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## **Migrant Agency: Negotiating Borders and Migration Controls**

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### **Abstract**

Policy, media, activist and academic discourses often portray migrants and refugees in the extreme, as victims or villains. This portrayal obscures the agency demonstrated by migrants and refugees and evidenced in their own accounts of their journeys. It also reifies the power of the state to ‘secure’ borders and control migration, and conceals the contested politics of mobility and security visible in negotiations between migrants, borders guards, smugglers, fishermen, and other actors. In this article, I take an ethnographic approach and conceptualises the border from the bottom up as a contested site of negotiation. The analysis reveals the ways in which migrants negotiate with their smugglers, amongst themselves, and with borders guards in order to circumvent state controls when entering the state clandestinely. In doing so, it questions traditional conceptualizations of sovereignty, security and citizenship. The article then analyses how migrants continue to demonstrate agency after arrival within state territories, and how this agency can have an impact not only on micro, everyday encounters, but also on the macro level: my research demonstrates how migrant agency can have causal and constitutive effects on state relations and power. The article draws on participant observation and over 130 interviews I conducted with migrants, refugees, fishermen, NGO representations, and policymakers between 2007 and 2015 in Malta and Cyprus.

## **Migrant Agency: Negotiating Borders and Migration Controls**

### **1. Introduction**

The question of migrant agency is central to how academics, policymakers, and activists frame and understand international migration.<sup>1</sup> It shapes how academics theorize migration, how government officials design policies, and how activists devise campaigns to influence policies. The thorny question of agency underlies public and policy discourse, where migrants are often characterized in the extreme, endowed with either a dangerous agency as unknowable, risky bodies, criminals, and potential terrorists; an immoral agency as fraudsters, queue jumpers, and welfare scroungers; or no agency at all as refugees, victims of trafficking, and forced migrants more broadly (cf. Nyers 2003; Anderson 2008a). These depictions are also gendered. It is the voiceless, female refugee who has become the poster child of the United Nations High Commissioner for Refugees (UNHCR) and other advocacy organizations (Johnson 2011), while the spectre of a male migrant haunts the borders of the first world. The constitution of migrant agency in this polarized manner amplifies the refrain for ‘managed’ migration and has far-reaching consequences. For instance, most developed nations have adopted externalisation practices and deterrent non-entrée policies, explicitly indicating their preference to resettle (limited) refugees from areas of conflict rather than accept those who demonstrate agency by arriving ‘spontaneously’ at their borders (Mountz 2010).

The question of agency also remains pertinent to policies, lived experiences, and rights once migrants cross borders. For example, any evidence of agency during a clandestine journey can undermine an asylum seeker’s ‘victimhood’ and thus her claim to refugee status (e.g. Oxford 2005: 31-33). Migrants must perform as the depoliticized suffering subject incapable of action and necessitating rescue. Those who do not conform and demonstrate agency, especially those who thwart state controls in order to enter a country, are likely to be securitised and depicted as villains who undermine a nation’s security, labour markets, and identity. As such, the victim-villain binary aids in the construction of the ‘good’ versus ‘bad’ migrant (cf. Anderson 2008a).

These binaries reverberate within migrant advocacy work, as well-intentioned organizations campaign for the rights of particular migrants by reinforcing their construction as victims without agency (cf. Johnson 2011; Sharma 2005). In underscoring the refugee as a humanitarian subject or the domestic worker as an exploited subject, they inadvertently encourage the racialized construction of and division between ‘good’ and ‘bad’ migrants, as well as between insiders and

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<sup>1</sup> I use the term ‘migrant’ broadly to include refugees and labour migrants, with a primary focus on those who cross the Mediterranean without state authorization or who lose their status once in southern Europe. These labels and categories are not unproblematic, being necessarily simplistic, unable to capture the complexity of the lives they try to contain, and laden with race and class biases (Anderson & Blinder 2014).

outsiders. Thus while women and children are often pointed to as undeserving of detention and deportation, the ‘foreign national prisoner’ in the UK and the migrant issued a ‘security certificate’ in Canada are not generally afforded this humanitarian lens (Griffiths 2015; Bosworth 2011).

Even when constructed as victims, migrants are not seen as victims of the state and its border policies nor of global capitalist labour markets nor of colonial histories of empire, but rather victims of other villainous forces, generally personified as an exploitative and cruel trafficker or smuggler. Migrants are also only portrayed as victims within limited physical and temporal spaces. In the Mediterranean, migrants are rendered victims at sea, during rescues, and in death, where they can be pitied, rescued, and mourned as ‘good’ migrants. However, once ashore on EU territory, they quickly become risky, securitized bodies, possible villains, who must be detained. In this manner, in both policy and advocacy efforts, these binaries depoliticize and in doing so narrow the scope of ‘appropriate’ policy responses to a selective humanitarian or security framework (cf. Sharma 2005) and contribute to the related humanitarian and security spectacles produced at the border (Andersson 2014).

Beyond policy and advocacy circles, divergent assessments of migrant agency within migration theories support different ontological assumptions that are often underestimated (e.g. Massey et al 1998; cf. Bakewell 2010). For instance, rational choice models that valorise agency underpin neoclassical and new economics of labour migration theories (e.g. Lee 1966), while world-systems theory prioritizes the structural conditions that result in migration apart from any individual decision (e.g. Wallerstein 1974; 1979). More recently, migration network theories have indicated how networks of friends, relatives, or co-nationals enjoy social capital that facilitate continued migration between two places, independent of the initial drivers of migration. Network theories often present migration systems as fully-formed without investigating the agency required to initiate, transform, or weaken such systems (cf. Bakewell et al 2011; Bakewell 2010). The simplistic division in migration studies between forced and voluntary migration reinforces such divergent approaches to agency.

