logical solution, but logic is not the strong suite of the law (nor of politics). As a result, while legislators envision solely male and female prisoners (and the corollary male and female issues), many correctional institutions are confronted with troublesome “specters” who fail to conform to the legislator’s rational, biopolitical plan. Our aim is to talk about these spectral prisoners by taking as our starting point the case-study of an informal system of incarceration, i.e. “Section D” of the Sollicciano District Prison in Florence.⁵

As is the case in all correctional institutions, the topography of Sollicciano prison features two macro-areas: a male and a female section; the latter includes a secluded section, Section D, used to accommodate transgender⁶ inmates.

⁴ See the concept of urinary segregation as developed by Jacques Lacan.

⁵ Our study on the “Section D” of the Sollicciano District Prison in Florence grew out of the fieldwork conducted for L’Altrodiritto-onlus, a non-profit organization based in the Department of Theory and History of Law of the University of Florence, devoted to extrajudicial legal assistance in matters of sentence execution in the correctional facilities of Tuscany and to the collection and analysis of data pertaining to the Italian penitentiary reality.

⁶ Our use of the term “transgender” finds its context in the contemporary debate around the necessity to revise prison policies based on normative binary categories. From this standpoint, we embrace the broadest definition of the term, which includes, as remarked by Sarah Lamb, “people who undergo a process of gender reassignment to live permanently in their self-expressed gender (which may or may not involve medical interventions such as surgery or hormone treatment), as well as those who express less fixed and more fluid gender identities and those who self-define as gender variant or gender non-conforming. Gender non-conforming, refers to people whose gender presentation or identity does not conform to gender

Three empirical considerations prompt our study of Section D. The first is related to the absence of relevant sources of law concerning the incarceration of transgender people: Sollicciano is one of the few Italian prisons in which a *tertium genus*⁷ of incarceration, not provided for by law, has been informally established. The second consideration is the high percentage of non-EU inmates housed in Section D, and the predominance, within this group, of Latin-American inmates, with a significant majority of Brazilians. The last consideration, which lies at the heart of our study and defines its theoretical and practical framework, is the necessity of interpreting the complex relationship between law and gender, and prison and gender.

This “critical triangle” defines the object of our study: the theoretical and practical interrelation of law, gender, and rights.⁸ In the course of our interviews and research activities, this “simple” configuration developed into a complex web of relationships and interpretive possibilities. These ultimately pointed back to the same reality of incarceration we had selected as the initial context for our case-study.

As mentioned above, our initial field of inquiry consisted of the analysis of penitentiary policy and practice with respect to the incarceration of transgender inmates. At the same time, we wanted to understand how such policies affect the penitentiary life of these prisoners. Thus one section of the interview is devoted to penitentiary data and to the different types of incarceration experienced by the interviewees. The second point of analysis lies in migratory routes and the interconnections between criminal law and the human phenomenon of migration. Regarding this very significant topic, our research focuses on the potential connection between sentence and migratory status as well as on the analysis of migratory routes in connection with gender identity and working experience. Last but not least, the intersection of prison and gender lies at the heart of our inquiry. Therefore, the middle section of our interview form consists of

norms or expectations but who do not necessarily identify as transgender (e.g. women who present in a masculine way, but nonetheless identify as women, as well as androgynous, gender-fluid and gender ambiguous people)” (16).

⁷ *Tertium genus* is a Latin expression indicating a third way between two established realities.

⁸ We draw on the theoretical framework developed by Emilio Santoro in *Diritto e Diritti: Lo Stato di Diritto nell'Era della Globalizzazione*. Giappichelli: Torino, 2008.

questions pertaining to gender identity and the treatment of this category as a *penitentiary status* in the personal experience of the interviewees.

As the culmination of our research process, in the present article we articulate the most problematic issues concerning the incarceration of transsexual migrants in Italy through the spectrum of our case-study of Section D in Sollicciano. Our aim is to initiate a discourse to replace the current political and public aphasia on the topic.

Methodology

The present study is based on research that combines original data collected at the Sollicciano District Prison with official data from the Prison Administration and secondary sources about the national prison population.

Selection of the sample

Jurists formulate definitions. One of the law's intrinsic functions, as we will emphasize throughout this study, is to create categories.⁹ From this perspective, the lack of a uniform definition for the category of transgender/sexual people as well as the constant ambiguity and overlapping of the two terms emerged as one of our first findings. In carrying out research, we identified our sample by studying all inmates housed in Section D of the Sollicciano Prison. Our sampling frame was further defined by the Prison Administration's criteria for assigning inmates to Section D. Questions such as 'who is transgender in prison' and 'who decides who is transgender in prison' form the basis of our work and lie at the heart of the problematic and interconnected issues of identity, law, and recognition analyzed in the second paragraph of the present article.

Data collection and triangulation

The legal phenomenon of the incarceration of transgender people emerged as our preliminary object of research. In this view, we based our analysis on the study of prison policy regarding this issue, adopting an approach that focuses on

⁹ See Kelsen, Hans. *Pure Theory of Law*. Berkeley: University of California Press, 1967, and Hart, H L. A. *The Concept of Law*. Oxford: Clarendon Press, 1961.

policy choices,¹⁰ in order to shed light on the broader legal landscape in question. As for the case-study, we used the method of the semi-structured qualitative interview, not recorded, conducted with all foreign inmates housed in Section D of Sollicciano prison in may 2012.

The interviews were modulated according to a flexible layout, hinging on the problematic issues we wanted to address in analyzing the object of our study. We expanded our original data collection with data gathered while working and studying at L'Altro diritto onlus.

Official data from the Prison Administration were collected through archival research, authorized by and conducted at the Department of Prison Administration of Tuscany, on November 26th, 2013. It is worth noting that one of the major difficulties in collecting data about the incarceration of transgender people lies in the fact that studies and official statistics are based on data aggregated according to the gender binary.

Data pertaining to the work of the CIADIG (Interdepartmental Center for Gender Identity Disorder) were obtained through interviews with the work team of the Departmental Organization Unit for Andrology and Sexual Medicine of Careggi.

While our *case-study* is based on a survey sample, the various research activities involved allowed for data triangulation, thus offering a reliable picture of the incarceration of transgender people taken as a national phenomenon.

1. Study of the Policies on the Incarceration of Transgender People Based on the Case of Section D in Sollicciano

1.1 The Population of Section D and Migration Policy in Italy

The interviewees' migratory routes serve to illustrate a migratory profile which constitutes an interesting object of analysis, especially in terms of vital

¹⁰ Young, Warren. "Influences Upon the Use of Imprisonment: a Review of the Literature." *The Howard Journal of Criminal Justice*. 25.2 (1986): 125-136.

statistics and demographics. Of the 6 inmates we have interviewed, 5 come from Brazil and one from Argentina. The latter, born and raised in Buenos Aires, moved to Rome, passing through Paris, in 2006. She talks about Argentina as a country marked by harsh discrimination against transgender people. She is a former member of an association promoting the rights of LGBT people and, among the interviewees, she is the one with the highest level of schooling (secondary school diploma).

The five Brazilian interviewees represent typical instances of individual migration for work purposes, with little or no group connections or identification. Interviewee No. 1, who has been in Italy for over twenty years, explains the context of Brazilian transgenders' migration (from São Paulo and Rio, in particular) to Europe in the 1980s and 1990s as follows:

As a transsexual person, it was difficult to study, work, and live in Brazil in the 1980s. Then came the boom of transsexualism with Roberta Close,¹¹ which gave us the courage to come out [as transsexuals], but we were not accepted in society, in school. We had friends who had emigrated to France, to Paris. Then we found out about Chirac's criminalization of prostitution. We then discovered Italy, Milan in particular, and things went like this: the girls worked, they prostituted themselves until they had enough money to buy a ticket to Milan. Roberta Close was an icon at the time, so the owners of nightclubs in Milan saw her as a star. Thanks to her, many of us found the courage to disclose their cultural identity (Interviewee No. 1).

The same interviewee explains that nowadays the situation is different and more difficult for young transsexual Brazilians. What follows is the case of 23-year-old interviewee No. 2:

¹¹ Roberta Close is one of the most famous Brazilian transsexuals. She was one of the first to openly disclose her transsexuality in the 1980s. She became popular after being the sensation of Rio carnival in 1984 and appeared twice on the cover of Brazilian Playboy (in 1984, prior to her sex reassignment surgery, and in 1990, after the operation). In 1989, Close underwent sex reassignment surgery in London. Around that time, she was interviewed on various major TV shows in Brazil and thus helped introduce the debate on transsexual rights in Brazilian society and media. In the early 1990s she left Brazil and moved to Zurich, where she lives to this day. She nonetheless remains present in Brazilian media (and social media) and regularly visits her home country. Close was involved in a 15-year-long judicial battle in Brazil, claiming her right to change her name and sex on her documents and birth certificate and finally obtaining legal recognition in 2005.

I came to Italy for the money, because here the currency is worth more than in Brazil. I helped my family, I made good money at the beginning, every month I would send 500 euros to my mother, who doesn't work and doesn't draw a pension. I traveled from Brazil to Paris the first time, then took a train and arrived irregularly in Viareggio, nine years ago.

