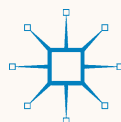


# MIGRANTS BEFORE THE LAW

contested  
migration  
control in  
europe

Tobias G. Eule  
Lisa Marie Borrelli  
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*To ponies.*

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# CONTENTS

1	Introduction	1
2	Inside the Migration Regime	39
3	Decision-Making and the Role of Law	81
4	Illegibility in the Migration Regime	111
5	Time as Waste and Tactic	149
6	Responsibility in a Migration Regime of Many Hands	187
7	Conclusion: The Production of Order Before the Law	229
	Appendix I	249
	Index	257

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ambivalent laws and emotions of street-level bureaucrats working on irregular migration in the Schengen Area. She was funded by the Swiss National Science Foundation Doc.Mobility Grant (172228) to further work on the emotional landscapes of street-level bureaucrats, while being a visiting researcher at the Centre for Migration Law at Radboud University, Nijmegen, and visiting graduate student at the Centre for the Study of International Migration at UCLA. She will now start a PostDoc position at the HES-SO Valais-Wallis.

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## CHAPTER 1

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# Introduction

Two caseworkers of a Swedish border police unit, a police officer and a civil employee, are holding a meeting with a family, a mother and her three daughters, at a small local police station. Since the family speaks Albanian, an Albanian telephone translator is called, but one of the daughters speaks Swedish well enough so that at times the translator is not needed. Pit, the police officer in charge of the case, introduces everyone and summarises the situation: the family's asylum claims have been rejected, and they have been expected to leave Sweden since several months. This meeting takes place in order to find out the family's attitude towards their rejection and return.

Ena, the civil employee, starts the interview. 'Why are you still here? You do not have the right to be here. This is a huge problem. Should I go through the case?' Slowly and friendly, she repeats the current situation and asks why the family has refused to leave until now. 'I have read your file and can see that you have appealed against your expulsion, but your appeal was denied'. Pit explains: 'You already stated your reasons against your deportation, they are in the file. But if there is anything new... That is how it works with the Migration Agency. We have respect for your reasons, but we are just the executive agency'.

The mother replies that they are grateful for the previous conversations they had with Pit via phone, as well as for this meeting. She says she can understand that the caseworkers are only working 'according to the law'. Pit and Ena explain repeatedly that currently there are no obstacles to proceeding with the deportation and that if any new circumstances arise, they should be reported to the Migration Agency. The oldest daughter mentions that she has filed something to the Migration Court, but has no idea what will happen now.

Ena and Pit tell the family there is nothing new in their files. 'The latest information we have does not show any new reasons [against deportation]. Maybe it got lost'. The conversation goes back and forth. Pit advises the daughter to double-check and make sure that the files are processed. At one point, the mother and the two daughters start crying silently.

The caseworkers continue with their questions in accordance with the protocol. 'The process has started. You work in your way and we work in our way, and right now there are no reasons why you could not be deported. Therefore, we plan your journey. And your current position is that you do not want to travel?'

'We have nothing against the police', the mother replies, 'but we are afraid to travel back home'.

'If we do plan and book a trip back [to Albania] and organise your travel documents, will you cooperate?'

The mother and eldest daughter maintain: 'We have nothing against your job or against the police'.

'But if we let you know [the flight date] a couple of days in advance, will you cooperate?'

The mother cries and explains that her youngest daughter is disabled, and the middle daughter suffers from depression and has suicidal thoughts.

Pit: 'Then it is high time you submit this to the Migration Agency. We are absolutely not going to send you back if there is any reason not to. We keep an eye on the case all the time. And you have my phone number'.

Ena adds: 'If we book the journey and you do not follow the instructions, you will be listed as absconded'.

Ena turns to Lisa and explains: 'It is an emotional job, but we try to have a dialogue, in order to make it as easy as possible'.

The oldest daughter chimes in: 'Social services are taking care of my daughter. What will happen to her?'

'We will reunite you with her', Ena replies, 'and you will travel together as a family'.

Medications are documented. Pit and Ena decide that the family has to sign in at the local police station twice a week. The oldest daughter asks when they would need to go back and if they could get two to three more months to stay. 'Yes, you will not travel today, it takes time. But you should start to prepare yourself mentally. That is the best'.