In this article, I focus on migration across the Mediterranean and posit that the prevalent construction of migrants as victims or villains obscures the agency, however limited, demonstrated by migrants and refugees and evidenced in their own accounts of border crossings and experiences within host states. Ignoring this agency reifies the power of the state to ‘secure’ borders and control migration, and conceals the contested politics of mobility and security evident in negotiations between migrants, borders guards, smugglers, fishermen, and other actors. These encounters illustrate alternative modes of seeking security that move beyond the state and citizenship as the sole frameworks for security (cf. Innes 2014). Moreover, I also argue that migrants are agents of and within international relations as they have an impact not only on micro, everyday encounters, but also on the macro level, having indirect,

direct, and epistemic effects on state policies and state relations. This article thus endorses a more nuanced picture of the border as a contested space, questioning traditional conceptualizations of sovereignty, security and citizenship.

I examine these issues by drawing upon my research in the Mediterranean region, and in particular fieldwork I conducted with migrants, refugees, fishermen, NGO representatives, and policymakers in Malta and Cyprus<sup>2</sup> between 2007 and 2015. This fieldwork included over 130 interviews,<sup>3</sup> as well as participant observation. One might suppose that migrants who reach the EU are ‘successful’ in relation to counterparts who are thwarted in their journeys by a lack of capital, border policing, violence, or death, and thus that the current study involves selection bias in including migrants with more agency. While acknowledging the inherent selection bias in any qualitative study, I would argue that this position develops from erroneous assumptions about migrant journeys as linear trajectories from country of origin to destination, as well as about the agency of migrants as measurable characteristic of an individual. Rather, journeys are much more fluid, with ‘transit’ countries becoming destinations and vice versa as new barriers and opportunities arise (cf. Mainwaring and Brigden 2016, forthcoming). This study analyses the ways in which migrants negotiate agency in the Mediterranean region at particular moments of their journey. For many, this is not the end of their journey: some continue on to other EU countries, while others are deported from EU member states to transit states or countries of origin.

Heeding the call of feminists such as Dorothy Smith (1987) and others who contend that we must begin an analysis of power from people’s everyday lived experiences, I foreground the experiences of people moving across the Mediterranean without state authorization. The article proceeds with a theoretical discussion of agency, and how it has been treated within migration studies. It then turns to examine how migrants find room for manoeuvre to negotiate security and sovereignty when crossing borders and within states. Lastly, I analyse how such micro demonstrations of agency relate to the macro level, by analysing the causal and constitutive effects of migrant agency on state relations and power. The analysis reveals an iterative dynamic between a contestation of the politics of mobility and their re-appropriation by the state.

## **2. Negotiating Agency: Beyond Choice and the Neoliberal Subject**

There is a limited and fragmented literature on migrant agency that spans across different disciplines, as well as across issue-area studies, such as citizenship and transnationalism. Scholars have explored how migrants challenge traditional

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<sup>2</sup> Cyprus remains a divided country. I conducted the majority of my research in the Republic of Cyprus, geographically the southern part of the island. A more limited number of interviews were conducted in the Turkish Republic of Northern Cyprus, a state unrecognized in the international community.

<sup>3</sup> All interviews were conducted in English. Although this precluded a small number of migrants from participating in the study, I nevertheless interviewed male and female migrants with different nationalities in rough proportion to estimates of unauthorized arrivals in Malta and Cyprus at the time.

conceptualizations of citizenship and imply new modes of political belonging (McNevin 2009; Nyers 2003), and how irregular migration flows challenge traditional representations of sovereignty and borders (Squire 2011). Much of this scholarship does not employ the concept of agency *per se*, instead speaking of contestation, autonomous migration, or resistance, for example. Collectively, however, these interventions can be understood as addressing the issue of migrant agency and can be divided into two different approaches. The most common approach considers specific instances of resistance or transgression on the part of migrants, especially those without status (e.g. Nyers 2003; 2006). A less common approach examines everyday forms of agency, such as how migrants without legal status adapt daily routines and social interactions in the face of their deportability (e.g. Sigona 2012). Reflecting migration studies more broadly, most of this literature examines migrant agency after arrival in a destination country, rather than during the migration journey.<sup>4</sup>

In contrast to this literature above and building on the literature that has critiqued anti-trafficking measures for devaluing women's agency (e.g. Anderson 2008b; Andrijasevic 2010; Sharma 2005), this analysis puts migrant agency at its centre and examines it in in-between spaces that might be considered hard cases: within borderzones where sovereign power is thought to create a state of exception leaving only 'bare life' and very little room for agency (Agamben 1998; cf. Mountz 2011). Although the analysis prioritizes agency, I do not wish to discount the significant challenges, structural constraints, and barriers to mobility, rights, and equality that migrants travelling in an unauthorized manner face. I do not wish to suggest that structural inequalities do not significantly condition their choices. One need not be a discerning scholar to see that access to mobility, asylum, and rights are increasingly out of reach for most of the world's population. Neither do I find it necessary to reduce agency to choice. As other feminist scholars have argued, adopting a neoliberal framework of a unified, rational actor faced with choices in this context is problematic and ignores how 'power works in and through subjects, not in terms of crude manipulation, but by structuring our sense of self, by constructing particular kinds of subjectivity' (Gill 2007: 76). Indeed, Bridget Anderson and Martin Ruhs (2010: 178) remind us that migrant agency is not simply about 'choice' as is often portrayed in policy debates, but rather about 'understanding decision making, the room for manoeuvre, opportunity structures and migration trajectories' within the contexts of modern nation-states and the global capitalist system. The issue at hand is thus not about choice or free will, but rather how even on the edges of states and societies, faced with formidable levels of marginalization, people continue to resist, find room for negotiation, and exploit these narrow margins (cf. Andrijasevic 2010; Choi & Holroyd 2007: 491).

