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## Gangmastering Passata: Multi-Territoriality of the Food System and the Legal Construction of Cheap Labor Behind the Globalized Italian Tomato

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**GANGMASTERING *PASSATA*: MULTI-TERRITORIALITY OF  
THE FOOD SYSTEM AND THE LEGAL CONSTRUCTION OF  
CHEAP LABOR BEHIND THE GLOBALIZED ITALIAN  
TOMATO**

*Dr. Tomaso Ferrando\**

**ABSTRACT**

Italy is the second largest producer of tomatoes in the world after the United States, and it is often considered the homeland of this food. Yet, the Italian tomato is much more than Italian. If one considers the people, geography, regulations, and history behind the “golden pome” (pomo-d’oro in Italian), there is no other conclusion than it is inherently local and global. In the last years, the Italian tomato sector has been under scrutiny for reliance on exploited labor, egregious living conditions, and the role of organized crime in trading human beings as any other commodity (“gangmastering” or caporalato). By embedding the Italian industrial tomato into a critical and multi-territorial legal approach to the food system, my contribution aims to offer a different perspective on the illegal action of labor intermediation as one of the most discussed issues surrounding the production of Italian tomatoes. Rather than presenting exploitation and caporalato as exceptions, this paper analyzes them through the lenses of trade law, competition law, and migration law as more appropriate lenses to understand the role of cheap labor in the construction of the global Italian tomato. If that is the case, legal interventions cannot be local and specific, but must be systemic, multi-layered and, therefore, based on dialogue and solidarity among workers, lawyers, activists, and academics across the whole tomato chain.

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### I. TOMATOES: ITALIAN PRIDE WITH A GLOBAL SIDE

If there was a ranking of stereotypical images of Italy, the “pizza, pasta & mafia” trypic would certainly stand on the podium alongside loudness, our love for “*la dolce vita*,” and the strong sense of family.<sup>1</sup> This article is not an attempt to use legal analysis to reproduce popular clichés. However, it stems from the recognition that food and mafia are among the most “exported” Italian “products” and that the global popularity of the former may have something to do with the local strength of the latter. This does not mean that all the Italian food is obtained or distributed with the support of criminal organizations, nor that mafia would not exist without the control of the food chain and the extraction of value from it. Yet, once we look closely at the way in which part of the Italian food system operates, it is possible to realize how the construction and interaction between spaces of legality and illegality are embedded in “Made in Italy” as a brand that is recognized, appreciated, and consumed all around the planet.

As an Italian, I decided to pick the example of the Italian processing tomato and the Italian tomato sauce (*passata*) as a product that is mostly associated with my territory, culture, and gastronomy. As a matter of fact, when you visualize pizza and pasta in the stereotypical trypic, did you not imagine the former covered with a thin layer of *passata* and a dish of spaghetti or a lasagna tray mixed with a Bolognese ragout? If we associate Italy with tomatoes, it is not an accident but a consequence of the centrality that tomatoes and the tomato industry have in the country’s recent economy and in its international trade balance. If we want to challenge the contemporary idea that food is a fetish to be admired on TV and shed some light on the legal and social complexity that lies behind the Italian food

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<sup>1</sup> Nicole Arriaga, *Pizza, Pasta, Mafia*, AM. MAG. (Feb. 25, 2011), [www.theamericanmag.com/pizza-pasta-mafia](http://www.theamericanmag.com/pizza-pasta-mafia).

system, there is no better place to start than with something so important for the Italian economy and culture—tomatoes.<sup>2</sup>

Italy is the second in the world for annual volume of processing tomato, after the US (mainly California) and followed by China.<sup>3</sup> From North (mainly Emilia Romagna, followed by Lombardia, Veneto, Piemonte, and Toscana) to South (Puglia, Campania, Basilicata, Molise, and, to an extent, Sicily), there are around 9,564 farms and 64,500 hectares of land dedicated to this vegetable,<sup>4</sup> with a total production of 4.8 million tons. More interestingly, Italian processing companies (around ninety-one throughout the country)<sup>5</sup> account for 49 percent of European and 13 percent of global transformation of these tomatoes into juices, sauces, and other products, with annual revenue estimated at 3.3 billion euros.<sup>6</sup> Half of the processing tomatoes that are transformed in Italy—worth 1.7 billion euros—is exported globally: it would be unlikely, entering into a supermarket chain in a world capital, not to find processed tomato coming from Italy.<sup>7</sup> Of all products realized from processing tomatoes, the Italian *passata* is by far the most popular among consumers and the most commercialized and thus has been chosen as a symbol to represent the whole tomato chain from farm to fork.<sup>8</sup>

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<sup>2</sup> Henry Bernstein & Liam Campling, *Commodity Studies and Commodity Fetishism II: "Profits with Principles"*, 6 J. AGRARIAN CHANGE 414 (2006).

<sup>3</sup> *Pomodoro, l'Italia supera i 3 miliardi di fatturato*, FOODWEB (Jan. 23, 2019), <https://www.foodweb.it/2019/01/pomodoro-italia-3-miliardi-fatturato/>. Industrial tomato is different from table tomato: the former is produced to be transformed into sauces or preserved, while the latter is consumed fresh. The production of table tomato in Italy is shrinking and national varieties are suffering from the increased import of table tomatoes produced within the EU (Netherlands and Spain above all), but also outside of the European Union (Morocco and Northern Africa in particular). *Profondo rosso per il pomodoro italiano*, ITALIAFRUIT NEWS (Apr. 15, 2019), <http://www.italiafruit.net/DettaglioNews/49118/la-categoria-del-mese/profondo-rosso-per-il-pomodoro-italiano>.

<sup>4</sup> According to the Encyclopedia Britannica, tomato is botanically a fruit but is considered a vegetable by nutritionists. In the absence of a hard-and-fast rule that clearly designates a botanical fruit as a vegetable, the Encyclopedia concludes that it is acceptable for tomatoes to be classified as vegetables. Melissa Petruzzello, *Is a Tomato a Fruit or a Vegetable?*, BRITANNICA, <https://www.britannica.com/story/is-a-tomato-a-fruit-or-a-vegetable> (last visited Jan. 31, 2020).

<sup>5</sup> Domenico Perrotta, *Produrre la qualità. I pomodori pelati tra industria, tradizione e conflitti*, 93 MERIDIANA 71 (2018).

<sup>6</sup> *Pomodoro, Italia secondo trasformatore al mondo con 4,8 milioni di tonnellate*, ANSA (Oct. 24, 2019, 1:53 PM), [http://www.ansa.it/canale\\_terraegusto/notizie/business/2019/10/24/pomodoro-italia-secondo-trasformatore-al-mondo-48-mln-ton\\_66cee169-79be-4fec-af7c-6c3d41a97474.html](http://www.ansa.it/canale_terraegusto/notizie/business/2019/10/24/pomodoro-italia-secondo-trasformatore-al-mondo-48-mln-ton_66cee169-79be-4fec-af7c-6c3d41a97474.html).

<sup>7</sup> Italy is the first producer of agricultural products in Europe, with a total value of its production estimated at 55 billion euros per year and a processing sector worth 31.5 billion euros. Export is constantly increasing at a pace that is faster than the European average. ISMEA, RAPPORTO SULLA COMPETITIVITA DELL'AGROALIMENTARE ITALIANO (2018).