I went to Brazil a year and a half later, because I had payed 13.000 euros to the *cafetina*,¹² who was here already. I renovated my mother's house. (Interviewee No. 2)

All the interviewees were arrested for prostitution-related crimes such as injury, theft, robbery, and extortion. Once arrested, they emerged from the invisibility related to the status of irregular migrants. In Italy, this status is subject to a policy of criminalization and faces an entrenched double-degree of stigmatization in the social and legal contexts at large¹³.

The inmates are satisfied with and conscious of their choice, and it would be misleading to think—at least as far as our case-study is concerned—that this kind of migration is part of an international network of work exploitation. In their particular case, a conscious choice was made and migration was voluntary. These transgender inmates were aware of working relationships and conditions, and their choice to migrate—which they do not regret—was mainly based on financial considerations and made possible by the contacts and opportunities they had at the time.

Nonetheless, this picture becomes more complicated when we take into account European laws and, in particular, the criminalization of migration in Italy, as well as the facilitation of this kind of migration provided by some *cafetinas*, who “invest” in young transgender people coming to Italy to prostitute themselves. The story of interviewee No. 2 is indicative of this new situation, which requires further

¹² *Cafetina*, from Lunfardo *caften*, is a Brazilian-Portuguese term indicating a person, normally a woman, who operates a prostitution business. While the etymology of the word is uncertain, its reconstruction is worth attempting. As a preliminary step in this attempt at reconstruction, the Arab word *qafian*, stemming from Persian, seems the only possible etymon. The etymology of the term *cafetina* would then be the same as that of the Italian words *caffetano* or *cafetano*, but its evolution and semantic development were certainly different and should be researched and retrieved within Brazilian dialects. For this tentative etymology we thank Gigliola Sacerdoti Mariani and Ida Zatelli.

¹³ Cf. E. Santoro, “La regolamentazione dell’immigrazione come questione sociale: dalla cittadinanza inclusiva al neoschiavismo”, in E. Santoro (a cura di), *Diritto come questione sociale*, Giappichelli, Torino, 2010.

research.¹⁴ The costs covered by the *cafetinas* for the “full migration package” (transportation, accommodation, food, work, and so on) are exorbitant and should be taken into consideration in order to fully understand the financial motivations behind this activity. The exploitation of (generally younger) transgender people by other transgender people (generally older and well-established, both on the market and in the country) is, according to interviewee No. 1, a new phenomenon which disrupts the previous framework based on “friendship and solidarity ties.”

Nevertheless, even those interviewees who came to Europe through this new mechanism give a positive evaluation of their experience.

1.2 “Due to Objective Reasons”: the Story of Section D

The case of Section D provides us with a particular perspective on the issue of the incarceration of transgender people, precisely due to its peculiarity. In Italy, since the shattering of the male monopoly,¹⁵ the structural problem of managing the inmate population has been tackled by separating prisoners according to sex.

Following a male/female normative binarism. This binary opposition adhered to the existing legal categories and, at the same time, indirectly solved the problem known in penitentiary jargon as “promiscuity” (i.e. sexual or affectionate liaisons) through a strategy of “risk avoidance.”¹⁶ In the construction of this legal framework, the narrow frame of reference based on the

¹⁴ For further reading see Geymonat.

¹⁵ It is worth mentioning that prison population management has always tended toward a form of normative monism (the male monopoly) which was apparently supplanted, though probably reinforced, with the advent of separate prisons for women and with the separation of male and female inmates. As Tamar Pitch remarked, this separation, though originally called for by British feminists, “is now being contested by many British feminists because, due to the small number of women in prison, the condition of female inmates is considered to be of little interest in comparison to that of male inmates, and, as a consequence, fewer economic and cultural resources are devoted to the former” (63). As we shall see, this issue affects transgender inmates as well and is amplified by their even greater degree of marginality.

¹⁶ The prison administration and the Italian legislator regard heterosexuality as the norm. At the same time, the perpetration of sexual segregation in prison policies results in the paradox of monosexual micro-communities which induce same-sex sexual or affectionate behavior, or incorporate these tendencies into power structures (cf. Sykes). As remarked by Higgins: “It is possible to argue that the social organization of Western society promotes homosexuality, or at least makes such activity possible. Most social, political and educational institutions (with the exception of the family) have been organized along strict division of the sexes. . . . If one wanted to design a system better calculated to promote opportunities to foster homosexual affection and activity, it would be difficult to improve upon the system which has operated in the West across many centuries” (13).

male/female dialectic has prevented any revision of the established order (for the discussion of law and gender, see *infra*).

The formal policies regulating the separation of prisoners in Italy demonstrate that gender issues, and the issue of transgender prisoners in particular, have not prompted policy-makers to initiate debate and reflect upon the penitentiary treatment of those subjects who do not identify as cisgender. For many years, the mode of incarceration of transgender people was informally defined by the procedures adopted in individual correctional facilities. Initially, where and how these inmates were confined was decided on the basis of the genital identity they were assigned at birth. In accordance with this customary procedure and in the absence of a more nuanced theoretical framework, transgender people who had not undergone gender reassignment surgery were commonly housed in the communal sections of the male wing.

However, some penitentiaries with a higher population of transgender inmates developed different pragmatic solutions, mainly out of “administrative necessity” and in view of the total absence of primary legal sources on the subject.

In these cases, solutions to the issue of “transsexual incarceration” varied. One solution involved coping with gender diversity through protective custody units,¹⁷ once again situated in the male wing.¹⁸ This procedure was made official through a 2001 departmental memorandum¹⁹ entitled “The so-called ‘protected’ sections. Inmate placement criteria,” stating that protected sections were “established to meet the need to protect specific categories of inmates due to objective reasons, even if these are at times based on the subjective characteristics of the inmates in

¹⁷ See art. 32 of the DPR 230/200 for the concept of “protective custody”:

Art. 32. Placement and grouping for precautionary reasons

1. Prisoners whose behavior requires specific care, for reasons such as the protection of other prisoners from potential harm, are assigned to specific institutions or sections designed to facilitate the implementation of the above-mentioned precautionary measures.

2. The persistence of the need for precautionary measures is verified every six months.

3. Moreover, those prisoners who are at risk of being harmed by other prisoners should be transferred to a more suitable placement. For this purpose, special sections can be used, but the assignment to such sections must be frequently reexamined for each individual case, in order to verify the persistence of the need to separate the individual from the community.

¹⁸ We talk about male sections because the phenomenon of the incarceration of transgender people was (and still is) characterized by the prevalence of male-to-female transgender inmates

¹⁹ Departmental Memorandum of the Penitentiary Administration Department, Prot. N. 500422 of May 2nd, 2001.

question (for instance, transsexualism.)”²⁰ This general model, which was based on a strong discriminatory paradigm, albeit for precautionary reasons, has been superseded in a few cases, on a merely practical level, by a different model which radically disrupts the classification of inmates according to their genital identity. As a matter of fact, some correctional facilities have introduced an alternative form of incarceration for transsexual inmates by assigning them to as autonomous spaces as possible.

The case of Sollicciano perfectly exemplifies this trend. As a matter of fact, a section for transgender people was originally established within the male wing, in an area of the building devoted to the medical center. This solution functioned according to a logic of basic “genital classification,” where the first distinction was made on the basis of the inmate's male genital identity. Subsequently, the issue of “promiscuity” was tackled through prisoner separation within the male wing.

Since the end of 2005, however, following a reorganization of the facility²¹, a new approach was introduced which subverted the automatism of male genital identity while preserving the concept of internal separation. The selected space is namely located in the female section, above the unit where inmates with partial mental illness are housed. The section in question is detached from the female compound, which occupies a whole wing. Originally, this space was not meant to function autonomously; as a consequence, significant flaws and structural shortcomings can be detected, first and foremost the absence of a room devoted to socialization, as well as the lack of rooms specifically devoted to meetings with lawyers and other professionals such as social and health workers. We shall see how this deficiency represents one of the most problematic aspects in the life of the inmates we have interviewed.²²

²⁰ It is highly significant that the term “transsexual” is used in penitentiary linguistic practice (by both inmates and workers, as well as by the administration) to indicate what may seem like a broad and ambiguous category. However, as we wish to demonstrate in this article, the use of this term betrays the covert intention to produce a marginal category.

²¹ All data pertaining to the cases of transgender inmates in Sollicciano were obtained from the research projects and legal advice activities of the non-profit organization *L'Altrodiritto-onlus*.

²² With regards to our research project, this fact represented a highly significant methodological impediment which threatened to considerably compromise the results and even the possibility of conducting interviews. As a matter of fact, the only place where interviews could be conducted was the duty officer's office: only thanks to the cooperativeness of the correctional officers, who allowed us to talk to the inmates in their office, were we able to protect the fundamental right to privacy.

