

Navigating the Law: Tactics of Avoidance and Appropriation

Adama's journey

At the very beginning of my fieldwork in the Swiss asylum camp, in 2014, I got to know Adama who was in his early thirties and who was originally from a West African country. I often chatted with him when I visited the camp. He had a joyful personality and usually shared a lot of jokes. During our first encounter, he told me about 'having his fingerprints' in Italy. He seemed aware of his limited chances to have his asylum case processed in Switzerland.

When I interviewed Adama for the first time, he often seemed unsure whether he could trust me and what information to reveal. When talking about the Swiss asylum system, he often addressed me as being part of the migration authorities, for instance in the following sentence: 'You people too, you don't allow anybody to stay.'

Adama told me that in his country of origin he had attended high school, majoring in art and geography. However, it remained unclear exactly what kind of school it was, how long he attended and whether he had also worked before leaving for Europe. In general, it was not always easy to understand Adama's accounts.

In 2013, Adama left his country of origin and travelled via different countries to Libya, as he told me, where he worked in construction for a short time. However, he experienced Libya as a hostile place towards Black people, as he pointed out. Within two months, he managed to organise a passage across the Mediterranean to Europe. He and his fellow passengers were rescued at sea by the Italian coast guard and then taken to Sicily, where Adama applied for asylum. He was later transferred to another Italian province, where he stayed in an asylum shelter for eleven months, together with other people from West African countries.

It remained unclear what happened during Adama's asylum procedure in Italy. He told me two slightly different versions – one during our first conversation in Switzerland and the second when we met again in Italy a year later. First, he said he had received a negative

decision from the Italian authorities, which prompted him to move on to Switzerland. During our second interview, he explained that the Italian asylum procedure had taken too long, which is why he wanted to 'try his luck' in Switzerland.

In another conversation we had in Italy, Adama mentioned a further reason for his move to Switzerland. He had heard rumours about other migrants who were lucky enough to marry a European citizen and thus legalise their status.

'I get the hope, you know, that maybe, when I go there, I can have some luck, different from here. Maybe I can be lucky and have a wonderful wife there [*laughs*]. ... Because my brother told me he sees those people. They came here with no documents but afterwards, you know, luck comes. ... They have opportunities with ladies, eh, women.' (Interview in Italy in 2015)

After his arrival at the Swiss border, it took him only a few weeks to learn of the rejection of his case by the Swiss State Secretariat for Migration, as Swiss authorities had learned about his asylum application in Italy. In the courtyard of the asylum camp we talked about the rejection, and it was obvious that Adama was extremely stressed about what to do next. He confided in me that he was not ready to move to another country as he was tired of always only staying for a short time in one place.

Adama was later transferred to another part of Switzerland, where he was housed in a cantonal shelter for rejected asylum seekers. He had a good friend in a nearby town with whom he could stay most of the time because, as he said, he preferred this to the emergency shelter, where residents were subject to restrictive rules, such as being home at a certain time. After about six months, Adama was intercepted by the police and taken to a deportation prison because of his illegal stay in Switzerland. He was detained there for a month before he was deported to Italy.

In 2016, I visited Adama in Italy. We met in front of the McDonald's near the main station, which proved to be a frequent meeting place for Adama. Several passers-by greeted him and exchanged a few words with him. He seemed to be well connected, and later I had the opportunity to meet some of his friends.

Adama seemed a little nervous at the beginning of our meeting. He asked if I was still working in the camp in Switzerland, which made me understand that he was still unsure about my position in the Swiss asylum facility. Again, I took some time to explain my research project to him. It was a few more meetings before I was sure that Adama understood that I was not working for the Swiss migration authorities.

Adama looked older and thinner than I remembered him when we met in Switzerland. He seemed very restless. At our first meeting during my visit to Italy, he excused himself after a while and disappeared for a few minutes. Later he explained to me that he was doing some illegal business in Italy to earn a living. He was worried that I would judge him and he justified his actions by stressing that this was the only way for him to support his mother and that he would much rather do another job. He also considered moving to another country in the hope of finding a better job there – and not having to do this 'dirty work', as he called it.

Adama recalled the time after his deportation from Switzerland as particularly precarious. When he arrived, he was not given any accommodation and was forced to sleep on the street. At times he would sneak into asylum shelters where friends and acquaintances were staying. Apparently, his asylum case was still pending in Italy, and he was waiting for a hearing with the authorities on his case. We talked about the fact that according to the law people should be accommodated in Italy during their asylum procedure – but it was common knowledge that the reception conditions in Italy were precarious (SFH, 2016). Nevertheless, and despite the experienced negligence of the Italian authorities, Adama continued to hope to obtain residence documents in Italy.

A few months before my visit to Italy, he had found a possibility to move into a friend's flat. Now that he was earning some money, he could afford to pay his friend rent. He was excited that he had finally found a place to stay and told me about it:

'Maximum! The time I got my house. ... Anytime I like, I open my gate, I sleep, anytime I need to. I invite people to come and [they] visit me. I'm the king! ... Nobody harasses me. But before, I told you, I sleep outside here.' (Interview in Italy in 2015)

He was visibly relieved about his new independence.

It was only in Italy that Adama told me he had a fiancée in his country of origin. He dreamed of marrying her and starting a family as soon as he managed to get residence papers in Europe. That way he could commute between Europe and Africa, work in Europe and still be there for his family and his wife.

During my stay in Italy, Adama was arrested.¹ When I met him after his release, he seemed even more exhausted, almost broken, and complained of stomach pains. He had spent 14 days in prison and could not – or did not want to – tell me about the reasons for his arrest. He also seemed even more nervous about police checks.

When we wrote to each other six months after my visit to Italy, Adama still had an ongoing court case. His asylum application had been rejected. However, he had appealed the decision with the help of a lawyer and was now waiting for the court's decision. He told me he wanted to wait until he could hopefully find a way to legalise his status before moving on to yet another country – as he had previously intended to do. In mid-2017, Adama was still in Italy, waiting for his status to be legalised. He complained that the legal procedures were too slow. In a chat over the Internet, Adama asked me for help. He wrote: 'Please, can we do false marriage? Even in Italy just in two months they would give me the paper.' He said that most of his friends had managed to get papers by now, some through marriage. He even offered me some money. I explained that this was not such an easy commitment for me, and he said he understood. Nevertheless, he expressed the hope that his situation would eventually be sorted out: 'One day there will be solutions. No condition is permanent.'