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<sup>4</sup> There are nevertheless important exceptions, such as studies on migrant agency during the smuggling process (e.g. Van Liempt and Doornik 2006). For further discussion of migrant journeys and agency, see introduction and other contributions to special issue on 'Clandestine Migrant Journeys' (Mainwaring & Brigden, 2016, forthcoming).

Following Emirbayer and Mische (1998: 970), I proceed with a definition of agency as a ‘temporally embedded engagement by actors of different structural environments... which, through the interplay of habit, imagination, and judgment, both reproduces and transforms those structures in interactive response to the problems posed by changing situations’. This definition emphasises the relational and social properties of agency and includes three elements – habit, imagination, and judgement – that correspond respectively to an iterative element of agency informed by the past, a projective element oriented towards the future, and a practical-evaluative element that mediates the interaction between past habits and future projects within specific temporal contingencies (cf. Sewell 1992: 20; Bakewell 2010). As Emirbayer and Mische (1998: 970) contend, ‘By differentiating between the different dimension of agency, we can help to account for variability and change in actors’ capacities for imaginative and critical intervention in the diverse contexts within which they act.’

The focus on judgement as the central pillar that connects the present to the past and future allows us to consider agency in moments where migrants consciously create space for manoeuvre within state structures and in negotiation with non-state and state actors, such as border guards, smugglers, and other migrants. This practical-evaluative element of agency draws on past experiences to characterize a situation as problematic or unresolved, and involves deliberation with others and/or oneself over possible trajectories of action (Emirbayer & Mische 1998: 994-1000). Such a conceptualization moves away from theorizing agency as ‘acts of citizenship’ that may be made without judgement, acts that ‘can be authored or anonymous, intended or accidental, individual or collective’ (Nyers 2010: 130; cf. Isin 2008: 23). Although the acts of citizenship literature has produced many important works and insights that this study draws on, this conceptual framework reinforces the focus on the relationship between migrants and the sovereign; in contrast, I analyse agency more generally in micro-level negotiations between state actors and migrants, but also between migrants, and between smugglers and migrants. Here, I conduct a grounded, ethnographic analysis of the agency used to negotiate mobility, and explore how the negotiation between control and contestation are co-constitutive (cf. McNevin 2013).

I thus conceive of this agency as political, as a contestation of mobility and bordering regimes. More than ‘ruptures’ or ‘interruptions’, I argue that they have the possibility of being transformative to the structures they operate within, and demonstrate this empirically. Moreover, revealing how migrants on the edges of states and societies negotiate agency in familiar ways challenges the over- and under-representations of agency that not only allow for the perpetuation of a ‘myth of difference’ between historical refugees flows within Europe and contemporary flows from the Third World (Chimni 1998; cf. Johnson 2011), but also between citizens and particular non-citizens, such as irregular migrants or refugees, and between ‘good’ citizens and ‘bad’ or ‘failed’ citizens, figures such as the welfare scrounger, the criminal, and the teenage mother (Anderson & Hughes 2015).

Examining questions of agency raises the question of how to delimit it. Do all actions constitute agency? Is agency dependent on outcomes? How do we know agency when we see it? The aim of this article is not to give definitive answers to these questions, but rather to demonstrate that migrants are not the victims or villains often portrayed in the media, politics, and scholarship. While the agency of wealthy Westerners is often assumed, that of the poor, migrants, slum dwellers, refugees, and minorities is habitually discounted (Cumbers et al 2010; Scott 1985). Thus, for the purposes of this article, I take a fairly encompassing view of ‘agency’. When, in interviews, people reported strategic engagement or negotiation with actors or their environment, I coded this as agency and explored how these were ambivalent moments of disempowerment and empowerment, as well as the outcomes of that engagement. However, drawing on Emirbayer and Mische’s definition of agency above, I reject the idea of particular outcomes being a necessary condition for the existence of agency: people’s actions may transform or *reproduce* structures.<sup>5</sup> My aim is not to endorse the primacy of sovereign power over the lives of migrants, seen for example in the work of Giorgio Agamben (1998) and scholars influenced by his work, or the primacy of human mobility over state control reflected in the ‘autonomy of migration’ literature. Rather, I wish to explore the intersection between migrant agency and sovereign power, where contestation and ambivalence prevail (cf. McNevin 2013).

### **3. Negotiated Passage**

The Mediterranean has become an emblematic site of the global struggle over mobility and its deadly consequences. Despite attempts to discursively and materially construct ‘Fortress Europe’ through restrictive policies at, within, and beyond the European Union’s external borders, people continue to thwart state controls in attempts to join family members, find refuge, and secure livelihoods. As controls have increased, journeys have become more dangerous: in 2015, over 3,700 people died making the voyage across the Mediterranean, making up 70 per cent of migrant deaths worldwide (IOM 2016). Malta and Cyprus have found themselves embroiled in this context since they joined the EU in 2004, shortly after experiencing an increase in unauthorized migrant arrivals and related asylum claims around 2002. In Malta, the higher levels of immigration were attributed in part to the increase in border patrols on Spain’s southern border, around the Canary Islands, and along the West African coastline. Faced with these new barriers, migrants began travelling in larger numbers through central Africa to Libya and across the Central Mediterranean (Lutterbeck 2006). Over the last decade, sub-Saharan Africans have constituted the majority of these flows: refugees from Somalia and Eritrea have been the largest groups, but West Africans also arrive on the island. In recent years, Syrian refugees have become the largest group. In Cyprus, the flows are more diverse and include people from Africa, the Middle East, and Asia. A labour migration programme established in the early

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<sup>5</sup> In the final section of the paper, I nevertheless demonstrate how migrant resistance within the state can have transformative effects on national and regional policies.