The mother replies: 'This is not the best'.

'It is, because if you get a different decision [a positive one], then you can see that as a bonus', Ena argues.

The mother maintains: 'I respect the police and will file an application and find reasons why we should stay. And if it is rejected, then we are ready to travel. All my daughters are not doing well'.

Ena tries to convince the family: ‘There are people who are illegally in this country for ten years. But either way they will need to go back home. It is better to go now than in ten years. Because then one has started to adapt. But yes, it is not easy’.

The mother answers: ‘I do not want to discuss this again. I take responsibility for this’.

In the middle of this, the oldest daughter receives a phone call. Their lawyer informs her that the Migration Agency needs further documents to process their case.

Pit replies: ‘You have to put a little bit of pressure on them [the Migration Agency], be tough, maybe exaggerate a little, so something happens’.

A couple of signatures and reassurances later the meeting is over. (field notes Sweden 2017)

Across Europe,<sup>1</sup> the control of unwanted migration has been a central issue in public, political and academic debates. Whereas mobility within Europe has been greatly eased by the abolishment of border controls in the Schengen Area, the movement of people whose entry, stay and work in a given country are deemed to be against the law is both a fact of life and constant cause for irritation and agitation for governments and state agencies, who seek to reassert control over their mobility. State agencies and migrants interact in a dynamic field of contested control over mobility, shaped by a loose European policy framework, national laws, organisational cultures and individuals acting at the margins of law and the state. This book traces these practices, from police stations and migrant hangouts in Italy to border controls and detention centres in Sweden, via a multi-sited ethnography of migration control in eight European countries: Italy, Switzerland, Germany, Austria, Latvia, Lithuania, Denmark and Sweden.

<sup>1</sup>When we refer to ‘Europe’ and the ‘European’ migration regime, we refer to the states that have signed onto the Schengen and Dublin Agreements. While our empirical focus is on the internal dynamics of the Schengen Area, where member states share a significant amount of border and migration-related laws and policies, a political intention geared towards ‘harmonisation’, and an apparatus of organisational structures in place for inter-agency cooperation, these states also form part of the larger, contested political project that is ‘Europe’. The geographical, discursive and judicial demarcation of an inside/outside of European space is instrumentalised to reify and externalise not only border controls, but also a series of problems and ‘crises’ against which Europe is portrayed as a peaceful, coherent entity (see De Genova 2017). By engaging with and empirically exploring the internal border dynamics, we also wish to contribute to deconstructing this inside/outside binary, showing instead the internal fragmentation and contradictions of this ‘European project’ (Bialasiewicz et al. 2013).

While migrants lacking legal residency amount to a fraction of the total migrant population in Europe, they are pushed to the centre stage of public and political debates, as they are seen to fundamentally challenge states' sovereignty. Migration control, and particularly the procedures aimed at the exclusion of unwanted migrants, has quite unique characteristics that warrant closer consideration and that can be summarised in three aspects. First, migration control needs specific attention as the legality of a person's residence status determines access to most other services and the possibility to claim and assert rights within a given state territory. The structural or legal violence targeting migrants with precarious legal status manifests itself not only in their exposure to coercive measures but also in the everyday 'insecurity in wages, a chronic deficit in basic needs such as housing, and a constant, general uncertainty' (Abrego and Lakhani 2015, 267). Moreover, migration law increasingly intersects with the criminal justice system (Bosworth et al. 2018; Stumpf 2006), welfare regimes (Rosenberger and Ataç 2013; Ataç and Rosenberger 2019) and questions of membership and citizenship (Barker 2017), and often involves exceptional uses of force, notably in cases of 'administrative' detention and deportation (De Genova and Peutz 2010; Ellermann 2009; Walters 2002). Therefore, the production of migrant 'illegality' in practice, generated by the state and legitimised by law, lies at the centre of our study. Second, state officials working in the field of migration control hold substantial power as gatekeepers of the state and the law: Not only do they make decisions on residence, detention and deportation, but they also execute these decisions. There is therefore acute need to investigate how they understand and make use of this power, and how it is contested (cf. Fassin 2013). Moreover, migration control is of 'intrinsically normative nature' (Ellermann 2009, 148). The coercive social regulation of migration is highly contested and frequently debated within the political and public sphere and based on normative judgements. Indeed, a migrant's right to remain is judged by his or her perceived 'deservingness', which is contingent on state officials' practices and normative decisions on how to implement law. Third, the frequency of legal changes, the multi-layered nature of migration law and the many hands involved in its enforcement render migration control an exemplary case for studying contemporary configurations of state power.