As we can infer from the account of Adama's journey, migrants with a precarious legal status actively engage in negotiations with the law. They try to claim their rights by initiating asylum procedures, they appeal negative decisions with the support of lawyers and legal advisors, or they take part in regularisation programmes. In many cases, however, they experience periods of illegalisation and therefore have to avoid the application of laws that target their unwanted presence.

The previous chapters have demonstrated how stigmatising discourses, high mobility, precarious and unstable living conditions as well as unpredictable law enforcement evoke feelings of powerlessness and uncertainty. Simultaneously, I have emphasised that migrants with a precarious legal status act upon their marginalisation by inventing new creative tactics in their navigation of the migration regime and their daily struggles to remain in Europe. Migrants appropriate mobility or become 'invisible' to elude migration control attempts, they navigate uncertainty within Europe by resorting to rumoured knowledge and they enter legal procedures to claim more rights. This chapter concerns this last point: the ways migrants seek to navigate the law.

Migrants' agency is strongly circumscribed and limited by legal frameworks defining their relationship to the states in which they reside. This chapter asks how, given the manifold legal constraints, we can conceptualise migrants' relationship to the law. Whereas the law is experienced as omnipresent and constraining, it simultaneously holds the promise to improve migrants' situation in case they succeed in regularising their status. Thus, this chapter is about the ambivalent relationship between the law and migrants with a precarious legal status against the background of increasingly elaborate border technologies intending to keep out unwanted migrants. This ambivalence is mirrored in migrants' everyday tactics.

Building on literature on legal consciousness (Ewick and Silbey, 1998; Hernández, 2010), I will first disentangle the relationship of migrants to the law and show that migrants are not simply 'against' the law, but often seek to act 'with' the law when trying to improve their legal situation. I will then zoom in on individuals' concrete practices and argue that, on the one hand, migrants apply tactics aimed at avoiding law implementation, and, on the other, they develop tactics aimed at appropriating legal frameworks to their own advantage. By doing so, I seek to conceptualise migrants' practices regarding their position to the law. In the last section, I address one tactic that migrants employ in the hope of regularisation when alternative legal avenues have been exhausted: I show that marriage to a European citizen (or lawful resident) must be considered as a last resort in migrants' fight for regularisation.

Migrants with a precarious legal status and the law

Anthropological and sociological approaches to law provide insights not only into how law works in practice, but also how law is accessed, appropriated and experienced by individual actors (see, for instance, Merry, 1985; Sarat, 1990; Lipsky, 2010; Calavita, 2016). Law, its implementation, and the negotiations revolving around it, shape migrants' journeys to a great extent. It is the law itself that produces the illegality that migrants find themselves in and the consequences resulting from the lack of a secure status. Yet the law can make the presence of people in a certain country not only *illegal*, but also *legal*. Hence, all of my interlocutors have engaged in legal proceedings in the hope of being able to regularise their status. They therefore had to 'deal' with the law in some way.

Underlining the ambivalent position of the law for migrants, Coutin (2000: 12) writes: '[T]hough law makes legal status a prerequisite for particular rights and services, law simultaneously creates mechanisms through which the illicit can regularize their status. As a result, law cannot be characterized as exclusively hegemonic'. Consequently, migrants with a precarious legal status – despite *and* because of their exclusion through the law – have to constantly negotiate legal procedures.

Since the 1980s legal consciousness or the question of how law is experienced and understood by ordinary citizens became a relevant focus of scholars in socio-legal studies (Silbey, 2005: 326). This body of literature is interested in how ordinary people perceive, appropriate and sometimes also misunderstand the law. Ewick and Silbey (1998) developed three schemas according to which individuals position themselves in relation to the law: 'before', 'with' and 'against' the law.

The first schema – 'before the law' – concerns a positioning in which the law is seen as a separate sphere to ordinary social life. The law is perceived as a 'formally ordered, rational, and hierarchical system of knowledge' (Ewick and Silbey, 1998: 57). Contrary to that, being 'with law' implies a form of legal consciousness in which 'the law is described and "played" as a game' (1998: 58). Here, the law is accessed, used as a resource by people aware of their rights. In this arena, actors engage in tactical manoeuvring to fulfil their self-interest. Finally, the third way of positioning oneself towards the law is being 'against the law' where individuals are either caught up in the law or are up against the law – 'its schemas and resources overriding their own capacity either to maintain its distance from their everyday lives or play by its rules' (1998: 58).

Hernández (2010) criticises that many studies on legal consciousness too quickly assume that the poor and marginalised hold a legal consciousness of the last type – and are thus seen as being positioned against the law. She

develops a more fluid theoretical framework on legal consciousness which allows for encompassing shifts between these different schemas. I would even go beyond her understanding of how individuals' legal consciousness develops and argue that different standings can exist simultaneously or that there can be a shifting from one schema to another and back again (see also [Abrego, 2011](#)).

Indeed, we must consider that migrants often get caught up in legal procedures, much more than citizens. [Ewick and Silbey \(1998: 15\)](#) argue that 'often, we don't feel the presence of the law although it is omnipresent'. However, my research participants were constantly confronted with the law as they were repeatedly involved in legal cases. Therefore, they might have a closer and more imminently experienced relationship to the law compared to people in a privileged legal situation, which, in turn affects migrants' legal consciousness. Thus, it is important to reflect on how specific exposure to the law also affects the ways people engage with the law. Being particularly exposed to the law, migrants with a precarious legal status may therefore be more aware and constantly 'feel the presence of the law', and some may also be more likely to resort to legal resources; all aspects affecting their legal consciousness. [Hernández \(2010: 100\)](#) similarly observes that 'minority men have more opportunities to develop legal consciousness as they are subjected to the law frequently compared to women' – only because the latter are less often imprisoned than men.

At the same time, negative experiences with the law can make people turn away from the law ([Hernández, 2010: 101](#)) and try to avoid its enforcement. Hence, we need to bear in mind the situational nature of individuals' engagement with the law. Illegalised migrants who are registered with state authorities are *visible* to the state ([Chapter 2](#)). In these situations, they might more actively engage in legal procedures (such as in attempts at regularisation). During periods where migrants remain *invisible* to the state, their tactics might revolve more around eluding any contact with states' law enforcement actors to avoid detention and expulsion. However, even in these periods, it is inevitable that migrants accumulate legal knowledge and know how to circumvent migration control attempts, as I demonstrated in the [previous chapter](#).