The shift from the male to the female section has led to a theoretical and practical revision of the management and treatment of transgender inmates in Sollicciano prison. Such a revision was motivated, first of all, by the will to create a space of incarceration separated from the male section, in order to reduce the risk of ‘promiscuity,’ and as autonomous and independent as possible from the management of the female section, as the choice of officers assigned to the section testifies. As in other cases, the management of Section D was regulated by practice and by mediating among safety requirements, petitions presented by correctional officers, and administrative and treatment dynamics. In this case, we have identified a series of conflicts stemming mainly from the imbalance of three factors: the will to create a real “Section” separate, autonomous, and independent as far as management and treatment are concerned, the actual lack of separate and self-sufficient spaces, and the theoretical absence of legal references officially defining a *tertium genus* of incarceration.

As a result of negotiations among such conflicting factors, the officers of Section D are currently prevalently male, within a structure that puts male officers in charge of security, and female officers in charge of management.²³

1.3 The Empoli Project and its Premature Ending

In the history of policies (or the absence thereof) related to the incarceration of transgender people in Italy, the case of Empoli is paradigmatic. Since the end of 2008, a ministerial decree²⁴ sanctions the use of the prison in Empoli (previously a medium-security prison for women) as “male correctional facility” for “so-called protected transsexual subjects”. The definition given in this decree reveals how, in the attempt to provide precise indications on this matter, institutions failed to develop an adequate language to address, and thereby construct, a shared social reality. Instead, they once again cling to the lifeline of normative binary categories: Empoli is converted from a female to a male correctional facility (and we will see how this conversion prompted the implementation of measures to ensure the safety and security of the facility in view of the designated category of inmates) and

²³ At the moment, the correctional officers are men, while the duty officer is a woman.

²⁴ D.M. 20-10-2008 - V° U.C.B. 30-10-2008 Conversion to male correctional facility “As from the date of this decree, the female correctional facility in Empoli is converted to a male correctional facility for so-called protected ‘transgender’ subjects.”

transgender inmates are defined with the bureaucratic circumlocution “so-called protected transsexual subjects,” where the confusing combination of the alienating attribute ‘so-called’²⁵ with the terms ‘protected’ and ‘transsexual’ denies identity and reality to the phenomenon which this phrase is supposed to define.

In 2009, the regional office of prison administration (PRAP) of Tuscany formed a work team²⁶ appointed with the task of organizing and supervising both the training of officers and the treatment and organizational interventions for the inauguration of the first correctional facility for transgender people in the world. At a same time, on a national level, the Department of Prison Administration (DAP) launched an Action Plan (PEA)²⁷ aimed at the “elaboration of a model of treatment for *transsexual* people [emphases added],” conducted by sending out a questionnaire to all prisons housing transgender inmates.²⁸ The analysis of questionnaires allowed the work team to identify two essential requirements for the elaboration of a model of treatment for transgender inmates: first of all, the creation of adequate structures (facilities, as well as sections) for the accommodation of transgender prisoners; secondly, an adequate training of personnel.

It seems clear that the cultural orientation of the Prison Administration in that specific historical context, even on a central level, was leaning towards the acknowledgment of a phenomenon otherwise unnoticed or misperceived, and that the forms of treatment as well as the identification of adequate spaces were being discussed on the level of national politics. The Empoli project at once leveraged and fostered this debate, establishing itself as a leading project not only in the national context, but also in Europe and internationally.

²⁵ From the Oxford English Dictionary Online: “‘So-called’: 1. Used to show that something or someone is commonly designated by the name or term specified; 1.1 Used to express one’s view that such a name or term is inappropriate.” *Oxforddictionaries.com*. Oxford University Press, 2014. Web. June 2014.
<<http://www.oxforddictionaries.com/definition/english/so-called?q=socalled>>

²⁶ This emerged from our research of the archive of the PRAP of Tuscany on November 26th, 2013. All data pertaining to the Empoli case are the result of archival research, authorized by and conducted at the Department of Prison Administration of Tuscany, located in Florence.

²⁷ Department of Prison Administration – Directorate-General for Prisoners and Treatment – Office VI “Intramural Observation and Treatment”, PEA n. 19/2009, analyzed during archival research carried out at the PRAP of Tuscany. The PEA resulted in a study and an article: Chianura, G. Di Salvo, G. Giovanardi, “Detenute transgender clandestine negli istituti penitenziari italiani: un’indagine pilota.” *Ecologia della mente* 2/2010: 219-238.

²⁸ I.e. the facilities in Alba, Belluno, Bergamo, Bollate, Firenze Sollicciano, Milano S. Vittore, Napoli, Poggioreale, Rimini, Roma, and Rebibbia NC, for a total of 80 inmates as of October 2009.

In 2009, the restructuring of the correctional facility in Empoli began. The structural changes aimed to “increase security levels” in order to meet the “basic structural requirements” for the category of inmates to be housed in this facility (formerly women, now transgender, or rather men, since the model adopted in matters of structural security was that of male correctional facilities, as already specified in the 2008 ministerial decree).

The PRAP had planned a transfer of detainees from other facilities: the inmates of Section D in Sollicciano²⁹ were supposed to be the first group to arrive. The second stage of the project envisioned the arrival of other transgender inmates from extra-regional facilities until all 24 beds were filled. The last stage would have the purpose of “broadening the target population of the facility.” However, as no further specification was provided, the designated category of inmates continued to lack a definition and to exist in a state of ambiguity. In the context of the incarceration of transgender people, such a state of ambiguity is subservient and functional to the preservation of the marginal character of this non-category of prisoners.

The same “Transgender Section Work Team” of the PRAP took concrete action on the front of treatment. The PRAP began to communicate with the CIADIG (Intradepartmental Center for Gender Identity Disorder), a center born in the Departmental Organization Unit for Andrology and Sexual Medicine at the University Hospital (A.O.U.) of Careggi, Florence. A series of meetings with professionals of this hospital division resulted in a formal collaboration agreement, which put them in charge of the diagnostic, therapeutic, and, possibly, surgical procedures for the detainees in Empoli. Furthermore, a training program was developed: “the assistance of detainees with gender identity disorder” aimed at “providing prison officers with the knowledge, skills, and conduct for an adequate management of potentially emerging problems, according to a system-wide perspective which requires that officers be trained to carry out their work in a fashion that is consistent with the general project of the institution and in collaboration with the various fields of activity (security, treatment, sanitary and social-private sphere).”

²⁹ Section D in Sollicciano housed 15 inmates in July 2009.

The SAIFIP (Physical and Psychological Identity Adjustment Service) of the S. Camillo Forlanini hospital in Rome and the non-profit organization Ora d'Aria-onlus were chosen as partners. The documents concerning the training program show that one of the main goals was to equip the officers with basic interpretive tools, starting from a linguistic-semantic frame of reference.

The text expounding the training program also clarifies that the aim of the project is to “gather relevant information in order to obtain a clear picture of gender identity disorder, with the final goal of carrying out specific and qualified intervention when problems arise.”

It is revealing that external interlocutors were mainly selected among health professionals (doctors, psychologists, etc.), with the only exception of an association for voluntary service in prison, operating in Rome and with no connection to the region of Tuscany. As we shall see, this was not a merely formal question, as it oriented the work team towards a mainly medical approach in the treatment of transgender inmates. Our analysis of the relevant documents revealed that the planning of the Empoli project fell short of the necessary involvement of jurists, sociologists, criminologists, and experts on the subject of prison in Italy. Furthermore, the project suffered the lack of direct and enduring relationships with NGO organizations and associations promoting the rights of LGBT people in the local and national contexts. This choice affected the theoretical and methodological framework of the project. The critical analysis of this framework revealed a superimposition of medical categories and discourse on the debate over the establishment of a prison for transgender people. In our theoretical and practical approach, words (such as the definition of transgender, as we shall see) lie at the core of the controversy between medical discourse (which regards the phenomenon as “gender identity disorder”) and the discourse on gender identity in the social sciences.

PRAP members of the Transgender Section Work Team apparently realized that one of the main issues they were confronted with was the development of a shared language to address the kind of reality envisaged by the Empoli project. Unfortunately, the political and social aphasia on the question of the incarceration of transgender people impacted upon the issue of language and its limits. Following

Wittgenstein's philosophical model of communication, we can infer that the limits of the political, administrative, and social language used to address this topic reflect the limits of the penitentiary reality (as well as other realities) experienced by transgender people. The guidelines of the training program attempted to provide the Transgender Section Work Team with a basic glossary, defining the term transgender as “a general term referring to all the people who do not identify with gender stereotypes, generally limited to masculinity and femininity. The term transsexual generally indicates people who identify with the gender opposite to their assigned and physiological sex to the point of modifying their sexual features.” This tentative definition, instead of being discussed with the transgender community or publicly, remained confined to the Empoli project and inevitably followed the latter's fate. The PRAP work team, established for and functional to the institution of the first prison for “so-called protected transgender prisoners,” was in fact released following a sudden suspension of the project.

