Playing dirty

Scheel, Stephan

Published in:
Journal of Ethnic and Migration Studies

DOI:
10.1080/1369183X.2024.2371207

Publication date:
2025

Document Version
Peer reviewed version

Playing Dirty: The Shady Governance and Reproduction of Migrant Illegality

Stephan Scheel[1] *(Leuphana University of Lüneburg)*

This is the final author manuscript which has been accepted for publication by the Journal of Ethnic and Migration Studies (JEMS). The article is part of the special issue 'Governing Transit and Irregular Migration: Beyond Formal Policies and Informal Practices' which was edited by Maria Koinova. To cite and reference this article please refer to final published version on the journal's webpage: https://doi.org/10.1080/1369183X.2024.2371207

Abstract: State authorities in Europe invest immense resources in what the EU insists on calling the 'fight against illegal migration'. Based on ethnographic research in two German cities, this paper shows that a tough approach towards illegalised migration can only be implemented through state practices that operate at the margins of, or even cross, the boundaries of what is legally permissible. This argument is developed through an analysis of informal practices that frontline staff in registry offices and migration administrations deploy to prevent, or at least disturb, illegalised migrants' attempts to regularise their status by becoming the parent of child that is entitled to German citizenship. Drawing on the autonomy of migration approach, I use migrants' struggles within and against Germany's migration and citizenship regime as an epistemic device to expose three kinds of informally institutionalised counter-tactics of street-level bureaucrats that qualify as *unlawfare*. The analysis shows that officials, in their attempts to forestall migrants' practices of *self-legalisation*, frequently resort to practices that are legally questionable or outright unlawful themselves. Ultimately, not only a tough stance on illegalised migration, but the

[1] Corresponding author: Stephan Scheel, Professor of Political Sociology, Institute of Sociology and Cultural Organisation (ISCO), Leuphana University of Lüneburg, Germany. E-mail: Stephan.scheel@leuphana.de

very production of migrant illegality emerges as contagious as it implicates an illegalisation of state practices.

Keywords: irregular migration; illegality; lawfare; regularization; state crime; street-level bureaucracy

Introduction

In the proclaimed 'fight against illegal migration' (EC 2006) state authorities regularly resort to practices that violate fundamental rights and legal norms enshrined in international treaties and national laws. The most prominent example of unlawful state practices in the context of border and migration control are 'push-backs'. The term refers to the practice of chasing migrants – often by use of violence – back across the border of a nation-state without giving them the opportunity to apply for asylum. This practice is illegal because it violates the principle of non-refoulement of the 1951 *Geneva Convention for the Protection of Refugees*. Following article 33 of the convention, 'no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion' (UNHCR 2010, 30). However, as documentation of 'push-backs' in the Aegean Sea and Evros region in Greece, borderzones in Croatia and more recently Poland and the United Kingdom demonstrates, border police across

Europe regularly engage in push-backs to the extent that they have become 'informally institutionalised technologies of border management' of the European Union (EU) and its member states (Karamanidou and Kasparek 2022).

While these evidently violent forms of border control are politically contested, few commentators have noted the paradoxical relationship between migrant and state illegality in this context: mobile people trying to access a legal procedure in order to legalise their status (by applying for asylum) are prevented from doing so through illegal state practices committed by officials in the name of an alleged 'fight against illegal migration' (EC 2006; FitzGerald 2019).[1] This article takes this paradoxical relationship as a starting point to ask: What does the resort to unlawful, informally institutionalised state practices in contemporary border and migration management reveal about the production and governance of migrant illegality?

I engage with this question in relation to struggles that revolve around a set of little-known tactics by which illegalised migrants living in Germany try to legalise their status by becoming the parent of a child that is entitled to German citizenship. While this route is, in modified form, also open to male migrants, the following analysis focuses – due to the complexity and gendered nature of the phenomenon – on illegalised women's attempts to appropriate legal residency in Germany through parenthood.[2] Once pregnant, illegalised women look for a man with German citizenship or a permanent resident title who is willing to acknowledge paternity for the soon-to-be-born child. Importantly, the

man assuming paternity in legal terms does not need to be the child's biological father. If the parents and their new-born successfully pass related bureaucratic procedures, the woman becomes the mother of a German citizen and is thus entitled to a resident permit.