1990s has contributed to the fact that migrants now make up close to 20 per cent of the Cypriot labour force and that a large percentage of migrants without status originally arrived on work visas (Eurostat 2015). Those crossing Cypriot borders without authorisation, on the other hand, generally arrive in the northern, Turkish-controlled side of the island before crossing the Green Line, which divides the island, into the Republic of Cyprus (Mainwaring 2008).

As member states on the EU's southern periphery, both countries have portrayed the arrival of migrants on their shores as a crisis and adopted migration policies aimed at deterrence, in line with wider EU priorities (Mainwaring 2014). However, despite the spatial and temporal strategies used by states in order to dissuade migrants and refugees from arriving on their territory, migrants negotiate and sometimes overcome these barriers. Examining the journey across the Mediterranean reveals instances where migrants demonstrate agency despite the difficulties they face. Here I discuss how agency is employed in micro-level negotiations that take place: (1) with smugglers; (2) between migrants; and (3) with border guards. The focus in this section is primarily on negotiations that take place on the high seas, where little oversight is possible and where one expects that migrant agency is extremely limited and state power blunt. 'Push back' policies and reports of boats 'left to die' would seem to corroborate this bleak picture (Heller et al 2012). I also include in my analysis the experiences of land crossings, in particular of the Green Line in Cyprus, in order to demonstrate how migrants resist the state of exception constructed within different kinds of borderzones.

Before the journey across the Mediterranean, migrants describe negotiations with smugglers over the price of passage and the time of departure. Although these negotiations are between two unequal actors, migrants leverage kinship, friendship, and their own knowledge in order to gain small advantages. Kamara,<sup>6</sup> a Liberian man, recalled how a friend used his maritime skills in order to negotiate a lower price for their passage from Libya across the Mediterranean: 'I paid \$300... [T]hey used to collect \$1,200, but me I am lucky because my friend he knows how to drive' (Interview, April 2009). Others have less success, and describe attempts to negotiate with smugglers as moments of powerlessness:

*Even when we start from Libya, it was broken the seating [in the boat].  
And we told them, it was broken, we said to the Libyans. [They said,]  
Fuck, move, move, there is no time for me. If somebody saw me from the  
government, they will kill me.... Go, we don't care about you. And we did.  
We pray to God and we arrived in here* (Interview, April 2009).

Despite the divergent outcomes, migrants in both these examples, faced with challenging, dynamic situations, draw on past experiences, skills and networks in their negotiations in both these examples. This differentiated agency across time and

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<sup>6</sup> All names are pseudonyms.

space illustrates both the barriers to mobility, violence, and marginalization that migrants en route face, but also the room for manoeuvre they find at the margins.

Migrants who arrive in Malta do not tend to negotiate their destination with smugglers in Libya, beyond knowing they are buying passage to Europe,<sup>7</sup> although, as is demonstrated below, negotiations over rescue and disembarkation occur with coast guards and other actors in the Mediterranean. Indeed, if we consider migrant journeys more broadly, migrant accounts reflect a dynamic process whereby they respond to new information, as well as structural opportunities and challenges along the migration route (cf. Havinga and Böcker 1999; Day and White 2002). Their journeys are thus rarely the straightforward linear trajectories from country of origin to destination, so-often reproduced on maps as arrows menacingly pointing north (cf. Mainwaring & Brigden 2016, forthcoming).

William, a Congolese asylum seeker related how he travelled through Uganda, Kenya, Syria, and Turkey before arriving in Cyprus. When I asked him whether he had a particular destination in mind, he said:

*To be honest, no. No. Because I, I wanted even to apply for asylum in Syria, but some people there they said no, you see, the system here is a little bit complicated... I mean the UNHCR, they are working there [but] the government is not working with them so it's not good. If you can go a little bit further and find a country where there is a system, an asylum system, then it might be good for you. So when I reached Turkey, again in Istanbul I wanted to apply for asylum. They say, no, you have to go to Ankara. The refugees, they are not here in Istanbul, you have to go again to Ankara. So I was a little bit confused... So, as I was tired and confused by the information, like this, I tried to check myself in the internet. Okay, you have to go to Ankara. So, meantime, I had information, that it's easy from Turkey to go to Cyprus. In fact, I saw so many people were coming with their visa, with a Turkish visa and they will fly from Istanbul to Ercan [Airport in Nicosia]. You see easy. And then the guys we say, okay, when you reach the north Cyprus, eh, you just cross to the south and you are in Europe. So it's the easy way! [laughs] And then, I decided to take the same route, but I didn't have the visa and a passport. And how to go there? There is one guy then came from Burkina Faso, I don't know, somewhere. West Africa. And the guy he had a visa. He say ... he will stay in Turkey. He was a football player and there is no need for him to go further. He will stay there and look for some football team. If they will accept him, they will fix his paper...! He told me, anyway, if you want to use my passport, you can go ahead. Because you want to go to Cyprus,*

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<sup>7</sup> Scholars report this type of negotiation occurring elsewhere (e.g. Van Liempt & Doornik 2006). In Malta, although many migrants report having wanted to go to Italy, others leave Libya without a specific destination. Moreover, even those who are trying to reach a particular country recall the overwhelming imperative to reach any safe place while at sea.