As a result, this book is not 'just' about the contested control of migrants with a precarious legal status. It is also a book about power, law and the state at the margins. Encounters between state officials and migrants with precarious legal status reflect power imbalances that we



also find in other encounters between state agencies and marginalised populations, in social welfare offices (Auyero 2012; de Certeau 1984; Dubois 2010; Zacka 2017) or in police stations (Fassin 2013; Maynard-Moody and Musheno 2003; Mutsaers 2015). Migration control offers an opportunity to study how various forms of state power—from care-taking to controlling and expelling—are enacted, contested and reconfigured in Europe today. The book can thus be read in two ways: as a contribution to ongoing public and academic debates on (‘illegal’, ‘irregular’ or precarious) migration on the one hand, and as an examination of legal practices, the state and society at the margins, on the other.

The introductory vignette illustrates how some of these themes emerged in our research. It describes an everyday yet decisive encounter between the Swedish border police, who are in charge of enforcing deportations, and a family facing deportation upon rejection of their asylum request. The example raises a number of issues, which will be further explored in this book. It demonstrates that migration control is a matter of contestation and negotiation, which crucially takes place through different uses of ‘the law’. While heavily circumscribed by law, migrants retain a certain agency: the family in the vignette has received a final decision on deportation to Albania, but make clear that they will not follow this decision voluntarily. Instead, they contest it by using the few legal avenues available to them, which will at least buy them some time before the deportation. Yet the power distribution between actors in the room remains profoundly unequal or *asymmetrical*. The police, endowed with the authority to forcibly detain and deport the family, seemingly have the law on their side. Yet they acknowledge that the situation is emotionally strenuous, and try to convince the family that complying with the order is better for them than remaining irregularly in Sweden with limited prospects for regularisation. The deportation order is still a matter of *negotiation*, rather than enforcement. Furthermore, while the main actors of the encounter are the family and the police officers, three additional agents—the family’s attorney, the Migration Court and the Swedish Migration Agency—play a crucial role in the settlement of the issue. The negotiation is thus not limited to face-to-face interactions between two parties (often facilitated through translators), but rather cuts across the boundaries of individual state agencies, as well as the divide between state and society. We understand such encounters as *spaces of asymmetrical negotiations* (Eule et al. 2017), and as such, as constitutive of the European migration regime and of migration law in

practice. In this book, we zoom in on the dynamics within such spaces of asymmetrical negotiations over mobility, with particular focus on how they are shaped by actors working with, upon and against the law. By doing so, we show how migration control is enacted and contested through the everyday implementation of law by a variety of actors who, holding unequal power positions and acting upon their respective values, interests and beliefs, shape the European migration regime.

Importantly, what we found in those negotiations was not an almighty ‘state’ wielding its sovereign power over migrants. Entering the everyday life of state agencies, and the various non-state organisations performing migration-related functions on behalf of the state, we found that these agents, too, often struggled to understand and navigate the laws and regulations they are tasked with enforcing. Acknowledging that asymmetries of power, information and knowledge exist also within ‘the state’ itself (Borrelli 2018), we explore how power operates not in spite of but exactly through the unreadability and unpredictability of law enforcement (Das 2004). In order to capture this dynamic, we found inspiration in the literary work of Franz Kafka and the grotesque depictions of bureaucracy that his work has lent inspiration to (Graeber 2012; Hoag 2010; Sutton and Vigneswaran 2011; see also De Coulon 2015). The ‘Kafkaesque state’ (Sutton and Vigneswaran 2011) is often contrasted with the Weberian ideal-type bureaucracy. While these are two equally fictional depictions of the state, they remain useful for capturing the tension between the experience of being subjected to uncertain and unpredictable law enforcement on the one hand, and the persistent self-representation of a bureaucracy that heralds itself as the guardian of ‘rationality’, ‘justice’ and ‘predictability’ on the other. In this juncture between two seemingly contradictory tales of state power, we found Kafka’s parable ‘Before the Law’, originally published in 1915, particularly useful for comprehending the specifics of the border encounter. The parable tells the story of a man from the country, who seeks to enter the law through a gateway that is seemingly open yet guarded by a doorkeeper who prevents him from entering—or who might let him enter, but not yet. Then resumes a seemingly meaningless waiting before the law, which ends with the man dying before the gate without ever gaining access. Before the man dies, he asks the doorkeeper why nobody else ever sought to enter. The doorkeeper replies that the gate was made only for him; no one else could ever have been admitted, and upon the man’s death, the gate will therefore be shut. The parable tells a grim story of