However, state officials working in registry offices and migration administrations deploy various informal practices that aim at countering this tactic of self-legalisation. They thus sustain and re-produce the very phenomenon that state authorities officially claim to counter and 'fight', namely 'illegal migration'. Studying this little-known phenomenon permits me to show that state officials' engagement in illegal practices does not only occur in remote borderlands at the outer edges of the state. It also happens – in an equally informal yet systematic fashion – in the middle of European societies where it is inscribed in bureaucratic procedures in which frontline officers working in migration-related administrations do not just implement but actively shape and redefine legal norms. What the following analysis thus shows, is that rather than resembling binary, mutually exclusive opposites, the formal and the informal are entwined in complex ways as informal practices may be clouded as formal while testing, or even crossing, the boundaries of what is legally permissible.

These arguments are developed based on ethnographic fieldwork which was conducted in two German cities between November 2019 and December 2022. In the following, I call them city A and B to protect research participants' identities. Besides non-participant observations at a migrant reception centre, fieldwork comprised 30 interviews with

illegalised migrants, street-level bureaucrats, lawyers, and migrant support organisations. I use this material to show that the government of 'illegal migration' implicates an illegalisation of state practices.

In this way, I highlight the contagious character of state practices of illegalisation which infect the practices of countless officials tasked with the governance of the people who are not supposed to be there. This contagious dynamic of migrant illegality resides in a veritable double-bind that the illegalisation of migration implicates for countless state officials who are compelled to deal with the legal claims of people that are officially not supposed to be there, as I explain in more detail in the following sections. Due to this contagious dynamic of practices of illegalisation, not illegal migration but state practices of illegalisation constitute the central political conundrum.

Conceptually, I draw on the autonomy of migration approach (AoM) to develop these arguments. The AoM offers a 'heuristic model' to investigate practices of border and migration control from migrants' viewpoint with a focus on their border struggles (Mezzadra 2011; Papadopoulos, Stephenson, and Tsianos 2008; Scheel 2019). Due to this inversion of state-centred perspectives that inform much of the research on borders and migration, the AoM thus offers a promising epistemic starting point for exposing informal practices of government on the 'street-level' of policy implementation.

Besides scholarship on illegalised migration, the article thereby contributes to the burgeoning literature on the day-to-day governance of borders and migration on the 'street-level' of policy implementation

(e.g. Affolter 2021; Alpes and Spire 2014; Borrelli 2022; Eule et al. 2019; Schweitzer 2022). This literature confirms the insight of Lipsky's (1980) pioneering work that 'street-level bureaucrats' do not just implement or apply, but actively interpret and bend the law to the degree that they act as veritable policy-makers. This article contributes to these debates by showing that the practices of street-level bureaucrats often stretch, cross and thus re-negotiate the boundaries of what is legally permissible as they engage in what I understand, inspired by the work of Jean and John Comaroff (2006), as *unlawfare*.

The article proceeds in four sections: Based on a review of existing literature on the legal production and governance of migrant illegality, the first section introduces the AoM as an approach which allows to apprehend the appropriation of a residency title as a form of self-legalisation. The three following analytical sections each elaborate on one set of informally institutionalised practices that test or even cross the boundaries of what is legally permissible.

State Practices and The Government of Migrant Illegality

Many scholars emphasize that migrant illegality is not reducible to a legal status. Migrant illegality resembles an actively produced, albeit contested condition that comprises a multiplicity of forms and statuses (Düvell 2011; Scheel and Squire 2014; Scheel and Tazzioli 2022; Sigona 2012; Squire 2011). Importantly, restrictive migration laws and border controls are not controlling or reducing, but effectively

producing ‘illegal’ migration (Andersson 2016; Scheel and Squire 2014; Schuster 2011). While the legal frameworks that enact people as illegal are historically and geographically contingent (Chauvin and Garcés-Mascareñas 2012), they all establish a particular relationship between a person and the state by depriving that person of the legal status that would allow them to live and work on the state’s territory (Sciortino 2004). Central to migrant illegality is the condition of *deportability*, the ‘very possibility of being deported’ (Peutz and Genova 2011, 6). Deportability shapes the social worlds of illegalised migrants, with whom they interact and how, the range of social activities they engage in and the kind of places they visit because it instils in migrants a constant fear of detention, deportation and of being reported to authorities (Sigona 2012).