*you can use this passport. And when you reach there, you send it back to me... I was not alone. ... I mean so many people use [passports], you know? Because we are Africans and the police, immigration, they see someone from Africa, so they just look like this, it's the same person. Although the face are not the same! [laughs] (Interview: August 2009).*

William's account reflects a dynamic process whereby he responds to new information and opportunities during his journey. Although he is clearly limited in his agency due to various structural conditions, he is also not without agency. William's past experiences, his lack of familiarity with asylum systems in Syria and Turkey, and his already long journey create incentives for him to apply for asylum in each of these countries, but he gathers information from friends, acquaintances and the internet and uses it to deliberate over possible trajectories before making a decision. William's account thus reflects the practical-evaluative element of judgement that mediates between past experiences and future projects, in his case the desire to settle permanently in a country as a refugee. He has preferences and a degree of control over his situation. In particular, his successful use of an acquaintance's passport entails agency that is subversive to the state and its borders. His experiences also reflect arguments made by Emirbayer and Mische (1998: 1006-07) that '[a]ctors who face changing situations that demand (or facilitate) the reconstruction of temporal perspective can expand their capacity for imaginative and/or deliberative response' and that '[a]ctors who are positioned at the intersection of multiple temporal-relational contexts can develop greater capacities for creative and critical intervention'.

In the Central Mediterranean, migrants also negotiate their passage at sea amongst themselves and with other actors, such as fishermen and mariners on commercial vessels. Migrants negotiate amongst themselves in order to decide who will captain the boat, how to distribute very limited food and water, what rules should be followed at sea such as whether smoking is permitted, and where to disembark. Disembarkation must be negotiated as states have adopted policies that discourage rescue.<sup>8</sup> For instance, fishermen and other mariners often refuse to rescue migrants due to monetary, security, and legal concerns. Some maintain they provide food, water, and directions, while others note that any engagement with these boats and their passengers is too risky (Interviews: migrants and refugees; fishermen, 2008-2014).

During negotiations at sea, migrants demonstrate awareness of international rules, knowledge they can deploy in order to exert some degree of control over their rescue. For instance, one refugee explained how the people he was travelling with were aware they needed to reach Maltese or Italian waters in order to be rescued by a European country:

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<sup>8</sup> In the Central Mediterranean, this was especially case before Italy launched its Mare Nostrum operation at the end of 2013.

*We were 24 men and one woman. And when we start our journey from Libya, it was on the 15<sup>th</sup> of October. It was very rough weather. And from the minute we left Libya, we were calling for international help to Italy, to Malta, to everywhere. But they keep on telling us just that we were on the territory of Libya. So we came forward, we came forward. At the end we were at the international line. We were in Malta's territory and then we ask for help (Interview: April 2009).*

Here, migrant manoeuvres can be understood as an 'improvisational orientation... towards habitual practice which takes place in ongoing dialogue with situational contingencies' (Emirbayer & Mische 1998: 979). Knowledge gained in the past shapes migrant expectations that they will be rescued in international waters, processes Emirbayer and Mische call 'recognition of types' and 'categorical location'. This informs their strategy of calling repeatedly for help while they move through Libyan waters.

Contrary to the state narrative that migrants who depart from Libya do not generally want to come to Malta,<sup>9</sup> most migrants who find themselves in distress at sea maintain their priority to be rescued over arriving at a particular intended destination. In situations of distress, migrants report that the Armed Forces of Malta (AFM) exert pressure on them to continue on to Italy, either through tactics that delay rescue, through threats of the long detention period or other difficulties they will face in Malta, or through offers of food and petrol to incentivise onward mobility (Interviews: 2011; 2015). Thus the most protracted and significant negotiations often take place between coastguards and migrants, where despite their limited power, migrants exploit their familiarity with international laws that require rescue at sea, and their knowledge of national flags and languages in order to identify vessels. Khalid, a 28-year-old Somali man, described such an encounter:

*... the Maltese rescue team, they arrived. One day before that, there was a helicopter taking some photos and I think they called the AFM. They came and they talked to us, where do you go you guys? Do you want to call Malta or do you want to call Italy? I spoke to them and I said no, we need just help from anybody. We don't need Italy, we don't need Malta, we just need help. And one of them came to our boat... He said if you have a problem with the machine, I will fix it and then I will give you some petrol and then you can go to Italy. I said we don't know where Italy is. And he said we'll help you, we'll help you. How you can help us is to put us on your boat [I said]. No, you can just go this way... So, then one of them said we'll give you some time, two hours, then you have to decide if you go to Italy or not. And I asked him, what happens if we don't go to Italy, because we don't know Italy. We just need help. We cannot go with such a*

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<sup>9</sup> Maltese politicians maintained this position in the interviews I conducted and in the media (e.g. Soares & Joy 2014; Gonzi 2011).

*boat. Because inside the boat, we had holes, so the water was coming in. And we are worried about it capsizing.... After two hours, they [came] back and said, any decision? We say we want to stay here. And then, one of us, [a fellow passenger], told me, this guy is from Malta. I said how do you know, because I hadn't seen the flag before. But he said I know the flag. And when they came back, I told him [the AFM member] we're going to Malta. And he said, do you know where's Malta? I say yes. It's not far away from here. And he said, are you going to swim? Because he didn't like to take us. He was pressuring us to take help like food and petrol and repair the machine and go on to Italy. I said, no. And after when they see we are very serious, they came close and then they evacuate people (Interview, April 2011).*

Present in this account are the elements of agency discussed above: the contextualisation of a social experience in light of past experiences and future projects, through deliberation with others and oneself, in order to negotiate possible trajectories. Mark Salter (2006) reminds us that specific rules of entry are never exhaustive, and some discretion is left with the border guard within the state of exception. This discretion is evident in the interaction described above and other migrant accounts of negotiations between border guard and migrants in the Mediterranean as to whether boats will continue on to Italy or remain in Malta. What is also revealed is that this discretion allows space for acts of migrant agency. Leveraging their knowledge of international law and state flags, these migrants presented themselves to the sovereign as border crossers intending to enter Malta.

