LUND UNIVERSITY

Titel

This is our rule of law!

An ethnography of the rule of law among the "No Green Pass" activists in Italy

Author Gian Luca Traverso

Lund University
Sociology of Law Department

Master Thesis (SOLM02)
Spring 2022

Supervisor:
Rustamjon Urinboyev

Examiner: Micheal Molavi

Abstract

In the context of the COVID-19 pandemic, this thesis focuses on the bottom-up conceptualisation of the notion of *rule of law*, developed by a group of *activists* against a COVID vaccine passport enforced in Italy (so-called *Green Pass*), and their subsequent *everyday acts of resistance*. By using a multimodal digital ethnography methodology, centred on both in-person and digital informal encounters, this explorative case study conducts a thematic analysis of how the concept of the rule of law, usually the prerogative of legal professionals, legal scholars and politicians, is understood and by a group of "No Green Pass activists" in Italy and subsequently used as a cultural underpinning to develop silent resistant strategies against the *Green Pass* itself. With the aim of conducting an empirically informed ethnography within the field of the sociology of the rule of law, this study shows how the concept can be framed, understood and used in ways that diverge from both *thin* and *thick* conceptualisations developed and studied from a top-down perspective. This study is founded on an anthropological concept of *legal culture* and highlights the importance of the rule of law within a larger legal-cultural web of meanings, capable of creating a complex cosmology of metaphors, tales and stories that frame the rule of law within the three identified themes (natural rights, individualism, and sovereignty), which are fundamental to understand the form of resistance of the selected group.

Keywords

Sociology of the rule of law, sociology of the constitutional law, legal culture, Italian legal culture, COVID-19, resistance studies

Acknowledgments

I want to thank all the participants in this study who kindly accepted to have me, an outsider, within their everyday experiences, without them this thesis could not have been written and I also learn that it is always possible to. A special thanks to my supervisor, dr. Rustamjon Urinboyev whose theoretical and practical advice helped me to give substance and coherence to this work. I also want Michael Molavi, the examiner of this thesis, whose comments and observations assisted me in more deep reflections about my positionality during this research. I express my gratitude to my friend Carlo, thank you for all our enriching conversations, which have been fundamental for the development of this thesis! Last but not least, I thank my family, my parents Gian Mauro and Fiorella, and my sister Eleonora for always supporting me in whatever I do.

TABLE OF CONTENTS

Introduction

During a mid-March evening, I found myself in a private-owned movie theatre, watching *The Truman Show.* The audience was small, and the general atmosphere was relaxed and cheerful. Before the movie, Matteo, the host, told me he and his wife, Graziella, organised several of these "movie events" together with their *"marginalised"* friends. Matteo and Graziella explained to me that being secluded was the only way to *legally* watch a movie: *"We are forced to act this way because they have deprived us of our fundamental rights"*. The fundamental rights they were referring to were various and articulated but, the more we talked, the more I grasped they conceived these rights as extra-legal and transcendental. Yet, they imbued them with legal concepts. The context is that of the limitations of movement dictated by the COVID regulations in Italy.

When we talked about these limitations, the small group was outraged, but also proud, of not having succumbed to them: *"We do not need the State, we manage to live without a State that does not respect our constitutional rights"*, said Graziella. Lorenzo added he was "fed up" with the derogatory terms used in the public debate to address the people who are against the COVID vaccine passport (the so-called *Green Pass).* He concluded that the government had no right to limit the freedom of movement of the citizens, and that "*we should think about a Constitutional resistance"*. Other members of the groups were eager to tell me, *"We are a lot, bound by the will to not succumb to these infamous regulations"*. Most of them used social networks to exchange ideas and organise similar events and strategies of resistance. In a few hours, I had the intuition that, behind the surface of contempt against norms that were deemed as illegitimate, there was an entire community, a group with its values and norms that could detect legal values from the existing legal system and reproduce them creatively. I left the meeting with some names and Telegram groups to interact with. After this first encounter with some members of the group, I began to "map the field" of the local group of activists against the "Green Pass" in Alessandria, a medium-sized town in northwest Italy.

The brief description outlined above is a "hyper-local" account of a series of social reactions and practices in the context of the global pandemic caused by COVID-19, which began on the 31st December 2019, when the press agency Reuters, among others, published a piece of apparently small news, overlooked amid the new year eve's celebration: *"Chinese health*

authorities said they are investigating 27 cases of viral pneumonia in the central city of Wuhan" (Reuters, 2019). Three days later, the World Health Organisation (WHO) tweeted about *"a cluster of pneumonia cases in China"* (WHO, 2020a). The following Thursday, the WHO issued a statement saying that laboratory tests ruled out other known viruses, therefore the disease was caused by "a novel coronavirus" (WHO, 2020b).

The extent of the crisis was still far from being recognised, still, it escalated quickly: on January 11, China reported its first death, and three days later the 11 million people city of Wuhan was closed off by the Chinese government, in what was the first, but not the least, of a series of large-scale lockdowns and similar measures, destined to spread all over the world (Qin & Wang, 2020; Taylor, 2021). It quickly became clear that the virus was highly contagious and that extraordinary measures were necessary in order to contain it. Just twenty days after the first lockdown in Wuhan, the US hastened to announce a travel ban for all foreign nationals and citizens who travelled to China. Several airlines suspended their connections with the country, and the global supply chains suffered (Corkery & Karni, 2020). Meanwhile, and amid a general sense of unpreparedness, the infections spread in Italy and then in Europe, and with it the government's attempts to curb the infections. After the surge of cases in the Lombardy region (one of the first infections hotspot in Europe), Italy decided to lockdown entire cities and towns in the country's north, by imposing fines on anyone caught entering or leaving the affected areas; school closures and similar measures quickly followed (Giuffrida & Cochrane, 2020). The fear of the unknown virus reached neighbouring countries, which imposed travel bans on Italy, and restored border controls within the Schengen area (Horowitz & Povoledo, 2020). By the beginning of March 2020, Italy extended the lockdown to the entire country, with a series of draconian measures such as the ban on all public events, schools and universities closures and total travelling ban between cities for non-essential reasons; a self-certification was imposed to travel between cities, violators of the lockdown rules risked fines and up to three months in jail (Tondo, 2020). Other European countries quickly followed to impose lockdowns, travel restrictions, and social distancing measures. The EU itself imposed a ban on non-essential travel from outside the block (Stevis-Gridneff & Pérez-Peña, 2020). On a global level, in just four months since the beginning of the pandemic, over 130 countries introduced some forms of travel restrictions, such as screening, quarantine and border closures, (Devi, 2020).

By the end of the year, vaccines against COVID-19 had been introduced, and the first vaccination campaigns began, amid shortages, and logistic issues. Following the increasing availability of the vaccination, many governments introduced "covid vaccine passports", i.e., documents certifying the vaccination (or immunisation) of the holder (Osama et al., 2021). These kinds of documentation could be used to travel between countries, or even to control movements within a country, as in the case of the Italian "Green Pass". Regardless of the limitation, it is clear from this brief overview that the measures taken by different countries around the world had a tremendous impact from a socio-legal perspective. In particular, the governments reacted to an event that happened in a highly interconnected, global society and touched upon fundamental rights such as the freedom of movement, the right to privacy, the freedoms of assembly and association, and the right to work (Spadaro, 2020).

This deep impact on individual and constitutional rights happened in the context of a public health emergency, during which the countries tried to manage an unpredicted crisis, by adopting emergency laws and granting the executives special powers, in an unprecedented use of behavioural regulation. This situation prompted "uncomfortable questions" by comparative law scholars about the role of democracy, the rule of law, and the efficiency of democracies compared to autocracies in managing the pandemic (Coglianese & Mahboubi, 2021). While there are questions about the use, by autocracies around the world, of the pandemic to tighten their surveillance apparatus (Cooley & Nexon, 2021), concerning constitutional democracies, questions have been raised about emergency regulations and their capacity to derogate human rights (Spadaro, 2020). Broadly speaking, considering the political structure of western constitutional democracies, it is not surprising that the adoption of such harsh measures provoked at least some remonstrations, doubts and protests in some part of the general population. In particular, Italy adopted a particularly harsh legal framework that ended up clashing with some fundamental rights proclaimed in the constitution. The measure that is at the centre of this ethnographic work is the "COVID-free passport" commonly known as Green Pass (GP).

The Italian Government introduced the GP, which was a certificate proving a complete vaccination against the virus or a negative COVID test. The government made the certification compulsory for access to a whole series of places, gatherings and public means of transport. Moreover, the Green Pas had been made mandatory to access workplaces. This package of measures had been further tightened up with the introduction of mandatory

vaccination for all people over 50 years old, this last disposition includes 100 € for the individuals who do not comply.

These regulations provoked an intense debate within the public opinion, a debate that is imbued, as seen above, with legal and cultural meanings, especially around the interpretation of the Italian constitution and the concept of rule of law. While is it true that most of the population accepted the Green Pass and its limitations, a consistent minority - around 27% (IPSOS, 2021) - ended up refuting the measure, and put in place some open protests that were, however, relatively short-lived, if compared to the duration of the state of emergency. Broadly speaking, the opposition to the Green Pass had been linked by commentators and politicians with the "anti-vax" conspiracy theorists. While there is undoubtedly some truth in this evaluation, the debate was dominated also by the discourse about the rule of law, the constitution and the fundamental values that it proclaims.

I will argue that these values are not something fixed and immutable. On the contrary, they represent a resource (Sewell, 1992) in the hands of groups that want to put in place a "counter-narrative" and, ultimately, resist the obligations put in place by the government. In the Italian context, many such groups against the Green Pass have been formed but, besides some studies regarding the broad political positioning of these formations, there are at the moment no socio-legal studies designed around a "bottom-up" design (Banakar, 2019). In other words, although it is clear that the great importance that the Italian government gave to the Green Pass provoked a debate between the majoritarian part of the population who accepted the measure and a minority who deemed it illegitimate, it is less clear what are the socio-legal values at the basis of the disagreement and what are the resistance strategies used by little-known groups who challenge this measure, openly or under disguise.

In particular, this thesis takes the activities of a group of activists against the Green Pass as an exploratory case study, to understand, firstly, how the concept of rule of law is reproduced within this small community and how it is linked with the constitution and with the broader legal culture of the group. Secondly, I will show how these transcendental legal values are at the basis of a series of "everyday acts of resistance" (Scott 1990), put in place by the group to challenge the national legislation and to limit the legal consequence of their choice to not use the Green Pass.

Research aim and research questions

By using an anthropological concept of legal culture (Geertz 1996; Merry, 2010; Rosen, 2006), this thesis aims to obtain a "thick description" (Geertz, 1973) of *how the aforementioned group of "No Green Pass activists" understands and use the "rule of law principles" and the constitution to build a counterculture that challenges the national regulation, openly or in disguise*. The aim is therefore within the sociology of the rule of law (Cotterrell, 1996; Hertogh, 2013, 2016; Krygier, 2008; Přibáň, 2020; Tamanaha, 2004, 2006), and is to produce bottom-up-designed socio-legal research that investigates on alternative conceptualisations of the rule of law ideal, which are usually explored from a top-down, normative, perspective.

Moreover, considering how these values are instrumental in the hands of the examined group to build a "counterculture", functional in challenging the state law, J.C. Scott's (Scott, 1990) theorisation of "everyday acts of resistance, and especially, of "*hidden transcript"* will be used. As I will argue in the theoretical section, James Scott's theoretical framework (Scott, 1989, 1990) is particularly useful to map the political subculture of the group and linking the creative use of the rule of law principle with the resistance strategies adopted by its members to challenge the national legislation. Some of these strategies are silent and, apparently, of little importance (such as watching a movie together), others are more articulated and openly in defiance of the social and legal norms. In particular, the concept of the *hidden transcript*, i.e. the resistant discourse that takes place beyond the eyes of authorities, will be useful to map the discourse of the "No Green Pass group", and to show how values, linked with the constitution and the rule of law, are actively used to build a counterculture and, ultimately, a whole bunch of resistance strategies.

Therefore, this study aims to answer the following research questions:

1. ***How is the concept of rule of law framed and understood within the No Green Pass activists' discourse?***
2. ***How is the concept of rule of law used to build a strategy against the Green Pass?***

Sample

The sample is constituted of a group of activists who are actively involved in the local debate around the Green Pass. I met some activists in person and I took part in six of their recurrent meetings between March and April 2022. The informal observations and conversations with the activists that happened during the meetings constitute the main source of material for this thesis, and the meetings might be regarded as focus groups, in which the conversations flowed naturally, and the goals, frames of references, power structures and, ultimately, strategies of resistance were collectively developed (Montell, 1999). Usually, around six or seven participants were present to discuss the reasons to resist, the strategies to put in place, and their everyday experiences in the context of the public health restrictions .

After a while, I discovered that some members engaged in the activities of two larger online groups, which used the app Telegram as a means of communication. The first group was named "No Fear Day Alessandria" ("No Paura Day Alessandria", NPA), and the second was called "Self-Certification Italy" (Autocertificazione-Italia, AI), which, despite the name, operated locally to develop active strategies to challenge the covid vaccine passport. The participants exchanged information, opinions and strategies on these groups almost every day, therefore the digital spaces, quickly became central for most of their daily activities. The relationship between the two formations was particularly interesting because the first (No Paura Day - NPD), represented a more generalist formation, in which the members commented together the current situation, while the second embodied a more clear strategy of resistance which aims to openly challenge the Green Pass with another "legalised" form of self-certification, as it will be explained below.

Considering the huge amount of opinions and strategies that the activists exchanged on Telegram, I took part and observed the common, public groups and I conducted thematic analysis on them. The admins of both of the Telegram groups were aware of my presence within the digital space.

Methodology

To answer both of the research questions, the primary methodology is a *multimodal ethnographic observation* (Hine, 2017), constituted by face-to-face encounters with the

participants and participant observation of the correspondent Telegram groups. In this way, this thesis, while relying on the online activities of the No Green Pass activities, triangulated the knowledge produced with face-to-face encounters.

Ethnography is a broad methodology which encompasses a whole umbrella of qualitative, interactive-deductive methods, that involve direct and constant contact with the agents within the context of their daily lives (O'Really, 2012, p. 3). In particular, as a method of data collection, I conducted participant observation (O'Really, 2012, pp. 150–156) of the in-person meetings and of the informal chats of the Telegram group. Regarding the in-person meetings, considering that some participants were uncomfortable recording the encounter, I wrote fieldnotes, immediately afterwards the conversations; while, regarding the discussions within the Telegram groups, I exported the chats in a .txt format to conduct thematic analysis, as done by Spitale et al. (2022), in a mixed-method study about the political positioning of the No Green Pass groups in Italy.