Yet, the condition of illegality is not imposed on migrants unilaterally. After all, it is migrants who render borders porous through their creative practices which aim at repurposing the methods of control into means allowing for the appropriation of mobility and other resources (Scheel 2019). However, migrants are not able to usurp the means and methods of control completely for their own purposes (ibid). Rather, practices of clandestine border-crossing result in a compromise: mobility, residency and labour, are possible but only under conditions of ‘illegality’ (Tsianos and Karakayali 2010). Nevertheless, in many countries, including those with restrictive migration and citizenship regimes, significant numbers of illegalised migrants succeed in their attempts to legalise their status later on (Chauvin and Garcés-

Mascareñas 2012; Moffette 2018). Many others lapse back and forth between statuses while trying to do so (Düvell 2011). All the while, illegalised migrants try to renegotiate the terms and conditions of what it means to live and work as an 'illegal' migrant in Europe. These multiple struggles over welfare, healthcare, housing, employment and, eventually, a residency permit or even citizenship constitute what Scheel (2019, 185) calls the *contested politics of migrant illegality*.

From this understanding of migrant illegality as an actively produced, contested condition follows that illegalised migrants are not simply outside of the law, as suggested by the misleading labels 'illegal' or 'irregular'. Nor are illegalised migrants only included in the law as those to be excluded, as Agambian accounts would have it. Quite to the contrary, illegalised migrants often interact with state institutions such as migration administrations (Eule 2018), welfare offices (Andreetta 2019), or healthcare providers (Perna 2019) and related legal regimes. Therefore, these state institutions are compelled to develop practices of governing allowing them to regulate the very presence of illegalised migrants and deal with their claims. The result is a heterogeneous regime of diffuse, mostly informal practices of government that combine tactics of law enforcement like police raids, detention and deportation with the partial inclusion of migrants and the prospect of ex-post regularisation (Chauvin and Garcés-Mascareñas 2012; Moffette 2018; Schweitzer 2022). Migrant deportability and 'regularisability' (Schweitzer 2022, 25) thus operate in tandem as 'complementary

dimensions of a diffuse and flexible regime for governing migration through probation' (Moffette 2014, 263).

Some authors even diagnose a 'micro-management of irregular migration' (Schweitzer 2022), but also warn of attributing too much efficacy and coherence to 'the state'. Therefore, this article follows the proposition to understand 'the state' not as unitary actor but as the combined effect of a fragmented and diffuse aggregation of various institutional layers and administrative bodies which all pursue their own agendas. The result is a heterogeneous ensemble of institutions that pursue ill-coordinated policies which roll and tumble over each other, producing all sorts of unintended side-effects and contradictions (Andreetta 2019; Tsianos and Karakayali 2010; Rozakou 2017; Scheel 2019; Sciortino 2004; Schweitzer 2022).

Another crucial insight of the literature on the governing of illegalised migration concerns the discretionary power of street-level bureaucrats (e.g. Andreetta 2019; Borrelli 2022; Eule et al. 2019; Schweitzer 2022). Frontline officers' room of manoeuvre is particularly pronounced in the context of migration because clients are not citizens, but vulnerable subjects whose precarious legal status may be amplified by a lack of knowledge of the local language and bureaucratic culture. Importantly, this significant discretionary power of officials working in migration administrations enables the proliferation of informal, potentially abusive practices of government on the street-level of policy implementation (cf. Koinova 2024; this issue). Street-level-bureaucrats may also use their discretionary power to 'undermine the power of the