On January 27th, 2010, the Ministry of Justice and the Region of Tuscany agreed upon a Memorandum of Understanding. Considering the framework of legal sources, as well as the fact that “prison population, as well as that of the people sentenced to an alternative to incarceration, and that of the minors subject to criminal proceedings, have undergone significant changes in the last years” the Memorandum identifies: “. . . the actions to be implemented, both individually and collectively, in response to the needs of the communities in which Correctional facilities, Criminal Justice Social Work Services, and other services of the Prison Administration Department and of the Department for Juvenile Justice are situated, in view of the common goals of individual rehabilitation of people serving a sentence, primary and secondary prevention, and the reduction of the level of criminality.” According to these premises and as far as specific projects are concerned,³⁰ it is agreed as follows: “The Ministry and the Region of Tuscany undertake to establish health care and treatment projects for *transgender* people [emphases added], be they incarcerated or serving an alternative sentence, ensuring in particular the introduction of support groups and adequate health

³⁰ Specific projects It being understood that the measures set forth in the present protocol apply to all persons subject to criminal proceedings, without distinctions as to sex, nationality, and religion, it is essential to point out the problems faced by some individuals, such as women and minors, foreigners, sexual offenders, transgender people, and inmates of Judicial psychiatric hospitals, who deserve specific supplementary and integrative actions, it being agreed that the quality and specificity of interventions should foster their successful social reintegration.

services, to which they are entitled without discrimination. In particular, the parties undertake to foster joint training for prison officers and the employees of local administration and services.”

Subsequently, the Region of Tuscany, the Regional Prison Administration of Tuscany and the Prison Administration Department agreed upon a regional operational protocol³¹ defining the concrete actions to be implemented, including the plan of using the correctional facility in Empoli for the “incarceration of ‘protected’ transsexual subjects by developing an adequate project in terms of treatment and health care.”³²

In the meantime, the restructuring of the facility was completed and the dates for its reopening were established: personnel training would begin on March 4th, 2010, the first inmates would be transferred from Sollicciano on March 9th, and finally, on March 13th, the transfer of inmates from Sollicciano would be completed. Everything seemed to be ready, and the Empoli project was soon featured in both the national and international press.³³

A hypothetical outside observer who followed the case in the media could legitimately believe that Empoli currently hosts a vital and effective institution.³⁴ However, with an unpredicted turn of events, the project fell through, paralyzed by political vetoes, a fact which received very little press and media coverage.

³¹ Regional operation protocol agreed upon by the Region of Tuscany, the Regional Prison Administration of Tuscany, the Prison Administration Department, and the Center for Juvenile Justice – January 27th, 2010.

³² See p. 6. See also paragraph 7, on page 23, *Transsexual people: For this category of inmates a specific project has been initiated in the correctional facility of Empoli, a location with suitable structural features, both from a quantitative and a qualitative standpoint, thus allowing for adequate and specialized interventions. The facility has been devoted to the treatment of transsexual people by ministerial decree 20.10.2008. The team established by the Prison Administration is currently elaborating a plan according to which services are already being provided by the Region of Tuscany (CLADIG-Interdepartmental Center for Gender Identity Disorder of the Careggi university hospital center), especially on account of the important health measures made necessary by this kind of intervention, as provided for by the regional law n. 63, of November 15th, 2004.*

³³ For examples from the national press, see: La Nazione, January 13th, 2010, http://www.lanazione.it/empoli/cronaca/2010/01/13/280105-luxuria_buona_idea_aprire.shtml As for the international press, see:

The Telegraph, January 28th, 2010, <http://www.telegraph.co.uk/news/worldnews/europe/italy/7092137/Italy-opens-first-prison-for-transsexuals.html>

Adnkronos, January 29th, 2010, <http://www.adnkronos.com/AKI/English/CultureAndMedia/?id=3.0.4251867104>

³⁴ The Wikipedia article in English on “LGBT people in prison” (last modified on October 6th, 2014) still features the news: “In 2010 it was reported that Italy was to open its first transgender prison at Pozzale, a decision welcomed by gay rights groups.” Source: “Italy ‘to open first prison for transgender inmates’” BBC. 2010.

Indeed, a latter Ministerial Decree³⁵ states that “due to the current needs of the prison administration, it is necessary to implement the conversion of the facility in question to a correctional facility for women,” and that “as from the date of the present decree, the male correctional facility of Empoli for so-called ‘transgender’ subjects is converted to a female correctional facility.”

The crux of the matter in this case is the lack of formal—or substantial—motivation for the abandonment of the Empoli project. Already in March 2010, two senators had raised a parliamentary question on this matter, as yet outstanding.³⁶ Due to the change of political majority and considering the current political climate in Parliament, the parliamentary question³⁷ raised on the issue demanding explanations for the suspension of the project has very little chance of being addressed.

2. Section D: The Theory Deficit

2.1. A matter of definition

The creation of a separate correctional facility for transgender people urges reflection upon what we may call “a matter of definition.” If we consider the law as a system of classification of reality (cf. Bergel), we can see how this new facility poses a challenge to legal dogmatics, insofar as it calls for the introduction of legal criteria allowing for the definition of a new legal category, i.e. that of “transgender people.” This issue ties in with the new identity politics or “politics of recognition.”³⁸ In this view, the creation of Section D calls for answers to complex legal issues

³⁵ D.M. July 6th, 2010. A call for the interruption of the project, issued in anticipation of the July decree, might explain the temporal gap between the envisaged transfer of inmates (March 9th, 2010) and the promulgation of the decree.

³⁶ Legislature 16 Parliamentary Scrutiny Question No. 4-02950, issued on March 30th, 2010, sitting no. 354 following the proposal made by senators Porretti and Perduca (PRI). Procedure still in progress. The text is available under the following link: <http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Sindisp&leg=16&cid=472741>.

³⁷ Parliamentary question 4-07039, with request for a written answer, submitted by MP Bernardini on Tuesday, May 4th, 2010, sitting No. 316. Procedure still in progress. The text is available under the following link: <http://parlamento.openpolis.it/att/documento/id/43776>.

³⁸ For further discussion see Fraser; Giddens; and Bauman.

which can be summarized in the two following questions: who is a “transgender person” to be assigned to Section D? Who decides who is a “transgender person”?

At a general normative level, in Italy, this question was answered with a law promulgated in the 1980s. The law no. 164 of April 14th, 1982, “Norms in matter of rectification of sex assignment” provides the procedure for sex reassignment on official documents, which can be performed under *res judicata*, if the judgment issued by the court “assigns to the person a different sex from that recorded on the birth certificate, following the alteration of this person's sexual characteristics.”³⁹ The structure of the law in Italy perfectly adheres to the logic of *tertium non datur*, which is typical for the classic normative binary model. In this context, the rights of those people who do not identify with given biological or normative categories fall into a gray area. Moreover, upon critical examination of the 1982 law, it seems necessary to raise the question of constitutionality with regard to the indissoluble connection, imposed by the legislator, between sex as recorded on official documents and surgical treatment.

So far, three verdicts have shaken this structure by articulating a constitution-oriented interpretation of the law, based on the following maxim: “in cases of established transsexualism, the medical-surgical treatment provided for by the law 164/82 is necessary only if it is required to secure the transsexual subject’s psychophysical well-being, should the discrepancy between psychosexuality and anatomical sex induce in the subject a feeling of rejection toward his or her own genital organs, whereas no surgical operation is required for the rectification of the birth certificate in the absence of such conflict.”⁴⁰

³⁹ Art. 1 L. 164/1982.

⁴⁰ Court of Rome, sentence October 18th, 1997, sentence no. 5896/2011, March 11th, 2011, and no. 34525, July 18th 2014; Court of Rovereto, sentence no. 194, May 3rd, 2013; Court of Siena, sentence no. 412/2013. The above-mentioned maxim conforms to the concept of sexual identity as defined by the Constitutional Court of Italy, sentence no. 161, May 6th, 1985, which puts the stress on “not only the external genital organs, as verified at birth or ‘naturally’ developed (albeit with the assistance of appropriate medical-surgical therapies), but also on psychological and social aspects. The contested norm relies on a notion of sex understood as a complex aspect of personality, determined by a variety of factors whose balance should be fostered or sought after, favoring in particular—since the difference between the two sexes is not qualitative, but quantitative—the dominant factors.” This constitutional argumentation paved the way for a different interpretation of the law, which severed the connection between sex reassignment on official documents and surgery. Unfortunately, however, this interpretation was embraced only by the innovative jurisprudence mentioned above, which is still in the minority.

Italy is not the only country facing the question of definition which, by the way, transcends the context of the penitentiary and pertains to much of the traditional normativity around sex segregation –a concrete example being that of the separation and use of toilets in public spaces, or in privately owned spaces open to the public. The case of Argentina deserves special attention due to the approval and promulgation of the law no. 26.743/2012, known as “Law on gender identity”. This law introduces a new legal framework, implementing, in article 1, the right to gender identity in its three dimensions: the right to recognition of gender identity; the right to free personal development in connection with gender identity; the right to be treated according to one's gender identity. In article 2, the Argentinian law defines gender identity as follows:

Gender identity is understood as the internal and personal experience of gender felt by each individual, which may or may not correspond to the sex assigned at birth, and includes the perception of one's own body.