Regarding the virtual dimension of the present group, I treated this dimension - in particular, the Telegram Groups - *as a place*, albeit virtual. As stressed by Hine (2000) the digital space might be seen as a "space, a digital space in which culture is formed and reformed" (p. 9). On the contrary, the Internet may be also be seen as a cultural artefact, i.e., a cultural product shaped by external social forces, consequently the focus of the ethnographer should be, within this optic, the formation of the online communities and how they end up in producing the digital elements itself (O'Really, 2012, p. 216). As said, however, I treated the digital space of the telegram group precisely like a space and not as a cultural artefact, in which interactions and utterances are comparable to those that happen in real life. To address the issues that Hine (2017) highlights regarding doing a digital ethnography, I considered the Telegram groups as an extension of the in-person focus group, triangulating the data between them and real-life encounters. The participants were aware of my role during the in-person meetings, and they were also aware of my presence in the Telegram groups, to avoid the dangers of lurking covertly within the groups and subsequently undermining the *participant* element of the observation (Hine, 2017). Finally, as I participated in the meetings /focus groups by asking clarifications and questions I did the same on the Telegram groups.

As said, I conducted thematic analysis (TA) on both the fieldnotes and the data generated with Telegram. More specifically, I followed a *Reflexive TA approach* as described by Braun et al. (2019), which is a fully qualitative method in which the themes are understood as

shared meaning-based patterns with the potential of uniting data that otherwise appear to be disconnected. These themes are usually constituted by "abstract entities or ideas" which have the potential of capturing a profound meaning beneath the linguistic surface of the data (Braun et al., 2019, p. 845). The themes so conceived are not a "bucket" in which to put the data; on the contrary, they are the product of the *coding activity* conducted on the data. Coding involves the "close exploration of the data", examining them usually line by line, and attaching labels to summarise and interpret the specific utterance (O'Really, 2012, p. 35). Only after the coding activity, is it possible to generate the themes that are the interpretive product of the analysis, regrouping, and reflexive interpretation of the researcher of the different codes (Braun et al., 2019).

I found the thematic analysis particularly useful in the context of this thesis because it is connected with the constructivist epistemology on which the theoretical framework, illustrated in the dedicated section, is based. Considering that the legal culture "as a part of a large whole" described by Lawrence Rosen (2006) is, in short, a process of meaning creation, connected with a concept of *culture* conceived as a *shared web of meaning* (Geertz, 1973), the conceptualisation of *theme* fits within this framework, because, as said, the theme is a conceptual tool with the power of bringing together different profound, and often hidden, meanings.

Specifically, the analysis of the No Green Pass Activists discourse generated different *codes* related to the specific utterance. To cite some examples, common codes (later regrouped) were *politics* or *parliament* or *not using the mask*. These codes had been progressively changed and regrouped, to obtain the three major themes connected with the activists rule of law understanding, and the two themes related with the concrete use of the concept during the everyday acts of resistance.

Ethics

During the course of this study, I faced some ethical issues and dilemmas, some of which are common with the general ethical problems that might be faced during an ethnographic project, others are more connected with the digital *part* of the ethnography itself, namely, the analysis of the Telegram groups.

The first problem was how to explain my position and my project to the research participants. It is worth remarking that this thesis does not contain *covert research* (O'Really, 2012), in any part, neither regarding the in-person meetings, nor concerning the Telegram groups analysis. The Telegram groups under analysis were public (i.e., everyone could enter without the admin's approval), and advertised both during the in-person meetings and on other social networks of the activists. The analysis of these groups is considered public data under the General Data Protection Regulation (GDPR), article 6.1 (Spitale et al., 2022), however, as said in the previous sections, I disclosed my presence on this digital space, in order to enhance the interaction with the activists (many of them I knew in person), and ultimately the value of ethnography as *participatory research* (Cornwall & Jewkes, 1995). I have taken similar precautions concerning the physical meetings, considering that the participants were fully aware of my role and my position regarding the Green Pass and the COVID-related restrictions in Italy.

With regard to this last issue, it is worth mentioning that, during the informal discussions I have had with the informants, I have disclosed to the activists my personal position concerning both the Green Pass, and the broader political context in which the "vaccine passport" had been issued. As a matter of fact, I did not share many, if not all, of the No Green Pass activists' positions regarding the Green Pass itself and, moreover, their framing of the rule of law centred around the existence of "absolute" and natural(ised) rights, which will be presented in detail within the data analysis section. Nevertheless, I did not feel the urge to openly challenge their discourse, especially in terms of legal/illegal. On the contrary, I structured my interactions with the activists around an empirical approach, which aims primarily in understanding *their conceptualisation* of the rule of law and its subsequent use as a tool of everyday resistance, whether I like it or not (Hertogh, 2016). As I said, my position popped up every now and then during my informal discussions with the participants. Sometimes they asked me questions and explanations, and I always explained them why I do not consider the Green Pass egregious impingement on the "absolute right" of movement (*en passant,* I do not believe that any right should be considered *absolute* but, rather, a social construction), and this brief glimpses on *my position* prompted them to explain better *their* position. Had I openly challenged their discourse, I would have lost their particular position concerning the rule of law, ending up in another research which takes the rule of law as a normative, top-down, fixed concept to be used as a benchmark against people who "do not have enough rule of law".

A particular issue that emerged during both the physical and digital discussion is the one concerning the vaccination status of the participants. Considering that the Green Pass was mainly obtained after a completed vaccination circle[1], the vaccination status of the participants sometimes emerged during my encounters with the No Green Pas activists, especially during the in-person discussions. Regardless of the fact that they kindly consented to the use of all the material I have collected, I otherwise decided to not disclose this highly sensitive health data, considering that privacy is one of the central ethical issues within public health law (Gostin & Wiley, 2018).

Finally, all the names of the participants are anonymised, regardless whether they are real names or nicknames as in the case of some activists within the Telegram groups.

Background

The scope of this section is to give some background information that might help the reader better understand the broad context of the "micro-reality" described in this thesis. First, I will draw an outline of the Italian approach towards the COVID pandemic. Second, I will briefly describe the system of self-certification within the Italian administrative law, and the notarisation of the documents, given their importance as a strategy of resistance for the No Green Pass activists.

The Italian approach to the epidemic and the adoption of the "Green Pass"

With regard to the Italian reaction to the pandemic, Giliberto Capano (2020) notes that Italy does not have any recent experience of health emergencies, considering that the last serious epidemic was the H3N2 Asian Flu of 1968-1969, which killed around twenty-thousands people. Italy is a regional state, with a high degree of vertical delegation between the central state and the regions. To understand the Italian public health policies, it is worth mentioning the constitutional reform of 2001 which changed chapter five of the Italian constitution, in a regionalistic sense. In particular, after this constitutional change, the 20 Italian regions have the exclusive power to manage their respective health systems (Capano, 2020; Vicentini & Galanti, 2021). The result is that Italy has *de facto* 20 different healthcare systems, and the

[1] See p. 13, footnote n. 4

situation is further complicated because the regions, unlike the central state, are governed according to the presidential system. This last characteristic might have favoured the politicisation and the conflictual management of the crisis (Capano, 2020). These factors contributed to building a policy system particularly slow in responding to emergencies, and prone to political polarisation, considering also the high consensus enjoyed by populist parties such as the right-wing League and the Five Star Movement (Vicentini & Galanti, 2021, p. 3)

. The newly appointed branch of the Civil Protection department, in turn, nominated a Technical Scientific Committee (Comitato Tecnico Scientifico - CTS), with advisory dutiesThe incremental strategy can be summed up in these progressives normative turns:

- March 8 2020: a regional lockdown issued by presidential decree was established in the hard-hit region of Lombardy.
- March 9 2020: the same measures had been extended to the entire national territory: by then, it was possible to go outside only for "justified reasons". Besides a fine, article 650 of the criminal code, which prescribes up to three months of imprisonment had been used.
- March 11 2020: all the "non-essential" activities had been shut down, and the same measures had later been extended to all "non-essential" industrial production.

Over 287 crisis-related regulations had been issued, both at the national and regional levels (Capano, 2020, p. 333). The nationwide lockdown lasted, after multiple extensions, until the 3 of May 2020.

The political debate

The political discourse had been characterised by clashes between the central government and the regions, and the presence of opposition parties (most importantly the right-wing Lega) in the government bodies of the hardest-hit northern regions further exacerbated the politicisation of the crisis (Capano, 2020). The political polarisation around pandemic management never ended. Firstly, during the first phase of normalisation-denial of the crisis (Capano et al., 2020), most of the opposition parties strongly opposed any kind of restrictive policy, then they advocated for harsher measures and, after a relatively brief period of

"national unity", in which they voted together with the majority, they pushed for a quick "reopening policy" and to more lenient public health measures (Vicentini & Galanti, 2021).

The general population, on the contrary, reacted with a "rally 'round the flag" response, at least during the most acute phase of the pandemic. Among the widespread sentiment of national unity and patriotism, the slogan *"andrà tutto bene"* ("everything will be fine") was created, widely used on social networks, and hung on the balconies of many people (Solito, 2020). The balconies became a symbol of demonstration of national solidarity, when the people in many Italian cities and towns sang from them (Scorza Barcellona, 2020).

From a socio-legal perspective, this summary of the first "acute phase" of the pandemic management in Italy, can yield suggestions. Firstly, the decentralised healthcare system played a role in some delays, inconsistencies, and normative conflicts that inflamed an already polarised political climate (Capano, 2020; Vicentini & Galanti, 2021). Even the precarious political unity reached during the national lockdown produced a gargantuan amount of regulation issued in the span of a few months, usually with short notice given to the population and with extensive use of executive powers (Capano, 2020). The citizens in turn reacted, during this first stage, with a widespread demonstration of national unity and with huge support for the government's measures (Vicentini & Galanti, 2021). This kind of unity, around the government and its laws, dwindled in the second phase of the pandemic, during which the government adopted lighter measures and, centrally in the context of this study, the "Green Pass". During this stage, as it will be shown, the support for the public health measures and the Green Pass remained high, but the public debate around the legitimacy of the vaccine passport became more inflamed and filled with shifting meanings given to "empty signifiers" such as "rule of law" and "constitution".

. These kinds of measures, still in place at the time of this study, are among the strictest in Europe. The Oxford Coronavirus Government Response Tracker (OxCGRT) has elaborated a COVID Stringency index based on a composite measure on nine "response metricsThis rather intense and polarised debate was centred around the usefulness and justness of the measures issued place by the government. Notably, Giorgio Agamben took a stand, and spoke openly against the Green Pass, pointing out that the restriction represented a "constitutional crisis", and their ultimate aim was to create "second-class citizens" (Agamben, 2021). This position, underpinned by Agamben's conceptualisation of the "state of exception" (Agamben, 2008), sees the Green Pass as the ultimate tool to create a "biopower" over the citizens, who are in

this sense forced to renounce to their fundamental constitutional rights, in a sort of perpetual state of exception, in which the executive has the power to pervert and derogate, the constitution and the fundamental rights of the citizens (Agamben, 2020a, 2020b). As it will be shown in the data analysis section, the narrative used by the No Green pass activists object of this study draws heavily from Agamben's discourse, albeit in a more instrumental and localised fashion.

The self-certification system

In this subsection I will briefly describe the self-certification system offered by the municipalities in Italy. Although this part will be mainly constituted by legal information, it is necessary to have some background information about the use of the self-certification by the No Green Pass activists as an instrument of everyday resistance.

The self-certification system (in Italian: autocertificazione), is an instrument typical of the Italian administrative law, introduced by the Decree of the President of the Republic n. 445/2000 (Decreto del Presidente della Repubblica - DPR). The DPR 445/2000 regulates, at the articles 46-49, the use of the self certification to certificate a large series of data within the relationship between the citizen and the public administration, from the citizenship itself to the residency status and many others. To give an example, if a person needs to prove its Italian citizenship to the public administration, it is enough to write a self-certification that declares the citizenship status rather than require an official document. As it will be seen in the dedicate section, the No Green Pass activists crafted their self-certification that, citing some legal sources, for example the EU charter of the fundamental rights and the Italian constitution, certificated the absolute right "to use public spaces, to work, and to attend the university courses". This document was presented in the municipality offices of Alessandria to be notarised. The notarisation is a service offered by the municipalities in Italy, that basically certifies the authenticity of the signature on a document, upon a presentation of identity documentGiven these basic "legal coordinates" it is worth remembering that it is not the scope of this thesis to determine whether the creation and the use of the self certification was *legal or not*. According to some jurists, probably not. But the interesting point is that it worked as an everyday system of resistance and created some level of confusion that the No Green Pass activists readily exploited. Even more interesting, in my opinion, are the deep

motivations that prompted the group members in crafting this document, which behind the "binary code" legal /illegal, contains a deep socio legal, cultural background worth telling.

Literature review

The literature review of this thesis is organised around the analysis of two lines of inquiry, the first is the broad area of the *resistance studies*, the second, the core of this work, is the area of the *sociology of the rule of law*. I will argue that the two areas can be put in a mutually fruitful dialogue.

Resistance studies

The definition of resistance is multilayered, and subject to different interpretations. Resistance may be clearly visible, as an opposition against any forms of power, and therefore it may be investigated from the "classical" point of view of the struggle of political actors against their direct superior or power institutions (Murru & Polese, 2020, p. 11). On the other hand, and most importantly for this thesis, the concept of resistance can be investigated from the perspective of the aforementioned invisible acts of resistance", (Scott, 1989, 1990). After Scott's seminal works of invisible acts of resistance, an entire interdisciplinary field emerged, which aims to investigate the resistance of the private and the everyday. This latter scholarship, is therefore focused on what Scott (1990) defines as the "infrapolitics", of subordinate groups, that is "a wide variety of low-profile forms of resistance that dare not to speak their name (Scott, 1990, p. 19). This theoretical foundation - discussed more in details in the section below - provoked an eclectic line of studies that challenged the traditional Gramscian notion of hegemony, by pointing out that domination is rarely total, and the consent of the dominated is more unstable than it usually appears (Courpasson & Vallas, 2016), precisely because the offstage discourse of subordinates groups is often overlooked in the classical scholarship. Finally, resistance, as pointed out by Courpasson and Vallas (2016) "is never as pure and pristine [...] as generations of Marxists theorists have hoped", because it is often merged with particularistic biases (p. 5). In other words, overt and covert resistance techniques may be found everywhere even within conservative movements that build a hidden transcript to openly challenge and hinder progressive politics, leaving open the troubling ethical question about what to do with morally condemnable forms of resistance and contestation (Murru & Polese, 2020), as it is suggested in the "book review" of the "Tea

Party Warrior's Field Manual" (Freeman-Woolpert, 2017) which, despite the content, "provides a new perspective on civil resistance and nonviolent action as implemented by conservative activists in the United States" (Freeman-Woolpert, 2017, p. 171).