law' (Schweitzer 2022, 4), either to reduce their workload by passing on cases to other countries and institutions (Borrelli and Lindberg 2024; this issue), or by siding with illegalised migrants, especially in cases in which strict laws clash with their own values (Andreetta 2019; Eule et al. 2019). To account for the heterogeneity of administrative practices resulting from street-level bureaucrats' discretionary power Alexis Spire (2009) has developed a typology that distinguishes between different types of bureaucrats based on distinct modes of decision-making. This heterogeneity of administrative practices generates significant degrees of uncertainty for migrants who often report to be confronted with an unfathomable regime of arbitrary decision-making (Borrelli 2022; Scheel 2019). It is precisely 'the very possibility that officials will bend the rules, change or correct mistake – or change it for the worse – [which] serves to sustain hope as well as fears for the gatekeepers of law' (Eule et al. 2019, 218).

This article contributes to debates on the production, contestation, and government of migrant illegality by attending to mostly informal, legally questionable, or outright unlawful practices that street-level bureaucrats deploy to prevent illegalised migrants from legalising their status. In the case under study, illegalised women enact a clause in German family law. In brief, §1592 of Germany's civil code stipulates that the legal father of a child does not necessarily need to be the child's biological father. Accordingly, the person acknowledging paternity will become the child's legal father, unless the mother is married at the time of birth. With this progressive regulation of parenthood, the legislator

wanted to assure that as many children as possible have a father who assumes his social and legal obligations as a parent. Importantly, §1592 opens the possibility for illegalised women to legalise their status by finding a man with German citizenship – or a man that has been ordinarily resident in Germany for eight years – who acknowledges paternity for their child.

To become legally valid, the person concerned must sign a document, the so-called 'recognition of paternity'. Since German citizenship law is predominantly based on the principle of *ius sanguins*, which stipulates that citizenship is inherited via ancestry, the child becomes entitled to German citizenship. In this way the woman becomes the mother of a German citizen and thus entitled to a resident permit under §28 of German residency law. The practice of illegalised women to legalise their status by invoking a clause in German family law that entitles their child to German citizenship can be read as an instance of *lawfare*, in which 'the "little" peoples and marginal populations of the world' (Comaroff and Comaroff 2006, 29) mobilise particular legal norms to improve their living conditions (see also: Chandra 2015). The Comaroffs introduced the notion of lawfare to account for the juridification of politics and the resort to legal instruments for political or economic ends. While they emphasise that lawfare 'becomes most readily visible when those who act in the name of the state conjure with legalities to act against some or all of its citizens' they also emphasise that the law may be turned into a 'weapon of the weak' (Comaroff and Comaroff 2006, 30–31).

More recent works in tradition of the AoM allow, in turn, to apprehend such instances of lawfare and the repurposing of German family law as the appropriation of a residency title via the recoding of legal norms and related bureaucratic procedures into means of appropriation (Scheel 2019). Thanks to its emphasis on migrants' capacity to act, the AoM thus allows to understand the appropriation of a resident title via parenthood as a form of *self-legalisation.* In this way, the notion of self-legislation highlights that the migrants are non-negligible protagonists in regularisation procedures, which are neither unilaterally enacted by state-authorities, nor mere acts of mercy by a benevolent sovereign. The latter is suggested particularly by the notion of 'amnesty'. However, also influential definitions frame regularization as unilateral, state-owned procedures. A widely-cited study defines regularization, for example, as 'any *state procedure* by which non-nationals who are illegally residing, or who are otherwise in breach of national immigration rules, in their current country of residence are *granted* a legal status' (Kraler 2009, 13; my emphasis). In this understanding migrants appear only as passive recipients of state-owned procedures. The notion of self-legalisation underlines, in contrast, that migrants are always – albeit in various degrees – actively involved in the regularisation their status, and that they are often compelled to deal with and defy the resistance of state-officials trying to undermine their efforts.

This is also the case in context of the appropriation of a residency title via parenthood. Officials working in migration administrations and

registry offices have developed various counter-tactics which aim at preventing illegalised women from self-legalising their status. The crucial point is that these practices often work in a legal grey zone, or even stretch and cross the boundaries of what is legally permissible, as the following three sections demonstrate.