<sup>8</sup> Italy accounts for 65 percent of the value of EU exported *passata*. *Id.*

Italy is internationally perceived as the country of the tomato. However, when we look at the reasons behind the Italian leadership in processing tomatoes, we unveil a history that is much more global than stereotypes may reveal. The link between Italy and tomatoes is a relatively short journey of five centuries that started with the Spanish colonization of Latin America, the cruel mission of Hernan Cortes around 1540,<sup>9</sup> and the almost contemporary annexation of the South of Italy by the Habsburg Empire, an essential condition for the arrival of the tomatoes in the territories below Rome and their diffusion in the perfect climatic conditions. Yet, the Italian processing tomato industry would have not flourished—or not flourished in the same way—without Napoleon’s investments in canning as an efficient way to preserve food for his army and would not have reached the global market had Garibaldi not led the “One Thousands” expedition in 1860 and opened the flow of capital from the North to the South. It was then, when the fertile territories of the South of Italy met the Northern capital and technological innovation, that Italy became the fulcrum of the tomato processing industry, with tens of processing plants in Parma and Piedmont receiving raw material from the “*Meridione*” and exporting tomato paste and preserved peeled tomatoes across Europe.

From a historical perspective, the success of the Italian *passata* is often told as the outcome of a combination of violence, technology, the birth of Italian capitalism, law, and politics. Yet, it is more. What is often missing from this account—from contemporary academic and legal engagements with the issue—is the role that people, and farmworkers especially, played and still play in the construction of Italy as a global competitor in the production and transformation of agricultural products—including processing tomato.<sup>10</sup> This was the case in 1861, when farmworkers in the newly annexed South earned half the money of farmworkers in the North, unemployment in the South was extremely high, living conditions were extremely poor, and a cheap workforce supported the development of processing facilities and transformation activities owned by Northern families and the distribution of products across Europe.<sup>11</sup> It is also the case today, when thousands of workers—mainly EU migrants and non-European citizens—are employed in the production of tomatoes (and other agricultural products) without the guarantees of a minimum salary or a proper contract, live in unhealthy and inadequate conditions, are often victims of abuses and

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<sup>9</sup> JOHN PAUL ZRONIK, HERNANDO CORTÉS: SPANISH INVADER OF MEXICO (2007).

<sup>10</sup> LABOR RELATIONS IN GLOBALIZED FOOD (Alessandro Bonanno & Josefa Salet Barbosa Cavalcanti eds., 2014).

<sup>11</sup> PASQUALE VILLARI, LETTERE MERIDIONALI (1878); DENIS MACK SMITH, STORIA D’ITALIA DAL 1861 AL 1997 (6th ed. 2011).

violence, and whose cheap labor is crucial in maintaining the competitiveness of the Italian tomato.<sup>12</sup> For some authors, we are facing a new ‘*Questione Meridionale*’ (Southern Question), but this question is interconnected with the global market.<sup>13</sup>

This article uses the example of the *passata* to combine a legal approach to the response against the exploitative working conditions of farmworkers in the Italian agricultural sector with the analysis of the political economy of the food system in which they are embedded. The aim is not only to identify opportunities and shortcomings of the legislative and regulatory interventions that have been adopted but to highlight the importance of a systemic approach to exploitation and to trigger considerations on the interdependence of competitiveness and cheap lives. To set the stage, the next section provides an overview of workers’ conditions in the agricultural sector and introduces the phenomenon of *caporalato* (gangmastering) as a diffused practice aimed at extracting value from workers taking advantage of their state of need and inferior bargaining power. In Section III, the article presents the three main national legal responses against *caporalato* and contemporary forms of enslavement in the Italian agri-food sector, highlighting the most recent transformations of the discipline along with the opportunities and shortcomings of each legal structure. Then, Section IV departs from the narrow focus on ‘worker-*caporale*-employer’ and embeds the tomato picker in the context of national and international food chains to discuss the needs for a multi-holistic approach based on the systemic understanding of the economic, legal, and political dynamics underlying the distribution of power and value between farmworkers, gangmasters, employers, and the rest of the chain. Finally, the conclusion offers some elements of reflection on the “Catch-22” situation experienced by Italy in the context of growing competition, fragile economy, increase presence of migrants in the country, and abandonment of the farmland.

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<sup>12</sup> The notion of cheapness is adopted from the work of Raj Patel and Jason W. Moore on the construction of world capitalism through the extraction and appropriation of non-rewarded value from people and nature. Cheapness is not only a material condition that refers to the price, but also indicates a vision and an approach towards the planet and human beings that subordinates their needs and rights and that takes advantage of their reproductive capacity. See JASON W. MOORE, *CAPITALISM IN THE WEB OF LIFE: ECOLOGY AND THE ACCUMULATION OF CAPITAL* (2015); RAJ PATEL & JASON W. MOORE, *A HISTORY OF THE WORLD IN SEVEN CHEAP THINGS: A GUIDE TO CAPITALISM, NATURE, AND THE FUTURE OF THE PLANET* (2017); RAJ PATEL, *THE VALUE OF NOTHING: WHY EVERYTHING COSTS SO MUCH MORE THAN WE THINK* (2009).

<sup>13</sup> LA GLOBALIZZAZIONE DELLE CAMPAGNE: MIGRANTIE SOCIETÀ RURALI NEL SUD ITALIA (Carlo Colloca & Alessandra Corrado eds., 2013).

## II. EXPLOITATION, VIOLENCE, DEATH, AND ILLEGAL INTERMEDIATION BEHIND THE ITALIAN *PASSATA*

The 2019 EBAN report on agricultural work in Italy describes a sector characterized by 1.1 million workers, 90% of whom have a temporary contract with an average length of 87 days, almost a third of a full-time agricultural job.<sup>14</sup> Having a regular contract means access to a series of conditions such as the benefit of minimum salary for agricultural workers, established by means of national collective bargaining at 7.13 euros per hour and 1,201.84 euros per month, the payment of monthly contributions to the national social security, and the possession of a contract that can be used to demonstrate financial conditions allowing easier access to housing and credit.

At the same time, unofficial data produced by civil society associations and research centers in 2016 revealed that a significant share of those agricultural workers, between 400,000 and 430,000, are hired irregularly (i.e., without a correspondence between what is officially declared and the hours worked), or in a condition of regulatory invisibility (i.e., without any contract or declaration).<sup>15</sup> Of these 400,000 thousand people, 80 percent are foreigners and about 132,000 are considered to be particularly vulnerable, marginalized, and in a state of socio-economic marginalization.<sup>16</sup>

From the apple fields in Piedmont (North-West) to the ghetto of Tre Capitoli in Foggia (South-East), thousands of women and men employed in the agriculture industry face systematic violations of working-time rules, including failure to grant daily breaks, weekly rest periods, and annual holidays; wages that are half the minimum national requirement<sup>17</sup>; payment in piece rates despite the legislative prohibition; charges to use transport provided by employers; confiscation of their passports and identity documents; living in the same place where they work (“which exacerbates isolation and segregation that in turn increases vulnerability to human rights

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<sup>14</sup> Press Release, EBAN, Osservatorio EBAN Lavoro Agricolo – Rapporto Annuale 2018 (Apr. 4, 2019) (on file with author).