Tactics to circumvent law implementation

States' attempts to control unwanted migration are, among other aspects, aimed at detecting illegalised migrants, and eventually expelling them from their national territory. In turn, unauthorised migrants need to develop tactics to thwart states' law enforcement practices aimed at detecting and deporting. These tactics can thus be categorised as 'against' the law ([Ewick and Silbey, 1998](#)).

Eluding migration control

In [Chapter 5](#), I have described the flexibility and spontaneity inherent in migrants' decisions to move somewhere else. Plans often change daily based on new opportunities opening up and others ceasing. [Papadopoulou-Kourkoulou \(2008: 2\)](#) argues in her book on transit migration that a common characteristic of her interlocutors was their dependence on 'the coming about of a particular opportunity', such as a gap in border control, the possibility of a work permit or of a chance to legalise their status. This illustrates well what [de Certeau \(2002: 37\)](#) has called using 'the chance offerings of the moments', an important feature of tactics by those who lack power. Quick reactions to new opportunities are a result of the unpredictability and insecurity inherent in migrants' living conditions. Employment in the informal labour market can suddenly be terminated, legal procedures are lost and eventually followed by (yet another) shift into illegality, and support structures are often likewise of a short-term nature. It is the elusive nature of migrants' actions that simultaneously makes it challenging for states to control people's movement and practices. Migrants learn about different options for regularisation, types of law implementation or reception conditions in different countries and adjust their journeys accordingly, as I have demonstrated with regard to migrants' high degree of mobility ([Chapter 4](#)) and the importance of rumours in decision-making processes ([Chapter 5](#)). Acting spontaneously upon available opportunities is the first field in which I locate elusiveness as a migrant tactic to circumvent migration control.

Walid, with whom I was in contact over several years, seemed to change his plans on a weekly basis, mirroring the unstable conditions he was subjected to. After he was deported from Germany to Switzerland – the country responsible for his case according to the Dublin Regulation – he told me about his plans to marry his young German girlfriend, which might have led to the regularisation of his status. However, briefly afterwards, their relationship fell apart. Nevertheless, Walid then contemplated moving back to Germany and staying with one of his acquaintances. Yet, he struggled with the thought of going back to a country that had just deported him, and he was not hopeful that this time things would be different. Walid also considered staying in Switzerland and looked for employment opportunities in the informal labour market but was unsuccessful. In the end, he made a spontaneous decision to leave for Italy with a man from the same country of origin whom he had just met in Switzerland. This all happened in approximately four months while he was living in a shelter for rejected asylum seekers in Switzerland.

To give another example: one day, I met Youssef, a man in his mid-thirties from a Maghreb country, in the asylum camp where I was conducting my

research, and he told me about having received a decision that dismissed his asylum application according to the Dublin Regulation. However, he had not yet decided what to do next. He told me, depending on the amount of money he received from working in an occupational programme offered in the asylum camp,² he would pick a destination. He added that it would take him only ‘ten minutes to decide’.

Khaled, a man from a North African country in his late twenties, had been living and working unauthorised in Italy for more than a year, as he explained to me. When he lost his job, he talked to a friend of his who was living in France after having obtained documents in Italy. The way Khaled recalls their conversation exemplifies how the flexibility mentioned earlier is embodied in migrants’ everyday practices:

“‘Come, come! We will search for a job, we will live in France,” [my friend said]. I met him there in Italy. He stayed for three, four days. And I prepared my suitcase and we left [*laughs*]. ... All of a sudden, like that, “let’s go!” ... I am crazy. ... Even now, today, I am with you, I am in Switzerland. ... I don’t know, tomorrow, you can find me in another country [*laughs*].’ (Interview in Switzerland in 2015)

In the following extract of an interview with Obinna, we were talking about the reason for him to go to Germany. Obinna had previously stayed in Italy for two years where he had requested asylum. His application was rejected; however, he appealed the decision. As the procedure took too long, he moved to Switzerland and entered another asylum procedure, which was, however, dismissed in line with the Dublin Regulation. After returning to Italy, he started talking to a friend who was staying in Germany at the time:

‘I told you when I was in [an Italian city] a friend called me from here [Germany] and told me that here it is better than there [in Italy]. ... So, if I don’t like what I’m doing, I should come over, maybe I’ll have a chance there, so ... that’s how with the little money I had, I had to buy a ticket. At that time ... the road was free somehow. Not too much control. Because you know, these days, if ... you come from Italy, before you get to Germany, [there is] so much control. ... That’s why he told me if I want to do something, I have to do something fast. Because every day is another day, it may change.’ (Interview in Germany in 2016)

This example demonstrates that speed is also needed to exploit loopholes in migration control. In the [previous chapter](#), I demonstrated how law implementation occurs in an unpredictable way, which pushes migrants to apply practices that are equally unpredictable for state authorities. As Obinna

explained, the necessity of migrants to react quickly to states' attempts of control results in the sheer impossibility to plan even the immediate future: 'Yeah. ... Like I told you earlier, like I told you in Switzerland. ... We know only about today. About this moment. We only know about this moment. Like ... we are talking now. ... Yeah. ... But tomorrow? We don't know what happens tomorrow' (interview in Germany in 2016). The unpredictability of state practices requires migrants to constantly weigh up the risks and opportunities, especially regarding the timing of going into hiding (see also [Chapter 4](#)), which is experienced as extremely stressful. However, it is exactly migrants' elusiveness that makes it difficult for states to act upon migrants' tactics, which is particularly evident when people go into hiding to avoid detention or deportation. This can happen covertly or in a more overt form of resistance during encounters with law enforcement agents. One of my interlocutors from a Maghreb country, for instance, described a moment of such open resistance. He had been in Sweden and early one morning the police arrived and tried to deport him back to Switzerland, which was the country competent for his asylum application:

- B: They came to me around seven o'clock in the morning to deport me. They were very friendly with me and one of them was an Arab man from Iraq. ... Migration officials. ... One told me: "Take your things and we go to the airport." I said, "Ok." Then I packed my things. I told him, I will go and buy *snus* [powder tobacco]. ... The petrol station [with a shop] was approximately [100 meters] away. Not far but a little bit far.
- A: And then you escaped?
- B: Yes. ... Then, he saw me how I left. I bought *snus* but I did not go back to him. I just went around the petrol station and ran a bit. He ran, ran, ran, ran. ... And you know, the police did not run behind me, just him, the migration official. ... After about 800 meters I turned around and just saw him alone. And I also stood there. He came to me ... and I said: "You really want to arrest me? You cannot do this." ... "How can I not do this?" I said, "I will beat you up, and ... nobody knows my real name and where I am from. ... I can also take your cell phone. I don't want any problems, I just want to bunk off. Let me bunk off. Don't try to hold me back." Then he realised that it was becoming a bit serious. Then, he let me go. (Interview in Switzerland in 2017)

The inherent speed and surprise of such movements enable migrants to display everyday resistance to states' attempts to control their presence, as it renders migrants 'hard to catch'. The rather slow mechanisms of bureaucracy and law implementation often cannot keep up with migrants' elusiveness. Yet,

it is exactly this need to react flexibly that makes migrants' lives unpredictable and highly unstable.