Undoing the Performative Powers of Documents through a Politics of Intimidation

Most illegalised women only make themselves known to authorities in the last weeks of their pregnancy, when they qualify for maternity leave. In Germany, maternity leave starts six weeks before the estimated date of birth and ends eight weeks after the actual delivery date. It offers women certain legal protections and this also applies to illegalised women. First, they are not deportable during this period because of airline transport restrictions regarding pregnant women. Secondly, women on maternity leave are exempted from relocation mechanisms implementing the burden sharing agreement for the accommodation of migrants and asylum seekers between Germany's federal states.[3] Thus, pregnant women – who often belong to migrant communities with a strong presence in major cities – avoid being relocated to reception centres in remote locations in the countryside.

Women usually arrive well-prepared at migration administration and provide all documents required for applying for a residency permit: a recognition of paternity, a declaration of custody, the passports of both

parents and, if necessary, the permanent resident permit of the child's prospective father. Both the recognition of paternity and the declaration of custody need to be officially approved by a notary or an appropriate office, such as a registry office or the youth welfare department.

After a brief interview, illegalised women – who are often hitherto unknown to German authorities – are registered. This means, first and foremost, that they are fingerprinted so that their biometric data can be checked for matching records in various national and European databases, such as ERODAC, the Visa Information System (VIS) and Germany's foreigner's register [AZR]. Initially, women are only issued a *toleration* [Duldung], which is not a resident title. It only offers a person legally required to leave Germany a 'temporary suspension of deportation' (see §60a(2) of German residency law). If the woman lodges her application before giving birth, the toleration's expiry date corresponds to the end of the woman's maternity leave, which is calculated based on the estimated delivery date. This is why women usually also provide the 'mother's passport' [Mutterpass], a medical document recording all developments of the pregnancy, although this is not legally required. A woman applying for a resident permit under §28 residency law will only be issued a resident permit once her child has been born and she can provide the foreigner's office with a birth certificate confirming the child's eligibility for German citizenship.

According to lawyers, social workers and officials, women are mostly successful with legalising their status in this way. 'If they provide all documents, and this is what they usually do, we will accept

it. […] Once paternity has been recognized, there is not much we can do about it, even if there are indicators for abuse', an official working at a registration unit underlines in an interview. A lawyer confirms this assessment: 'The issuance of a recognition of paternity is the magic moment. Once the document has been issued, the registry office can get steamed up as much as they want [because they suspect abuse]. Eventually, they will have to enter everything in the birth register. Examination and certification have already been completed and the [constitutional] court's verdict stresses that a revocation of certification [of German citizenship] is unconstitutional. The decision has already been taken at the notary's office. So ultimately, the entry [of the child's birth] in the register is nothing but a formality.'

The recognition of paternity illustrates the performative powers of official papers, files and other documents. 'Paperwork does not simply describe an external reality "out there": Documents also take part in working upon, modifying, and transforming that reality' (Asdal 2015, 74). Especially in the context of migration, paperwork operates as 'paper at work' (Borrelli and Andreetta 2019, 4). Documents like transcriptions of asylum hearings, case files or health certificates 'create and shape realities and bureaucratic outcomes' (ibid, 2). In the present case, it is the recognition of paternity which translates a new-born child into a German citizen, thus enabling the child's mother to apply for a resident permit and legalise her status.

This is why some street-level bureaucrats working in migration administrations and registry offices engage in informal practices that

aim at preventing migrants from obtaining a recognition of paternity. The legal instruments for preventing the 'abusive recognition of paternity' are provided by §1597a of Germany's civil code. This relatively new paragraph was introduced in 2017 with the 'Law for improving the enforcement of returns' in response to a landmark ruling of Germany's constitutional court from 2013. Previously, §1600 had offered authorities the possibility to revoke a child's German citizenship and its parents' residency titles *ex post* if they could prove that the recognition of paternity only served immigration purposes. In 2013 the court ruled the ex post revocation of citizenship to be 'absolutely prohibited' by Germany's constitution (Bundesverfassungsgericht 2013). This is why the new §1597a aims at *preventing* the creation of the legal conditions for the child's entitlement for German citizenship. It offers competent authorities – in practice local migration administrations – the possibility to suspend the issuance of a recognition of paternity and to launch investigations into potential abuse.