All this considered, is clear that forms of resistance, the strategies employed, and the values and cultures which are produced and reproduced within them vary widely according to a multitude of factors. It is not surprising then that the field is crossed by many theoretical approaches and methods, encompassing political science, anthropology, sociology, gender studies and feminism, precisely because resistance is inextricably linked with the power structures, institutions and values against which is directed (Törnberg, 2017). In other words, *resistance,* in both of its covert and overt forms, (and the grey zone that lies in between) is i*pso facto* multifaceted, precisely because it represents the innumerable possibilities in which human agency is externalised. For these reasons, resistance studies, especially as invisible "everyday" forms of resistance, are prone to be operationalized in the forms of highly localised case studies, usually carried out with ethnographic methods (Törnberg, 2017). The prevalence of qualitative methodologies suits better with the multifaceted nature of the concept itself, which is prone to take highly localised and particular forms, that inevitably produce "thick descriptions" (Geertz, 1973) of the resistance itself. Moreover, resistance is inevitably linked with power, and the most recent literature concerning the concept is particularly influenced by the Foucauldian notion of the dialectical relationship between power and resistance and its creative power, which results in creating identities and oppositional meanings (Knights, 2016).

To put it differently, the study of everyday acts of resistance is particularly useful to investigate the often informal reaction of marginalised groups in the face of power (often, but not necessarily the coercive power that stems from the state). Informality is often central in this kind of investigation that aims to show how a given social formation reacts to detrimental conditions. The importance of informal actions and reactions have been shown, for example, in the context of a power void, specifically, regarding the lack of welfare state actions in the Chernobyl exclusion zone, which gives birth to a whole system of informal economic practices of the local population and an "unofficial understanding of the risk", with the final aim of defending a space that, as far as unhealthy as it may be, still represents the only reliable social network to rely on (Davies & Polese, 2015, p. 40). Similarly, informal practices can be employed by the population also to challenge new laws and regulations that

limit vital economic activities, such as in the case of informal practices of resistance among the outlawed Georgian street vendors (Polese et al., 2016). In both of these examples, and in many others, resistance is informal and ends up challenging the national state legal system and policies. In this context, informality and resistance, even if they have been studied initially in the context of developing countries - for example: (Gupta, 1995; Scott, 1985, 1989) - is applicable even to rich countries, especially regarding the new challenges posed by neoliberal policies and globalisation.

As pointed out by Juris and Sitrin (2016), in the current globalised socio-economic context, many movements are centred around the values of informality and non-hierarchical horizontality. These movements are usually formed by people with common problems and backgrounds and aim to "create alternatives necessary to their survival" (Juris & Sitrin, 2016, p. 46). The authors, by providing several ethnographic examples, points out how resistance has a generative dimension of new identities that are functional to challenge globalised, neoliberal policies of many countries and public institutions around the world, from the austerity policies that occurred during the economic crisis in Greece to the protest against Monsanto in Argentina (Juris & Sitrin, 2016). Examples of community creation and resistance in a postmodern context can be found in many case studies like, for example, the research of Laszczkowski (2020), which documents everyday acts of resistance of the Italian activist against a high-speed train project in the north-west of Italy, and the cohesive power of parody and mockery. Community creation is central, as Scott (1990) stresses, and it produces acts of cultural resistance, as shown in the ethnographic studies of Annunziata and Rivas-Alonso (2020), which focus on the invisible tactics adopted by the population of gentrifying areas in Istanbul and Rome. As the authors point out, resistance against gentrification is characterised beside active strategies such as resisting an eviction, by "informality and invisibility", like "moving around the institutional frameworks, manipulating the institutional norms or searching the invisibility as a way to escape from the radar of the institution" (Annunziata & Rivas-Alonso, 2020, p. 80). Similarly, Baca (2020), suggests that apparently innocuous acts such as taking photos of a landfill in a little town in Montenegro may have the power, when they are published on social media, to become a nationwide movement, in a sort of re-politicisation of the resistance.

The brief overview outlined above can give a glimpse of how many times resistance can interact with the law or with non-national norms. Resistance does not happen in a vacuum,

rather, it is always a reaction towards the power that often stems from the state or from a societal formation which has some coercive power to impose its form of normativity. Moreover, resistance can be a reaction to the *absence* of the state, as discussed in the aforementioned study by Davies and Polese (2015). The literature regarding Scott's concepts of everyday resistance, therefore, is pervaded by stories, narratives, and findings that are strictly intertwined with legal concepts. However, it is mainly focused on the everyday actions of the resistant from a mechanistic point of view, that conceptualises the action as a reaction to social structures as an alternative subculture which silently challenges them. Law and legal phenomena are present in most of the case studies and ethnographical works almost everywhere, but they are studied with the lens of processes that happen outside the law and without the conceptual lens of sociology of law and, in particular with the lens of sociology of the rule law (Přibáň, 2018, 2020; Thornhill, 2010). Using these lenses might enrich the field, because the rule of law represents a powerful tool in the hands of social movements which pursue political goals, it can be tools to challenge government decisions, resist abuses of power, and seek justice" (Pirie, 2021, p. 19).

Resistance and the law

There are contributions to resistance studies that use legal or socio-legal conceptualisations to show how they are used to challenging state law. For example, the ethnographic research by Finchett Maddok (2010), drawing from the notion of a semi-autonomous social field (Moore, 1973) and from the concept of strong legal pluralism (Griffiths, 1986) points out how social centres in the UK are "spaces of resistance that are created through the navigation of alternative normative fields, in parallel with the influence of the state order" (p. 31). In other words, the formation of social norms based on more shared and non-hierarchical decision-making processes and promotion of inclusion ends up in creating alternative spaces characterised by a "utopic normativity" (Finchett-Maddock, 2010, p. 33). Ultimately, Finchett-Maddock defines this kind of normativity as "hidden normativity"; she concludes that precisely because it is hidden is also a form of silent resistance against practices in privatisation and dispossession of the communal spaces which happen in the urban environment (Finchett-Maddock, 2010). More specifically on the concept of the rule of law, Thompson's (2020) archival research about the struggle over the communal possession of the land between the British colonial government and the Jamaican population between the XIX and XX centuries, shows how the rule of law itself can be manipulated to foster not only the

dominant (colonial) government but also by the subaltern class (in this case the Jamaican population) which, firstly had incorporated a national treaty within its own cosmology about the sacred ownership of certain lands and, secondly to use this narrative to openly challenge the colonial government.

To sum up, resistance studies are touched upon and interpreted with the lens of many branches of the social sciences and, specifically, the silent everyday acts of resistance gave birth to a whole and quite multifaceted field of studies represented mainly by case studies conducted with qualitative methods. Resistance is focused on power dynamics, and these dynamics are pervaded by normativity, they are enacted with laws and they are challenged by using legal and, in the case of this thesis, constitutional imaginaries bound with naturalised ideals of rule of law and absolute rights. Therefore, a sociology of the rule of law and constitutional law might bring contribution to the resistance studies by focusing on how the blurry ideal of rule of law, and its powerful capacity to naturalise rights and demands can be used by marginalised groups, like the "No Green Pass" in Italy to bright forth silent acts of everyday resistance, to build narratives and to form identities (Ewick & Silbey, 1998; Knights, 2016), that goes beyond the classical (overt) dialectical reaction of the powerless against the powerful categorised as legal mobilisation. Also, an empirically driven concept of resistance, and particularly its everyday forms, can explore the empirical, bottom-up dimension of sociology the rule of law (Banakar, 2019).
I would argue that both of these dimensions, namely the capacity of the rule of law and constitutions to constitute an instrument of everyday resistance, and the empirical dimension of a sociology of the rule of law are worth exploring through the lens of an anthropological concept of legal culture (Merry, 2010; Rosen, 2006) and Scott's theoretical framework regarding the concept of resistance (Scott, 1990).

Legal-doctrinal concept of the rule of law.

The literature about the rule of law is dominated by the legal-doctrinal analysis of the concept, and its functional characteristics within the legal system, The legal conceptualisation of the rule of law idea is therefore focused on describing the concept as a set of features that the law *should possess*, consequently, the legal doctrine core ideas about the rule of law are normative statements which aim to construct a normative moral concept. This view is

expressed, among others, by Joseph Raz in his essay *The Law's own virtue* (Raz, 2019), in which he summarised the characteristics that a legal system should possess to be the rule of law-abiding: clearness, stability, public availability of the rules, which are applied according to general standards and not retroactively (Raz, 2019, p. 3). According to this view, the rule of law, expressed within these five principles, is crucial to guarantee predictability, and stability and to avoid arbitrary acts of the government (Raz, 2019). Similar views are expressed, regarding the judiciary activity, by Scalia (1989) who summarises the rule of law as the "rule of following rules", according to which the judge should always motivate his decisions *by making explicit his/her legal reasoning* (i.e., the rules that s/he has followed), rather than pursuing fact-based reasoning. Interestingly, according to this view, the judiciary - and, by extension, the government - should follow such a strict adherence to the "black letter law" to preserve the values of predictability and equality and, extensively, of popular sovereignty. Such a thin conceptualisation of the rule of law (Tamanaha, 2006), is therefore a *normative value* to which the law and the legal system should conform, but the principle does not contain any indication about the goodness of the law, in other words, rule of law does not mean "rule of the good law" (Raz, 2019, p. 10). While for Raz, this categorisation of the rule of law is crucial precisely because its only duty is to prevent arbitrary action of the government, other legal scholars have tried other principles to the concept, precisely to avoid the danger of an autocratic regime which "establishes clear legal rules yet commits egregious human right violations" (Ellis, 2010, p. 194).

An example of this approach is represented by Tom Bingham, who includes within the concept two other principles, namely, the protection of human rights, and the respect of international obligations (Bingham, 2007). This line of thought considers the rule of law as "inextricably interlinked with the respect of human rights and subsequently does not deem a political regime that violates these rights as a rule of law regime (Bingham, 2007, p. 76). Bingham observes that there are different understandings and sensibilities about human rights, nevertheless, he refuses the formalist approach by arguing that, *"within a given state of affairs, there will always be a measure of agreement on where the lines are to be drawn*, *and in the last resort the* [...] *the courts are there to draw them"* (Bingham, 2007, p. 77), advocating for a jurisdiction of the rule of law. A similar approach is followed by Ellis (2010), who advocates for the incorporation within the rule of law value of "absoute" rights, and concludes that "countries cannot and should not be seen as embracing the rule of law simply because they champion economic and commercial liberalism. Without a full and

unambiguous commitment to substantive, absolute rights these countries are failing to abide by the rule of law" (Ellis, 2010, p. 26).

The overview above shows how, within the legal doctrinal perspective, *rule of law* is essentially a normative-procedural ideal, which aims to define what are the characteristics that the law and its institutions *should possess*, to achieve the aim to restrain arbitrary power and guarantee predictability. Regardless of the thick and thick conceptualisation of the concept, in the end, the outcomes of this literature are lists of general principles and characteristics, and this is perfectly coherent with the close nature of the legal system and legal reasoning. That is why a sociological approach to the rule of law is profoundly different in this foundation: it does not retain a normative-doctrinal approach but, rather, tries to face the issue with a sociological gaze.

Sociology of the rule of law

This section summarises the main issues within the sub-field of the sociology of the rule of law, and it will be mainly drawn from the works of Roger Cotterrell, Jiří Přibáň, Brian Tamanaha, Martin Kryger and Marc Hertog. The main purpose of this section is to describe the debate within the sociology of rule of law sub-field, embodied by two different approaches: which have been labelled "the rule of law in action" and the "living rule of law". The first, majoritarian, perspective accepts that the rule of law's main value is to prevent arbitrary power and consequently explores whether this value is supported in the legal practices and among legal professionals; the outcomes are usually studies about the famous gap between the "law in the books" and "law in action" (Pound, 1910). The second line of inquiry, advocated mainly by Marc Hertog, is centred around a bottom-up, perspective focused on the societal understanding of the concept, with the aim of producing a description of the "living rule of law" within a given context.

Top-down perspectives

Tamanaha (2006), in his historical analysis of the concept, points out that, before the Enlightenment, the law was essentially "non-instrumental": rather than being goal-oriented, it was the reflection of natural and universal order, in other words, the laws were created but "discovered" (Tamanaha, 2006, p. 11). This trend changed with the Enlightenment and its emphasis on rationality: boosted by the discovery of universal natural laws, the philosophers

of the Eighteenth century embraced the task of discovering the “hidden forces of the social world” (Tamanaha, 2006, p. 22), and understood the legal system as a rational structure driven by and bound to unquestionable, and natural “social laws". Interestingly, this intellectual feat produced the opposite result: the search for universal social norms failed and ended up undermining the universal character of common law and natural law, particularly, the rule of law ended up being labelled as a universal public good (Tamanaha, 2004, 2006). Interestingly, Tamanaha points out how the instrumentalist understanding of the rule of law also risks undermining the notion of rule of law itself as a universal public good, especially in the post-modern highly polarised society, where the notion of “public good” is disputed, and battles to achieve it translate in instrumental struggles to seize the normative power of the law itself (Tamanaha, 2006, pp. 215–226).

Similar critical considerations are made by Cotterell (1996), who highlights the moral emptiness of the legal concept of rule of law, which is more goal-oriented than principle-based. Considering the shift between twentieth-century corporate-capitalist society and the present post-modern society he critically emphasises how the procedural concept of the rule of law, centred around stability, predictability and defence of the private property, is socially dependent on socio-economic conditions and power relationships and unable to guarantee substantial equality. Nevertheless, he advocates in a sort of curious rapprochement to the substantive position made by some jurists seen above (Bingham, 2007; Ellis, 2010), for an ideal dimension of the law, centred around values such as individual, autonomy and security which are worth pursuing “whatever the social context” (Cotterrell, 1996, p. 459). In this fashion, Cotterrell is in line with Tamanaha in criticising the “thin” concept of the rule of law, but he supports a more ideal conceptualisation precisely because, according to his view, is functional to challenge the power imbalances of the post-modern society and its “blind, private and sectional interests” (Cotterrell, 2008, pp. 7–8).