Being imperceptible

For states to get hold of their subjects they need to first be able to 'see' them (Scott, 1999), which requires the identification of people on a state's territory. This means registering them, counting them – and nowadays – fingerprinting them. Accordingly, one tactic used by migrants to escape the view of the state and avoid migration control attempts is to make their identity imperceptible. Papadopoulos and colleagues (2008: 8f) write that imperceptible subjectivities 'are marked by their intimate relation to potentialities which escape fixed forms of regulation and control':

Becoming imperceptible is an immanent act of resistance because it makes it impossible to identify migration as a process which consists of fixed collective subjects. Becoming imperceptible is the most precise and effective tool migrants employ to oppose the individualizing, quantifying and representational pressures of the settled, constituted geopolitical power. (Papadopoulos and Tsianos, 2007: 228f)

Thus, remaining undetected, refusing to disclose one's identity or using somebody else's identity are everyday acts of resistance to avoid law enforcement (cf Ellermann, 2010; Scheel, 2019).

People who are at risk of deportation can attempt to elude the state's view by not attracting any attention in their everyday life (Chauvin and Garcés-Mascareñas, 2014). This is mostly in situations where individuals have not been registered at all. Mustapha, a man in his late twenties from a North African country, explained to me that in situations in which he feared being intercepted by police – especially while attempting to cross a border without being caught – he would make sure he was well dressed as he appeared less suspicious like this:

'If anybody sees you like this and you have an Arab face and you don't have good clothes, they will call the police directly. [So] what do I do? I have a costume ... and cravat like this, do you understand? ... I change because when [you have been] in the jungle you are dirty. [So that they think] "Oh, this is not an Arab, this is a Greek [man], this [one] does not come from the border"' (Interview in Switzerland in 2014)

This quotation recalls the potent and excluding effect of racialised, classed and gendered ascriptions of otherness discussed in Chapter 3, where I have also emphasised the disciplinary dimension that can be evoked through an

atmosphere of suspicion. This is reflected in migrants' attempts to behave correctly to avoid any sort of attention by law enforcement agents, which can diminish the risk of being apprehended (Wyss and Fischer, 2022). 'Correct' behaviour includes always having a ticket when using the bus, obeying street rules or not engaging in criminal activities (Fassin, 2013). Obinna said: 'People like me that look for documents ... I don't want to ruin my document. Maybe [because of] selling some drugs, something like that. If you are caught, then your document can be delayed. ... I just want my document to come out clear' (interview in Switzerland in 2014). Some of my interlocutors highlighted that correct behaviour and distancing oneself from criminal engagement was crucial both to avoid being caught by the police but, notably, also for a potential future regularisation, which often depends on a clean criminal record (Schweitzer, 2014).

Given the increasingly sophisticated border technologies such as the use of biometric data to reliably confirm people's identity, it has become more difficult for migrants to fake their identity to circumvent law implementation. Increasingly, fingerprints are stored in databases so that migrants cannot use multiple identities and, for instance, circumvent the application of the Dublin Regulation by applying for asylum under a false name. However, migrants nevertheless seek ways to outwit technologies, however elaborate. A man from Algeria, for instance, recalled being in Sweden with a good friend from the same country of origin. They applied for asylum and pretended to be two brothers from Palestine in the hope of having a better chance of receiving a protection status. Both had previously applied for asylum in Switzerland. One evening, they talked to a group of Sudanese people who recommended they chop off their fingertips with a razor to make identification impossible. The two friends from Algeria followed this advice. Unsurprisingly, in the end, this did not lead to a change of competency for their case from Switzerland to Sweden as their fingertips grew back – also highlighting the indirect violent effects of ever more pervasive control practices.

Another tactic to challenge the fingerprinting is the evasion of registration in the EURODAC database in general, which again involves remaining undetected. It was common knowledge that this often happened in Italy, a country where many migrants arrive and which was thus in theory responsible for processing their asylum claims according to the Dublin Regulation. Without fingerprints being registered in the EURODAC database, it is difficult for states to prove that another state is responsible for processing a person's asylum application.

Remaining imperceptible, however, does not necessarily imply that there is 'nobody to see' for state authorities. Migrants can also apply tactics of deception by pretending to be somebody else. During asylum determination procedures, this includes the adaptation or re-invention of

individual biographies for them to fit into the definition of the Geneva Refugee Convention.

In both of our interviews, one taking place in Switzerland and one in Italy, Adama described the narratives he had presented to decision-makers during his asylum hearings. In Italy, the story differed from the one he told authorities in Switzerland. When I asked him in Italy about these inconsistencies, he apologised, embarrassed, and told me that his ‘brother’ had sent him details of ‘what to say in the [Italian] commission, how to say it and how I got a problem’. He was therefore advised to adapt his story to increase his chances of obtaining a protection status.

As [Beneduce \(2015: 562\)](#) writes, ‘lying is often the only possible reply to the hypocrisies that regulate migration, or the laws on the recognition of human rights’. He continues: ‘Leaving behind documents that prove one’s identity, losing or destroying them ... inventing a new name, age, and, in some cases, even nationality, are acts that represent a complex and tiring work of bricolage aimed at overcoming these problems’ (2015: 562f). The prevailing culture of disbelief surrounding and circumscribing migrants with a precarious legal status is particularly apparent during asylum determination procedures – where only certain types of suffering are recognised and where others are deemed incredible or insufficient in order for applicants to be granted protection ([Beneduce, 2015](#)). Hence, it is unsurprising that migrants feel pressurised to tailor their stories and identities to find ways to remain in Europe. Such an elasticity of identities and the capacity to adapt to changing circumstances again highlights the requirement to be flexible.