This may involve the modification of one's appearance or bodily functions by pharmacological, surgical, or other means, provided that it is freely chosen. Gender identity also includes other expressions of gender, such as clothing, speech, and conduct.

Argentina has thus become a role model in the legal recognition of gender identity issues. Nevertheless, this model does not provide an exhaustive grid of theoretical and practical answers to secure the respect of plural identities in general, and the identity of transgender people in particular.

The question, of course, is not an easy one. Reflecting on the issue of legal identity, anthropologist Eduardo Viveiros de Castro claims that “this discourse . . . takes on a delirious or hallucinatory quality, which, after all, also characterizes the whole debate in which ontology and the law engage in a public process of coupling” (134). According to Viveiros de Castro, these processes beget monsters that are “picturesque and relatively innocuous as long as we do not place too much faith in them, otherwise they devour us” (ib.). To paraphrase Viveiros de Castro, we might say that the whole discourse around what “being transgender” means in the law and what determines affiliation to this collective identity has a “delirious” and

“hallucinatory quality,” and that Section D provides a clear example of a context in which “ontology and the law engage in a public process of coupling.”

In this view, Section D represents the establishment of a *tertium genus* beyond the traditional identities of the normative binary, based on a static male/female alternative, and thus requires precise legal criteria of classification. In other words, the following question arises: if a person gets arrested and is brought to Sollicciano prison, which criteria does the Prison Records Office adopt in order to assign him or her to the male, female, or transgender section of the jail? Whereas with regard to the first two categories (male/female), where sex and gender coincide, the normative binary works effectively, difficulties arise from the necessity to provide a legal frame for transgender people. In order to classify men and women, the system employs the criterion of genital identity assigned at birth, which is a constant element in official documents and in the informal analysis of individuals. However, when facing more complex cases in which the above-mentioned correspondence between sex and gender is unclear or nonexistent, the Prison Records Office can resort to Section D.

Actual practice has progressively identified exception as the defining criterion of Section D. Every time the penitentiary administration of Sollicciano faces the challenge posed by an individual who proves unsuitable for normative binary categories, Section D emerges as an effective solution to problems of management and security in the correctional facility. If, on one hand, the exceptional solution represented by Section D gives relief to the prison administration—which thus exempts itself from the heavy responsibility of establishing legal criteria in the face of legislative silence —on the other, it creates a problematic scenario. The prison administration uses this system of classification in the dark: it renegotiates day by day the meaning of the categories in question and deals with identity issues by resorting to Section D; at the same time, it tests the boundaries of this section and its possibilities of interaction with the rest of the correctional facility.

This course of action has engendered a paradoxical situation: whereas, on one hand, Section D seems to be the strategy adopted by the prison administration to meet the need for specific treatment, on the other, the absence of precise criteria constitutes a downright policy choice. The choice not to establish legal criteria to decide who is and who is not a transgender person, and the lack of guidelines and clearer procedures regulating the placement of inmates in Section D exacerbate

identity conflicts within the section. The decisions of the Prison Records Office do not always coincide with the point of view of the different subjects involved and are frequently revised by the penitentiary administration, which often opts for the transferal of those individuals who were “wrongfully” placed in Section D to the female or male section, or the other way around. Indeed, as the data and interviews we collected show, there are cases of self-proclaimed transgender people who were not assigned to Section D due to the lack of the primary exterior signs of transgenderism or transsexualism as understood by the Prison Records Office. Moreover, it is established practice that F to M transsexuals or transgenders are not assigned to Section D, even when the primary exterior signs indicating male gender are present.

From a theoretical standpoint, the “marginality criterion” of the penitentiary policy of Sollicciano might be interpreted as the unconscious adoption of the sociological category of “trans people,” defined by Judith Butler as including all those who subvert the normative binary; another possible definition for the category of inmates assigned to Section D would be the umbrella-term transgender, which includes, according to Lamble, “transgender, intergender and non-conforming gender” (7). While the adoption of a fluid criterion is a problematic choice—and in the present work we try to identify and underline its nodal points—it is important to acknowledge the advantages of this approach over the use of medical discourse. Medical discourse leads us to the pathological notion of “gender dysphoria,” a medical category allowing for the formulation of a diagnosis for transgender and transsexual people, and for all those who do not match normative binary categories.

Gender dysphoria ‘originated’ as a disorder in 1994 with the publication of the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) by the American Psychiatric Association (APA), the most important publication functioning as a reference point for the diagnosis of mental disorders in the United States and in the world. The notion of gender dysphoria took hold as homosexuality, which was listed as a mental disorder in the DSM until the 1980s, was de-pathologized. As pointed out by Arlene Istar Lev, from a contemporary perspective, this fact is highly significant because the same specialists who advocated for the removal of homosexuality from the DSM also advocated for the inclusion of the category of gender dysphoria in the DSM-IV:

Why would they want to pathologize gender identity diversity while we were finally liberating homosexuality as a diagnosis? It was thought at the time that the inclusion of a diagnostic category would legitimize transgender identity and would assist in the development of treatment and professional attention for this invisible and vilified population. History has indeed shown some wisdom in this perspective. However, it has also left us 30 years later with a diagnostic category that pathologizes a minority community, and potentially interferes with their pleas for civil rights and acceptance within the human family. (Lev 291)

Lev also provides us with a short summary of the development of the notion of gender dysphoria across the various editions of the DSM:

A brief review of this process follows: In the DSM –III (APA 1980), two diagnoses were included for the first time, one called Transsexualism, to be used for adults and adolescents, and the second Gender Identity Disorder of Childhood. In DSM -III -R (APA 1987), a third diagnosis was added: Gender Identity Disorder of Adolescence and Adulthood, non-transsexual type, which was removed when the DSM -IV (APA 1994) was published. Also in the DSM -IV the two previous diagnoses were conflated into one, Gender Identity Disorder (GID), with different criteria sets, one for adolescents and adults, and another for children. Additionally, the diagnosis of Transvestic Fetishism, a paraphilia, has undergone numerous changes in nomenclature and criteria during the revisions; all were included in the section on Sexual and Gender Identity Disorders. (ib.)

The pathologization of transgender identity is supported in the medical field and by the editorial staff of the DSM as a way to ensure that community health services take charge of transgender people, providing them with hormonal therapy and medical-psychiatric assistance. However, the kind of fatalism inherent in the equation illness-assistance seems tainted with a naturalistic fallacy: it overlooks the possibility of medical interventions for a positive condition (pregnancy being an exemplary case). A sociological reflection on this strategy and its stigmatizing effects is thus necessary. Reflecting on the pathologization of trans identity, Butler remarks that:

To be diagnosed with gender identity disorder (GID) is to be found, in some way, to be ill, sick, wrong, out of order, abnormal, and to suffer a certain stigmatization as a consequence of the diagnosis being given at all. As a result, some activist psychiatrists and trans people have argued that the diagnosis should be eliminated altogether, that transsexuality is not a disorder, and ought not to be conceived of as one, and that trans people ought to be understood as engaged in a practice of self-determination, an exercise of autonomy. Thus, on the one hand, the diagnosis continues to be valued because it facilitates an economically feasible way of transitioning.

On the other hand, the diagnosis is adamantly opposed because it continues to pathologize as a mental disorder what ought to be understood instead as one among many human possibilities of determining one's gender for oneself. (Undoing 76)

2.2. Classification and Gender Identity: Conflicts and Mediation between the Penitentiary Administration and Section D

In order to analyze the meaning of the categories in question, and to identify the points of conflict and mediation between the penitentiary administration and the inmates of Section D, our semi-structured interviews devote part of the conversation to identity issues, both individual and collective. These issues emerge in the context of the interviewees' reflection on personal experience and the current prison policy concerning transgender people. We take the notion of gender (and that of transgender, which challenges and subverts traditional gender relations) as our starting point for the development of a theoretical framework in keeping with gender studies, thus stretching the concept of gender far beyond sex understood as a biological category.⁴¹ Furthermore, our choice to focus on gender is functional to the international debate on the politics of recognition, within which the debate on prison policies concerning the treatment of transgender prisoners is nested.

⁴¹ For this notion of gender see Butler, *Bodies That Matter: On the Discursive Limits of "Sex"* New York, London, Routledge, 1993.

The semi-structured interview originally included the three following questions on the subject of gender identity: in which way did the system classify the person as transgender (Q1: how were you assigned to Section D?); how did the person interpret such a classification (Q2: what is the definition of transgender?); last but not least, what is the person's self-definition (Q3: How would you define yourself?). Actual fieldwork, however, immediately subverted our original questions and premises. The interviewees would either explicitly reject the term *transgender* or conceive of it as indicating an initial stage in the experience of transsexualism. *Transsexual* is a common term in the language used by the penitentiary administration and is often expressed by the prefix only, as in *trans* (to denote a transsexual or transgender person) or *trans section*; in our experience, as well as in the laws on this subject, the term *transgender* is hardly ever used.