Within the Central Mediterranean, the overlapping space between border guard discretion and room for migrant agency also indicates the potential for collusion between these two actors. Indeed, in some instances the interest of border enforcement actors and migrants converge in a desire for migrants to continue on to another country (in this case Italy).<sup>10</sup> This underscores the complexity of irregular border crossings and demonstrates that there is more room for manoeuvre for migrants crossing borders than is usually assumed.

Similar negotiations and strategies arise in migrant journeys to Cyprus, and in particular their attempts to cross the land border that divides the Cypriot island. Despite occasions where migrants are able to exert some control over these negotiations, the risks to the individuals on the move remain high, with many instances where migrants feel powerless. William, the same Congolese man discussed above, explained that with the aid of 'those who came before [along] the same routes', he was met at Ercan airport in northern Nicosia by facilitators who took him to a safe house. He continued,

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<sup>10</sup> This dynamic has also been evident more recently in the responses by EU member states and their border guards to the high numbers of refugees arriving from Syria, Afghanistan and elsewhere since 2015.

*And after one day, somebody came – two guys, they say they are police, where is our papers, like this. They started intimidating us, until they took all our money.... [But] they are just the people in this same business. They take my \$600, whatever remained in my pocket, they took it away.... Then, we stay four days in the north until some other people came so that they can cross us (Interview: August 2009).*

Further danger awaited William and other migrants as they attempted to cross the Green Line dividing Cyprus. Many spoke of injuries they sustained in jumping great heights or clambering over barbed wire, as well as violent and racist encounters with the police on both sides of the line. William twisted his ankle while jumping over a large wall that separated him from ‘Europe’. The Cypriot police apprehended him and his three fellow travellers almost immediately, violently denied them the opportunity to apply for asylum, and unceremoniously ‘[threw them] back to the other side’ of the Line. The last words the policemen uttered were ‘if you try to come here [again], we will kill you...’ Despite this difficult situation, William and his fellow travellers drew on past experiences in attempts to resist state controls and refashion their futures.

*Even though I was injured, I started to jump. I jumped because there was sewage there, I had to jump over to the other side. [It was] night ... and there was a small bush. When they throw us there, they disappeared. I told the other guys, you see, why did these police disappear? They would have stayed around to make sure that we are not [jumping back].... Because they disappear, so this is a dangerous place.... I said, all of us, we should sleep, nobody move. This place, either it's a minefield or there should be a military barracks a few metres away here. If we move, they will shoot us. And if they shoot us, we will be shot in the North. There it's not their problem. They will make a report that maybe some people wanted to cross, then we shoot them. So we should not let ourselves be killed. We have to be careful. We slept. I said everybody have to stay the place he is, no movement.... And then after a few minutes, we hear some noise in the bushes. I said you see, these are military. This is the reason why those police, they disappeared. We have to stay, sleep until we relax a little bit, to see the next step. There was not another option but to come back. So we decided to come back... (Interview: August 2009).*

This Congolese man's knowledge of human rights norms and legal systems gave him leverage in his encounter with the police. Moreover, his awareness of police behaviour subsequently proved crucial to his efforts to re-enter the Republic of Cyprus. Despite the implementation of such barriers to stall migration efforts, the agency of those making these journeys is key in understanding how and why people continue to enter countries in a clandestine manner. William's persistence and his reliance on kinship networks ultimately proved successful.

*I said we should avoid the number four because they know that they throw four people. So if they see four people walking around, immediately they*

*will come and catch us. We have to go either one by one, or two by two, or... Then the last decision was okay, you three you go, I stay.... So, they left. It was at night. This is around ten now, ten or eleven [p.m.] Then, I have to leave as well. So, I left slowly, slowly, I left and crossed this time.... I didn't have anything on me, no money, nothing.... I was just going like this. Until I find one shop, which is 24 hours working. They have telephone. I was dusty, hungry and I didn't have anything. So, I have to call my sister in Canada.... I get her, I say this is the situation. We were arrested by the police, beaten up like this, they throw us in the north.... I'm really tired, I don't know what is going to happen to me. I wanted them to at least arrest me so I can get treatment and some food.... I don't know. My sister was a little bit concerned... And she told me, okay, you have to go to one hotel and then from the hotel you call me, so I can pay, I can transfer the money directly from my account, my credit card to the hotel so they will deduct, they will take out their money. So this is what I do. I said, no, I should not stay in Nicosia because maybe these police are still looking for me. I went to Larnaca (Interview: August 2009).*

The agency described by migrants and refugees while crossing the sea and other borderzones could be characterized as 'individual acts of desperation' (Ellermann 2010: 409). However, I contend that these acts can reflect more robust expressions of agency that subvert state migration controls and belie the security spectacle at the border. For example, the confessional acts described above force the hand of the AFM and result in migrants' disembarkation in Malta. Having arrived in a transit or destination country, migrants continue to resist policies and practices such as immigration detention through protest and escape strategies, and to resist marginalisation in the host community through acts of political organisation and demands for rights both nationally but also at the EU level (Interviews: 2008-2014).<sup>11</sup> Migrants have also cooperated with lawyers and NGOs in order to legally contest state practices. Indeed, longer periods of settlement can allow for more organized forms of resistance to emerge. Such efforts are discussed further below and, in some instances, result in legal condemnations of state practices, such as mandatory immigration detention and 'push backs' at sea, and in a narrowing of the boundaries of the state of exception.