<sup>15</sup> *Osservatorio Placido Rizzotto*, FLAI (July 31, 2018), <https://www.flai.it/osservatoriopr/osservatorio-placido-rizzotto/>.

<sup>16</sup> *Id.*

<sup>17</sup> FABIO CICONTE & STEFANO LIBERTI, SPOLPATI: LA CRISI DELL’INDUSTRIA DEL POMODORO TRA SFRUTTAMENTO E INSOSTENIBILITÀ (2016), [http://www.filierasporca.org/wp-content/uploads/2016/11/Terzo-Rapporto-Filierasporca\\_WEB1.pdf](http://www.filierasporca.org/wp-content/uploads/2016/11/Terzo-Rapporto-Filierasporca_WEB1.pdf).

abuses”)<sup>18</sup>; inadequate or even inhumane living conditions; forms of control over workers’ lives by employers, including the use of surveillance.<sup>19</sup>

Yet, this is not everything. According to the Placido Rizotto 2018 Report on Agromafie and *Caporalato*,<sup>20</sup> around 60 percent of the migrant agricultural workers do not have access to clean water or sanitation. Most of them live in camps (or “ghettos”) and are victims of physical and moral abuses,<sup>21</sup> with sexual violence, blackmails, rapes, and abortions, which have been recorded throughout the years but seldom denounced, addressed and dealt with.<sup>22</sup> It may not appear so evident when you look at a commercial of a tasty Italian *passata*, but the Modern Slavery Index in 2017 recognized that the situation in Italy is among the most worrisome in the EU, with “the risk of modern slavery [set] to worsen . . . over the next year, with agriculture a sector of concern, and the agricultural sector plays a central role in this direction.”<sup>23</sup>

Exploitation and violence are not the only two fears of migrant agricultural workers. As Mangano wrote in June 2018, Italian farms are like a contemporary “Spoon River,” a graveyard of untold stories of people who died without notice. Since 2013, more than 1500 farmworkers have lost their lives, including some Italians working without contracts. Some died because of the intense heat and the long hours of work; others were smashed by tractors or falling trees; numerous workers lost their lives in the fires that regularly break out in the ghettos (e.g., Rosarno in 2018, Borgo Mezzanone and Rignano Gragnanico in 2019); others were killed by the police or by

<sup>18</sup> 2018 Findings: Italy, GLOBAL SLAVERY INDEX, [www.globallslaveryindex.org/2018/findings/country-studies/italy/](http://www.globallslaveryindex.org/2018/findings/country-studies/italy/) (last visited Jan. 31, 2020) [hereinafter GLOBAL SLAVERY INDEX].

<sup>19</sup> AMNESTY INTERNATIONAL, EXPLOITED LABOUR: MIGRANT WORKERS IN ITALY’S AGRICULTURAL SECTOR (2012), <https://www.amnesty.org/en/documents/EUR30/020/2012/en/>; LETIZIA PALUMBO, TRAFFICKING AND LABOUR EXPLOITATION IN DOMESTIC WORK AND THE AGRICULTURAL SECTOR IN ITALY (2016), [http://cadmus.eui.eu/bitstream/handle/1814/42406/GGP\\_TRAFFICKO\\_2016\\_EN.pdf?sequence=3&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/1814/42406/GGP_TRAFFICKO_2016_EN.pdf?sequence=3&isAllowed=y).

<sup>20</sup> AA. VV., AGROMAFIE E CAPORALATO (Osservatorio Placido Rissotto ed., 4th ed. 2018).

<sup>21</sup> OXFAM & TERRA! ONLUS, HUMAN SUFFERING IN ITALY’S AGRICULTURAL VALUE CHAIN 3–4 (2018), <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620479/cs-human-suffering-italy-agricultural-value-chain-210618-en.pdf?sequence=4&isAllowed=y>.

<sup>22</sup> Antonello Mangano, *Violentate nel silenzio dei campi a Ragusa. Il nuovo orrore delle schiave romene*, L’ESPRESSO (Sept. 15, 2014), <https://espresso.repubblica.it/inchieste/2014/09/15/news/violentate-nel-silenzio-dei-campi-a-ragusa-il-nuovo-orrore-delle-schiave-romene-1.180119?preview=true>; Antonello Mangano, “*Se tua moglie non sta con me non vi pago*” Romene nel ragusano tra ricatti e sorpresi, L’ESPRESSO (Oct. 8, 2014), <https://espresso.repubblica.it/inchieste/2014/10/08/news/romene-nel-ragusano-tra-ricatti-e-soprusi-ma-ora-il-territorio-si-mobilita-1.183497>.

<sup>23</sup> GLOBAL SLAVERY INDEX, *supra* note 18.

Italian citizens that “did justice themselves,” while a worker was scavenging some metal parts in an abandoned plot of land.<sup>24</sup>

Not surprisingly, criminal organizations and organized crime thrived out of the combination of relevant economic activity, human necessities (eating, working and surviving), and the state of invisibility, necessity, and need experienced by hundreds of thousands of people in the country. The central character in this story is the *caporale* (gangmaster) who acts as an intermediary/broker<sup>25</sup> between landowners (or tenants) and workers (migrant or Italian, seasonal or sedentary) to provide cheap labor and obtain personal economic or social benefit.

*Caporali* are contacted by farmers (owners or tenants) when work is needed, and they recruit the men and women who will be spraying the pesticides, harvesting the produces, and putting the food into boxes. They will be responsible for the workers during the day and will make sure that they are efficient and under control. In addition, they will use their knowledge of the employers, the competition between workers, and their connections with authorities to make sure that owners can pay less than the minimum wage. A 2018 report by two non-governmental organizations, Oxfam and Terra! Onlus, sketches the main characteristics of the *caporalato* system and highlights the link between vulnerability, competition, profit, and cheapness:

Gangmasters (*caporali*) arbitrarily decide who can be part of their teams. Because there are often more workers than jobs and because the workers do not have means of transportation, the *caporale* takes advantage of workers’ fragile socio-economic status and illegally profits by directly deducting money from workers’ daily wages. For each day of work, some workers must pay the *caporale* a fee of €5 for transportation to the farm; workers may be also forced to buy food and water from the *caporale* at a higher price than it would cost at the local supermarket (e.g. €1.50 for 50ml

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<sup>24</sup> Alessia Candito, *Migrante ucciso in Calabria a colpi di fucile: era un attivista del sindacato*, LA REPUBBLICA (June 2, 2018), [https://www.repubblica.it/cronaca/2018/06/03/news/colpi\\_di\\_fucile\\_in\\_calabria\\_contro\\_migranti\\_un\\_morto\\_e\\_due\\_feriti-198023690/](https://www.repubblica.it/cronaca/2018/06/03/news/colpi_di_fucile_in_calabria_contro_migranti_un_morto_e_due_feriti-198023690/); Antonello Mangano, *La strage silenziosa dei campi, dove italiani e migranti muoiono insieme*, L’ESPRESSO (June 15, 2018), <https://espresso.repubblica.it/inchieste/2018/06/11/news/la-strage-silenziosa-dei-campi-dove-italiani-e-migranti-sono-uniti-dalla-morte-1.323615>.