Martin Krygier sets the sociological difficulties in analysing the rule of law precisely in its inherent normative essence, in other words, in what he defines as the “anatomical approach” (Krygier, 2008), which consists in enumerating a list of the characteristics that the legal institutions and the political system should possess, for the rule of law to exists. In short, Krygier considers this approach inadequate for sociological inquiries for two reasons, namely its “confident assumption that the central ingredients of the rule of law are legal institutions” and “the equally confident assumption that we are in a position to stipulate in general terms what aspects and elements of these institutions produce the results we seek” (Krygier, 2008,

p. 4). To support his point, he uses various historical examples of failed “rule of law transplantations” (for example in the former Soviet countries) or, on the contrary, of successful stories about the rule of law, devoid of its formal technical qualities of certainty and predictability (he points out how the birth of the rule of law idea itself happened indeed in the context of highly particularistic and disorganised legal production) (Krygier, 2008, pp. 7–11). The point is that, to investigate the rule of law, is not enough to look at the institutional characteristics of a certain political system, rather Kryger proposes a teleological analysis of the concept (its immanent goal) in order to achieve comprehensive sociology of the rule of law. Conceding that the immanent goal of the rule of law ideal is to prevent the arbitrary exercise of power, he suggests that, to investigate sociologically the concept is necessary to empirically investigate how much the institutionalised principles “count as a source of restraint and a normative resource, usable with some routine confidence [...] in social life” (Krygier, 2008, p. 13).

Despite their respective differences, Brian Tamanaha, Roger Cotterrell and Martin Kryger’s literature about the concept of the rule of law, is close to what Reza Banakar describes as sociological jurisprudence, namely, their focus goes beyond “law technical efficiency, to its existence, as an idea embodying cultural expectations" (Banakar, 2014, p. 46). Their critical analysis of the formal “thin” concept of the rule of law is based on its insufficiency in hampering the arbitrary acts of the government, and its pretence of universality, when in fact the rule of law is a historically and socially constructed idea (Tamanaha, 2004, 2006). However, they insist on the inherent goodness of the rule of law idea and they warn against the diminishment of the notion of the command good in favour of a “blind”, practical instrumentalism. Cotterrell, advocates for a normative conceptualisation of the rule of law that empowers the citizens to take more control of their lives, by ensuring “the possibilities for all members to participate as full members of the community to which they belong" (Cotterrell, 1996, p. 465). In other words, both Tamanaha’s historical analysis of the concept, and Cotterell’s sociological reflection on the rule of law as a moral value, offer a useful critical perspective, about the “thin” notion of the rule of law in modern society, moreover, they both suggest a normative conceptualisation of the rule of law as an empowering tool to challenge power inequalities in the modern society. Moreover, Martin Kryger’s appeal to abandon the “anatomical approach” in favour of a teleological one to build a sociological understanding of the rule of law idea is also close to this kind of perspective. As noted by Jiří Přibáň (2020), his approach is functionalist because even if Kryger is dismissing the

"normative idealism" is still promoting, according to Přibáň, "factual realism", since he suggests exploring different ways in which particular society use and reproduce universal legal principles (Přibáň, 2020, p. 115).

To sum up, the socio-legal investigations about the rule of law discussed so far, usually produce critical exploration of the concept in order critically analyse how external values and power dynamics to the rule of law (for example, neoliberal democracy) finish hampering its powerful civilising force like (Cotterrell, 1996; see also e.g., Waldron, 2002). Usually, this literature is concerned with the tendency of the rule of law to be bent as a rhetorical device by politicians, and subjects who want to pursue goals that often overlook values such as equality and social justice (Cotterrell, 1996; Tamanaha, 2006). This line of inquiry criticises the use and abuse of the rule of law concept as political rhetoric but advocates nonetheless for its use to avoid injustice and to strengthen the rationality of the system in dealing with inequality and arbitrariness (Shklar, 1987). In other words, this scholarship is aware, that there is a gap between the "rule of law in the books", and the "rule of law in actions" (Pound, 1910) but, as noted by Hertog (2016), in order to build a bottom-up approach to the sociology of the rule of law, the focus should be the values of the society itself and how the society understands its relationship with the state and not the effectiveness of the rule of law as understood and developed by legal professionals.

Bottom-up perspectives

According to "bottom-up informed" sociology of the rule of law (Hertogh, 2013, 2016), should abandon the legally constructed idea of the rule of law (i.e., the "lists" of various institutional characteristics the law *should possess*), but also from any notion about "immanent values" enclosed in the notion of the rule of law itself, as pointed out by Kryger (2008). Hertog is in line with the authors discussed above in underlining the importance of overcoming what Kryger defines as the "anatomical approach" toward the rule of law, however, he argues that a bottom up-empirical-drive sociology of the rule of law should keep in mind the difference between participant and observer, whereby former is interested the impact of the rule of law, and the latter's goal is to "increase our understanding of the rule of law in the social practice"; in this fashion, the main concern of the sociologist of law is the social definition of the rule of law itself and not its degree of application (Hertogh, 2013, pp. 4–5). From this perspective, he proposes a new model for the empirical analysis of the rule of law, inspired by Ehrlich's concept of living law (Ehrlich, 1936), namely, the "living rule of

law, which is a non-instrumentalist, constitutive approach, in the sense that, namely it places the people's own understandings of the rule of law's at the centre of the empirical analysis, treating the rule of law as a dependent variable (Hertogh, 2016, pp. 47–49).

Similar considerations, although based on a different theoretical standpoint, are made by Jiří Přibáň (2020), whereas he proposes an understanding of the rule of law that goes beyond an instrumentalist approach. As mentioned in the previous section, Přibáň is in line with Hertog in praising the critique of the anatomical approach made by Martin Kryger, nevertheless, he tries to analyse the concept with more radical sociological lenses, in other words, the tries to go beyond the function of the rule of law as "pursue of the common good" (Tamanaha, 2004), or the value-based notion of rule of law as a restraint to arbitrary power (Krygier, 2008). Drawing from Luhmann's systems theory, he considers how the rule of law is, firstly, a legitimising tool for the political "raw power", but secondly and most importantly a societal value. (Přibáň, 2020, pp. 118–120). This second bottom-up dimension is constituted by the rule of law as understood by the general population and is imbued by values that may differ from the formalistic legal understanding of the law. These values constitute the rule of law as a "spontaneously evolving cultural practice, and order impossible to politically control and legally enforce. It is relative to political culture and histories, and [...] may significantly differ between particular political cultures" (Přibáň, 2020, p. 120)

Theoretical framework

Every day acts of resistance

According to James C. Scott's theorization of resistance, the power relationship between a ruling group and a subordinate one does not end in silent obedience, on one hand, or in collective "overt" acts of resistance on the other. Scott conceptualises the concept of resistance in a more nuanced fashion, whereby the subordinate groups put in place silent opposition strategies towards the power (Scott, 1990). He argues that the relationship between powerful and powerless, before it eventually bursts into an open confrontation, may be perceived as a relationship of silent consent and almost total subordination but in reality, according to this theory, an entire hidden transcript, namely, a hidden discourse that "Takes place offstage beyond the direct observation of the power-holders" (Scott, 1990, p. 4) and directly challenges the public transcript, i.e. the public discourse endorsed and produced by

the ruling class. Within this dialectical relationship between public and hidden transcript, the subordinate groups do not have an interest in public acts of defiance, rather, they have an interest in producing a "credible performance" which conforms with the public transcript endorsed by the power (Scott 1990 p. 4). It is important to note that, according to Scott's theory, the existence of a hidden transcript is the consequence of the mere existence of the public transcript. In other words, the hidden transcript exists in response to the hegemonic actions of the power, subsequently, it ends up creating "autonomous social sites' ' (Scott, 1990 p. 124), that try to free themselves from the hegemony of the ruling groups.

The public transcript and the hidden transcript are indeed the two polar opposite of a political discursive spectrum which is composed of four forms of political discourse. The first is the public transcript itself, which is a self-portrait of the dominant elites, which rhetorically justifies their actions (Scott, 1990 p. 18). On the other extreme of the spectrum, lies the aforementioned hidden transcript, whereby the dominated individuals regroup outside the frightening gaze of power and develop a counter-hegemonic political subculture. In between, there is the performance of the resistant group, which is in itself a public transcript, albeit a defiant one. Indeed, it is a performative act characterised by disguise and anonymity, but in reality has a double meaning, functional to shield and protect the actors (Scott 1990 p. 19). These three forms of political interaction and discourse produce an equilibrium in which the power holders' hegemonic discourse seems to reign with no opposition, whereby the powerlessness subjects forms a hidden political subculture, that aims to create a "safe space" for the resistance rather than openly challenge the dominant groups (Scott 1990). However, this is a precarious balance, because the hidden acts of resistance that brood within the hidden transcript and are embodied by the performative acts that only apparently conform with the power, could break the barrier between them and the public transcript become an open act of resistance (Scott,1990).

Besides the ideal-typical form of discourse under examination (public or hidden, performative or openly challenging of the dominant narrative), central in the context of this work is the fact that shifting the focus of the analysis on covert political acts and discourses is useful to map resistance strategies and, most importantly, the "social and normative basis of practical forms of resistance, as well as the values that might, if condition permitted, sustain a more dramatic form of rebellion" (Scott, 1990 p. 20). Here, I see the link, from a socio-legal perspective, between this "social and normative basis" and a sociology of normative values which, at least in western society, are dominant among the general population, such as the

concepts of rule of law and constitutionalism. A political subculture, and the subsequent covert and overt acts of resistance, do not develop in a vacuum. On the contrary, it flourishes within a certain social structure characterised by peculiar cultural practices and values that are crucial to shaping the political action of resistance or rebellion (Scott 1986). By keeping in mind the fact that every form of resistance aims at the facto gains, i.e. the preservation of some kind of autonomy of the resistant individual and, by reflection, of the resistant group (Scott 1986), it is important to note that Scott asserts that any open act of rebellion aims, on the contrary to a de jure recognition of the resistants' claims. In other words, hidden and public transcripts are two separate phenomena, rather they can be conceptualised as two aspects of the development of a resistance strategy.

For this work, I will argue that the hidden transcript of the group is founded on certain values that have high socio-legal relevance, especially because their most used concept such as "constitution", "rule of law" and "individual rights" is declined in a peculiar way that differs from the point of view of the "black letter" legal scholarship. Moreover, these values, together with the construction of the identity of the group that is intrinsically linked with the construction of the otherness (namely, the power) are the bedrock to constructing the political culture of the group that fuels both the covert and the overt forms of everyday resistance. (Scott 1990); to put it differently, these values are crucial in forming a particular legal culture.

Legal culture

Broadly speaking, legal culture has been famously defined as *"one way of describing relatively stable patterns of legally oriented social behaviour and attitudes"*, which elements of identification range from *"facts about institutions"*, but also *"more nebulous aspects of ideas, values inspiration and mentalities"* (Nelken, 2004, p. 1). In this definition lies the broad spectrum of the definition of legal culture. Merry (2010), observes that legal culture has been used to define many different phenomena, from the internal legal culture of legal professionals to the public opinions towards the law. Within this spectrum, she identifies the "anthropological" or "interpretive" approach that sees the law and the legal categories as a part of a larger cultural whole (Merry, 2010). This concept stems from an interpretive conceptualisation of culture as a shared network of meanings, advocated, among others by Clifford Geertz (1973)

Clifford Geertz (1973). describes culture as an intricate structure of shared meanings, highly contingent on the conditions of a particular society. Culture is therefore dynamic, constantly changing, not fixed nor essentialized, because of the web of meanings adopted creatively by the individuals that use these lenses to interpret the world (Geertz, 1973), in a fluid, dynamic fashion, potentially apt to form new webs of meanings and, therefore, cultures. The task of the ethnographer is therefore to make sense of this web of meanings and produce a "thick description" of the group s/he is studying, by "sorting out the structure of signification of the specific social formation" (Geetrz, 1973 p. 9)

This dynamic model of understanding the social field has a profound influence on the role of the law and normativity. Following Geertz, on the process of meaning creation, Lawrence Rosen (2006), observes how the law plays a crucial part in this process. In this optic, the law is not separated from the whole culture of a society; it creates metaphors and meanings, and it draws from context and fluid assumptions to fix them within a naturalised order (Rosen, 2006). Rosen, therefore, argues that, if culture is a fabricated intersubjective web of meanings, the law retains the crucial functions of creating metaphors, facts and, most importantly, an entire cosmology (Rosen, 2006). In other words, the law being part of a specific culture has a naturalising function of elements of the larger culture of which it is part. By absorbing within itself a specific and socially constructed view of the human being, the law contributes to creating a naturalised idea of "what means to be human" (Geertz 1973), and subsequently a sense of "orderly universe" (Rosen, 2006). In defining an order, the law also draws a moral order, by indicating to a community what is right and what is wrong, and by establishing - as with the rule of law idea - the path towards a certain idea of civilization (Pirie, 2021). The fact that law can naturalise cultural values, and therefore construct a moral order does not mean that law, and especially the rule of law, can also be, at the same time, a resource against power and legitimisation of the power itself. As much as this perspective might seem contradictory, it highlights, on the contrary, the powerful *constructive* non-functionalist dimension of the law and the rule of law in particular.

This constructive dimension of the rule of law is highlighted within the theoretical reflection on the concept, which highlights not only the normative dimension of this elusive but fundamental legal concept but also its role as a foundational value (Přibáň, 2020).

Data analysis

This section is divided into two parts: firstly I will focus on the first question, namely, *how the concept of the rule of law* is understood among the No Green Pass (NGP) activists, I will argue that the foundational value which frames the activists' understanding of the rule of law constitute the hidden transcript (Scott, 1990) of their strategies of contestation of the Green Pass. Secondly, I will focus on the overt dimension of their everyday acts of resistance, i.e., on *how the rule of law is used to openly challenge the* use of the Green Pass certification.

The Rule of law, the rule of Rights.

Regarding the concept of rule of law, namely, the relationship between the citizens and the state, and the use of the constitution - which is in many ways the embodiment of the rule of law principles - the activists are perhaps, unsurprisingly, aligned on a very "thick" conceptualisation, which is more focused on *values* rather than on the procedural characteristics of the law. These values, are the creative elaboration of the group itself, which is able to construct a sense of community around them and, consequently, a strategy of resistance. After the thematic analysis of both the in-person encounters I had with the activists and the discussion on the Telegram groups, I identified three themes, which are recurrent in the NGP's discourse about the rule of law and the constitution:

1. *Natural rights*: the activists frame their activities as functional to defend rights and freedoms that *pre-exist* any possible legal concept. In this way, the people I interacted with conceive the rule of law - and, by extension - the constitution - as mere instruments reproducing the natural rights that are inalienable, and belong to every human being, precisely because they are inherent to human nature. As I will argue below, this naturalised conceptualisation of the rule of law is a powerful rhetorical tool, because it gives a cultural framework to the group, in which including their every act of resistance.
2. *Individualism*: directly connected with the first theme, this theme understands the rule of law, as a two-fold relationship with the state. Within this narrative, the No Green Pass activists frame their resistance, in terms of defending the "supreme", often naturalised in the sense mentioned above, rights of the individual. This kind of narration is connected with the theme "Natural Rights", precisely because it sees the

relationship state-citizen as a highly atomised one, and conceptualises any intervention of the government as a menace to the "absolute" autonomy which pertains to the individual "by birthright". This theme also fuels the discourse about the rule of law within the NGP groups but also boosts some activities that are more prone to promote a strategy of alienation and separation from the state than an open resistant challenge.