Hence, the new law calls on notaries and institutions competent to issue a recognition of paternity to put the procedure on hold and notify the local migration office if they encounter 'concrete indicators' of abuse. It specifies five indicators for abuse which concern case constellation in which (1) the mother or her child are legally required to leave Germany; (2) the mother has applied for asylum while coming from a 'safe country of origin'[4]; (3) there exists no personal relationship between the person recognizing paternity and the mother or the child;

(4) the person recognizing paternity has previously declared paternity for children by other women; (5) payment of money for the recognition of paternity.[5] These indicators are formulated in such broad that many cases can be considered as suspicious. An illegalised migrant from Ghana applying for residency under §28 will for example always be considered as a potentially abusive case because the person concerned can only make themselves known to authorities as an 'illegal migrant' or as an asylum seeker. Since Ghana is listed as a 'safe country of origin' either the first or the second indicator for abuse listed by §1597a will apply to them.

For migrants, §1597a implies that they should preferably visit a notary to obtain a recognition of paternity, at least if they want to avoid being accused of 'abuse' and related nerve-wrecking investigations, which may end with a rejection of their application and the initiation of deportation procedures. The reason is that state institutions competent to issue a recognition of paternity are subject to a strict obligation to notify migration authorities of any case of potential abuse. Notaries are, in contrast, legally bound to a strict duty of confidentiality regarding their clients' personal affairs.

However, since the introduction of §1597a it has become difficult for migrants to get an appointment at a notary because the new law puts notaries in a legally precarious position as the requirement to report potentially abusive cases to authorities conflicts with notaries' duty to confidentiality.[6] A social worker summarises the situation as follows: 'Notaries do not outwardly reject them, this could be interpreted as

discrimination. They rather tell them that they only have an appointment available in a few months' time.' In this way, notaries take advantage of the time-constraints faced by illegalised women. Since they are only protected from deportation for the period of maternity leave, they cannot wait for months to get their paperwork sorted.[7]

This situation has not been brought about legal changes alone. 'The pressure does not so much originate from the law itself, but from a few registrars who have a very strict interpretation [of §1597a] and put notaries under pressure', a lawyer reports. Since its introduction in 2017, some registrars amplify the legal precarity that §1597a generates for notaries through a *politics of intimidation.* They write threat letters to notaries still daring to issue recognitions of paternity to illegalised migrants. At the time of writing, these notaries are mostly found in the suburbs of city A. Most notaries concerned make the men acknowledging paternity declare under oath that the indicators for abuse listed in §1597a do not apply to them. They must swear, for example, that they did not receive any money for acknowledging paternity. This measure constitutes a legal safeguard which has been recommended by notaries' professional body. Accordingly, notaries should document – by obtaining declarations under oath – that they have satisfied their obligation under 1597a to scrutinize the case for indicators of abuse (Informationsdienst des Deutschen Notarinstituts 2017).

Yet, some street-level bureaucrats respond to this legal safeguard by writing threat letters to notaries concerned. While these letters are official and written in the name of the registry office, this practice itself

is informal as it is not prescribed by any official or internal guidelines. ‘These letters are written in a very harsh way and usually end with a threat to report the notary at the notary chamber, or to file criminal charges under §95 residence law against the notary.[8] In juridical terms, these threats lack any substance, but they are very effective’, a lawyer explains. Since notaries do not earn much money with the issuance of recognitions of paternity, most notaries would reason that continuing to do so is not worth the trouble.