I was often impressed by the way people could play their different roles depending on the context. Migrants subjected to illegalisation learn how they need to behave, what biographical note might be useful to mention, and what kind of appearance might help them avoid attention. People thus have to invent and adapt identities as they are subjected to increasingly narrow – and changing – definitions of who is deemed vulnerable or deserving enough against the background of a political context in Europe that calls for border closure.

However, it is not only their biography that is adapted but also certain aspects of individuals’ identity. For example, people may pretend to be minors, as underage people claiming asylum have more rights than adult asylum seekers ([Malmqvist et al, 2018](#)). In Mustapha’s case, the head of an asylum facility in Austria turned a blind eye when Mustapha pretended to be underage. Mustapha recalled their conversation:

“‘How old are you?’ ‘Me, I am 17.’ [He] told me, ‘You joke with me or what? Ok, I know you are maybe 26, 25 years old.’ I said: ‘No, I tell you the truth.’ He told me, ‘I give you one week here. ... You

are afraid of prison. ... I give you one week and then you leave this place". I told him, "Ok".' (Interview in Switzerland in 2014)

States react to such subversive tactics by applying new technologies to reveal the 'real identity' – or in this case the real age – of people seeking asylum. For instance, in the context of age assessments, state authorities increasingly rely on medical examinations (Hjern et al, 2012).

At another occasion, instead of hiding his real age, Mustapha felt forced to lie about his country of citizenship. On his way from Turkey to Switzerland, he pretended to be from Syria as it was during the time when thousands of Syrians were fleeing their war-torn country to Europe and were portrayed by the media as 'genuine refugees' who deserved protection, thus also arousing sympathy for their escape. Mustapha recounted one conversation with a border guard when he tried to cross from Greece to Bulgaria:

"“You have a document?” [the border guard asked]. I told him, “No, I am from Syria.” He told me, “Ah, from Syria.” ... He told me, if you are from [a North African country], you have one year prison in Greece and you go back to [your country of origin].” (Interview in Switzerland in 2014)

As this example shows, border control practices can involve very sweeping generalisations and discriminate certain nationalities. However, such declaration of the wrong country of citizenship mostly does not lead to obtaining a protection status because state techniques for establishing a person's identity are becoming increasingly elaborate. Nevertheless, it might result in a different initial treatment as in many cases people are already classified according to the likelihood of receiving international protection upon arrival in a particular country.³

Often, migrants with a precarious legal status also have to resort to forged documents, for instance, in their attempts to gain access to support structures or employment opportunities. Ali, for instance, managed to organise a document in his Middle Eastern country of citizenship that 'proved' him to be underage despite him having already turned 18 at the time. Several other people acquired some sort of documentation to ease their stay in Italy: Youssef, for instance, arrived in Europe with the help of a fake work contract. Similarly, the issuing of a forged visa or the use of somebody else's passport may allow people to avoid the dangerous route across the Mediterranean and enter by air instead (see, for instance, Scheel, 2018).

Eymen bought forged papers that made it possible for him to work in Italy:

E: I made a fake paper. ... [In Italy] you can make everything. ...
A permit, papers, passport, everything.

- A: And this helps to find a job?
 E: Of course, because without papers you cannot do anything.
 (Interview in Switzerland in 2014)

Of course, migrants with a precarious legal status can also be deceived by false promises as I was made aware of by two legal counsellors in Italy: ‘When we had the *sanatoria* and the quotas,⁴ there were many fake contracts ... This is a business. ... Two persons in a CIE [Centre of Identification and Expulsion] have told me that they were promised a work contract but without any result’ (interview in Italy in 2015).

In my second interview with Jamal in Germany in 2016, he explained to me that he had learned – supposedly through conversations with other migrants or legal counsellors – that there were three ways to prevent deportation from Germany: first, he was told, he could get married to a person holding valid residence papers, thus regularising his legal status via family reunion. Second, if he converted from Islam to Christianity, he might be able to convince the authorities that as a Christian it would be too dangerous to live in his Muslim country of citizenship. And third, he was advised that pretending to be mentally ill might render the enforcement of a deportation order impossible. The latter option highlights that adjusting one’s identity can also entail an enactment of ‘the suffering body’ (Fassin, 2012). In all of these cases, Jamal would have had to bend at least part of his identity to prevent his deportation. What these tactics that were suggested to him would also have in common is that Jamal would actively mobilise legal means that make law enforcement difficult, impossible, or at least delay it. Consequently, in these cases, tactics to circumvent the enforcement of certain laws overlapped with tactics to appropriate alternative legal frameworks.

As Chapter 3 has illuminated, this book’s protagonists confront racialised, gendered and classed representations stereotyping them as ‘the undeserving other’. Concealing their identities or taking on a new one thus serves as one tactic to oppose these adverse reception conditions – but simultaneously reproduces them to some extent.

Tactics of appropriating law

As shown in the previous chapters, migrants actively engage with and seek ways to appropriate different regulations as when they partake in procedures to legalise their status, appeal unfavourable decisions with the help of lawyers or use their right to access state support structures. Hence, despite occupying a sphere that is defined by illegalisation, migrants attempt to appropriate certain legal frameworks, and act ‘with the law’, such as lodging asylum applications – to prevent the implementation of other policies – for

instance, detention due to unauthorised residence. Both by avoiding law enforcement and by appropriating laws, migrants can complicate states' achievement of policy aims. This tension between avoiding and appropriating law (enforcement) is mirrored in the conflicting relationship between state practices of care and control (Ataç and Rosenberger, 2019).

Importantly, appropriation of the law requires some degree of compliance with states' regulatory frameworks. Certain forms of compliance – or 'reluctant compliance' (Scott, 1985: 26) – must be understood as tactically employed everyday acts of resistance (see also Hasselberg, 2016). However, following Scheel (2018: 2755, see also 2019), I identify such resistance only if the mechanisms of control are recoded 'into means of appropriation': 'The success of practices of appropriation hinges, paradoxically, on a convincing *performance of compliance* with the regulations, conventions and requirements these practices seek to efficiently subvert' (Scheel, 2019: 92). Notably, tactics to appropriate the law require a certain degree of legal expertise – as do tactics aimed at avoiding the implementation of law. Also, in order to act 'with the law', migrants often have to resort to lawyers or legal counsellors to ensure they receive the right support in their cases.

Putting law enforcement on hold: prolonging legality

When migrants initiate legal proceedings, they are sometimes not (only) concerned with regularising their legal status. In Chapter 4, I have shown that applying for asylum can serve the purpose of obtaining a temporary legal status for the duration of the asylum procedure. Similarly, if migrants move on to another country and apply for asylum for a second (or third and so on) time, this can be a way of 'making time'.⁵ Entering a new asylum procedure can thus prolong migrants' authorised presence and act as protection from deportation to the country of origin and might even help to access welfare services (Wyss, 2019).