a law that appears as highly arbitrary, personalised, and impossible to access. But why did the man not just disregard the doorkeeper's warning and enter without permission? As will be argued in this book, it is precisely the uncertainty and arbitrariness of the requirements and effects of law that enables people to sustain their hope that law will deliver justice, and which lends law its disciplining power. Moreover, we find another aspect of the parable important: the doorkeeper and the man both become defined by their undertaking. The doorkeeper may be regulating access to the law, yet the purpose and functioning of the law arguably remain obscure, also to the doorkeeper him or herself.

While the man from the country in Kafka's parable does not achieve his aim of accessing the law, his life remains defined by the sheer presence of the law. Similarly, migrants at the margins of the state experience the law as an overwhelming power with the force to render their very existence illegalised. Rather than simply standing 'before' the law—and thus outside of it—migrants frequently get caught up and lost within legal procedures when trying to legalise their presence, simultaneously feeling trapped by law, and finding that it remains inaccessible for them. Throughout the book, we will make use of Kafka's parable to discuss the encounters between agents of the migration regime and 'the law'.

## APPROACH OF THE BOOK

How did this book come into being? It started with the general realisation that while there is a rich academic and policy-oriented literature about 'migration' and 'migration policies', we still know relatively little about if and how they work in practice. Of course, the 'implementation gap' in migration control is well documented (Castles 2004; Czaika and Haas 2013; Rosenberger and Küffner 2016), with explanations ranging from the incomplete harmonisation of migration control practices (Boswell and Geddes 2011; Feldman 2012; Fischer 2012), the demands of neoliberal markets for exploitable labour (Calavita 1998; Castles and Miller 2009; De Genova and Peutz 2010) and migrants' resistance (De Genova 2017; Ellermann 2010). In this book, we do not primarily seek to explain the gap, but rather to examine what happens to life within it. Our approach is situated in the research tradition on street-level bureaucracy (Lipsky 1980) and socio-legal studies that are less interested in the mismatch between policy and practice, but rather seek to explore how laws and policies are effectively shaped through practice. We found that a

useful starting point for exploring the making of migration law-in-practice is in the dynamics within the often uncertain and protracted bureaucratic procedures regarding individuals with precarious legal status.

In our previous research in Germany (Eule 2014), we found significant variations in the decisions made (who can stay?) as well as within decision-making processes (what does it take to decide who can stay?) between four different migration agencies and even within the same office. These variations increase with the precarity of a migrant's legal status. Thus while for EU citizens, procedures and outcomes were rather similar across all four agencies studied, it was almost impossible to predict the outcome of the cases of rejected asylum seekers, unemployed labour migrants or divorced family migrants. The contested control of individuals with precarious legal status therefore became the focus of our respective research projects, which build the foundation for this book.

Rather than a comparison of one type of agency in one state, the research on which this book is based covers multiple actors and agencies in eight European states, while retaining the socio-legal, street-level perspective of our earlier work. Instead of the usual compilation of country-focused chapters by different authors, this book is thus a truly collective effort. The collective approach has enhanced a rigid interpretation of our individually generated data, improved their reliability and enabled a critical analysis of different perspectives on the micro-dynamics of contested migration control that a conventional, mono-perspectival account (studying either states *or* migrants) would not allow. The intense exchange and cooperation within our research team make for the unique character of the book.