<sup>25</sup> The notions of ‘broker’ and ‘broker capitalism’ have been used in sociology and agri-food studies to describe the way in which capitalism permeates and unfolds in a market’s peripheries like the South of Italy. See Domenico Perrotta, *GHETTI, BROKER E IMPERI DEL CIBO La filiera agro-industriale del pomodoro nel Sud Italia*, CARTOGRAFIE SOCIALI, May 2016, at 261; JANE SCHNEIDER & PETER SCHNEIDER, CULTURE AND POLITICAL ECONOMY IN WESTERN SICILY (1976).

water and €3.50 for a sandwich). At the end of the day, a sum up to €10 per worker—one-third of a worker's daily wage—could be illicitly earned by the *caporale* and his or her team.<sup>26</sup>

*Caporalato* is not a new phenomenon and is not an Italian peculiarity. In some countries, like the United Kingdom, the phenomenon of intermediation in the agricultural sector has been regulated and disciplined by law, with the Gangmastering (Licensing) Act of 2004 introducing a system of licensing and standards for agencies that place vulnerable workers in agricultural work, the Gangmasters and Labour Abuse Authority (GLAA), and a number of offenses with penalties up to ten years imprisonment for operating without a license. Yet, in Italy there was no specific criminal punishment for the illicit intermediation between workers and employers until 2011, with courts that had to rely on two offenses introduced by legal reform in 1998, “reducing or holding a person in a condition of slavery or servitude”<sup>27</sup> and the “employment of citizens of third countries without regular permit.”<sup>28</sup> Only then, the legislator decided to introduce a specific criminal offense concerning the act of “illicit intermediation and exploitation of labor” with the aim to lower the threshold of criminal liability otherwise required by the two other crimes and to better adapt to the changing relationships between workers and owners. Five years later, in 2016, the discipline of “illicit intermediation” was significantly reformed in its thresholds, relevant conduct, and penalties by a new “anti-*caporalato*” law inspired by the rising voices of migrant workers and civil society associations. In light of the legal complexity that characterized the state's response to the exploitation of workers and, in particular, the illicit intermediation, the next section introduces the main elements of each of the three offences and offers some details of the main innovations of the anti-*caporalato* law, along with the opportunities and shortcomings that lie beneath it.

### III. THE CRIMINAL TURN AGAINST ENSLAVEMENT, INTERMEDIATION, AND EXPLOITATION

The mainstream legislative response against the phenomena of *caporalato* and the exploitation of farmworkers belongs to the Italian criminal code and, in particular, to the section dedicated to the protection of

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<sup>26</sup> OXFAM & TERRA! ONLUS, *supra* note 21, at 6.

<sup>27</sup> CODICE PENALE [C.P.], art. 600 (It.).

<sup>28</sup> Decreto Legislativo 25 luglio 1998, n.286, G.U. Aug. 18, 1998, n.191 (It.).

people and their individual freedom. After a long legislative journey that began in 1938, which has been significantly influenced by the European Directives, the current legal framework is characterized by three separate offenses that differ in characterization, relevant conduct, legal requirements, and punishment: (a) “reducing or holding a person in a condition of slavery or servitude,”<sup>29</sup> (b) “employment of citizens of third countries without regular permit,”<sup>30</sup> and (c) the crime of “illicit intermediation and exploitation of labor.”<sup>31</sup> A brief overview of the dispositions is useful to understand the potential of each provision and, more importantly, the limits of each of them.

*A. Reducing or Holding a Person in a Condition of Slavery of Servitude*

Article 600 of the criminal code, as reformed in 2003 and 2014, is a wide disposition that sanctions the conduct of whoever “exercises over a person powers corresponding to those of the right of ownership” or

Reduces or holds a person in a state of continuative subjection (realized through violence, threat, deception, abuse of authority or profit from a situation of vulnerability, physical or mental inferiority or a situation of necessity, or by the promise or payment of sums of money or other advantages from whom has authority over the person), forcing the victim to perform work or sexual services or to beg or to perform any other illegal activity that involves exploitation or to undergo organ removal.<sup>32</sup>

Although most of these conditions can be found in the Italian agricultural sector and some of the conduct reflects that of *caporali* and owners, prosecutions have remained the exception and have hardly led to any judgments, particularly against legal persons whose businesses may be organized around the work of modern slaves.<sup>33</sup> There are multiple reasons

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<sup>29</sup> CODICE PENALE [C.P.], art. 600 (It.).

<sup>30</sup> D.Lgs. n. 286/1998 (It.).

<sup>31</sup> CODICE PENALE [C.P.], art. 603 bis, *amended by* Legge 29 ottobre 2016, n.199, G.U. Nov. 3, 2016, n.257 (It.).

<sup>32</sup> Legge 11 agosto 2003, n.228, G.U. Aug. 23, 2003, n.195 (It.); Decreto Legislativo 4 marzo 2014, n.24, G.U. Mar. 13, 2014, n.60 (It.).

<sup>33</sup> *Caporale's* “criminal” liability is provided by Art. 25 *quinquies*, Legislative Decree No. 231/2001, but can often be avoided by putting in place an adequate system of due diligence. MARIA FRANCESCA CUCCHIARA & ANNA BARACCCHI, ASSOCIAZIONE PER GLI STUDI GIURIDICI SULL’IMMIGRAZIONE, THE ITALIAN LEGAL FRAMEWORK AGAINST LABOUR EXPLOITATION (Paola Cavanna et. al. eds., 2017).

why this is the case: the difficulty of getting access to evidence and testimony, the indeterminacy of the notion of “continuative subjection” and its incompatibility with seasonal workers, and the reference to violence, threat or a situation of necessity that is not always compatible with the state of economic and social precarity in which farmworkers live, and that pushes them into accepting underpaid, irregular, and extenuating jobs. In addition, the effectiveness of the norm is affected by the absence of a provision excluding the possibility of self-incrimination for victims who denounce the abuses (and the subsequent risk of deportation in the absence of a regular permit) and by the non-reception of the definition of “condition of vulnerability” as a “situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved” as defined in Article 2(1) of the Anti-Trafficking Directive 2011/36/UE. In light of this, the risk of a conviction between eight and twenty years does not seem to represent a relevant deterrent.

*B. Employment of Third Countries' Citizens Without Regular Permit*

A more specific offense was introduced in 1998 as a response to the increasing number of undocumented migrants residing in Italy and their employment in the Italian economy without regular documents.<sup>34</sup> In this case, the target is not the intermediary but the employer, and the main purpose of the norm seems to be the protection of fair competition among workers rather than the protection of the workers' freedom, life, and human rights. In its original formulation, Article 22(12) of Legislative Decree 286/98 exclusively focuses on the act of hiring workers without a permit or with an expired permit, with no reference to the working conditions, the exploitation, the hours of work, and the payment.<sup>35</sup> In 2012, Article 22(12 bis)(c) was introduced by legislative decree and added the aggravating circumstances of hiring undocumented workers in conditions of exceptional exploitation and exposure to great danger.<sup>36</sup>

Even more than the aforementioned provision on enslavement and servitude, the criminalization of whomever employs undocumented migrants is characterized by an irremediable flaw in the lack of the automatic exclusion of self-incrimination for those migrants who denounce the conditions of exploitation or denounce the irregularity of their working conditions. In

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<sup>34</sup> D.Lgs. n. 286/1998 (It.).