3. *Sovereignty*: finally, another legally and politically charged theme emerged during the analysis, that is the theme of sovereignty. Sometimes, it is explicitly mentioned and, interestingly, it is often mentioned in connection with article 1 of the Italian constitution (which mentions popular sovereignty); in other situations, it is mentioned implicitly by reference to the general will of the people. This theme is sometimes in contradiction with the above-mentioned *individualism* but, as pointed out by Ewick and Silbey (1998), the contradiction within an ideological system is functional to the endurance and malleability of the system itself, whereby it can be adapted to different individual narratives and political purposes. Within this theme, the rule of law coincides with the "will of the people", and the decision-making mechanisms typical of representative democracy are criticised precisely because they represent a menace to this concept of "total sovereignty".

After this general overview of the abstract characteristics of the three themes, I will proceed with the analysis of each theme, to show how they are framed within the words of the activists, and how they constitute a "bottom-up" understanding of the rule of law or, put in other words, form of "living rule law" (Hertogh, 2013, 2016).

Natural rights

During one of the first meetings I had with the members of the "No Paura Day" group, I had the occasion to attend a discussion among the activists about the *reasons for* the contestation of the Green Pass. These kinds of meetings, as it will be shown later, became rarer later in my research, precisely because the groups' focus shifted to the concrete strategies of everyday resistance. On the contrary, especially during the first encounters with the group, discussions about more "abstract" foundational values were lively and vibrant. I saw this phase as crucial in building an understanding of the rule of law and, consequently, a *hidden transcript*, on which to base future strategies of resistance. The very nature of the rights they wanted to

defend was at the centre of these first meetings, and therefore the "natural origin" of these rights.

Some people who attended the meeting were suspended from work, without pay, others were students and retirees, who suffered less harsh consequences, but they all shared some limitations in their personal movements, considering that, at the time of the encounter (March 2022) the Green Pass was still necessary to attend most, if not all, of public places, from workplaces to public offices, from cinemas to restaurants. Regardless of the particular limitations, the general sentiment of the group was focused, in a first stance, around the values of the freedom of movement, and personal freedom, which are, in their view, rights that are given by birthright. In the words of Laura, a woman in her forties, their *"main and only goal"* should be to protect their *"body integrity, which is a value that cannot be separated from the law"*. From this premise, Maurizio, a 29 years old man (who later will become one of the founders of the group "Self Certification Italy"), said that

> *«The main error* [of the existing nation-wide movement] *is to shout out "Freedom! Freedom"! Is an imploration to concede a right that has always been ours! Freedom belongs to us by right »*

Laura immediately agreed and said by using a quite powerful metaphor, comparing the natural rights to something that cannot be bargained or purchased. Recalling different images from the still-ongoing limitation she pointed out how frightening it was to see people in line outside the vaccination pharmacies to buy a COVID test *« to buy 48 hours of rights*[2]*»*. She continued pointing out that her rejection for the Green Pass, was not rooted in a disbelief in the vaccine. On the contrary, she was deeply troubled by what he considered paternalistic measures, which aimed, in her view, to establish a system centred around a model that rewards the citizens with rights that are "naturally" in their disposition. He expressed this view to the group and her friend, Clara strikingly replied:

> *"I don't want to be part of a society in which we take pleasure in deserving rights, giving in to blackmail, I don't want to be rewarded with rights that are mine by birth."*

This sense of "theft" of the natural rights who belonged to the humankind "by birthright", was at the centre of the group discussion, and played a crucial role in establishing a "cosmology" of the group (Rosen, 2006) by which evaluating the actions of the government,

[2] In order to obtain a Green Pass without the vaccination (or certificate of healing) it was necessary to be negatively tested for the disease. The Green Pass obtained in this way way lasted for 48 hours.

and through which the rest of the group created an otherness (Pirie, 2021) that separated themselves and the people who "gave in to the blackmail in exchange of rights". These kinds of rights were often described as "absolute" or "inalienable" or, as seen above, "natural", and the laws and regulations issued by the government which violated this natural order were bluntly deemed as illegitimate.

During another meeting, held the following week, the discussion turned again on the sense of anger, frustration, and disappointment experienced by some participants, when faced with daily activities which required to show the GP. In particular Matteo and his wife Graziella - who I already met during the introductory meeting I mentioned in the introduction - told me about their recent experiences in different cafes and restaurants around the town, during which they repeatedly questioned the owners about their authority to ask for the document. Matteo pointed out that their core argument during these quarrels with restaurants and cafe owners was centred around their alleged violation of the «*absolute right of the freedom of movement*», and they tried to shame them precisely because of their «*authoritarian behaviour*». Similar experiences have been reported by other participants, sometimes even more serious and dramatic because they happened on the workplace, and therefore triggered the aforementioned sanction of suspension without pay. In any case, the *reasons* and the *values* (Přibáň, 2020) they evoked when they explained why these actions were inherently wrong lied in their normative conceptualisation of the relationship between citizens and the state (Hertogh, 2016). This conceptualisation is efficacy expressed by Matteo who recapitulated the different narratives of the groups by saying that the government did not even have the power to concede certain rights:

> «*Things that used to go without saying, such as the freedom to leave the house, go to a restaurant or take a train, these basic rights, now need authorization to be exercised. And the green pass is this authorization. Here again, we see the blindness of people who think that the green pass guarantees freedom. The inviolable rights, cannot be subordinated to a pass*»

The inviolability of the right of movement, and the right to work, is absolute in this context. Albeit it is close to what is expressed in the Italian constitution (e.g., articles 4 and 13), the non-negotiable nature of these rights is conceptualised in a much more strict way, precisely because they are part of a naturalised social order (Rosen, 2006) of which the positive law is a mere reflection. The legitimacy of the positive law is subsequently evaluated on the basis of this supra-positive, natural order, in this way the rule of law and the constitution are seen in a

non-instrumentalist way, as a mirror or a politicisation of rights that already exist "by nature" (Tamanaha, 2004, 2006). Despite the rational-instrumentalist turn of the rule of law idea - at least from a top-down perspective - the No Green Pass activists showed a high commitment to the idea of the rule of law, as a limit to the power of the government. The crucial point, though, lies in the fact that this ideal is only filled with values that are part of a higher *naturalised* order. These values, as it will be seen in the following analysis of the other two themes, are part of a deeper legal culture, that goes beyond the simple understanding of the legal system by non-professional people but it is indeed connected with an entirely different understanding of the relationship between the state and the citizens, whereby the citizens enjoy rights that are not *conceded* by the state (as remarks Matteo) but, rather, pre-exist the state itself, which can only guarantee them.

This awareness that there are two different normative orders, namely, the order of "the people" - the code of "the people" appeared often within the theme "sovereignty", as it will be shown later - and the normative order of the state, creates, almost inevitably, a tension can it cannot be explained only in terms of dissent against a particular norm or measure - as it the case of the Green Pass - the tension between the naturalised understanding of some of the rule of law principle and the perceived betrayal of them within the analysed community. The fact that these values, in particular the freedom of movement and the right to work, are actually mentioned and enshrined in the constitution is a powerful rhetorical tool, to foster the activists' narrative, because the constitution itself is a source of values for at least some members of the community. The constitution is therefore, in the group's view, a foundational document that consecrates rights and values that pre-existed the formation of the document itself, as noted by Filippo and Cristina on the "No Green Pass" Telegram group:

> «*We carry the burden of defending the democratic constitution. We have the burden of protecting human rights and of countering any We have the burden of protecting human rights and of combating any threat to individual freedoms sculptured in the Constitution*[3]*. We have the burden of combating mafias and the dramas of totalitarianism in order to guarantee the freedom of citizens*» (Filippo)
>
> «*It is time to regain the freedoms that our fathers and grandfathers have conquered*» (Cristina)

[3] The underlined words are a literal transition from the Italian «*Libertà individuali scolpite nella costituzione*». I have chosen to use the verb "sculptured" instead of, for example, "enshrined" because it gives a good idea of the constitution as a mythical document in which the rights are, almost physically, "sculptured".

This kind of mythical foundation of the constitution, is one of the key elements embedded in the naturalisation of the "living rule of law" (Hertogh, 2013) expressed in these excerpts. As explained above, the rights, the "individual rights", are conquered, and, finally, enshrined in the constitution. The term itself, "sculptured" gives the idea of a document that is physical, in which the people can find the rights that are finally, after a long struggle, consecrated within the document. This point is clear in Cristina's reply, whereby she says that their struggle is a mission to regain rights conquered by the previous generations. In doing so, she recalls the origins of the "foundational document", in the aftermath of World War 2, during which the current Italian institutional framework had been laid out, after a referendum that abolished the monarchy and produced the current constitution (Cartabia, 2020). The naturalised order is, in this way, further strengthened by a strong connection with a relatively recent past, in which the constitution was forged after two decades of totalitarian regime and countless compromises between the different political forces (Cartabia, 2020). This connection creates a strong sense of community that helps the group to frame its "promise for justice" (Pirie, 2021), and aids them in conceiving, explaining, and finally putting into acts, their strategies of resistance. While it is true that the constitution, in Italy as in other western-liberal democracies, embodies an ideal of rule of law, that is perfectly compatible with a legal conceptualisation of check and balances functional to curb the arbitrariness of power (Thornhill, 2010), the constitution, when is mentioned and used in this micro bottom-up context, assumes the different role of the document loaded with a strong significance, rooted in the recent history, capable to create categories of absolute "right" and "wrong", that is destined to enter in conflict with other measures that have a more clear instrumentalist underpinning, which is immediately labelled as unnatural and therefore wrong.

The idea of natural rights is therefore strong within the group, which often expresses the concept of rights that are not given, or created but discovered and conquered. However, the use and reproduction of the constitution within the activists' discourse is, however, partial and, sometimes instrumental in itself, considering that the document is indeed full of procedural parts whose primary aim is, quite obviously, to delineate a balanced institutional framework. Nevertheless, the parts of the constitution that explicitly mention rights and principles, have a powerful influence on the community, especially when they are rooted in defence of the rights of the individual.

Individualism

Given this background of naturalised rights, the second theme that emerged during the thematic analysis of data is the one of individualism. This discourse is deeply intertwined with the one about *natural rights* and it is partially its direct derivation, especially when it is declined in utterances about "individual sovereignty", as some of the respondents were keen to specify. However, I do think that such a theme deserves separate analysis, because it evokes other socio-legal values and rights that are much more mundane and usually pertain to the internal legal culture of the legal professionals (Nelken, 2004) and in this context are declined in new, and sometimes unexpected, modalities. Specifically, this theme is filled with references to the article 13 of the Italian constitution mentioned above - which guarantees the freedom of movement - but also with references to the right to privacy and the importance of consent. Interestingly, privacy and consent merge with the discourse of natural rights described above, which ends up in fueling a particular depiction of the state as too paternalistic (or, at the worst, totalitarian) and in creating alternative spaces to escape the control of the state itself.

Among the different limitations created by the Green Pass, there was, as mentioned, the mandatory requirement to show the pass at bars and restaurants. This kind of measure lasted until April 2022 and would place an obligation on both the customers and the owner of the public place, which were both subjected to fines up to 500 euros and, in the case of the latter, a mandatory closure of up to 15 days. In this context I have been invited to a meeting, held in a closed cafe, in which some members of the NGP group discussed these measures, and the reason to resist them. Claudio, the owner of the cafe, explained to me that at the beginning of the pandemic it was willing to close its activity to «*help the country to get rid of the virus*» but, after the changing of the policies from a full-scale lockdown to the Green Pass system, he was «*appalled by the sheer number of people who accepted a limitation of our personal freedom which is sacred*». He tried to co-exist with the new regulation for some time but, after he received a fine for not having checked the Green Pass of his customers, he decided to close his cafe, and to cultivate his own vegetable garden in his own plot close to the city.

This brief story sparked a discussion among the other 5 participants to the meeting, who pointed out how the current measures totally disregarded the rights of the individual, because, in the words of Marco, a twenty-two-year-old university student, they were the product of a system that is «*a reverse pyramid system, in which mass overpowers individual*». The others

agreed, reasoning on the fact that the duty of the state should be to guarantee the "sovereignty of the individual " (which belongs to her/him) by birthright, according to the theme described above. In a curious proposition of the old refrain of *no* "taxation without administration", Maurizio pointed out that this defence of the «*Individual sovereignty is the primary duty of the state; whenever the state fails to protect my personal freedom, then I have the right to not pay taxes*». Generally speaking, they described their experience as an exclusion from the community, and therefore they proposed various forms of legal alienation (Hertogh, 2018) from a state which, in their view, betrayed the absolute right of movement. One of these spaces was the cafe itself, which had been transformed into a private space outside the state normativity. With a sense of pride, the presents emphasised the fact that, by acting in this "semi-clandestine" way, they could enjoy some sense of community, without giving up their individual rights. They recalled similar activities such as the private cinema described in the introduction. As said, they showed a strong sense of pride for being able to live without, in the words of Claudio, «*the infamous pass*», which is viewed as inherently wrong precisely because it harms the *absolute* freedom of movement and, moreover, the right to privacy and the importance of consent regarding medical treatments (such is the vaccine or the COVID test).