The 'indeterminate nature of documentary regimes' creates room for manoeuvre (Tuckett, 2018: 20). As Daniel, whose asylum application was rejected in Austria, told me: '[Authorities] don't decide so fast. ... You make an appeal, and they leave you for two years, three years, four years'. While waiting for the bureaucratic procedures to be decided, applicants can use the time to find other means of improving their situation. These can include developing a network of people who can help them to find informal work and living arrangements, or finding alternative opportunities for regularisation. There is no guarantee that an appeal procedure will be a lengthy process and of course there is no guarantee that it will result in a favourable decision for the appellant. Nevertheless, being involved in a legal procedure might suspend a deportation order for a certain amount of time – although this would not apply to all cases (AIDA, 2017: 6).

Hasan, a man from South East Asia, told me about his 23 asylum applications in four different countries. Being certainly aware of the almost non-existent chance of being granted a protection status, he explained that having an ongoing legal case would at least allow him to show confirmation of his application to the police in the event of being stopped and checked. In Belgium, he had lodged three asylum claims (respectively appealed the negative decisions), as he recalled, and was provided with a place to sleep while the legal procedures were still pending. After the rejection of the third application, he failed to find accommodation, which is why he moved to another country where he initiated a new asylum procedure.

An employee of the International Organisation of Migration in Austria emphasised that in many cases, the right of appeal slows down the implementation of legal decisions and helps some people to find an alternative way through the legal maze as it might prolong their temporary legal status:

‘You have to have an appealing system, otherwise you are not by law. And people have a right to this. That an individual tries to muddle through, to find their own way, that is reality, and you cannot blame this on somebody. That is how it works. That works for some and for others not at all.’ (Interview in Austria in 2016)

This way of ‘making time’ can be used to find other legal avenues that could help to improve an individual’s (legal) situation. Such appropriation of legal procedures by migrants is often a thorn in the side for the authorities. Griffiths (2017: 52) writes that in the UK, immigration ministers criticised migrants who supposedly ‘drag their feet so as to draw out their time on British soil, which they can then use to override the state’s timespace edicts’. Such potentially ‘profitable temporal delays ... reflects the fact that time accrued in a place can feed into successful claims to remain or settle’ (2017: 52).

Indeed, one’s presence in a country – even if unauthorised – over a long period of time can in certain cases lead to regularisation (Kraler, 2019: 104; see also Chapter 2). In Switzerland, for instance, rejected asylum seekers can apply for regularisation in the case of serious personal hardship if they have lived in the country continuously for five years and can prove their ‘advanced integration’ (Asylum Act, Art. 14 Sec. 2a). In the Swiss canton of Geneva, between 2017 and 2019, a regularisation programme was launched that regularised around 3,000 unauthorised migrants – mostly female domestic workers. Their regularisation was conditional on the length of their stay (five years in the case of families and ten years for adults without children; Kaufmann and Strebel, 2021: 9). Importantly, these hardship cases are subject to the discretion of state authorities and thus, their outcome is not guaranteed and in case of rejection applicants’ risk of deportation might even increase as their identities are disclosed. Note also that the high

mobility of people within Europe makes such a regularisation impossible as the criterion for continuous presence is mostly not applicable – placing most of my interlocutors in an even more precarious position.

Yet, states react to migrants' tactical use of time by extending the duration of presence that is required to acquire a legal status or devaluing the time according to how it was spent (as when time is spent in prison or abroad; Griffiths, 2017), or by accelerating bureaucratic procedures (Poertner, 2017), including the shortening of appeal deadlines as to render lodging an appeal more challenging (AIDA, 2017).

Paperwork

The second kind of tactics of law appropriation identified refers to practices aimed at the regularisation of a person's legal status. 'Paperwork' mostly describes bureaucrats' everyday practices of processing and producing documentation – and thus the materialisation and legitimisation of laws (Borrelli and Andreetta, 2019; Borrelli and Lindberg, 2019). It is worth emphasising that migrants themselves are not only objects of paperwork but also actively participate in it. I propose to broaden the understanding of the term to include, on the one hand, practices related to 'papers' such as case files and, on the other hand, practices related to 'papers' in the sense of residence papers. Also, while most asylum seekers and illegalised migrants are prevented from working, it is worth acknowledging how much 'work' – in the sense of effort – is needed to obtain papers. Paperwork, in this understanding, thus includes participation in legal procedures assessing individuals' right to remain (like collecting – or withholding – proofs), making efforts to provide the necessary ground for obtaining (and keeping) residency (such as demonstrating one's 'integration') as well as finding ways to 'work around' limitations assigned to specific residence papers. Notably, to engage in 'paperwork', 'making time' is often a prerequisite as preparing and dealing with the necessary paperwork takes time.

Importantly, paperwork related to residency does not end after having obtained a legal status, as the example of Rachid highlights. He had finally received temporary residence documents in Italy but soon realised that despite the regularisation of his legal status, he lacked employment opportunities and access to welfare services (Chapter 4). Thus, Rachid went to Germany where he found occasional work in the informal labour market. With his temporary Italian residence permit, this was, however, illegal. He described how he repeatedly had to return to Italy to prevent losing his residence permit in Italy. This involved forging a work contract and other proof of his local 'integration' in Italy despite him working in Germany. Rachid explained that he hoped to finally receive a permanent residence status, which would also allow him to work in other countries in the Schengen area. For this, he

had made considerable efforts such as passing a language test in Italy, which is a precondition to apply for a permanent residency. However, Rachid was confronted with a difficult situation: despite having legalised his status in one country, he found himself in yet another illegal situation in another country, which endangered, in turn, his residence papers in Italy where he was expected to live and work. If proven otherwise, his status could be withdrawn. Rachid's example highlights how mobility can, on the one hand, enable migrants with a precarious legal status to improve their economic situation, but on the other, how it severely challenges and endangers their efforts to legalise their stay, respectively to keep their right to stay.

Let me illustrate this with another example: Karim, a man in his late twenties from a Maghreb country, whom I met in Switzerland, had previously lived in Austria for almost two years where he had submitted an asylum application. He told me that upon his application, he had given a false name to the Austrian authorities because initially he had not planned to stay but instead to move on to France, which required him to circumvent the implementation of the Dublin Regulation. However, he later changed his mind because he started to like the idea of living in Austria and because he was in a relationship with a woman who lived in Austria. As his asylum application had been rejected, he sought an alternative way to remain in Austria.