Theoretically, the approach of this book draws on the state of the art in migration research and other studies of law enforcement and street-level bureaucracy. It seeks to explain the nature (and limits) of migration control as a dynamic interplay of migrants' trajectories within Europe and state efforts to detect and contain these movements. From this perspective, the European migration regime comes into being by means of 'continuous repair work through practice' (Sciortino 2004, 32). It is not the outcome of a consistent plan. We explore how this regime operates through law-in-practice, how law lends and constrains power, and how power, in turn, is exercised through and beyond law. In much of earlier work analysing state power, the role of law has either been overlooked as a mere strategy of government or uncritically assumed to be

a fixed regulatory framework that constrains state sovereignty. This book, in contrast, takes seriously the role of law as a tool that channels power in the name of or against ‘the state’, and explores how law functions through informal knowledge transfers, rumours and various appropriations of black letter law. This has concrete implications for the life prospects of migrants with precarious legal status and informs the formal practices of state agents. The state’s unreadability both enhances its power *and* lends space for actors to challenge its practices.

The book can also be read as a study of law and the state, seen through the lens of how states address a key challenge to their sovereignty. Migration is not just an interesting phenomenon, but also a topic of fierce political contestation, a field of immense legal innovation, and one of the few areas in which state intervention seems to continuously expand. As such, we argue that our approach provides a lens through which we can improve our understanding of law and the state itself. From our analysis emerges an image of the state as made up of a broad range of actors and practices that wield substantive power over individual subjects but that are at the same time ridden by legal ambiguities and conflicting roles and interests. As Malkki (1996) reminds us, there exists a symbiotic relationship between the concepts of forced migration, refugees and the state: by using one, we risk reifying and essentialising the other. As highlighted by Hoag (2011), as anthropologists of ‘the’ state, we need to be careful as not to reify the assumption that there is an ideal way according to which law and bureaucracy ‘should work’. The aim of our book is therefore not to evaluate practices in comparison with written laws and regulations or to make normative judgements of what is ‘right’ and ‘wrong’ in law enforcement. Instead, we explore the various forms in which law appears and shapes the everyday life of state officials, non-state actors and migrants (cf. Silbey 2005). Migration control, and the broad variety of subnational and transnational social actors involved in the struggles over mobility, also offers an opportunity to study the everyday practices that (re)produce state effects (Drotbohm and Hasselberg 2015; Gill 2010; Mountz 2007).

The theoretical framing of the book challenges notions of a ‘rational Western state’. We have taken inspiration from legal and political anthropology and sociology, particularly the work of Philip Abrams (1988), Veena Das (2004), Akhil Gupta (2012), Timothy Mitchell (1999), James C. Scott (1985, 1990) and others, which enables us to bring an

understanding of informal practices as both productive and increasing rather than diminishing state power. These theoretical approaches fundamentally challenge the notion of a Weberian bureaucracy and state—a view that, somewhat ironically (Hoag 2011), remains prevalent and important in the self-understanding of bureaucratic officials and therefore continues to influence their practices despite their everyday experiences, which often reflect the contrary. In this book, we shed light on ideas, practices and struggles of street-level officials, as it is exactly through their mundane material practices (paperwork, coercion and borderwork) and the struggles over power and agency (among themselves, with other state agencies, non-state actors and migrants) that the state appears in its material, abstract and ideational form.

Importantly, we are not aiming for a cross-country comparison between different state apparatuses. Instead, we have sought to identify and highlight similarities and commonalities in the dynamics, struggles and contestations over control and facilitation of mobility that take place across these different national contexts, in spite of the differences between our research countries as well as the state agencies, organisational contexts and research sites within them. It is therefore necessary to reflect on the comparability of the data. How can we compare so many actors across such vastly different national, regional, historical and cultural contexts? Is the situation not different everywhere, and the laws different everywhere? While dissecting the specifics of the different organisational, historical, cultural and political contexts and the policy changes on national, local and international levels carries important analytical value, a conventional comparison between these contexts is bound to mainly find differences. We therefore go beyond focusing on national or subnational variations in the legal frameworks and practices of migration control. Similarly, we do not simply compare states or regions with little migration influx, such as Lithuania and Latvia, with countries with larger numbers of arrivals. Instead, we focus on what, across these diverse contexts and actors, stays constant. This enables us to identify significant similarities in the way different actors, from state agents to migrants and their support networks, experience the practices, ideas and struggles over an abstract migration law and its interpretation.