Claudio recalled the fact that, before he decided to close his cafe and transform it into a private place, was ashamed to ask his customers for the Green Pass, because this kind of control involved what he defined an «unjust intrusion», into the realm of sensible medical data, and he felt a sense of injustice in asking a document which involved the knowledge of these data. He bluntly said that «I am not a police officer, and I am not entitled to check any kind of document that violates the rights to privacy that belong to every citizen». Marco, the student mentioned above, pointed out that he did not want to share is data with the universityIn the context of this meeting, what emerged is that the *sovereignty of the individual* is absolute and non-negotiable, therefore the rights to privacy and consent are also sacred and unchangeable, because they are the direct derivation of this rule of law principle (developed within the group), according to which *the state should not impinge the right to privacy because, in doing so, it violates the sovereignty of the individual*. Considering that the Italian constitution, guarantees these rights but, perhaps unsurprisingly, it also provides for exceptions and derogation (as far as they are lawfully established), a tension arises between a thin and thick conceptualisation of the rule of law, because the values of privacy and consent are framed within two different normative cosmologies of the relationship between citizens

and the state (Pirie, 2021). The first, considers appropriate and justified to limit individual rights as far as these limitations are justified by the health emergency and by the representative democratic process; the second is centred around the importance of individuality and is therefore keen in reasserting a contractualist approach of the relationship with the state. This conceptualisation has the power of creating metaphors and facts (Rosen, 2006) such as the metaphor of the blackmail recalled by Marco above, and ultimately fuels overt resistance strategies (Scott, 1989), such as the creation of alternative spaces of socialisation mentioned above. Within this hidden transcript, the individual precedes and transcends the existence of the state, and other individual rights are instrumental in the sense that they are the mere expression of a natural order that exist before and above the state, as vigorously said by Laura:

> «*We will not pay fines to claim every day our right to live and move freely in the world. Today we realised by looking into each other's eyes that we do not recognise this state as our own, nor its violent and inhuman laws. We will continue to live with the dignity of a human being, who does not have to ask permission to breathe or to walk. The individual transcends laws and the state itself. We will not ask for anything*»

Sovereignty

The notion of (natural) individual rights described above, although central for the conceptualisation of the rule of law among the No Green Pass activists, is however insufficient to build more organised forms of resistance, such as the writing and performative use of a self-certification which will be described in the dedicated section. To finally build a sense of community and a subculture able to acquire consensus and structure it was necessary for the activists to build a proper, normative understanding of a central element of the rule of law idea, that is the idea of sovereignty. As noted in the theoretical analysis of the concept, the rule of law ideal, regardless its "thick" or "thin" conceptualisation (Tamanaha, 2004), is centred around the scope of guaranteeing predictability and, most of all hampering the arbitrary power (Krygier, 2008; Tamanaha, 2006). This primary mission of harnessing the arbitrariness of power is operationalised in a system of checks and balances that is ultimately codified in the constitution, and the Italian constitution is not an exception to this kind of development. Within the Italian constitution, the notion of sovereignty is mentioned in article 1 where it is proclaimed that:

> *"*Italy is a democratic republic, founded on labour. Sovereignty belongs to the people, which exercises it in the forms and within the limits of the Constitution*"*

"Sovereignty", "People", "Constitution". In the article cited above, perhaps plain and simple for a jurist, lie most of the discussions, the contradictions and the building activities of the hidden transcript (Scott, 1990), within the No Green Pass groups. The opposition to the covid restrictions stems from the perceived disruption of the connection between "the people " and the executive power, in other words, the activists complain about a crisis in the government's legitimacy.

Both in the online and in-person utterances, No Green Pass activists are keen in expressing this view. On the Telegram group, Lorenzo, the person who built a private cinema to circumvent the regulations I mentioned in the introduction, pointed out that

> «*In Italy, we have a government and politicians who are not doing the people any good. That is why our laws are more stringent, unjust and discriminatory. The people have been deprived of power. It is enough to think that these decrees have been approved without the slightest parliamentary debate by a vote of confidence*»

The discussion shifted to the question of the legitimacy of the government and, afterwards, to the notion of the sovereignty of the people. Finally, during an in-person meeting, this background linked directly with the motivation to resist the current state of affairs. Immediately afterwards the utterances I described above, others replied and the core argument became the legitimacy of the government. Speaking about this topic, Sofia commented:

> «*Where are the sovereign people? Draghi* [the PM] *is abusive, put there by another abusive person! Draghi was not elected by anyone! An abusive and dictatorial government must be brought down with the dissent of us all. If we regain this awareness, helping to re-establish popular sovereignty, Italy and the Italians will retake the future of ours and our children's. Italy is a republic founded on work power in the hands of the people. This is also stated in the constitution written with the blood of our fathers.*».

The excerpt above, which is highly critical of the current institutional framework established by the Constitution, is connected again to a "larger cultural whole" (Rosen, 2006), that transcends the actual protests against the Green Pass, namely, the recurring debate about the non-elected government in Italy. In short, large swathes of the Italian public opinion are

critical of the fact that, within the current institutional system, the government is actually nominated by the President of the Republic, and it gains its powers after a confidence vote of the elected parliament. This fact creates a lack of legitimacy in the government itself, at least in the eyes of some parts of the public opinion, and for most of the populist parties (see, e.g., Campus, 2003). Interestingly, but perhaps not surprisingly, this narration has been despised by jurists and commentators as "not true" and "fake", on the basis of normative arguments, in other words, on the technical interpretation of the constitution (see, e.g. Costa, 2016; Diamanti, 2009). From a bottom-up perspective, however, such disdain emerges from a different conceptualisation of the relationship between the citizens and the state, which sees some principles of the constitution as naturalised, non-negotiable, values. As seen during the analysis of the theme "Natural Rights", Sofia recalled the fact that the constitution had been written after the struggles of «*our fathers and grandfathers*», referring again to the foundational act of establishing a constitution after the second world war and the fall of the fascist regime.

After all the struggles, the civil war, and the resistance against the fascist dictatorship, the constitution emerged as a document that founded the modern Italian Republic, disciplining the system of checks and balances, in order to assure the rule of law (Cartabia, 2020), however, from the point of view of Sofia and the other activists, the constitution is something else. It represents the confirmation of the popular sovereignty, that is *conquered*, never *conceded* because it pre-exists the document itself. While for a "black letter legal scholar" the constitution represents the codification of the rule of law functionalists ideal, for the No Green Pass, it represents a source of principles, an ideal of sovereignty and a promise of justice (Pirie, 2021), that inevitably clashes with more mediated, forms of "constitutionalised sovereignty", and represents, together with the other two themes of *Natural Rights* and *Individualism*, the hidden transcript on which the hidden strategies of the group are founded.

In other words, the naturalisation of a particular normative order, with its particular system of individual rights and its conceptualisation of absolute sovereignty constitutes the *hidden transcript* of the group, its dissident discourse, secluded from public demonstrations, that constitutes the cultural basis for future, overt, acts of resistance (Scott, 1990). The three themes of this discourse, are not created in a vacuum but, on the contrary, they draw from a larger legal culture which utilises the constitution as a cultural artefact to justify and foster a

different conceptualisation of the rule of law itself, and to insert transcendental values within the rule of law ideal.

In other words, to understand the dissent towards the Green Pass, it is necessary to map the resistant discourse of the activists against which is a discourse that produces a different understanding of the rule of law, which in turn heavily relies on a shared narration about the cultural role of the constitution as the foundational document of a community, in which the coordinates of *right* and *wrong*, of *insider* and *outsider*, the meanings of words like *consent*, *individual*, and *sovereignty* are set within a coherent cosmology (Rosen, 2006) of the relationship between the citizen and the state. . Once the cultural meanings are defined and set, and only after this crucial operation, the actual activity of resistance can be put in place.

Resistant strategies: the self-certification

On the basis of the hidden transcript described above, many silent resistance strategies have been conceptualised and put in place by the Non-Green Pass activists, from simple acts like not showing the Green Pass in public places to more complex activities that involve forms of an open challenge towards the public authorities. In particular, in this section, I will analyse a particular strategy of resistance which is the creation of a document, i.e. a *self-certification* to avoid presenting the Green Pass itself. This self-certification basically relies on a service of *authentication of the signature* that the municipalities in Italy offer to their residents. In other words, for every resident, by which it is possible to obtain an official stamp of the municipality that certifies the authenticity of the signature in any kind of document. The NGP activists used this service to authenticate a document that certifies, by citing articles of the constitution and general legal principles, their right to not show the Green Pass.

I have chosen to analyse this particular form of resistance for a series of reasons. Firstly, it represents a clear operationalisation of the activists, understanding of the rule of law ideal, of their hidden transcript, which "bursts out of the shadows" in an open challenge towards the measure. In other words, within this particular form of resistance, emerges the link between a bottom-up-generated ideal of the rule of law and a crucial role in underpinning a concrete act of resistance. Secondly, considering that self-certification was extremely weak from a legal point of view but, surprisingly, it demonstrated to work during many everyday encounters with the authorities, this form of resistance highlights the importance of performative acts (Scott, 1990) when dealing with public authorities. In other words, the activists are well

aware that their document is weak, nevertheless, they try to present it as a perfectly "legal product" by emphasising, for example, the value of the stamp of the municipalities, and other formal elements. Finally, the analysis of this section reveals the discrepancy between the overt performance of the activists - which in itself is interesting for its performative element - and the hidden "rule-of-law-values", described above which are always present within the activist's discourse about how to obtain and use the self-certification. For the group, the major problems related to this kind of certification were, firstly, how to obtain it (given that to access the public offices a Green Pass was needed) and, secondly how to use it. To address these issues, they created a Telegram group called "Autocertificazione - Italia" ("Self-certification, Italy"), on which this section relies heavily.

A legitimacy problem

To address the first problem, how to obtain the Green Pass, the major obstacle was represented, as said, by the physical access to the office itself. Surprisingly, in this context, a problem emerged: most of the activists were reluctant in using the Green Pass obtained by alternative means to the vaccination, like a negative COVID test or proof of healing. Marco, for example, explained to me that he automatically obtained a Green Pass "by healing", but he never used it because he was «*totally opposed to any form of profiling*». In general, the group believed that using the Green Pass was wound have boosted the legitimacy of the document, no matter *how* this document was obtained, As highlighted by Sofia (who I mentioned above in the analysis of the hidden transcript),

> «*I am entitled to the infamous survivor's barcode but I have NEVER used it, and I continue in my line of consistency. Do not give in to test blackmail*[4]*! Otherwise, we legitimise the maintenance of the Green Pass! We strike to eliminate it forever in all its forms! Enough of these tests. It is only a question of deciding whether you want to be men or slaves... If you choose to be slaves you will be slaves forever! No compromise. Free tampons? Not a chance.*»

This risk of using the Green Pass to obtain self-certification represented a problem within the group. The group framed this risk in terms of legitimacy because their objective was to undermine every form of control over their individual (naturalised) rights, according to their hidden transcript analysed above. Indeed, the consensus around this issue was not unanimous,

[4] With reference to the Green Pass obtained after a negative COVID test

and other members wanted to try to enter the municipality's offices using a Green Pass, but they were rebuked by other activists, on the basis of this awareness of the perceived "legitimising mechanism" of the Green Pass itself.

In general, the members, who obtained the Green Pass and used it were blamed on the basis that they were "unaware of the risks" of using the Green Pass, which was seen as inherently *wrong.* After these first exchanges with the group, I attended one of the in-person meetings with the group and the strategy of not using the Green Pass to enter the municipality building was "officialised". Marco - one of the leading figures of the group - explained to other activists that it was « *out of the question*» to use other copies of the «*infamous document*» to enter the office, precisely because

> «*What needs to be eradicated altogether is the legislation of emergency which is and will be the driving force behind any further restrictions they want to introduce, The aim is to impose the green pass, to get people used to have a passport to access services, the cinema, restaurants*»

The general perception of the group is that being the Green Pass is a patent violation of their supreme inviolable rights, it cannot be legitimised in any way, not even for pursuing their strategic goals. Two important observations can be made here.

Firstly, the group constructed its own sense of legitimacy and justice, directly stemming from their hidden transcript, which is in turn their understanding of the rule of law based on naturalised individual rights and sovereignty. From an outsider's point of view, the act of refusing to use the pass to pursue a political goal may seem irrelevant but, as pointed out by James C. Scott, to map the hidden discourse of dissent means to find "the *social normative basis for practical forms of resistance*. The point is that neither everyday forms of resistance nor the occasional insurrection can be understood without reference to the sequestered social sites at which such resistance can be nurtured and given meaning" (Scott, 1990, italics mine). In other words, the sense of (il)legitimacy of the Green Pass, a feeling so strong that ends up forbidding the use of the document even for the group's primary goals, can be better understood only when put in connection to the broader legal culture of the activists which, from a socio-legal perspective, is substantiated in a profoundly different understanding of the rule of law and the constitution.

Secondly, this hidden transcript of the No Green Pass activists has also a normative force *within* the group itself. As pointed out by Rosen (2006), the legal culture of a group creates myths, metaphors, and an entire cosmology by which and through which the world is interpreted and the parameters of *right* and *wrong* are established. Ultimately, this cultural whole has the potential of building a community which, in virtue of its own naturalisation of facts and stories - as in the case of the activists, who naturalised their rights within the myth of the construction of a community around the constitution - gains the power of exerting social control over its members. The fact that some activists proposed to use the Green Pass to enter the public offices was considered unacceptable, precisely because "strategic use of the document" would have ended up reinforcing a system that the groups considers illegitimate for the "existential reasons" described above, and every action that risk to undermine this "coherent pattern of resistance" is silenced and labelled as counterproductive. Ultimately, the No Green Pass activists' group represents, a web of power relations in itself, that does not provide a neutral framework through which every kind of utterance is accepted, on the contrary, every proposal is evaluated through the cultural meanings of the group described above and, if there is a need, it is censored. The patterns of visible resistance is the social product of the power relationships among the subordinates (Scott, 1990, p. 118).

Confusion and performance

In the end, the group opted for using a different technique to access the public offices. They try to exploit the law to their advantage, by threatening the public employers of *public service disruption* and *refusal to perform official acts*, which are two offences under the Italian criminal code[5]. It is not the scope of the present analysis to establish whether these legal claims were founded from a legal point of view, the point in this context is that they mostly worked. In many cases the activists managed to gain access to public offices and obtain their authentication of the signature on their document.

During one of the meetings (in-person), Maurizio was worried about the fact that he could not enter the municipal office but Marco confidently replied: «*You have to say that they risk*

[5] The Italian criminal code stipulates that "Whoever, [...] causes an interruption or disrupts the regularity of a public office or service or a service of public necessity, shall be punished by imprisonment of up to one year" (article 340). With regard of the refusal to perform official acts, the article 328 of criminal code provides a penalty up to two years to "the public official or person in charge of a public service, who unduly refuses(1) an act of his office"

criminal charges. Yesterday, after my threat, they brought us everything including the receipts with the relevant signatures». With this method, they managed to obtain the much-needed stamp to this document and they started to use it for different activities, from restaurants, to cinemas and so on. The important point here is that the group was well aware that their tactic was, to put it lightly and from a strict legal point of view, weak. Nevertheless, within this narrative that corresponds with the notorious *"with the law"* scheme in the Ewick and Silbey's seminal work (Ewick & Silbey, 1998), their real scope is not to really sue the city employees, let alone to promote criminal trial against them, but is to create confusion. After I met with Marco and other people he helped to obtain the *free-pass* (this was the name that he gave to the notarised self-certification) outside the city hall, he explained to me this strategy. He had an bookled under his arm, full of notes, printed articles of the criminal code and different rulings about these articles. Most importantly he had a bunch of self-certifications (or *free-passes*), thoroughly notarised than he said laughingly :

> «*The more documents we show to them, the more confused they are. When our request is unsuccessful, we tell them everything they are risking, talk about criminal charges, and if necessary call law enforcement. In any case, the value of the document and our struggle comes from within ourselves and how we assert our rights* »

Similar observations have been made in the Telegram group, about the fact that this tactic actually worked and, finally the activists managed not only to enter the public offices without the Green Pass but also obtain the authentication of their self-certification. In the hand, from their point of view, the fact that their eclectic tactics, centred around confusion and disruption, worked represented for them a moment of confirmation of the justness of their principles which underpin their struggle. The fact of having a document that was a product of their struggle represented "a moment of truth and personal authentication" (Scott, 1990, p. 208), but this movement of authentication could be completely understood, once again, only within the legal-cultural point of references of the group itself, because for them, that relies on the three pillars of *natural rights*, *individualism*, and *sovereignty* described above.