#### **4. Negotiating Rights inside EU Territory**

Migrants continue to make demands, negotiate their rights and interests, and demonstrate agency once they arrive within EU member states. Nasim, a young Palestinian man, never intended to come to Malta. The boat he travelled on from Egypt sank en route to Italy, and he and his brother spent five days in the sea watching many of their fellow travellers perish before a French captain rescued them.

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<sup>11</sup> In speaking to reporters and researchers about their experiences and grievances, migrants also demonstrate an agency that troubles their subjectification and subverts state narratives about them and their journeys.

Dehydrated to the point of delirium, they nevertheless were registered and sent immediately to one of Malta's detention facilities when they arrived on the island. Despite their traumatic experience and fragile state, Nasim and his brother both refused to be fingerprinted during the police registration process, aware that these fingerprints would follow them around Europe and would inhibit their settlement in Sweden where they had family and intended to travel (Interview: December 2014).

Such examples of migrant agency have thus far been more central to the migration scholarship within the disciplines of sociology and anthropology (e.g. Anderson & Ruhs 2010; Bakewell 2010; Sigona 2012; Van Liempt & Doomernik 2006). However, in academic fields more concerned with macro dynamics, such as International Relations, individuals beyond powerful policymakers are rarely included in analyses. Even in the literature on migration governance, the agency of migrants is often ignored. Despite this, migrant agency and forms of migrant resistance to state practices, including hunger strikes, protests, and court cases, influence state and regional policies, as well as state relationships. For example, the plight of refugees in Greece prompted the European Court of Human Rights (2011) to rule against returning an Afghan asylum seeker to the country under the Dublin Convention in 2011 (cf. ECJ 2011). In these instances, NGOs often act as intermediaries, championing migrant causes at the regional and international level. However, the lobbying successes of NGOs in Brussels are based on their first-hand knowledge of the situation 'on the ground', with migrant testimonials forming an indispensable part of their expertise and campaigns (Hoffmann 2013).

In Malta, protests in immigration detention have led to the EU exerting pressure on Malta to improve detention centre conditions and to reconsider its mandatory 18-month detention policy. The European Committee for the Prevention of Torture compiled a report after their visit to Malta that specifically references protests held by detainees, as well as allegations of mistreatment (Council of Europe 2005). Subsequently, legal action taken by migrants resulted in the European Court of Human Rights (2013a; 2013b) condemning Malta's detention policy as a 'defective national system hindering human-rights protection', and in particular violating the right to liberty, the right to an effective remedy, and the prohibition against inhuman and degrading treatment.<sup>12</sup> These developments, alongside the long-awaited release of a national inquiry into the death of a detainee in 2012, prompted the government to announce that they will reduce the 18-month detention limit to six months (Dalli 2014) and end the mandatory detention of asylum seekers (Interview: senior government official, 2014; Dalli 2015).<sup>13</sup>

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<sup>12</sup> Similarly, the Court used migrant testimony and data collected by advocacy organizations to condemn Italy's practice of returning migrants and refugees to Libya from the high sea, a practice that Malta supported (ECHR 2012).

<sup>13</sup> At the time of writing, the government has not implemented either of these reforms. If these reforms are implemented, the government will continue to automatically detain migrants who do not claim asylum.



Lawyers involved in such cases at the national and regional levels note the centrality of migrant participation and testimony. Indeed, the difficulty in identifying migrants who has been returned to another country or detained, and in ensuring their participation and testimony, often over a long period of time, can thwart attempts to launch such cases. Tefarra, an Eritrean refugee, arrived in Malta in 2006 and was immediately put in detention for 12 months. He explained his shock at being imprisoned:

*I've been in prisons in a lot of places and... I can say that it was the worst prison I've seen. Because what makes it the worst for me is that was not my expectation. And in other countries, I was in prison because I break the rules, but in Malta I didn't break any rules. The only crime I committed is just I asked for asylum... I can tell you that I was cut off from everything. I had no communication with family; I've no communication with other people who live on the outside. I was doing nothing, just eating, waking up, and just like that for months, doing nothing (Interview: April 2009).*

After his release, in May 2007, Tefarra lodged a case with the national court with the aid of a lawyer from Jesuit Refugee Services. The case was still pending six years later in 2013 and was cited in the European Court of Human Rights (2013a) judgement that year as evidence of the lack of an effective remedy. At the time of writing, the case is still pending after 41 court sittings were deferred and a further 19 were adjourned between 2007 and 2016 (Civil Court – Malta 2007). The length of such proceedings diminishes the ability of migrants and NGOs to pursue these cases.

Migrant and refugee protests are less common in the Republic of Cyprus. This difference may be explained by several factors: having no mandatory detention policy, the Cypriot government does not detain large numbers of migrants in one place for extended periods of time. This, alongside the more sizeable presence of migrant labourers who are also vulnerable to losing their legal status, causes the migrant population to be more dispersed across the island. Moreover, there are much fewer NGOs working in the areas of asylum and migration than in Malta, and thus a more limited capacity for advocacy and for support of migrant resistance to state practices. Nevertheless, NGOs have made use of their relationships within the migrant population and the oversight provided by the EU in their work. For example, a local migrant advocacy organisation, KISA, filed complaints with the European Commission in response to the Cypriot Supreme Court decision to deny labour migrants access to residency under the Long-Term Residents Directive (Interview: Lawyer, KISA, July 2009; cf. KISA 2008). KISA and other groups, such as Amnesty International, have also highlighted the length and conditions of immigration detention prior to deportation, for which they rely on migrant and refugee testimonies (KISA 2011; Kosmopoulos 2011). Such reports and complaints create more

monitoring of Cypriot migration practices and impinges upon the state's relationships at the regional level.