<sup>35</sup> *Id.*

<sup>36</sup> Decreto Legislativo 16 luglio 2012, n.109, G.U. July 25, 2012, n.172 (It.).

addition, the exclusive focus on undocumented workers appears incapable of grasping with the reality of agricultural work in Italy, where a large percentage of the activities are realized by East Europeans, people with a residence permit but insufficient understanding of their rights or bargaining power, and asylum seekers who can regularly reside in Italy while waiting for the final decision on their status. Rather than an opportunity to improve workers' conditions and contribute to a different distribution of value between capital and labor, Article 22(12) is a double edged sword that punishes the migrants more than the employers (who face a fine of 5000 euros per irregular worker and detention between six months and three years),<sup>37</sup> does not deal with a large part of the agricultural workforce, and that, if effective, threatens to significantly reduce the opportunity for undocumented migrants to find a source of revenue, pushing them into conditions of increased invisibility and, as a consequence, making them even more vulnerable and exposed to abuses and criminal organizations.

### C. *Illicit Intermediation and Exploitation of Labor*

The third criminal response to the abuses that characterize the Italian agricultural sector is represented by an ad hoc offense that challenges the role of the intermediaries (i.e., the *caporali* that act as a hub between workers and employers and use their position to extract value from workers and reduce costs for employers). Already criminalized in 1949 as a misdemeanor, the original focus was on protecting the labor market from the abusive practice of intermediation and not on the protection of workers. It was only in 2011, after the 2010 "Rosarno riots" that erupted in one of the largest ghettos in Italy and the 2011 workers strike in Nardó, that the Italian parliament decided to introduce an ad hoc criminal offense under the rubric of the offences against people and their freedom. Once enacted, the new Article 603 bis of the Italian penal code introduced the criminal relevance of the conduct of those individuals undertaking an organized activity of intermediation (i.e., hiring workers or organizing them in the context of exploitative jobs, using violence, threats, or intimidation, and abusing the needs or necessities of the workers).<sup>38</sup> The focus was on the *caporali* and the objective was to deter them from operating.

Besides introducing for the first time in the Italian legal context a provision that directly addressed the increasing presence of organized crime in the construction of the agricultural labor market, Article 603 bis also

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<sup>37</sup> D.Lgs. n. 286/1998 (It.).

<sup>38</sup> Legge 14 settembre 2011, n.148, G.U. Sep. 16, 2011, n.216 (It.).

identified indexes of exploitation that highlighted four different ways in which labor could be made cheap and, consequently, the value produced by workers allocated elsewhere along the chain.<sup>39</sup> By defining the parameters, the legislator was trying to draw a picture of *caporalato* and define the threshold of legal acceptability and unacceptability. Exploitation was defined as a combination of (1) the systemic retribution below the national collective contract or disproportionate to the quality and quantity of labor provided; (2) the systemic violation of the legal limits and requirements for working hours, weekly rest, holidays, and leave; (3) the violation of norms on health and safety that expose workers to personal danger; and (4) the fact that workers operate in working, housing, or surveillance conditions that are particularly degrading.<sup>40</sup>

Some interpretative issues immediately arose, first of all with regards to the request of a minimum level of organization (of people and capital), which excluded individual episodes and unorganized forms of intermediation. In addition, the disjunction between “hiring” or “organizing” workers did not offer a clear solution to those cases where both activities were undertaken. Moreover, the need to prove violence, threats, or intimidation suggested that no measure could be taken in those cases where workers had decided to be the object of intermediation and had accepted the exploitative labor conditions, not because of physical or moral constriction but because of their economic or irregular situations. In addition, the thresholds of exploitation appeared too high, with the reference to “systematic” retribution, “systematic” violation, “exposure to danger,” and “particularly” degrading conditions that appeared to legalize and legitimize occasional forms of exploitation and those forms of subordination that did not reach levels of inhumanity. Furthermore, the norm did not introduce any exclusion of self-incrimination for workers who denounced their exploiter and no form of automatic regularization for irregular workers victims of organized crime. Finally, despite the relevance of conduct realized by the employer, such as corresponding low payments and providing degrading housing conditions, Article 603 bis only criminalized the actions of the *caporali*, without giving any relevance to the actions of those who were employing the workers and, by exploiting them, benefitting from a lower cost of labor and higher margins.<sup>41</sup>

Although limited in its application, the introduction of the “anti-*caporalato*” law in 2011 had the merit of providing an immediate legal response to the thousands of people that had mobilized in Rosarno, Nardó,

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<sup>39</sup> Legge 29 ottobre 2016, n.199, G.U. Nov. 3, 2016, n.257 (It.).

<sup>40</sup> *Id.*

<sup>41</sup> L. n. 148/2011 (It.)

and in other ghettos around the country, therefore legitimizing their concerns and contributing to a nationwide conversation around the parameters, requirements, and best way of tackling the issue.<sup>42</sup> In the years that followed, national and international media started covering the working conditions in the Italian agricultural sector, and the agricultural sector as a whole witnessed the multiplication of bottom-up organization and coordination, with more strikes and acts of resistance happening in Sicily, Calabria, Apulia, and Lazio.

One of the main results was a new round of legislative debate on the “anti-*caporalato*” law and the enactment of an amended version of Article 603 bis in 2016 that introduced four main innovations: the criminalization and punishment of the conduct of those individuals and legal entities (i.e., land owners, tenants, processing companies, etc.) who use, hire, or utilize workers taking advantage of their situation of need and putting them in a condition of exploitation, whether or not there has been an intermediation, and independently on the use of threats and violence; the abandonment of the idea of “systemic” violations as an index of exploitation in favor of the notion of “repeated” violations, a condition that is satisfied when the conduct happens more than once; the exclusive focus on the state of need, defined as the lack of means to provide for the essential needs of the workers or a psychological state of fragility that reduces the contractual autonomy of the worker; and the mandatory confiscation of every means used to commit the crime, a broad definition that not only includes the land where the mansions were undertaken, the barracks where the workers were living, and the vans used for the workers’ transportation, but also the price obtained for the goods produced by exploited workers, the goods themselves, and any profit generated illegally.<sup>43</sup>

The extension of the criminal liability from the intermediaries to those who hire and exploit workers is not only a legal innovation, but the evidence of a move towards a more systemic understanding of the link between law, value chains, and the distribution of power and value.<sup>44</sup> If law was only an instrument of governance and coordination between different actors of the chain, the new Article 603 bis would have no relevance because it would be seen as a mere sanctioning tool that intervenes *ex post*. However, if we consider legal structures as essential elements in the creation of the condition to generate, extract, and accumulate value at all levels of the chain, we realize

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<sup>42</sup> YVAN SAGNET & LEONARDO PALMISANO, *GHETTO ITALIA* (2015); MARCO OMIZZOLO, *SOTTO PADRONE* (2019).