Show the stamp!

Similar considerations can be made from the *use* of self-certification in everyday life. The actual utilisation of the document happened mainly within cafes, restaurants and public means of transportation. With regard to the workplace, however, the use of the *free pass*

happened to be much harder, and most of the activists preferred, in the end, to choose the sanction of not having the GP in the workplace, that is the suspension without pay mentioned above; others have chosen to use the Green Pass by repeatedly get tested every 48 or 72 hours, with the consequent blame of the other members of the group, further confirming the *normative power* of the hidden transcript I mentioned above. In any case, most of the group members managed to obtain these notarised self-certifications and they repeatedly started to use them around the city; on Telegram, stories about the successful use of the *free pass* began to emerge.

Carolina, a school teacher in his forties, managed to obtain the authentication of his pass just a few days later, however, she is still doubtful about how to use it, and he asked about the *legal validity of* the document itself. He was planning to explain that this document was *legally* superior because it mentioned human rights principles and the constitution even during a state of emergency such as the one that was still in place at the time in Italy. Marco quickly explained to her - and to others who asked similar questions - that she was asking the wrong question. He observed that, even if the Green Pass was illegitimate, the stamp of the municipality on the self-certification was more strategically efficient than the content of the document itself:

> «*You are right. In Italy there is a hierarchy of sources and principles, and that's why the green pass is waste paper. But let's all remember that if you want to use it without problems you use it by showing the institutional stamp and the others accept it*»

Maurizio confidently confirmed this view, more tied to the performance of the presenter of the *free pass* than to its actual content.

> «*There are people in the group who have gone everywhere with this, then it depends on who we find* [who controls the pass]*, how far we want to go, and how confidently we present it. It also helps a lot that, by doing the authentication, you have the stamps of the institutions as a psychological value when you present it. The stamp makes the document more credible before the controller, who at the sight of the header on the document is more convinced. But in both cases, their strength lies in our ability to demonstrate to the controller that we are using an absolutely legal document*»

Sofia promptly recalled his experience with the use of self-certification in a restaurant. She stressed how she managed to stay in the place, with the use of the *free pass*. She stressed the fact that the owner - who was, as said, legally obliged to control the Green Pass - initially

refused to let her stay but, in the end, bewildered by the fact that the document had a "veneer of officiality", he allowed her to remain in the restaurant. As a rule-of-thumb of the "*free pass* handbook" Sofia remarked:

> «*Only the authentication receipt should be shown, they should be confused. To assert one's rights with people who have given up their rights, giving up ownership of their bodies makes no sense. Let's treat them as the serfs that they are and present the document as the "municipality pass"*

From this brief exchange, some observations can be made. Firstly, as seen with regard to the issue of how *to obtain* the authentication, the resistance strategies of the No Green Pass activists are highly performative. On the surface, when they interact with the people who are supposed to control their documents, their discourse is filled with legal concepts. Some talk about the constitution, others about even more technical conceptualisation of the law such as Marco, when he evokes the hierarchy of sources. Nevertheless, all these utterances are part of performative action.

Scott (1990) affirms that the public transcript - i.e, the discourse of the dominant classes, is a respectable performance on the part of the subjects who hold powerful positions; the subordinate's acts, in turn, are also part of a performance, in the sense that they operate a suppression of their actions and feelings to conform the public transcript and to not openly challenge the authorities. In this sense, the performance of the resistants is characterised by a constant "suppression of feelings" that ends up in generating the *hidden transcript*, which is a safe place to express "dissonant political culture". (Scott, 1990, p. 40). In short, according to Scott's conceptualisation of the dialectic between powerful / powerlessness, the entire interaction between the two is a performance and, therefore "virtually all ordinarily observed relations between dominant and subordinate represent the encounter of the public transcript of the dominant with the public transcript of the subordinate" (Scott, 1990, p. 13). A possible issue in this context, however, is the fact that the public performance of the "subordinates" - in the case of the present thesis case the No Green Pass activists - disappears with the consequential result that the public transcript ends up in being "disproportionately influenced by the power holders" (Tilly, 1991, p. 597).

When the members of the group, in their "public" interactions with the authorities, evoke legal concepts, they do so as an expression of their *hidden* transcript, characterised by the themes identified above, therefore they express a performance. Nevertheless, this

performance is not obediently aligned with the official narration of the authorities. In other words, while it is true that the No Green Pass activists act as a part of a performance - in the sense that they *conceal to their interlocutors their profound reasons behind their form of resistance* - this performance does not aim at mimicking subordination. On the contrary, its goal is to translate the values that the group inserts within their notion of the rule of law (Přibáň, 2020) into a legally challenging language, which has more disruptive potential compared to powerful, but rather general and abstract, ideals such as natural rights, individuality, and sovereignty.

J.C. Scott emphasises that, in the moment in which the "cordon sanitaire" between *public* and *hidden transcript* is ruptured, i.e, the moment when the resistance becomes apparent, there is an "explosive moment" (Scott, 1990, p. 19), in which the *public transcript of the subordinates* is openly declared in a "ritual of public insubordination", that coincides with the *open declaration on the hidden transcript* (Scott, 1990, p. 215). In the case of the No Green Pass activists, however, I do believe that the open communication of their dissent to the authorities - which, it is true, for a while remained suppressed and concealed - *did not correspond with an unveiling of their particular conceptualisation of how the rule of law ideal* (i.e, their *hidden transcript*). While it is true that the themes of *natural rights*, *individuality* and *sovereignty*, constituted the cornerstones, the "social and normative basis of for practical forms of resistance" (Scott, 1990, p. 20) of the group, the shared web of meanings (Braun et al., 2019), that helped the activists to make sense of *why* they have opposed the Green Pass, and to make strategic choices, it is also true that these meanings did not emerge in their everyday interactions with their "opponents". What the No Green Pass activists do when they use their *free pass* is not to openly declare their ideas, narratives and stories about the constitution and the rule of law, because they are perfectly aware that such an act would be, counterproductive, at the same time, delving into their ideal of justices and cosmologies by which they interpret the legal and political sphere is crucial to better understand the politically-drive acts which otherwise appear to emerge from the vacuum.

Concluding remarks

Rule of law, constitution, and self-made certifications. Narratives, everyday encounters in the context of a health emergency, and webs of meanings that shape these narratives. The facts that emerge from this brief *multimodal ethnography*, in between digital and real real-life,

might be summed up with the fact that there is always something more behind the surface of the everyday, seemingly improvised or apparently meaningless actions. The scepticism around the use of the Green Pass has always been merged, within the Italian public debate, with the narration against the "anti-vaxxers" sentiment, op-eds popped up in the Italian newspapers warning about *"The science attacked by populists"* (Molinari, 2021), *"The populism of the anti-vaxxers"* (Messina, 2021), and about these people who are ultimately *"refractory to democracy"* (Sofri, 2022). The lists could go on, and by no means do I think that these worried editorials are wrong, or exaggerated. It is true that populists, often right-wing, parties exploited and produced much of the "anti-vaxxers" conspiracy narrative, even prior of the COVID-19 outbreak (see, e.g., Kennedy, 2019), but it is also true that, behind the powerful and sometimes useful analysis there elements that may have been underlooked, and are also insightful from a socio-legal gaze.

The outbreak of COVID-19, in Italy and in the rest of the world, presented, as said in the background section, ethical problems that are not new to the public health law which, broadly speaking, are centred around human and individual rights which in turn are considered central within the rule of law ideal, from the right to move to the right of privacy and many others (Gostin & Wiley, 2018; Mann et al., 1994). Moreover, the pandemic was the first to happen during the postmodern era, where a shift from policies and laws centred around "social security and regulations" to "risk management strategies [...] which aim at pre-empting threats and insecurities" had already been noted (Banakar, 2014, p. 189). After all, the Green Pass, as conceived in Italy, can be interpreted precisely in this aspect, as remarked by the health minister Roberto Speranza, in a televised interview, who described the Green Pass as a tool that facilitated freedom, and ultimately prevented the risk of people dying while ensuring some freedom of movement, yet, he stressed the fact that the people who opposed the pass are people who "do not trust the science" (Speranza, 2021). Indeed, while it is undoubtedly true that some of the people who protested and subsequently chose to not use the Green Pass also had "anti-vax sentiments" it is also true that this is not necessarily the case, and among the consistent minority of the 27% (IPSOS, 2021) who is against the document emerge more profound reasons to oppose it, rather than a "distrust in science". In other words, within the Italian public debate, the opposition to the Green Pass had been put on the same level as the "anti-vax" movement, with the result that some socio-historical reasons of some parts of the opposing population had been disregarded, in this general climate of managerial and emergency policy (Banakar, 2014, p. 210).

These reasons are more related to a broader (legal) culture and a different understanding of the rule of law than to a simple positive/negative opinion on medical treatment. This is because, this treatment, in the end, involved a much broader spectrum of limitations and measures that impacted principles that are traditionally enshrined in the rule of law idea and the constitution. Discussions about the rule of law, and the constitutional consistency of the law, are traditionally considered the realm of legal professionals and legal scholars or, at most, politicians, who in this case might problematise phenomena such as one described in this thesis from a top-down, perspective, concluding that *there are no issues*, from a rule-of-law-point-of-view or, on the contrary, that, *the is an issue* because some parts of the population "does not trust the science", as said above. On the contrary, from a bottom-up, point of view (Hertogh, 2016), what emerges from this exploratory case study is the fact that the rule of law ideal might well be problematised outside, courtrooms law schools, and the parliament, and become a resource to utilise in a political battle.

That is because, within the group of the No Green Pass activists, *the rule of law is understood in different terms compared to the reductionist and instrumental conceptualisation that might have a legal professional* (see, e.g., Raz, 2019), and they are substantiated in the three themes described above. This thick perception of the rule of law is therefore articulated around three fundamental pillars that are represented by the fact that there are some natural rights which *belong to the individual citizen by birthright*, and the individual citizen itself is at the centre of the relationship with the state, is entitled to a form of *individual sovereignty* that is not given nor conceded, because, the is the individual that pre-exists the state itself and, if the state breaches this almost-contractualistic relationship, the individual is entitled to pursue alternative forms of resistance or even engage in forms of legal alienation (Hertogh, 2018), by the physical creation of legally secluded places like the cinema or the cafe described before. This emphasis on the sovereignty of the individual paradoxically ends up in creating an understanding of the sovereignty and the constitution that is centred around the notion of th*e unmediated power of the people*, and therefore is sceptical towards any form of representative democracy.

The central point is that these three themes are brought together with other, extra-legal realms, and they become part of a larger culture whole that can not be redacted to the label of the *external legal culture of the laypeople* (Nelken, 2004), rather, these themes are the result of the action of bringing together different facts, create metaphors, that fit coherently within a complexive cosmology (Rosen, 2006), centred around an ideal of justice (Pirie, 2021). The

role of the constitution within this coherent history is that of a foundational document, a cultural artefact, that represents, firstly, a mythical (near) past directly connected with the creation of the document itself and the proclamation of the *sovereignty of the people*, which, is worth remembering, is not created by the constitution but is *proclaimed*. Secondly, the constitution represents a formidable reservoir of schemas and resources which "empowers and constrain social action and tend to be reproduced by those actions" (Sewell, 1992, p. 27). The resources able to empower social action are contained in the fundamental principles contained within the constitution itself, such as, for example, the sovereignty of the people (art. 1), the equality principle (art. 3) and the freedom of movement (art. 13). In the activists' discourse, it doesn't really matter that these supreme rights are mediated by the constitution itself and by the traditional institutional mechanisms of the liberal democracy, what it counts that they are enshrined onto a sacred which is displayed in the archives of the Quirinale, the residence of the President of the Republic. Indeed, these resources have a huge empowering potential for the group, in terms of framing the profound reason behind their forms of everyday resistance, but they also have a normative potential as agency limitations.

Indeed, as seen during the concrete operationalisation of the resistance strategy, the values of the group, and its understanding of the rule of law can limit the agency of its members and modify the strategic choices of the group itself. When the group decide to not use the Green Pass not even to get access to the city hall offices, is making a normative choice, which entails the blame of the members who have a different opinion, in this way the group is able to externalise a coercive potential, which shapes its resistance strategies. As said above, the hidden transcript of the group, their cosmology and frame of reference is both the result and the source of the power relationships internal to the group itself (Scott, 1990). This also leads to the consideration that, understanding of the rule of law of the group itself, from my point of view, should not be idealised, let alone romanticised or depicted as a "true" or "just" conceptualisation of the rule of law. As J.C. Scott highlights, regarding the hidden transcript

> "[P]ower relations are not [...] so straightforward that we can call what is said in power-laden contexts false and what is said offstage true. Nor can we simplistically describe the former as a realm of necessity and the latter as a realm of freedom. What is certainly the case, however, is that the hidden transcript is produced for a different audience and under different constraints of power than the public transcript" (Scott, 1990, p. 5)

What emerges from the bottom-up analysis of the rule of law's understanding among the No Green Pass activists, is a web of cultural meanings that is instrumental to their resistance strategy. Is perhaps a conceptualisation of the rule of law that might seem strange, unfamiliar or even controversial considering its ties with the populist dichotomy "people / elite", nevertheless, if analysed from a *sociology of the rule of law perspective*, it is a conceptualisation that is worth exploring, considering that, a true sociological approach to the concept should put aside any normative bias and focusing to every aspect and use that the rule of law might take, even the ones that "we don't like" (Hertogh, 2013).

This "thick description" of the understanding of the rule of law ideal of this group of "No Green Pass activists" also covered *the use* that the activists made of their ideals, that is an instrumental use, with a potential of generating normativity and power relationships inside the groups - as seen within "a legitimacy problem" section". Moreover, the overt strategies of the group itself can be understood only within the frame of reference of the three main themes described above. In other words, this case study suggests that whenever we assist to form social protests that are complicated to understand and easily labelled as "wrong" - or perhaps populist from a normative point of view, a bottom-up understanding of the deep reasons behind these protests can give a new enriching perspective both for the study of resistance and, most importantly, for the sociology of the rule of law that in this way might be freed from a legalistic, perspective and enriched with a more empirical data-driven approach.