Hence, rather than focusing in depth on one or a few emblematic cases, we use many different examples to highlight similarities in the everyday negotiations over migration law enforcement. What we found across this broad variety of actors and locations was a consistency of

inconsistency: there is mess and imperfection everywhere. We found incomplete migration law enforcement and widespread pragmatism with regard to this fact (see Eule 2017). We found substantial and continuous fluctuations in the sources of law and their usages, as well as in the actors involved in controlling, supporting or facilitating the terms of migration control (Gammeltoft-Hansen and Sørensen 2013). And, importantly, we found that migrants, in spite of intensified control efforts, retained their agency and acted upon the legal possibilities available to them. Approaching these dynamics through the lens of the spaces of asymmetrical negotiations (Eule et al. 2017) enabled us to capture a broad range of snapshots and wherever possible long-term observations of how these agents interacted with, through, and before the law, making up what we know as European migration control.

Applying the concept of a ‘migration regime’ enables us to extend our lens to all actors involved in the spaces of asymmetrical negotiations. We focus on the ‘situated’ agency of migrants, street-level bureaucrats and non-state actors in the specific context of those negotiations. This means we focus less on aspects that contextualise migrants’ journeys, notably their biographical experiences. Nor do we elaborate on the historical, political, cultural and organisational specifics of different national contexts. Importantly, we do not argue that these differences do not matter. Our work should rather be read as a complementary study to anthropological, social scientific and legal approaches that highlight such nuances and variations in different localities. In return, the ‘thicket’ of our descriptions lies in our accounts of the micro-level struggles and interactions taking place in spaces of asymmetrical negotiations before, with and against the law, which we argue are what ultimately shapes the migration regime in Europe.

Research with migrants of precarious legal status shows that migrants often shift between different legal statuses (Ahrens 2013; Papadopoulou-Kourkoula 2008). Following migrants’ ‘interrupted journeys’ (Wys 2019; see also Collyer 2007; Schapendonk and Steel 2014), it becomes visible that this ‘status mobility’ (Schuster 2005) implies encounters with a variety of state and non-state actors depending on the momentary legal status a person holds. Unauthorised migrants who try to remain invisible to state authorities and live in a ‘space of nonexistence’ (Coutin 2003) are at constant risk of being controlled by the police and thus need to find ways to avoid encounters with state officials. Others, who seek to

regularise their legal status or to receive protection, step out of such invisibility and enter legal procedures. They become ‘asylum seekers’, and during these often-lengthy procedures, they interact with decision-makers, social workers and security staff in asylum shelters, with legal counsellors and of course with other migrants in a similar situation. If their asylum claim gets declined, they become ‘rejected asylum seekers’ and are from then on under constant risk of being detained or deported. In order to avoid deportation and to seek for alternative options, many of our interlocutors have moved on to other countries within the Schengen Area and consequently became subjected to the Dublin Regulation. These ‘Dubliners’ (Picozza 2017) might initiate another asylum procedure but are often sent back to the country competent for their claim (see Chapter 2). Some persons also hold short-term temporary permits, yet others have obtained a residence permit in one country but moved on to another where they again end up in an irregular legal situation (Ahrens 2013; Borri and Fontanari 2015). Thus, their migration movement often resembles a cyclical pattern involving manifold sites, actors as well as legal statuses. This complexity calls for a collective examination of various perspectives, sites and actors.

Indeed, along their ‘interrupted journeys’ (Wyss 2019), people holding precarious legal status encounter not only migration offices but also border guards, police officers, prison services and private security actors, courts, legal advisors and a range of civil society organisations, variably performing controlling functions and offering advisory and ‘humanitarian’ services. In order to understand how these encounters shape migration control outcomes, we need to study how street-level actors get to a decision, how decisions are communicated, (mis)interpreted and contested by migrants and legal advisors, how roles are crystallised and conflated, and understood by different actors. Such analysis, we argue, cannot be confined to a strict nation-state context, given the international scope of laws and regulations, organisations—and of migrants’ journeys.