<sup>43</sup> L. n. 199/2016 (It.).

<sup>44</sup> See IGLP Law & Glob. Prod. Working Grp., *The Role of Law in Global Value Chains: A Research Manifesto*, 4 *LONDON REV. INT’L L.* 57 (2016).

that the criminal relevance of the conduct of the employers has two main implications: (a) the recognition that activities undertaken at one point of the chain (i.e., intermediation) have a consequence at other levels of the chain (i.e., the cost of labor for the employers and the price of the goods they will be selling to the market); and (b) redefines the allocation of bargaining power among the actors of the chain, which lead to a redistribution of value, risks, and responsibilities. As a matter of optimistic simplification, we could say that the risk of confiscation of the land, price, and profit would push the employer into reconsidering the economic viability of cheap labor and towards implementing forms of employment that do not satisfy the indexes of exploitation and that, therefore, would be more respectful and more expensive.

Yet, the attempt by the legislature to redefine the allocative dynamics of the agri-food chain by giving criminal relevance to conduct undertaken downstream from the intermediation triggers three other considerations linked to the possibility of unexpected or underestimated consequences deriving from the use of isolated legal interventions (which elsewhere I call “legal chokeholds”<sup>45</sup>) to address issues that are co-constructed across the complexity of value chains. Firstly, the identification of the boundary between legality and illegality of conduct is always left to judicial interpretation, creating the possibility for exploitative behaviors not to be considered criminally relevant because of the lack of repetition or the application of a strict standard of “degrading conditions.” Secondly, the criminalization of certain conduct in the context of rural areas and undocumented migrants is often associated with the intensification of the role of criminal organizations, the sole entity capable of guaranteeing protection and impunity from the enforcement of punitive and effective laws. Thirdly, the chain-based approach adopted by the law 199/2016 falls short by not recognizing that the materiality of the relationship between employers, intermediaries, and workers is significantly determined by the overall structure of the chain and by decisions that are taken downstream (i.e., by the concentration of the processing, trading, and retailing sector in a limited number of players and by the unequal bargaining power between farmers and buyers).<sup>46</sup>

Despite the positive reactions that have accompanied law 166/2019 and the new text of Article 603 bis, the reality on the ground is that the

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<sup>45</sup> See Tomaso Ferrando, *Land Rights at the Time of Global Production: Leveraging Multi-Spatiality and Legal Chokeholds*, 2 BUS. & HUM. RTS. J. 275 (2017).

<sup>46</sup> See OXFAM AND TERRA! ONLUS, *supra* note 21, at 1; Alessandra Corrado, Martina Lo Cascio & Domenico Perrota, *Introduzione. Per un'analisi critica delle filiere e dei sistemi agroalimentari in Italia*, 93 MERIDIANA 9 (2018).

overemphasis on illicit intermediation and the criminalization of farmers may have counterproductive effects on workers' conditions and employment if not supported by a redefinition of the whole chain and a reconsideration of the legal structures that allow lead firms operating downstream to exercise financial and contractual pressure over producers and, as a cascade effect, that give strong control over the lives of workers. In a nutshell, the criminalization of intermediation and exploitation of cheap labor can hardly lead to just working and living conditions if the price received by farmers for the agricultural products is significantly lower than the cost of producing them without intermediation and exploitation, and if workers are forced in a condition of invisibility, socio-economic marginalization, and dependency. If the price of a kilo of processing tomatoes that remunerates the employer, pays the minimum salary of all the workers, guarantees that they work the correct amount of hours, and respects their dignity is thirty (euro) cents per kilo, the current offers of five to eleven cents a kilo have almost inevitable implications that cannot be addressed by means of criminal law and criminalization. Moreover, twenty years of tight migration policies and laws have increased the number of undocumented and irregular extra-EU workers residing in the country, creating a "reserve army of workers"<sup>47</sup> that are competing with each other for agricultural jobs but also competing with documented and regular workers, are afraid of denouncing because of the fear of repatriation and contribute to a vicious circle of cheapness and exploitation.

#### IV. WHAT THE ANTI-CAPORALATO LAW CANNOT GRASP: CHEAP LABOR AND DISPOSABLE LIVES AS A FUNCTION OF THE ITALIAN GLOBAL *PASSATA*

This article began with a celebration of the Italian *passata* as one of the most popular Italian foods around the world. Yet, popularity in a very competitive market that is shared with agricultural giants like the United States, China, and Spain cannot be achieved with the sole brand and the quality of "Made in Italy." Leaving aside the dynamics of the niche markets, competitiveness requires keeping prices as low as possible by reducing costs, increasing efficiency, and—why not—producing non-internalized social and environmental externalities. When we think about the material conditions of workers farming processing tomatoes across Italy, we have to first embed them into the transnational food system that not only connects multiple actors

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<sup>47</sup> FRIEDRICH ENGELS, THE CONDITION OF THE WORKING CLASS IN ENGLAND 77 (Mark Harris ed., Panther ed. 2010).

within the same “*passata* chain” (owners, traders, processors, retailers, and consumers), but also creates competition between different “*passata* chains,” often rewarding those who can offer a cheaper product.

In this context, an effective legal and political response cannot be narrowly focused on the local exploitation but must be capable of understanding the existence of root causes behind cheap labor, cheap lives, and cheap nature that are functional to the existence of the global Italian *passata*.<sup>48</sup> They have to do both with the legal construction of the global chain and the internal power dynamics between its actors and with the legal construction of the migrant worker as an invisible, exploitable, available, and disposable means of production. More importantly, they are interconnected: the existence of power asymmetries along the chain and the attempt to reduce costs to increase margins go hand in hand with the search for cheaper labor. At the same time, the existence of cheap labor creates the conditions for the Italian *passata* to be competitive and, therefore, to be integrated in global chains that reach consumers in the four corners of the planet. However, this interdependence is missing from the mainstream political and legal debate in Italy, where the process of criminalization of *caporalato* is schizophrenically surrounded not only by legislative attempts to increase the price received by farmers but also by an intensification of the anti-migrant attitude and a reduction of the opportunities for migrants to obtain permits and regularly remain in the country.

Three kinds of legal initiatives are worth noting which represent an attempt to redress the unequal distribution of power between farmers and buyers, although they are still in their inception and aim at challenging “unfair trade practices,” rather than embedding buyer-seller negotiations into the broader legal, economic, and cultural context. The first one falls in an area across contract law and competition law and is enshrined in Article 62 of Law Decree 1/2012 and in the recent EU Directive on Unfair Trade Practices, EU 2019/633.<sup>49</sup> Both the national law and the EU Directive apply to business-to-business (B2B) sales and purchases in the agri-food chain and aim at increasing the transparency of negotiations; consolidating the certainty of contracts; introducing minimum requirements in terms of the content of contracts, changes, and cancellations; and banning certain unfair trading practices imposed unilaterally by one trading partner (normally the buyer) on

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<sup>48</sup> Nature is cheap when it can be contaminated with fertilizers and pesticides, when soil can be depleted, and when natural resources are not regenerated but exclusively extracted. Productivity and global competition in the *passata* sector also lead to these behaviors, thus the role of cheap nature should never be forgotten. See PATEL & MOORE, *supra* note 12; Susan Marks, *Human Rights and Root Causes*, 74 MOD. L. REV. 57 (2011).