Bibliography

Agamben, G. (2008). State of Exception. In *State of Exception*. University of Chicago Press. https://doi.org/10.7208/9780226009261

Agamben, G. (2020a). L'invenzione di un'epidemia. *Quodlibet*. https://www.quodlibet.it/giorgio-agamben-l-invenzione-di-un-epidemia

Agamben, G. (2020b, May 11). Biosicurezza e politica. *Quodlibet*. https://www.quodlibet.it/giorgio-agamben-biosicurezza

Agamben, G. (2021). Cittadini di seconda classe. *Quodlibet*. https://www.quodlibet.it/giorgio-agamben-cittadini-di-seconda-classe

Annunziata, S., & Rivas-Alonso, C. (2020). Everyday Resistances in Gentrifying Context. In A. Polese & S. Murru (Eds.), *Resistances: Between Theories and the Field*. Rowman & Littlefield International.

Baca, B. (2020). Everyday Acts of Citizenship. In A. Polese & S. Murru (Eds.), *Resistances: Between Theories and The Field*. Rowman & Littlefield International.

Banakar, R. (2014). *Normativity in legal sociology*. Springer Berlin Heidelberg.

Banakar, R. (2019). *On Socio-Legal Design* (SSRN Scholarly Paper No. 3463028). Social Science Research Network. https://doi.org/10.2139/ssrn.3463028

Bingham, Lord. (2007). THE RULE OF LAW. *The Cambridge Law Journal*, *66*(1), 67–85. https://doi.org/10.1017/S0008197307000037

Braun, V., Clarke, V., Hayfield, N., & Terry, G. (2019). Thematic Analysis. In P. Liamputtong (Ed.), *Handbook of Research Methods in Health Social Sciences* (pp. 843–860). Springer. https://doi.org/10.1007/978-981-10-5251-4_103

Campus, D. (2003). Il governo del popolo, dal popolo, per il popolo. Il presidente americano

e la retorica populista. *Comunicazione Politica*, 1000–1021.

Capano, G. (2020). Policy design and state capacity in the COVID-19 emergency in Italy: If you are not prepared for the (un)expected, you can be only what you already are. *Policy and Society*, *39*(3), 326–344. https://doi.org/10.1080/14494035.2020.1783790

Capano, G., Howlett, M., Jarvis, D. S. L., Ramesh, M., & Goyal, N. (2020). Mobilizing Policy (In)Capacity to Fight COVID-19: Understanding Variations in State Responses. *Policy and Society*, *39*(3), 285–308. https://doi.org/10.1080/14494035.2020.1787628

Cartabia, M. (2020). The Italian Constitution as a Revolutionary Agreement. *Italian Journal of Public Law*, *12*(1), 85–109.

Cornwall, A., & Jewkes, R. (1995). What is participatory research? *Social Science & Medicine*, *41*(12), 1667–1676.

Costa, F. (2016). Come si forma un governo in Italia. *Il Post*. https://www.ilpost.it/2016/12/12/come-nasce-governo-italia/

Cotterrell, R. (1996). The Rule of Law in Transition: Revisiting Franz Neumann's Sociology of Legality—Roger Cotterrell, 1996. *Social & Legal Studies*, *5*(4), 451–470. https://doi.org/10.1177/096466399600500401

Cotterrell, R. (2008). Is Law Just a Means to an End Conversations. *Socio-Legal Review*, *4*, 1–8.

Courpasson, D., & Vallas, S. (2016). Resistance studies: A critical introduction. In *The Sage handbook of resistance* (pp. 1–28). Sage publications London.

Davies, T., & Polese, A. (2015). Informality and survival in Ukraine's nuclear landscape: Living with the risks of Chernobyl. *Journal of Eurasian Studies*, *6*(1), 34–45. https://doi.org/10.1016/j.euras.2014.09.002

Diamanti, I. (2009). La leggenda del premier eletto dal popolo—Politica—Repubblica.it. *La*

Repubblica. https://www.repubblica.it/2009/01/sezioni/politica/mappe/eletto-popolo/eletto-popolo.html

Ehrlich, E. (1936). *Fundamental Principles of the Sociology of Law*. Transaction Publishers. https://books.google.it/books?id=U73F3jtxdLoC

Ellis, M. (2010). Toward a Common Ground Definition of the Rule of Law Incorporating Substantive Principles of Justice. *University of Pittsburgh Law Review*, *72*(2), 191–216.

Ewick, P., & Silbey, S. S. (1998). *The Common Place of Law: Stories from Everyday Life*. University of Chicago Press. https://press.uchicago.edu/ucp/books/book/chicago/C/bo3615912.html

Finchett-Maddock, L. (2010). Finding Space for Resistance through Legal Pluralism: The Hidden Legality of the UK Social Centre Movement. *The Journal of Legal Pluralism and Unofficial Law*, *42*(61), 31–52. https://doi.org/10.1080/07329113.2010.10756641

Freeman-Woolpert, S. (2017). The Tea Party Warrior's Field Manual. *Journal of Resistance Studies*, *3*, 165–171.

Geertz, C. (1973). *The interpretation of cultures: Selected essays*. New York : Basic Books.

Gostin, L. O., & Wiley, L. F. (Eds.). (2018). *Public health law and ethics: A reader*. https://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=1870339

Griffiths, J. (1986). What is legal pluralism? *The Journal of Legal Pluralism and Unofficial Law*, *18*(24), 1–55.

Gupta, A. (1995). Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State. *American Ethnologist*, *22*(2), 375–402.

Hale, T., Angrist, N., Goldszmidt, R., Kira, B., Petherick, A., Phillips, T., Webster, S.,

Cameron-Blake, E., Hallas, L., Majumdar, S., & Tatlow, H. (2021). A global panel database of pandemic policies (Oxford COVID-19 Government Response Tracker). *Nature Human Behaviour*, *5*(4), 529–538. https://doi.org/10.1038/s41562-021-01079-8

Hertogh, M. (2013). *A Sociology of the Rule of Law: Why, What, Where? And Who Cares?* (SSRN Scholarly Paper No. 2285996). https://papers.ssrn.com/abstract=2285996

Hertogh, M. (2016). Your rule of law is not mine: Rethinking empirical approaches to EU rule of law promotion. *Asian European Journal*, 44–59.

Hertogh, M. (2018). *Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life* (1st ed. 2018). Palgrave Macmillan UK : Imprint: Palgrave Pivot. https://doi.org/10.1057/978-1-137-60397-5

Hine, C. (2000). *Virtual ethnography*. SAGE.

Hine, C. (2017). Ethnographies of online communities and social media: Modes, varieties, affordances. *The SAGE Handbook of Online Research Methods*, *2*, 401–415.

IPSOS. (2021). *Covid oggi, sondaggi: La maggioranza degli italiani è favorevole al Super Green Pass*. IPSOS. https://www.ipsos.com/it-it/covid-oggi-sondaggi-maggioranza-italiani-favorevole-super-green-pass

Juris, J., & Sitrin, M. (2016). Globalization, resistance, and social transformation. *The Sage Handbook of Resistance. London: Sage Publications*, 31–51.

Kennedy, J. (2019). Populist politics and vaccine hesitancy in Western Europe: An analysis of national-level data. *European Journal of Public Health*, *29*(3), 512–516.

Knights, D. (2016). The Grand Refusal? Struggling with alternative Foucauldian inspired approaches to resistance at work. In A. Polese & S. Murru, *The SAGE handbook of resistance* (pp. 98–120).

Krygier, M. (2008). The Rule of Law: Legality, Teleology, Sociology. In N. Walker, *Re-Locating the Rule of Law* (Hart Publishers). Social Science Research Network.

Laszczkowski, M. (2020). Militant laughter. In A. Polese & S. Murru (Eds.), *Resistances: Between theory and the field*. Rowman & Littlefield International.

Mann, J. M., Gostin, L., Gruskin, S., Brennan, T., Lazzarini, Z., & Fineberg, H. V. (1994). Health and Human Rights. *Health and Human Rights*, *1*, 6.

Merry, S. E. (2010a). What Is Legal Culture—An Anthropological Perspective. *Journal of Comparative Law*, *5*, 40.

Merry, S. E. (2010b). What Is Legal Culture—An Anthropological Perspective. *Journal of Comparative Law*, *5*, 40.

Messina, S. (2021, July 21). Il populismo dei no vax. *la Repubblica*. https://www.repubblica.it/commenti/2021/07/22/news/il_populismo_dei_no_vax-311205503/

Molinari, M. (2021, July 24). La scienza aggredita dai populisti. *la Repubblica*. https://www.repubblica.it/editoriali/2021/07/24/news/maurizio_molinari_no_vax_populismo_covid_19_scienza_editoriale_25_luglio-311606691/

Montell, F. (1999). Focus Group Interviews: A New Feminist Method. *NWSA Journal*, *11*(1), 44–71. https://doi.org/10.2979/NWS.1999.11.1.44

Moore, S. F. (1973). Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study. *Law & Society Review*, *7*(4), 719–746.

Murru, S., & Polese, A. (Eds.). (2020). *Resistances: Between theories and the field*. Rowman & Littlefield International.

Nelken, D. (2004). *Using the Concept of Legal Culture*. https://escholarship.org/uc/item/7dk1j7hm

O'Really, K. (2012). *Ethnographic Methods*. London: Routledge.

Pirie, F. (2021). *The Rule of Laws. A 4000 years quest to order the world*. Basic Books. https://www.basicbooks.com/titles/fernanda-pirie/the-rule-of-laws/9781541617957/

Polese, A., Rekhviashvili, L., & Morris, J. (2016). *Informal Governance in Urban Spaces: Power, Negotiation and Resistance among Georgian Street Vendors*. 18.

Pound, R. (1910). Law in Books and Law in Action. *American Law Review*, *44*(1), 12–36.

Přibáň, J. (2018). Constitutional Imaginaries and Legitimation: On Potentia, Potestas, and Auctoritas in Societal Constitutionalism. *Journal of Law and Society*, *45*(S1), S30–S51. https://doi.org/10.1111/jols.12118

Přibáň, J. (2020). Sociology of the rule of law: Power, legality and legitimacy. In *Research Handbook on the Sociology of Law*. Edward Elgar Publishing. https://www.elgaronline.com/view/edcoll/9781789905175/9781789905175.00017.xml

Raz, J. (2019). The Law's Own Virtue. *Oxford Journal of Legal Studies*, *39*(1), 1–15. https://doi.org/10.1093/ojls/gqy041

Rosen, L. (2006). *Law as Culture: An Invitation*. Princeton University Press. https://doi.org/10.1515/9781400887583

Scalia, A. (1989). The Rule of Law as a Law of Rules. *University of Chicago Law Review*, *56*(4), 1175–1188.

Scorza Barcellona, G. (2020, March 13). Coronavirus, l'Italia sul balcone: Canzoni contro la paura. *La Repubblica*. https://www.repubblica.it/cronaca/2020/03/13/news/coronavirus_italia_al_balcone_canzoni_contro_la_paura-251221289/

Scott, J. C. (1985). *Weapons of the weak: Everyday forms of peasant resistance*. Yale University Press.

Scott, J. C. (1989). Everyday Forms of Resistance. *The Copenhagen Journal of Asian*

Studies, *4*, 33–33. https://doi.org/10.22439/cjas.v4i1.1765

Scott, J. C. (1990). *Domination and the Arts of Resistance: Hidden Transcripts*. Yale University Press. https://books.google.cg/books?id=tl9q9DbnkuUC

Sewell, W. H. (1992). A Theory of Structure: Duality, Agency, and Transformation. *American Journal of Sociology*, *98*(1), 1–29.

Shklar, J. N. (1987). Political theory and the rule of law. In A. C. Hutcheson & P. Monahan (Eds.), *The Rule of Law: Ideal or Ideology*. Carswell.

Sofri, A. (2022, February 12). Un grido dalla galassia dei traditi: "Basta con la democrazia, tanto non funziona!" *Il Foglio*. https://www.ilfoglio.it/societa/2022/02/12/news/un-grido-dalla-galassia-dei-traditi-basta-con-la-democrazia-tanto-non-funziona--3681084/

Solito, D. (2020, March 11). 'Andrà tutto bene': Gli striscioni contro la paura da coronavirus disegnati dai bambini sventolano sui balconi. *La Repubblica*. https://milano.repubblica.it/cronaca/2020/03/11/news/coronavirus_italia_striscioni_andra_tutto_bene_disegni_bambini-250925591/

Speranza, R. (2021). *Speranza: 'Vaccini e Green Pass sono strumenti di libertà'* [La 7]. https://www.la7.it/in-onda/video/speranza-vaccini-e-green-pass-sono-strumenti-di-liberta-01-09-2021-395139

Spitale, G., Biller-Andorno, N., & Germani, F. (2022). Concerns Around Opposition to the Green Pass in Italy: Social Listening Analysis by Using a Mixed Methods Approach. *Journal of Medical Internet Research*, *24*(2), e34385. https://doi.org/10.2196/34385

Tamanaha, B. Z. (2004). *On the Rule of Law: History, Politics, Theory*. Cambridge University Press.

Tamanaha, B. Z. (2006). *Law as a Means to an End: Threat to the Rule of Law*. Cambridge University Press. https://doi.org/10.1017/CBO9780511511073

Thompson, M. D. (2020). The Rule of Law and the Public Transcript: The Accompong Maroons and the Colonial Jamaican Government's Dispute about Fullerswood Estate. *Caribbean Quarterly*, *66*(4), 498–518.

Thornhill, C. (2010). Niklas Luhmann and the sociology of the constitution. *Journal of Classical Sociology*, *10*(4), 315–337. https://doi.org/10.1177/1468795X10385181

Tilly, C. (1991). Domination, Resistance, Compliance... Discourse. *Sociological Forum*, *6*(3), 593–602.

Törnberg, A. (2017). Researching Resistance: Methodological Challenges, Ethical Concerns and the Future of Resistance Studies. *Journal of Resistance Studies*, *3*(2), 5–18.

Vicentini, G., & Galanti, M. T. (2021). Italy, the Sick Man of Europe: Policy Response, Experts and Public Opinion in the First Phase of Covid-19. *South European Society and Politics*, 1–27. https://doi.org/10.1080/13608746.2021.1940582

Waldron, J. (2002). Is the Rule of Law an Essentially Contested Concept (in Florida)? *Law and Philosophy*, *21*(2), 137–164.