Being known to the authorities under a false name became a problem when he wanted to marry his girlfriend, which would also lead to a regularisation of his status. For the marriage, he needed his birth certificate and documents proving that he was unmarried. As the name on those documents did not match his 'Austrian identity', Karim sought to 'correct' the latter. He hoped that if he applied for asylum in Switzerland under his birth name and later be returned to Austria (according to the Dublin Regulation), he could change his name back to the original one. This was a tactic suggested to him by a lawyer in Austria. Unfortunately, his plan did not work out. Karim underwent a Dublin deportation from Switzerland to Austria, and upon arrival in Austria, he was asked to provide the authorities with his original documents. However, becoming identifiable for the authorities could have also enabled his deportation, which had so far been impossible because Austria lacked information on his official identity. Thus, to obtain some sort of proof of his integration (a language certificate in his case) or to marry his partner, both of which could lead to regularisation, he would have been required to disclose his true identity, which at the same time could have led to his deportation. This example indicates that such 'paperwork' aimed at recoding the mechanisms of control into means of appropriation (Scheel, 2018, 2019) always takes place under great uncertainty and unpredictability and might not always result in the desired outcome.

Importantly, Karim's example points to the crucial role of legal intermediaries (such as lawyers or legal advisers) when migrants engage in practices to appropriate law. As the staff member of the International Organisation in Austria said: 'It depends also a lot ... if somebody has the right legal advisor, if one has somebody who is strongly committed' (Interview in Austria in 2016). Successful navigation of the law often requires committed support from legal advisors and lawyers 'facilitating migrant mobility, easing communication channels, or enabling the production and completion of bureaucratic paperwork' (Tuckett, 2018: 94).

After many years of 'paperwork', Karim and his partner got married, and through their marriage he was able to obtain a residence permit. This brings me to another important pathway to legalisation. Especially, for non-European citizens who are neither deemed vulnerable nor 'profitable' for the labour market, marriage is often the last resort for regularisation. Many interlocutors have mentioned this as one of the only ways to secure their residency in Europe. Hence, trying to get married to a European citizen can be conceived of as one way of committing to 'paperwork'.

Marriage as the last option

After about five years of knowing Walid, we met one day for a coffee and discussed once again his options for regularisation that seemed to keep disappearing one after the other. Together with a local legal counsellor, he had tried to reopen his case with reference to the psychological difficulties from which he suffered, but he had just received the absolute final negative decision on this. His general prospects looked now particularly bad especially since Switzerland had just started to deport a considerable number of people to his country of citizenship – among them a friend of Walid's. On that afternoon, I struggled to find ways to cheer him up. At one point, he looked at me and said: 'Look, Anna, if you really want to help me, you have to marry me.' Unsure how to react to this – knowing how true it was – I tried to explain that I would not be willing to marry him. As the introductory description of Adama's journey has already shown, it was not the only time I was asked this question, which reflects the sheer impossibility for many people to legalise their status based on either a claim for protection or on labour market integration.

The European Convention of Human Rights (Article 8 and 12) states the right for private and family life as well as the right to marry. As other publications demonstrate, marriage, respectively family reunion, is often the only way for non-European citizens to enter Europe, respectively to obtain a residence permit (Beck-Gernsheim, 2011; Scheel and Gutekunst, 2019; Moret et al, 2021). Different European countries have developed new policies to fight so-called marriages of convenience, and street-level bureaucrats

view marriages between EU and non-EU citizens as suspicious and seek ways to distinguish a ‘genuine couple’ from a ‘bogus’ one (Lavanchy, 2015; Scheel, 2017; Kristol and Dahinden, 2020). State authorities thus strive to prevent migrants from undermining migration control by way of obtaining residence permits through marriage. Accordingly, states’ attempts to limit unwanted migration not only affect migration policies but also other legal frameworks, such as marriage law, by introducing new obstacles to marital unions that are perceived as ‘suspicious’. Public discourses on belonging shape how policies on marriage and family migration are implemented (Dahinden et al, 2020). These discourses play into bureaucrats’ assessments of couples’ ‘genuineness’. Lavanchy (2014: 15), for instance, writes that ‘couples comprised of African men and Swiss women’ are often viewed with particular suspicion; mirroring the dominant colonially coined imperative of White men ‘saving brown women from brown men’ as famously pointed out by Spivak (1988: 296; see also Wyss, 2018).

Yet, marriage certificates are a ‘valuable resource for border artistes’ (Beck-Gernsheim, 2011: 63). Choosing a European spouse ‘is a kind of action ... testing the limits, stretching the borders but also submitting to the rules of the majority while, at the same time, subtly challenging and eroding them’ (2011: 63). Marrying a European citizen therefore needs to be seen as both a tactic to subvert dominant discourses (and the concomitant legal frameworks) of excluding the ‘other’ and as a tactic that seeks to appropriate the laws of nation states, which allow for spouses to live in the same country. States in turn seek to enact migration control by governing intimate relations – for instance by normatively defining the ‘acceptable’ couple (Kristol and Dahinden, 2020).

In Chapter 3, I have highlighted how borders penetrate intimate relationships. Many of my interlocutors struggled with the realisation that marriage was their last option to legalise their status. In his relationship with a Swiss woman, Eymen felt that his girlfriend was suspicious as she was afraid that he had engaged in the relationship just to get married. Hence, he distanced himself from the idea of marriage to prove the sincerity of his feelings towards her. I have argued that this somehow turns the relation between marriage and the ‘authenticity’ of romantic feelings on its head. The relationship between Eymen and his girlfriend eventually ended and when I conducted the second interview with him, he was considering looking for a woman whom he could marry only for the sake of obtaining a residence permit. His change of strategy highlights how the exhaustion caused by long-term cyclical experiences of trying and failing to improve one’s situation pressurises people into finding alternative avenues – even if they are as incisive as considering a sham marriage. This example also demonstrates how finding a solution for regularisation is in many cases relegated to the private domain.