<sup>49</sup> Council Directive 2019/633, 2019 O.J. (L 111) (discussing unfair trading practices in business-to-business relationships in the agricultural and food supply chain).

another. A step forward in the recognition of the power imbalance that characterizes the agri-food chain and can have an indirect impact on the agricultural workers, both the law and the Directive refrain from dealing with the process of price formation and the race to the bottom that is generated by structural and economic circumstances, such as poor logistics, market concentration, and lack of alternative markets for products.<sup>50</sup>

On the contrary, the way in which the agricultural price is determined is at the core of a bill on double-race tenders that was approved by the House of Representatives in 2019 and awaits discussion by the Senate.<sup>51</sup> The bill on double-race tenders was strongly invoked by civil society organizations and media and aims at banning the use by retailers of a mechanism consisting of two rounds of tenders among processing companies, one before the harvest and one after the harvest, through which processing companies pre-sell the *passata* to the retailer and then negotiate with farmers on the basis of the price that they have offered. As reported by #FilieraSporca, such a mechanism:

strongly affects the entire value chain, both because of the speed with which it takes place and because companies are forced to agree to sales well before production quantities and costs have been determined. Having pre-sold at very low prices, processing companies therefore have to negotiate the lowest possible prices with producers, who must in turn make savings by hiring the cheapest possible labor or breaking their contractual obligations to farm workers.<sup>52</sup>

Yet, low prices continue to be offered to farmers even if double-race tenders have been discontinued, revealing that it is not only a matter of negotiation but a structural issue.

The third relevant intervention in this area is the Common Agricultural Policy (CAP) as a form of public support of agriculture and, therefore, a direct subsidy to the cost of production that may reduce farmers' dependency on the market and, therefore, increase social and environmental practices. Leaving aside the specificities of the CAP and the distortive nature of public subsidies, the EU policy has helped farmers remain in the business but has not yet triggered virtuous dynamics with regards to working conditions. On the contrary, the possibility to access the financial support of the CAP has represented an appealing profit opportunity for Italian criminal organizations,

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<sup>50</sup> There are 9,456 farms producing processing tomatoes in Italy. However, 95 percent of the transformation is realized by 91 processing facilities, 21 of which are in the North of the country. See Perrotta, *supra* note 5.

<sup>51</sup> Atto Senaato n. 1373, Limitazioni alla vendita sottocosto di prodotti agricoli e divieto di aste a doppio ribasso (It.).

<sup>52</sup> #FILIERASPORCA, LA RACCOLTA DEI RIFUGIATI (2016).

while the CAP itself has intensified the socio-economic inequality between small-scale and large-scale farmers (putting more pressure on the former and pushing them towards socio-environmental unsustainable or illegal practices)<sup>53</sup> and has shifted the burden of supporting agriculture from the market to the public authority. Aware that agriculture is receiving financial support through the CAP and is considered a central economic activity in the region, buyers know that they can lower the price per kilo, in a way privatizing the public resources aimed at the agricultural sector.

From the point of view of agricultural productivity, the limited effectiveness of the measures aimed at increasing revenues and bargaining power of farmers is somehow “counterbalanced” by the normalization of a state of emergency,<sup>54</sup> the increased criminalization of “irregular” or undocumented migrants, and the intensification of the xenophobic attitude of both policy makers and the broad public. Only in the last two years, the Ministerial Decree of 20 November 2018 on the role and function of the centers of initial reception and the “Security Decree” carrying the name of the then Minister of Internal Affairs Matteo Salvini<sup>55</sup> have weakened, as clearly stated in a 2019 report by Amnesty International, “the condition of the asylum seeker and of those migrants who receive protection, . . . producing social marginalization and ghettoization that are more likely to be exploited by criminal interests and mafia organizations (exploiters, traffickers, *caporali* and Mafiosi).”<sup>56</sup>

This article is not the appropriate space to discuss the details of all the measures introduced in the last two years, which span from the cut of financial support to the centers of first reception and the denial of registration for asylum seekers, nor to provide a detailed analysis of the way in which they materially and legally impact the life and opportunities of non-EU citizens. Yet, to understand the connection between the emergency decrees, the creation of a labor reserve army and the thriving of illicit intermediation it is enough to consider that almost 87,000 people lost their right to live in Italy as a consequence of the new decrees and that on January 1, 2020, they also lost the right to be hosted in a reception center.

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<sup>53</sup> In 2013, the top 0.8 percent of the beneficiaries of the Common Agricultural Policy received 26.3 percent of the full amount of resources disbursed in favor of the whole Italian agricultural sector. More interestingly, 0.001 percent of the farms (150 in total) received around 6 percent of all the direct payments aimed from Brussels to the sector. The remaining 94 percent of farms shared just 39.5 percent of all CAP subsidies. *Commission Factsheet on CAP Expenditure in 2013 by Member States* (2015).

<sup>54</sup> GIORGIO AGAMBEN, *HOMO SACER: IL POTERE SOVRANO E LA NUDA VITA* (1995).

<sup>55</sup> Decreto legge 4 ottobre 2018, n.113, G.U. Oct. 4, 2018, n.231 (It.).

<sup>56</sup> AMNESTY INT’L, *I SOMMERSI DELL’ACCOGLIENZA CONSEQUENZE DEL DECRETO LEGGE 113/2018 SUL SISTEMA DI ACCOGLIENZA ITALIANO* (2019).

For sure, the Italian legal framework contains ad hoc forms of protection in the case of extra-EU citizens who are victims of violence or exploitation, such as the permit for social protection<sup>57</sup> and the permit for those who are victims of labor exploitation.<sup>58</sup> However, they have a limited length (six months that can be renewed if the conditions remain), and their interpretation by the public prosecutors is increasingly subordinating their release to the provision of relevant information on the exploiters and to the proof of an actual and serious danger for the migrant. More precisely, non-EU migrants who are victims of exploitation and abuses would only be protected if they actively contributed to the investigation against the perpetrator and if they could provide evidence that they are facing a serious and immediate danger. Thus, the discipline seems to overlook the cultural, personal, and economic obstacles towards denouncing and cooperating and, more importantly, normalizes forms of exploitation that are not dangerous or immediate. Considering the broader context and the increasing criminalization of migration, it should not come as a surprise that these permits have not been particularly effective and that they are not seen as valuable options by non-EU farmworkers who populate the Italian countryside.<sup>59</sup>

The moment we move away from the tomato and we embed it into the wider legal and economic context of global *passata* chains and global human mobility, it becomes evident how inappropriate it would be to look at *caporalato* in isolation from the rest of the legal, economic, and social context in which migrants, *caporali*, and farmers are embedded. Yet, despite the interconnectedness between people, places, and issues, national and regional legal solutions reproduce a waterproof attitude that cannot grasp the plurality of legal structures that define rights, produce value, and allocate power. Although the new anti-*caporalato* law of 2016 represents a step forward compared to the previous version (mainly because it moves beyond the worker-*caporale* dynamic to include employers as the beneficiaries of the exploitative practices), it appears inadequate and potentially a source of serious unexpected consequences both for workers and farmers. A radical intervention is thus needed, which redefines power relationships through the lenses of migratory status, distribution of value across the chain, and the race to the bottom generated by the global competition that characterizes the market for processing tomatoes, *passata*, and other tomato-based products. Yet, is such radical intervention desired?