Since the aim of our study is to understand the categories and related meanings from within the prison environment, the real situation we found on the field prompted a revision of our starting points and of the terminology—often used inconsistently, as revealed by the protocols signed by the Italian Ministry of Justice, addressing sometimes “transgender,” sometimes “transsexual” people—we had planned to employ in dealing with this topic.

As for the first question (Q1: how were you assigned to Section D?), the five interviewees talked about their experiences in Sollicciano prison and stated that they were never given the chance to claim their own gender identity in the Prison Records Office. Interestingly, however, four interviewees out of five stated that, in the Prison Records Office, they were asked whether they had undergone sex reassignment surgery or, in their jargon, whether they had been “surgerized.” According to interviewee No. 5, those who have undergone sex reassignment surgery⁴² for the purpose of legal gender recognition are assigned to the female section, whereas those who have not undergone SRS are housed in Section D. In this respect, as noted above, Italian law provides that following sex reassignment surgery, and in accordance with a judgment allowing gender reassignment on official documents, “civil status certification of a person whose sex reassignment has been

⁴² In the course of our interviews, the issue of the incarceration of transsexual people who underwent female-to-male sex reassignment surgery was never discussed. Historical data collected by *Altrodiritto* report a single case of this kind. In this case, the inmate was assigned to the female section, and no consideration was given to the alternative possibility represented by Section D.

legally recognized shall be issued with the sole indication of the new sex and name.”⁴³ It appears clear that we are dealing with cases which elude the potential “definitory power” of the penitentiary administration (and, as a result, defy our attempts to analyze them).

Despite our observations, it is difficult to identify a single model, albeit informal, adopted by the Prison Records Office. Interviewee No. 2, for instance, states that question are unnecessary since the labeling already takes place at the police station, where officers “identify who is and who is not a transsexual person.” Such a process of identification seems to be completely lacking in formal—or, at least, clear—criteria of analysis.

It is precisely this degree of informality, rooted in the same context of uncertainty within which the Prison Records Office operates, that is criticized by the interviewees:

If a gay man gets arrested during the day, with no make-up on, he is brought to the section for vulnerable male prisoners. But if he's found at night, with make-up and [female] clothes on, then he is placed with transsexual inmates. Homosexuals are afraid of sharing a cell with transsexuals. There used to be a homosexual inmate [who had been placed in the section for transsexual people], a long time ago, I wasn't here yet, but transsexual inmates began to see him as a man because of the lack of sex. (Interviewee No. 1)

Inmate No. 2 informs us of a transsexual person who has undergone surgery and is housed in the female section. This piece of information has been verified and is, as clarified above, consistent with the law. In this respect, it is interesting to note that the law itself contributes to strengthening the criterion of binary genital identity, thus relieving the penitentiary administration of the onus of definition and sharpening the sense of identity deprivation among the inmates of Section D.

⁴³ Art. 5 L. 164/1982.

2.3. A different kind of classification: gender meanings and identities

It has not been possible to derive from the interviews an unequivocal notion of transgender or transsexual identity. In the course of our interviews, however, two important aspects emerged: there is a great deal of tension surrounding the meaning of gender-related words and gender identities, and there is a tendency towards contrasting, often mutually exclusive, and irreconcilable views. Apparently, all the interviewees consider themselves transsexual; however, they do not acknowledge the same “transsexual quality” in others. Moreover, their narratives constantly redefine gender and sexual orientation categories, revealing significant tension around those categories, which they regard as mishandled by the penitentiary administration. The latter, in the interviewees' opinion, creates “confusion” by overlooking important differences.

As far as the identity question is concerned, all inmates consider themselves transsexuals on the basis of two criteria. These symbolically reproduce another classical binary opposition: the body/soul or body/mind binarism, which has spurred heated philosophical debates since Ancient Greek times. For some of the interviewees, the defining element of transsexualism is the body with its modifications, seen as the unquestionable mark of the transsexual condition. For others, it is rather in the soul that transsexual identity is to be sought (in the ways of thinking, being, living). These two criteria are employed alternately in the interviewees' accounts, and it is no coincidence that they very often mirror individual experiences and personal choices. For interviewee No. 1, who uses hormonal therapy and has undergone a series of operations (prosthesis and other operations, where the implantation of silicone has a particular symbolic value), the body is the locus where transsexualism manifests itself. As a consequence, the use of hormonal treatment and/or surgery becomes a binding condition for the identity in question.

For interviewee No. 1, “there are real transsexuals, with breasts and cheekbones, and there are Brazilian transsexuals, who are gay and dress up as women and prostitute themselves.” According to this idea—by far the most popular, and acknowledged even by those who hold a different view—transsexual identity is the exclusive prerogative of those who bear the mark of transsexualism on the body, whereas those who do not conform to such physical paradigm are excluded.

Interviewee No. 3 clearly illustrates this conflict: she feels transsexual, but is seen by the others as gay, both because she does not use hormonal therapy and because she is not interested in undergoing surgery:

I am gay, but my way of being is that of a woman. I was arrested at home, cross-dressed. They asked me what I do for a living and said that if my clients are men, then I am a transsexual person. They told me I am. I consider myself a transsexual person. They [the other transsexual inmates] believe that transsexual means having silicone breast implants. I think that a transsexual person thinks differently. If a person feels transsexual, it's in the mind. Being transsexual doesn't mean being a woman, it's a separate category. A man is gay when he is a sissy. A transsexual man loves another man. A transsexual man can also fall in love with a woman. (Interviewee No. 3)

This disagreement on who really is transsexual separates the inmates from one another and, at the same time, entails a significant redefinition of gender identity and, in particular, of the term gay. In the discourse of transsexual inmates, this term stands for a man who represses his transsexuality and, only for this reason, sticks to a masculine habitus and often, pressured by society, has relationships with women as well. This kind of redefinition incorporates and reformulates the whole range of sexual orientations typically associated with the categories of gay and transsexual people respectively (the gay person is represented as bisexual, whereas the transsexual person is generally homosexual). Indeed, all the interviewees defined 'gay' as a different category from transsexuality:

There is no difference in sexual orientation. The transgender person mainly wants to look like a woman, while a gay man may be a lawyer and may not be brave enough to come out and undergo physical transformation. He sticks to the male identity, while transsexuals are brave enough to disclose their sexual identity. (Interviewee No.1)

These contrasting and divergent accounts converge on one point in particular: all interviewees regard transsexuality as a biological fact, a natural physical manifestation which emerges during childhood, on which the individual has little or

no autonomous influence. When asked whether it is possible to become transsexual as an adult, all the interviewees rejected such a hypothesis.

The idea of transsexuality as a biological given is so strong that one of the interviewees believes that the Prison Records Office should include a doctor who “scientifically” identifies transsexual people, thereby “solving the problem once and for all.” Within Section D, the tension between individual and collective gender identity is undoubtedly aggravated by the penitentiary administration's failure to establish clear inmate placement criteria, as well as by the multiplicity of interpretations surrounding the fundamental identity question, which in itself defies any attempt at a definitive answer. Such highly complex issues certainly require in-depth study and careful consideration; however, it is beyond the purview of this paper to cover them comprehensively.

3. Managing Section D: Function and Dysfunction

3.1. Empoli and Section D: a Theory of Chaos

While on the political front the Empoli case was suddenly and inexplicably cut short (in such a covert manner which can be hardly reconciled with the formal structure of a legal state), on the administrative and factual level it brought severe consequences. Significantly, this incident had important repercussions on the structure of Section D. Due to geographical proximity,⁴⁴ many transgender inmates, previously housed in various correctional facilities in Tuscany and other regions, had been transferred by the DAP (Department of Prison Administration) to the facility in Sollicciano, closer to their final destination in Empoli. In this process, the various forms of treatment, which the inmates were receiving, were suspended. For the first time in its history, Section D faced overcrowding, an issue which should have been temporary but became permanent as the Empoli project was aborted.⁴⁵ This *status quo* increased the visibility of Section D in Sollicciano with regard to its organization, its basic premises, and its structural dysfunctions.

⁴⁴ Both Sollicciano and Empoli prisons are located within the territory of the Region of Tuscany.

⁴⁵ It is interesting to note that the state of overcrowding caused by the above-mentioned transfers was relieved thanks to two legal proceedings: the one pertaining to the Italian Consolidated Immigration Act (Testo Unico sull'Immigrazione), D.P.R. 286/1998, following a ruling by the European Court of Justice in Luxembourg, and the one pertaining to the decriminalization of the criminal penalties under art. 14.5 ter and 6.3, following a ruling by the Italian Supreme Court of Appeal.

The Empoli project had yet another effect on the organizational structure of Section D. The interaction of the penitentiary administration with the work team of the CIADIG in Careggi demonstrated the latter's competence in the fields of diagnosis and therapy. A favorable context for this collaboration was provided by the reform in prison health care,⁴⁶ which was fully implemented in 2008, and the Tuscan Regional Committee resolution n. 396 of May 29th, 2006, according to which the Region of Tuscany should provide hormonal therapy to Tuscany residents. Unfortunately, the collaboration with the CIADIG was suspended alongside with the Empoli project, but it could have been rearranged for Sollicciano, and indeed, it appears to be currently under negotiation.⁴⁷ At the moment, in the absence of a formal convention, the interaction of the CIADIG with Sollicciano prison is irregular and affected by the systematic structural inadequacy of the facility. The medical examination of inmates from Sollicciano at the University Hospital in Careggi began in June 2013,⁴⁸ but the majority of inmates have not yet had a session with the CIADIG workers and are not under the care of the Careggi work team, not even for hormonal therapy.