Our book thus distinguishes itself in the following ways: through its collaborative approach and its ethnographic breadth, through its relational approach to migration control that builds on socio-legal perspectives and through its focus on similarities in the face of legal and organisational differences. The individual chapters reflect this approach: they bring together diverse strands of literature (Chapter 2), examine the role of law in decision-making (Chapter 3), trace the impact of mess and



informality in law enforcement (Chapter 4), show the micro-struggles over time and speed (Chapter 5) and raise the question of responsibility in the migration regime (Chapter 6). Conversely, the remainder of this chapter serves to clarify several issues that have been repeatedly raised by our colleagues—indeed, the second part of the chapter could be called ‘answers to questions that we received at conferences’. We will first set the scene of our research and address the elephant in the situation room: the question of ‘migration crisis’. Second, we will explain our methodological approach, including questions of research access and ethics. Third, we will provide short explanations to key terms that we use throughout the text. The fourth and final section will provide the customary overview of the remainder of the book.

## INTRODUCTION TO THE FIELD: EUROPEAN MIGRATION CONTROL IN CONTINUOUS CRISIS

By the summer of 2015, German police agencies became increasingly lenient towards migrants transiting through the country to reach other destinations and file their asylum claim. When Tobias shadowed officers in a North-German city known for being both a destination and transit hub for asylum seekers, the police had simply suspended their control activities at traffic hubs such as the main station. They even coordinated efforts to help refugees onto ferries to Sweden and Norway and arranged temporary shelters for them, while enabling them to avoid registering in Germany. According to local news, officials estimated that a total of around 60,000 asylum seekers, almost certainly without legal residence in Germany, were ‘assisted’ by police officers onto ferries to Sweden alone—almost 40% of the total asylum seekers that arrived in Sweden in 2015 (field note Germany 2015).

In December 2015, Lisa and Annika interviewed Swedish border police officers in a city that is directly interlinked with Denmark via train, and via ferry with the German city where Tobias conducted fieldwork. The city had therefore become a major entry point to Sweden for many asylum seekers. That fall, the police officers had worked alongside the Swedish Migration Office, Refugees Welcome, the Red Cross and several other NGOs with registering (or deliberately avoiding registering) asylum seekers and had to a great extent performed the same tasks as these other organisations, even though their official functions and aims were very different. One police officer explained: ‘At the time [late summer of

2015], there was a national decision that we should be forgiving towards those who arrive, even if they lacked identity documents or reasons to be here—we even let them continue their onward journey if that was what they wished for. In September, there was an in-between situation: we received clear directives from above to be a link between the refugees and the Swedish Migration Agency, and to mediate between authorities and NGOs, who were very active. This is what we did: we were at the central station, helping refugees with all sorts of things, driving them places, handing out sandwiches—but not controlling. Then in November 2015 came the decision to close the border and start controlling again’ (field note Sweden 2015).

In April 2016, we heard a Danish police officer in Copenhagen reflect on the same events from the previous summer. ‘Denmark has long been a transit country for migrants wanting to reach Sweden. We’ve known that for a long time. But we are not allowed to conduct controls at the Danish border as we’re in the Schengen zone. There have been several suggestions made as to what could be done about the problem but we’re not allowed to conduct any systematic border controls. We can’t satisfy everyone... either we break the Schengen code, or become a transit country for Sweden’ (interview Denmark 2016).

Our research has been carried out during a time of proclaimed ‘crisis’ of European migration control. There is a burgeoning ‘crisis’ literature, which—importantly—highlights the human tragedies as well as the productivity of the proclaimed crisis for governments and for a range of stakeholders (Andersson 2016; Colombo 2017; De Genova and Tazzioli 2016; Holmes and Castañeda 2016). Our project, however, traces the underlying dynamics and systemic irregularities of European migration control that well precede this ‘event’, but which have been accentuated with the rise in numbers of arrivals. Even though many of our state agent and NGO interlocutors referred to the ‘summer of migration’ (Buckel 2016) as a ‘crisis’, they also acknowledged the ordinariness of exceptional situations within their field of work. The above vignettes and testimonies from police control posts in Germany, Denmark and Sweden suggest a number of different reasons behind the perceived ‘loss of control’: the sudden leniency of over-worked German police officers, the drastic changes in political instructions regarding the reception of asylum seekers in the light of the ‘exceptional’ number of arrivals in Sweden, and the trade-offs stemming from contradictions between European legal frameworks and everyday work realities, as reflected in the quote by a Danish

police officer. However, none of the above vignettes tells something radically ‘new’ about the everyday (dys)functions of migration control. The German police has always been lenient towards transit migrants—otherwise hardly any asylum seekers would have ever made it to Sweden or Denmark. Similarly, practices often constitute a trade-off between legal principles and ‘real life’, and legal changes to migration law are often drastic and sudden reactions to political developments. Yes, things were different from before—but were they radically new?