The political discourse has been shown to attribute little agency to (particularly Muslim) women engaging in marriage migration, as they are predominantly depicted as mere victims of their patriarchal cultural background (Bonjour and de Hart, 2013; Jashari et al, 2021). In the context of my research, gender roles have sometimes played out differently to what the public discourse claims. Some of my interlocutors confided in me that they felt used by their girlfriends who seemed unwilling to commit to a serious relationship and eventually to marriage (Wyss, 2018). One day during my visit to Italy, I was conducting a follow-up interview with Adama when he told me, with a mix of indifference, frustration and embarrassment, that he engaged in sexual relationships with Italian women in the hope of being able to improve his situation by getting married:

‘Let me come clear to you, Anna, because you are asking me, right? They just need a man. Something like this. So ... I experience it, Anna. I have four of them. I even ask one lady. We were sleeping in bed. I said, “Would you marry me, because you know that I don’t have paper?” She said, “Adama, *niente, niente*, no problem.” ... But I see that, you know, one month, two months, three months, she was just trying to use me like that, so ... I think it’s better for me to leave them, you know? The first time I slept with her, she really appreciated me. I said maybe this would be of my interest. ... She [might] even marry me. For the second time ... I said that you know it’s better for me to give them up. ... They are not good, anyway. They tried to use people.’ (Interview in Italy in 2015)⁶

Adama’s account resembles what Scheel (2017) wrote in his article on aspiring migrants’ tactics to seduce European women to appropriate mobility via family reunion. Instead of reproducing the image of ‘male foreign villains’ who abuse European female victims, Scheel proposes a different reading that sheds light on the intertwinement of these migratory practices with exclusionary border regimes and the resulting deflection of unequal power distributions. He highlights that these asymmetrical relationships and their inherent ambivalence must also be analysed against the background of ‘unequal access to mobility, economic resources and life opportunities’ (2017: 396):

Instead of a simple victim – villain dichotomy we encounter young local men trying to take advantage of often much older European tourists who, in turn, take advantage of their privileged position in the ‘geopolitics of mobility’ (Hyndman, 2004) as they look for sexual adventures and romantic opportunities in the anonymity [of] (North) African tourist destinations. (2017: 396)

These power asymmetries create ‘precarious intimacies’ – ‘uncertain and shifting gendered relations of dependency that [migrants] use to advance their lives, but which also expose them to vulnerabilities’ (Vuolajärvi, 2019: 1102). Their illegalisation makes it difficult for them to maintain intimate relationships and to build a family, whereas a relationship and marriage hold the promise to improve illegalised migrants’ legal situation.

Several of my key interlocutors considered trying to find a woman to marry because other legal pathways to regularisation had been exhausted or seemed out of reach. However, to my knowledge, there was only one person among my interlocutors, Karim, who indeed managed to legalise his status through marriage. The high degree of mobility, their social and legal marginalisation and their negative public image make the construction of intimate relationships exceedingly difficult.

Concluding remarks

Migrants with a precarious legal status get stuck in limbo-like situations in refugee camps and bureaucratic procedures, they work under precarious conditions, are forced to leave familiar surroundings under the threat of deportation and are rarely able to plan their future as it remains highly unpredictable. Despite this overall sense of powerlessness, I have shown in this chapter how migrants’ tactical behaviour can repurpose or circumvent migration law enforcement targeted at their exclusion – often, however, with tremendous side effects. I have identified migrants’ tactics in relation to the law and highlighted how we can locate migrants’ everyday resistance in both tactics ‘against’ and ‘with’ the law. The fact that migrants not only avoid law enforcement but instead seek to appropriate legal frameworks underscores again the interrelatedness of legal frameworks, state practices of control and migrants’ resistant tactics.

Adama actively engaged in legal proceedings both in Italy and Switzerland when he lodged asylum claims, respectively appealed negative decisions. In Italy, he had turned to a lawyer who supported him with his claim. Hence, he ‘played the game’ and was – to a certain extent ‘with the law’ (Ewick and Silbey, 1998). However, during the time he spent unauthorised in Switzerland, his relation to the law would better be described as ‘against the law’. He found himself in a situation whereby he had to remain, as far as he could, invisible to law enforcement agencies. After his deportation to Italy, he once again engaged in a legal procedure. Hence, the legal consciousness of migrants whose legal status shifts along their journey is ‘fluid and contextual ... as is legal status’ (Abrego, 2011: 360). Furthermore, a person may simultaneously exhibit different forms of positioning in relation to the law. For instance, migrants whose presence in a particular state is unauthorised and who therefore seek to avoid states’ attempts of law enforcement might

at the same time engage in legal procedures in the hope of legalising their status. The previous sections have shown how migrants seek to appropriate law on their behalf in order to avoid the implementation of other laws. Instead of acting only ‘against the law’, people thus also try to find ways to be ‘with the law’. Indeed, they act *against* certain laws (those aiming at their legal exclusion), while simultaneously seeking to be *with* certain other laws (those promising to legally include them). Considering the fragmented nature of journeys outlined here, the legal consciousness of migrants can thus not be understood as stable, but rather as shifting, as a result of their spatial mobility, adaptation to new contexts, the accumulation of knowledge and experience, but also as depending on individuals’ actual legal situation. This shows how such different and contradictory relations to the law can exist simultaneously, revealing the complex and ambivalent interactions of migrants with a precarious legal status and the law, which is again intensified in the case of people who frequently shift between different contexts.

This ambivalent nature of law for migrants with a precarious legal status puts them in a situation where they must endure the threatening side of the state and be compliant with it, even though it seeks to exclude them. As Coutin (2000: 12) writes:

It is difficult to definitively locate power and resistance within immigrants’ legalization struggles. It is tempting to view immigrants’ legal consciousnesses, their alternative accounts of immigration law, as a subversive discourse. Yet if this discourse is intrinsically connected to and in some ways reproduces law, which in turn justifies the social and physical exclusion of the undocumented, then immigrants’ legal notions are less a form of resistance than an account of law narrated from a particular subject position.

I agree with Coutin that the tactics outlined in this chapter must not be understood as capable of overthrowing the prevailing power asymmetries. However, building on the migration regime as an analytical approach, which views migrants as constitutive agents who are disruptive to the smooth functioning of migration control, in this chapter, I have shown how we can conceptualise migrants’ agency within these restrictive regulatory and controlling frameworks – not as collective resistance but as ‘weapons of the weak’ (Scott, 1985).

Migrants need to consider their options carefully – do they resort to the law, which includes becoming visible to state authorities – or do they circumvent the law by remaining invisible or imperceptible. Both types of tactics carry an enormous element of risk given migrants’ precarious situation and given the unpredictability of law in practice. Yet, the capacity to endure this uncertain condition indeed constitutes a challenge for states to ‘manage’ unwanted migration.