3.2 Space and Treatment

Our analysis of the penitentiary reality of Section D, based on the data and activity of the organization L'Altrodiritto, reveals a complex structure defined by its practical character and lacking a solid theoretical foundation. As mentioned above, Section D is situated within the female section, on the last floor of the building, and consists of one office room (reserved for the staff and duty officer) and cells. Our research has revealed dysfunctions pertaining to the management of space, the availability of treatment services, and everyday life in the facility. The spatial organization of Section D is pivoted on the lack of spaces other than prison cells. In the original project, the space of Section D was intended as a wing annexed to and

⁴⁶ The prison health care reform in Italy was launched with Law n. 419, November 30th, 1998, providing for the transfer of responsibility for all prison health care services (including health care work relationships, and financial and material resources) from the Ministry of Justice to the National Health Service. However, the transfer of responsibility for prison health care to the National Health Service was completed only in April 2008, with the Council of Ministers Presidential Decree (D.P.C.M.) issued on that date.

⁴⁷ Our interviews with the work team of the Departmental Organization Unit for Andrology and Sexual Medicine of Careggi revealed the possibility of structured collaboration.

⁴⁸ According to the data provided by the work team of the Departmental Organization Unit for Andrology and Sexual Medicine of Careggi, about ten inmates from Section D have undergone a first psychiatric examination at the Hospital Unit; about five or six of these are receiving therapeutic care.

dependent on a bigger section. As the whole floor was converted to autonomous section, the architectural elements connecting it to the female section were lost. In particular, the separation of Section D from the female section entailed the loss of all channels of communication with the outside world, i.e. the rooms where detainees meet with magistrates, lawyers, and NGO operators, and other socialization areas normally included within a prison section. This space management policy has led to the abnormality of a closed, autonomous, independent, but structurally deficient section.

At the moment, Section D hosts prison cells and an office room for the duty officer and correctional officers, while it lacks common areas, socialization areas, and rooms allowing for meetings with lawyers and social workers in observance of the right to privacy.

These structural dysfunctions were unanimously and frequently emphasized in the course of the interviews. Interviewee No. 3 states on this point:

There is a hierarchy. Women have the green area, men have the soccer field, our section is open but the men's section is also open. We have a lousy area. They are expanding the men's area, men have a theater and a cinema, we have nothing but this small area. Even socializing is no longer possible. Things are always taken away from trans people. They care more for women and men, I don't know why.

Originally, the space of Section D was divided into prison cells introduced by a large room intended as common area and interview room. In this context, the duty officer's office was reduced to a desk situated at the entrance of the section. The correctional officers and the duty officer's office were later transferred to the common room, thus cutting off the only two channels of communication with the outside world. Meetings with volunteers and lawyers must now be improvised in the duty officer's office. This solution entails a number of problems, notably with respect to the protection of the right to privacy. This problem is currently tackled by resorting to an alternative and informal solution: the officers agree to leave the room for the duration of the interview, thus protecting—though only as a result of negotiation—the right to privacy.

As for treatment, the scarcity of treatment programs and specific activities for the inmates of Section D adds to the problem of space. Initially, they could participate in ordinary and extraordinary activities together with the detainees of the female section. Especially with regard to outdoor activities, the managerial model adopted at the time allowed for the joint participation of female and transgender inmates. In the inmates' narratives, this stage is described as a “mythical golden age”; in the words of interviewee No. 1:

Two years ago, before the separation, it was perfect here. Now we don't have a green area, nor do we have access to all study programs and schools.

I represent trans inmates in the section council. . . . I remember that, at the time, Sollicciano used to be the first experiment of a section for transsexual inmates connected to the female section. But then there was a short circuit. There used to be a proper reeducation. Now we don't have access to the gym (except once a week), we have access to the sports field once a month, and there is no library for us.

The end of this mixed model of treatment is narrated as follows:

Before I got here, there was a problem with a transsexual inmate who was actually heterosexual and screwed everyone in Section D. One day, during the out-of-cell time outdoors, he was caught screwing a woman. Since then, transsexuals aren't allowed outdoors anymore. We all pay for what he did.

Significantly, the episode described above is referred to by nearly all interviewees as a sort of foundation myth of the segregation of Section D. It is even more interesting to note that almost none of the interviewees was held in the facility at the time of this incident, but they all describe it as though they had personally witnessed it, as if it were part of their direct experience.

Indeed, the absolute separation of Section D was motivated by the constant problems emerging during joint activities involving both female and transgender inmates. Therefore, the possibility that the violation of the “promiscuity ban” led to a

penalization of the living conditions of transgender inmates should not be ruled out. The model of treatment currently implemented in Section D, which is the main target of the interviewees' criticism, crystallized then into its most restrictive and exclusive form. This condition of structural and spatial isolation is aggravated by the inadequacy of treatment, which the inmates of Section D receive only when men and women (formally recognized from a legal perspective, and thus gaining the right to all activities and services) have already made use of the facilities, according to a formula which acknowledges their right to treatment (expressed in Article 27 of the Italian Constitution) only in an exceptional and marginal fashion.

It seems to me that we are less important because we are fewer people. For instance, the photographer⁴⁹ took pictures of men and women, but he didn't come to us. It's discriminating. Women are always allowed to go to the theater, we are rarely allowed to go. (Interviewee No. 3)

We don't have a correctional education officer. There are no alternative measures for us, although we are often granted leave permits as a reward for good conduct. What is missing is a person who understands our needs. We need to be allowed outdoors. (Interviewee No. 6)

These issues clearly indicate the lack of a basic ideological framework within which the topic of incarceration can be addressed from a gender perspective. Signs of the difficult integration of a third category of incarceration can be found in the most banal, everyday procedures: the distribution of clothes, the possibility of buying products for personal hygiene, the possibility of getting a haircut, and the way in which the penitentiary administration addresses the inmates of Section D. For these inmates, all such aspects of daily life in prison are marked by the ongoing frustration of the freedom of self-definition and the right to have one's identity recognized and respected. The dominant paradigm tends to the coercive re-orientation of these inmates toward the habitus associated with their genital features: the clothes distributed in Section D are “for men,” the products for personal hygiene “few,” the

⁴⁹ The presence of a photographer is a rare and highly important occurrence in prison. Many documents require passport photos (notably driving license renewal), but even the simple use of photography to record the passing of time becomes an important form of self-preservation in jail.

hairdresser is “not necessary,” the semantic and linguistic categories employed by the officers of Section D are male gendered.

I have never experienced such strong discrimination as I have experienced it in jail. It wasn't the other inmates who've made me feel so bad, it was the staff that made feel like this. Some say that there should be a training course for correctional officers assigned to the transsexual section. For instance, I am often addressed as “he” and feel humiliated. The inspector of this section treats me as a “he.” The simple fact of having to explain myself to her makes me feel humiliated. If we start an argument we get reported. A transsexual person cannot feel like a man. She needs respect. (Interviewee No. 6)

It's hard in here because the officers talk to us as if we were men, aggressively. But some are politer than others. We have no choice of clothing, only men's clothes are available. (Interviewee No. 5)

Access to basic services, such as schools or libraries, is extremely limited: indeed, the segregation of transgender inmates from those of the male and female sections turns marginality into the ruling criterion for Section D. In this context, the lack of formal recognition and a specific policy for the care and management of transgender inmates results in the ongoing precariousness of their situation. The topic of schooling deserves to be treated separately, since literacy and primary education have always been designed for mixed classes. This notwithstanding, access to school has always been extremely limited for transgender inmates — and this is yet another evidence of the specific form of stigma attached to transgender people in jail.

A last point we will address is that of the “comparative judgment” on Section D expressed by the interviewees on the basis of their experiences in other Italian correctional facilities. Interviewee No. 4, for instance, was arrested in Viareggio, together with a friend, and immediately brought to the prison in Lucca, where she spent two days “in solitary confinement, with no toilet or hot water.” She further explains: “. . . we made a scene, asking for a transfer to Sollicciano or an improvement of the situation, and since nothing could be done, they applied for our transfer. My friend actually knew Section D already.”

Interviewee No. 6 comes from Rebibbia prison (Rome). She describe the situation at the correctional facility thusly:

Rebibbia has a section for transsexual inmates too, the management forbids all forms of contact with men and women, but school is with men. In Rebibbia we were also offered no activities. We were housed in the male section, but we had the same expenses of a female section and could not buy women's clothes. I was then moved to a section for trans people in Rimini. In Rebibbia I wasn't allowed to dress like a woman.

Considering the functioning and dysfunctions of Section D, we regard it as an idiosyncratic and constantly changing reality, deserving attentive study in the context of the Italian prison system due to its potential to disrupt the gender binary paradigm (male incarceration/female incarceration) and to reflect existing gender identity tensions.