A similar question was posed by a Swedish border police officer, whom we interviewed in December 2015. The officer recalled having attended a joint international course with police from all Schengen member states, where the ‘crisis’ had been on everybody’s lips. Yet it had also put the Swedish police officer’s perceptions of what constituted an exceptional situation into perspective:

The Germans were going mad at the time with this migration. They said there are thousands of them coming here and then one of the Italians turned around and was like ‘what’s your fucking problem? We’ve had this for fifteen years, now it’s your turn’ and then she just turned back around again. But her point was ‘what’s your problem, stop complaining’! And we realised that if we had between 200 and 900 people arriving in the central station each day since September, Italy has had 1000 arriving each day for the past fifteen years or so... (interview Sweden 2015)

The crisis thus needs to be understood in the context of each actor and situation. We find it important to both acknowledge and take seriously the experiences of crisis among our interlocutors and to question its structural underpinnings. Another example comes from our fieldwork in Germany, where by the end of 2015, around half of the thirty employees of one visited migration office had requested transfers, put in their notice, or asked for early retirement, citing the working conditions and chaos that unfolded in that summer and autumn. The office, certainly from the perspective of the people who worked in it, was in crisis. Yet, the chaos of this particular office, more than 600 kilometres north of Germany’s southern border, was neither linked to the political, European or humanitarian ‘crises’ that coincided in 2015, nor explainable solely through the large number of asylum seekers arriving in Europe in that year. Rather, their crisis (and arguably that of many other agencies across Europe) was caused by logistics: a multiplication of effectively unnecessary tasks and much delayed responses to predictable developments, including housing

shortages and backlogs in bureaucracy. All of these issues had existed prior to 2015, and in most cases, officers had unsuccessfully attempted to resolve them. Crucially, once the logistical issues were recognised and appropriate solutions put in place, many local manifestations of crisis all but disappeared. This was true even in a notoriously chaotic administration as the state of Berlin, where the long queues and informal camps in front of the state welfare office dissolved once it was decided to place all relevant agencies for the registration process in one building so that within one day, an asylum seeker would have ‘gone through the entire system of registration’ (interviews 2016–2018). There is no question that the number of asylum seekers put strains on the capacities of agencies, and we do not want to discount our interlocutors’ experiences of such strains—nor to downplay the repressive measures which our migrant interlocutors were exposed to as European governments declared a need to ‘respond’ to the situation with border closures and an increasingly hostile environment for migrants deemed unwanted. At the same time, ‘crisis’ can be used as an analytical lens rather than taking it for granted. To us, it highlights pre-existing aspects of migration control, from the leniency of the German border guards to the realisation that perhaps, some Northern European states were just late in receiving fractions of the displaced masses following the post-2011 instability in Northern Africa and the Middle East. Finally, many scholars, including us ourselves (Eule 2014, 2017), have pointed to inefficiencies as well as high levels of continuous ‘radical’ reform projects within street-level bureaucracy.

## METHODOLOGY

An analysis of the migration regime cannot be boiled down to a state versus migrant perspective but must take into account a broader range of actors and the various power positions they take: it must necessarily include ‘studying up, down, and sideways’ (Nader 1972; Wedel and Feldman 2005). Both law and the interplay and interests of these diverse actors are key for understanding how certain mobilities become framed, categorised and regulated—in other words, which mobilities become the topic of concern around which a *migration regime* is formed (Pott et al. 2018). We concur with critical researchers working on migration regimes that this requires ethnographic fieldwork in the localities in which the negotiations over the regulation of mobility take place (Hess 2008; Horvath et al. 2017; Papadopoulos and Tsianos 2013). We have