Nevertheless, migrant and NGO actions appear to be more influential in Malta than in Cyprus. Malta is more visible in the EU with regard to migration and asylum. Having emphasised its vulnerability in the face of the migration 'crisis' (Mainwaring 2014), Malta attracts more attention from regional actors and thus simultaneously constructs a larger, more visible platform for migrants, refugees, and NGOs. We can conclude from this difference that migrant and refugee action can affect a state's image, power, and relationships to varying degrees, depending on the levels of monitoring and oversight by non-governmental and supranational actors. NGOs play a crucial role in these feedback loops, as their advocacy work is often the most powerful tool available to marginalised migrants and refugees, especially at the regional and international level.

Although the discussion above demonstrates migrants' room for manoeuvre and ability to effect change, it is important to note that migrant agency and the contestation of the politics of mobility may be co-opted by the state. For example, Malta, and to a lesser extent Cyprus, have exploited the circumvention of their border policies by migrants and refugees in order to argue that the islands face a disproportionate responsibility for migration and asylum within the EU. Within this discourse, the inability of the state to secure borders and its vulnerability in the face of large, unregulated flows is emphasized and exploited for political gain. Thus an ambivalent relationship between the state and unauthorized migration arises: although the focus is on deterring the arrivals of these migrants and refugees, it is these very arrivals that have put Malta especially on the political map within the EU during the last decade. In this manner, the agency demonstrated by migrants and refugees in order to arrive on the island constitutes in part the power that Malta wields within the EU (Mainwaring 2014).

## **5. Conclusion**

It would be understandable to examine the tragic and avoidable drowning of so many people in the Mediterranean in recent years and conclude that this borderzone, like so many others, is a landscape of fear and death (Nevins 2002: 120). However, I contend that this watery landscape is also one of negotiation and that foreclosing the notion of migrant agency allows states to depict these travellers in the extreme: as ever-menacing security concerns, or as flotsam and jetsam pushed and pulled by powerful forces – smugglers, poverty, war, and so on. Both of these interpretations reinforce a focus on deterrence rather than rights or integration. Furthermore, the latter depiction of migrants-as-victims reinforces state narratives that migrants arrive in states 'accidentally', that they do not wish to remain, or that they belong and are safer at 'home'.

The state narrative also dehumanizes the migrant, as it portrays her journey as an act into which she is coerced entirely by a smuggler and which she takes only out of desperation. This depiction and the poor understanding of the journey leads to erroneous policy assumptions and alienates host populations who cannot comprehend the risks migrants take in crossing seas, deserts, and other terrain. For example, an Eritrean refugee explained his marginalization in Malta in part due to the lack of understanding of his motivations and agency in crossing the Sea, which he believed lead Maltese people to think he and other migrants did not care for their own lives and were 'crazy' (Interview, April 2009). Similarly, another migrant said, 'Because we come on the small boats on top of the big sea, so they are afraid. What kind of people, imagine...' (Interview, April 2009). Reduced to uni-dimensional bare lives, it is inconceivable that these individuals have preferences, desires, long-term plans, and agency that shape their decision-making.

Migrant agency qualifies the depiction of the border or borderzone as a state of exception. It reveals the room for manoeuvre available to migrants, the contested politics of mobility, and the limits of state power. This room for manoeuvre, where migrants are sometimes able to negotiate for their own interests, does not make them scheming villains or rational actors who exploit any opportunity, and should not undermine their claims to international protection. Although migrants may be legally and socially marginalised by a state, they are not absent from these interstate relations. Politically, they are marginalised both at the national and regional levels. Individually, they may be weak actors who are often overlooked in International Relations and other scholarship. However, drawing on the experiences of migrants a different picture emerges: at the micro level, they negotiate their mobility and contest migration controls, sometimes circumventing or even subverting them; in the aggregate, these flows of people are politically powerful. Indeed, it is their very marginalisation within a state that prompts migrants to resist state practice, inciting protests and riots. Although the effects may not be felt immediately, these acts can carry broader political consequences.

It is only by looking to people who defy state controls by overstaying or by entering a state without authorisation that we begin to deconstruct state discourse of migration control and to appreciate the permeability of 'Fortress Europe'. Despite the discursive and material machinery that is mobilised to limit unauthorized migration, migrants continue to employ strategies to resist migration controls. Indeed, the intensification of border enforcement is often met with a growing sophistication and professionalization of border crossing strategies and practices. In this sense, border controls not only encourage longer and more dangerous migrant journeys, but also higher levels of ingenuity and agency from migrants and smugglers. Nevertheless, migrant agency is still greatly circumscribed by the political power of the state and may be harnessed or even exploited by the state for its own purposes, as has been illustrated above.

Constructing migrants as victims or villains ignores how states create vulnerability through immigration controls, and disregards the agency of migrants negotiated at the margins. The very fact that migrants have arrived in Malta, Cyprus, and elsewhere in a clandestine manner and settled in these countries speaks to their agency. Notwithstanding the fact that they are often marginalised and discriminated against, migrants' long-term presence on the islands is not due to policy design. In this albeit limited sense, their agency has proved more powerful than that of the state.

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