3.3 Yes to Empoli, no to Empoli: the Opinions of the Interviewees

The interviewees' narratives clearly show their need for recognition: although their specificity cannot be systematized, it is also sharply distinguished from the experience of male and female inmates. The interviewees did not give a unanimous answer on the most desirable forms of incarceration and treatment, but their reflection on the situation of transgender inmates in Italy and their judgment on the aborted Empoli project reveal, amidst divergences and contradictions, a common condemnation of the law, of its silence and aphasia. The inmates of Section D have clearly developed a sort of common ideology (i.e. around the question of Empoli) by reflecting upon the expectations, hopes, and concerns they harbored as they waited to be transferred to Empoli and later had to face the sudden arrest of the project.

The various answers on the possibility of a correctional facility for transgenders only revolve around two main points. The first is the theme of "ghettoization", explicitly condemned by all interviewees:

The community for trans people only ghettoized us, both on the level of prison community and on the level of social community. (Interviewee No. 1)

No [I don't approve of the Empoli project] because we are capable of living side by side, a different prison would isolate us even more, and it would mean that we are not considered normal people. A section for trans people would be much better if special attention were given to allowing transsexual inmates equal rights to heterosexual prisoners. It would be good to have facilities for transsexuals only, outside of the prison, allowing for alternatives to incarceration. The section should provide assistance for the reintegration and reeducation of prisoners. We have no correctional educators or psychologists. The psychologists only comes once a month. In Rebibbia I had a psychologist, in Rimini I had a psychologist and I was under treatment. (Interviewee No. 6)

The second point shared by all narratives is that of “rivalry.” This theme hinges, on one hand, on a sort of basic anthropological pessimism over transsexual people and, on the other, on the conflicts between nationalities:

A prison for transsexuals only wouldn't be good because some trans people don't get along with each other, there is too much envy. (Interviewee No. 3)

I wasn't in Jail at the time of the Empoli project, and I saw that it wasn't a good idea, except for penal labor because we would manage it ourselves. But putting all trans people in Italy in one place would have been like dropping a bomb. We are all South American but there is a strong rivalry among us, Columbians and Peruvians are very aggressive. (Interviewee No. 1)

Another argument against a correctional facility for transgender inmates is that it would contribute to the reproduction of social mechanisms already at work in society outside of the prison walls and in the work life of transgender people, i.e. their exploitation by the cafetinas:

If they open a jail for transsexual people, there will be a barrier between trans people and the cafetinas who exploit them. It's less likely to happen here because we are fewer. Smaller facilities like this one are better. It's not the case here, but there are cafetinas in jail, and they continue to exploit. In a jail for trans people only, there would be exploitation among us. There's a natural hierarchy: the older ones don't do anything. There's no exploitation here. (Interviewee No. 5)

All these examples share the idea that a facility designed for transgender inmates follows a logic of “ghettoization,” creating an instinctive sense of rejection and casting negative projections on the imagined life within the facility. The idea of a centralized “gathering” of all transgender inmates in Italy into a single facility is perceived as alarming. All interviewees agree that the management of smaller facilities distributed across the country is easier and reduces the risk of opposition and conflict between groups, especially those based on nationality. It is interesting to note that what the interviewees fear is not the relationship with the penitentiary administration (indeed, they all believe that the Empoli project would have brought about a general improvement in this respect), but rather the hypothetical establishment of a community without “the Other,” which would exacerbate interpersonal conflicts and community tensions. Moreover, the interviewees are concerned about society's outlook on the opening of a prison for a “third gender” (which this definition clothes with an aura of abnormality) and about society's judgment over the legitimacy of a similar choice, which openly calls into question the social representation of transgenderism and transsexualism.

Only one interviewee declared herself in favor of the Empoli project, stressing the advantages which would derive from the specialized training of correctional officers and individual treatment. It is important to note that Interviewee No. 4 is the only one who is in prison for the first time and has been held there for little over a month. What is more, she is the only interviewee who cannot speak Italian. Her opinion is thus fully idiosyncratic and less affected by group dynamics:

It would be interesting to have a prison for transsexuals only. Correctional officers would have to study in order to work with transsexuals. We would have a school and all other activities. We always

have problems here, both with men and with women. The problem with women is that they don't accept transsexuals. The problem with men is sex. Besides, there is no supply of clothes here, only men's clothes. (Interviewee No. 4)

A last question included in this interview session addressed the hypothesis of a “mixed prison” in which the placement of inmates would not operate on the basis of gender. Faced with this possibility, the interviewees had a unanimous reaction:

No, organization is better. (Interviewee No. 2)

I imagine what it would be like if we were all together, it would be vandalism ... This separate section is better. Men want to boss around, it could work with women, but staying here is better ... there would be abuse, women and trans people would compete for men, there would be power relationships, there are trans people who like women and men who like trans people, thus the problem of sexual competition. I don't know if friendship would work in jail. Our relationships with men would inevitably be sexual, and with women as well. (Interviewee No. 5)

No, it would be a threat to stability. Even for men and women: there would be the problem of promiscuity and an increased risk of suicide. It would be psychologically damaging. It would be better to have the possibility of mixed socialization among trans people, men, and women. (Interviewee No. 6)

These unanimously negative answers demonstrate how penitentiary classification based on gender is perceived by these inmates as “natural”, necessary, and evident.

At the heart of the issue of the penitentiary treatment of inmates who do not identify as cisgender lies precisely this unanimous belief in the natural and necessary character of the separation of inmates on the basis of sex.

Conclusion

The number of transgender prisoners constitutes a small percentage of the entire prison population and is therefore managed as an exception by the prison administration. The prison can be considered to be a place designed for male incarceration, while all “other” prisoners are seen as inconvenient exceptions. If, as we believe, this logic is not unique to the Italian context, the fact that all inmates held in Section D are migrants needs to be understood in the light of Italian and European migration policies.

Joining the debate on the incarceration of transgender people, this study wishes to foreground the issues that this phenomenon raises for the entire penitentiary system. When trying to understand the dilemmas of Italian prison policy around transgender people, Section D can be regarded as a nodal point providing multiple perspectives on the policies chosen to address this issue. In this view, our case-study presents itself as a magnifying glass, zooming in on the challenges awaiting a penal policy consistent with the needs and specificity of those individuals who subvert the normative gender binary, each in their own singular way.

At present, the contradictions and conflicts found in Section D betray the reservations and limits characterizing the prison administration's choices. It is important to acknowledge that the Italian legislature's choice of not choosing is not a neutral approach. As Paul Watzlawick and the Palo Alto group have already stated in their first axiom of communication, “one cannot not communicate” (41-42 et passim); in this sense the unwillingness to communicate is a basic form of communication that does not acknowledge the other party. With regards to policy choices, omission is a specific kind of action which entails, in the case under examination here, ideological and practical consequences. These define, as we have tried to emphasize, the everyday experience of the inmates of Section D.

As we have tried to show here, the history and management of Section D are deeply intertwined with the story of Empoli and suffered the same fate. We chose to use “Empoli” as a critical ground for developing a debate on the incarceration of transgender people, thus reclaiming this issue from invisibility. Empoli hinges on a fundamental premise: it contributes to sustaining, consolidating, and aggravating a system of segregation based on gender identity. To put it simply, the case of Empoli tells us that there is a third gender, so we must reflect on this issue and provide a *tertium genus* of incarceration. This seemingly revolutionary political answer bypasses

the significant fact that the Italian penitentiary system has never undergone a gender-based rethinking and remodeling and that a *secundum genus* of incarceration does not yet exist.

If we examine the interviewees' views on the Empoli model (which were essentially negative) and combine them with their reactions to the hypothesis of a "mixed prison" with no gender separation, the lack of a clear consensus regarding the "best" detention model for transgender people as well as the complexity of the issue become evident. The variety of answers and the impossibility of a *recondutio ad unum* are tangible in the interviewees' narratives, in the paucity of Italian public debate, and in the plurality of aspirations inside the LGBT movement.

A brief digression on the seemingly uncomplicated topic of public toilets can help us illustrate the complexity of the issue and the consequences of adopting one model to the exclusion of others. The discussion over public toilets and gender is framed by two dominant suggestions: the creation of a third bathroom next to the already existing male and female ones or the introduction of a gender neutral toilet that explodes the gender binary. The difficult reconciliation of these different aspirations and perspectives is further complicated by considerations brought forth by academics and activists that see the expansion of rights for everyone as a possible retreat or dilution of already conquered spaces.

Considering the different custodial models for transgender prisoners in Italy, this study has tried to stress the lack of public reflection on the incarceration of transgender people and, in general, on their rights, rights which, in contexts such as correctional institutions, tend to weaken and almost entirely disappear.

As we have tried to emphasize, this discursive gap is especially evident in linguistic choices, where the persistent use of the word transsexual is not, as it may seem, a neutral choice; on the contrary it indicates a resistance to the new LGBT grammar that challenges the normative gender binary and the exclusive dialectic opposition of the masculine and the feminine.

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