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<sup>57</sup> D.Lgs. n. 286/98, art. 18 (It.).

<sup>58</sup> D.Lgs. n. 286/98, art. 22 ¶ 12 (It.).

<sup>59</sup> In the five years after the introduction of Article 603 bis in 2011, only 500 workers denounced the *caporali*, a number that is equivalent to 0.1 percent of the victims of *caporalato*.

V. TRANSNATIONAL COLLABORATION TO ESCAPE THE POLITICAL  
AND LEGISLATIVE “CATCH-22”

This article has offered a critical legal and chain-based analysis of the forms of labor exploitation that lie behind the Italian *passata* (tomato sauce) as a product that is known all over the world and that makes Italy a world leader after the United States and before China. In line with mainstream legal accounts, the story began with a depiction of the severe abuses suffered by hundreds of thousands of workers in the Italian agricultural sector (mainly non-EU citizens) and connected them with the thriving phenomenon of *caporalato*, (i.e., the illicit intermediation between workers and employers) which is often conducted by members of Mafia.

Moreover, this article is also an attempt to depart from the dominant reading of *caporalato* as a problem of the Mafia and has suggested that it is incorrect and ineffective to focus on the workers–intermediary–employer relationships without embedding them in the broader context of the whole *passata* chain and in the even wider context of the legal construction of illegal and irregular migrants. It is only then, I believe, that it is possible to expose the root causes of one of the most significant problems faced by the Italian agricultural sector and to question the role of law (contract law, EU law, criminal law and—more importantly—migration law) in producing cheap lives and cheap labor. No criminal intervention and no anti-*caporalato* law will be effective until workers are emancipated from their current condition of invisibility and vulnerability and their value along the chain is fairly and justly distributed in order to adequately remunerate labor and nature.

Yet, are we sure that emancipation and just prices is what Italy (as a government, a legislative body, and as one of the largest economies in the world) really wants? The annual value of Italian tomatoes’ derivatives (including the “gangmastered” *passata*) is estimated at 3.3 billion euros, half of which is exported. Moreover, workers’ exploitation does not only concern the red vegetables, but the whole Italian agricultural sector, whose economic value exceeds 55 billion euros every year and which represented 41 billion euros in export in 2017.<sup>60</sup> A reform aimed at agricultural workers, which recognizes their legal status and their full rights, enforces the payment of minimum salaries and appropriate working hours, and guarantees the provision of healthy living conditions and social security, etc., would certainly redefine the power dynamics at the bottom of the chain and move the labor reserve army away from the control of criminal organizations. However, such intervention would likely cause an increase in the costs of

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<sup>60</sup> ISMEA, *supra* note 7, at 13.

production, possible higher prices for the *passata*, and a reduction in the competitiveness of Italian processing tomatoes vis-à-vis varieties farmed elsewhere under different labor and production conditions. In addition, an increase in the cost of labor without any form of public support to the farmers (such as procurement of the tomatoes at a price that guarantees a living wage to the workers) may create an incentive towards mechanization and nudge farmers to replace workers with machines, thus erasing the potential positive impact of regularization of workers' lives, generating more unemployment and urbanization, and also intensifying the process of land concentration in favor of wealthier producers and the abandonment of the countryside by smallholders.

Once again, these considerations are valid only if we do not pay enough attention to the way in which labor relations and individuals are embedded in longer chains populated by multiple actors who appropriate and accumulate value. If we only look at the cost of production that may correspond to higher legal standards, it is true that legislators and small-scale farmers may appear trapped in a "catch-22" where cheap lives and cheap labor contribute to the global competitiveness of the Italian *passata*, to affordable products that can be bought in supermarkets all over the world, and to the permanence of farmers on the land. However, if we adopt a food system approach to gangmastering and illicit intermediation, we realize that the higher cost of production associated with regularization and the full respect of people's and workers' rights is a problem only if we take for granted that the value of a *passata* must be distributed in the same way that it is distributed today and if we assume that there is no alternative to global competition.

Regarding the first point, it is enough to consider that out of an average price of 1.3 euros per bottle of *passata*, almost 53 percent is appropriated by the retailer, while the current remuneration of farmers is around 8 percent, and the processor receives 18 percent. If we start from the assumption that the current distribution of value along the chain cannot be changed, we can only conclude that a more expensive Italian *passata* would lead to higher prices, thus putting the burden on the consumers and reducing the consumption. However, if we read the same figures through the lenses of annual profits and dividend distribution of global retailers, which in some cases reach the billions, we realize the importance of questioning the current distribution of value and the priority that is often attributed to rewarding private investors over labor and consumers.

For what concerns the possibility for more expensive Italian tomatoes to be replaced with tomatoes harvested elsewhere, it would be too naïve to say that Italian tomatoes are unique and that the Italian flag guarantees a comparative advantage. As a matter of fact, production of processing

tomatoes in the US, China, and Spain is increasing,<sup>61</sup> and international trade law rules that allow countries to limit the import of products obtained in violation of human rights have very limited leverage at the moment.<sup>62</sup> Thus, the legal and political fight against *caporalato* and exploitation undertaken in the Italian countryside will have to be supported by public measures, such as public procurement and incentives to rural development, along with an intensification of the collaboration between workers and farmers operating in different countries that replaces the mechanisms of pure economic competitiveness with a more sophisticated notion of sustainable competitiveness based on principles of social and environmental justice.

The transition from competition to collaboration is intellectually, economically, and legally complex and not easy to envisage. However, a move away from price-based competition and the narrative of “winners and losers of the market” appears essential if we want to find a third way to the alternative between maintaining exploitation and fostering depeasantization. In a competitive context, cheapness represents an advantage and an opportunity to drive other businesses out of the market. Collaboration, on the contrary, shall guarantee that socio-environmental improvements obtained at one point of one chain (e.g., farmworkers in Italy in the *passata* chain) are not going to come back as a boomerang in the form of unemployment, delocalization, or mechanization.

## VI. CONCLUSION

In conclusion, the example of the Italian *passata* discussed in this paper has proved the need for a chain-based and legal-pluralist approach when analyzing and engaging with forms of exploitation like gangmastering, which are embedded in longer value chains and involve multiple actors operating at different levels and—in some cases—jurisdictions. In addition, the search for effective solutions in the context of a global market for tomatoes’ derivatives has highlighted the role of economic considerations in potentially constraining the actions of the legislator and the inherent limits of price-based competitiveness as an incentive to produce and exploit cheap labor and cheap lives. Thus, a call has been made for holistic and collaborative interventions that address the root causes underlying workers’ exploitation in the Italian agricultural sector, focus on the current distribution of value across the chain, and identify viable solutions to the potential regressive implications of

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<sup>61</sup> See Perrotta, *supra* note 25.

<sup>62</sup> General Agreement on Trade and Tariffs art. XX, Apr. 14, 1994, 1867 U.N.T.S. 187.

fighting gangmastering without a right-based vision of the future of food and the legal emancipation of agricultural workers.