Importantly, these politics of intimidation include practices that are legally questionable, if not outright unlawful. A lawyer cites a case in which a notary made the man acknowledging paternity swear under oath that he had not previously acknowledged paternity for children of other women. A check in the birth register conducted by the registry office established, however, that the man had lied. Besides rejecting the recognition of paternity as invalid, the registrar in charge sent a threat letter in which he called on the notary to file criminal charges against the man because of perjury. Yet, this request to sue their client constitutes an incitement to commit a criminal offence, because the registrar essentially invites the notary to violate their strict obligation to confidentiality, which entails a prohibition to disclose any information to law enforcement agencies.[9]

What this example shows is that a tough stance in the ‘fight against illegal migration’ entices state officials to engage in practices that bend and breach the boundaries of what is legally permissible, such as calling on notaries to sue to their clients. Paradoxically, these legally

questionable or outright unlawful practices aim at preventing illegalised migrants from obtaining the paperwork that would allow them to legalise their status. The example of registrars' politics of intimidation thus illustrates the contagious character of the illegalisation of migration which infects the practices of state officials.

The underlying reason for this contagion resides primarily in the double-bind that the illegalisation of migration implies for countless state officials: they must deal with the legal claims of people who are officially not supposed to be there. To satisfy the demands of a tough stance on 'illegal migration', state officials can only respond to migrants' practices of lawfare and the repurposing of legal norms into means of self-legalisation by engaging in practices that can be characterised, in reference to the Comarroffs' (2006) work, as *unlawfare*. These practices constitute instances of unlawfare insofar as they aim at turning the ignorance, non-application or stretching of legal norms into mechanisms that allow to block migrants' access to the legal procedures that would allow them to self-legalise their status.[10]

These instances of unlawfare are precisely those moments in which the contagious character of practices of illegalisation comes to the fore: state officials are not able to satisfy the imperative of nation-state sovereignty to master and contain that which state laws render illegal without resorting to illegal practices themselves. What this contagious dynamic implies is that the production of migrant illegality through practices of illegalisation entices a proliferation of state practices that are unlawful as they involve the selective non-application,

bypassing and re-interpretation of legal norms and procedures in order ‘to commit acts of political coercion, even erasure’ (Comaroff and Comaroff 2006: 30).

Creating Legal Limbo: The Devil Is in The Detail

The fact that most women only make themselves known to authorities when they are on maternity leave to avoid deportation indicates that self-legalising one’s status by giving birth to a child entitled to German citizenship is fraud with risks. Things can go wrong. And sometimes they do go wrong, as I witnessed on multiple occasions.

One reason is the informal practice of registrars and migration officials to reject documents migrants need to apply for residency under §28 as invalid on formal grounds. In practice, they systematically look for mistakes and inconsistencies in relevant documents, such as the parents’ birth certificates or the recognition of paternity, that they can use as a pretext to refuse entering the man recognising paternity as the child’s father in the birth register. As a result, the child loses its entitlement to German citizenship and both the mother and her child find themselves in a situation of legal limbo.

In city A, a registrar explains that he always checks in the birth register if the man acknowledging paternity for the child has previously declared paternity for other children. ‘This is not done systematically; it depends on the registrar. I am more of a truffle hunter. I always look into this. […] Many notaries now make the man acknowledging

paternity declare under oath that he has not recognised paternity for other children before. If I then find out [through a check in the register] that the man has repeatedly acknowledged paternity in the past, I will not accept the recognition of paternity because it has been issued under false pretences. Instead, I will write to the notary who then either must withdraw the recognition of paternity or change it, because it contains incorrect information. Normally, they would have to suspend the procedure and notify the local migration office [of a case of potential abuse], but they rarely do this. They just change the passage concerned.' While the registrar views this practice as 'abuse of office', lawyers stress that notaries would follow the already-cited ruling of Germany's constitutional court. According to this landmark ruling, an ex post revocation of citizenship violates article 16 of Germany's constitution (Bundesverfassungsgericht 2013).

While this practice may be said to operate in a contested grey zone of the law, registrars in city B – according to a lawyer – 'always come up with new reasons not to enter the man [acknowledging paternity] as the child's legal father into the birth register.' The lawyer describes the following, informally institutionalised practice of the local registry office as 'terror of identity verification'. Besides the passports of both parents, the registry office requests the birth certificates of both parents before they issue a birth certificate for their child. However, registrars in city B systematically treat the parents' birth certificates as falsified documents if they have not been issued within a period of one year after the date of birth of the person concerned. To this end, the registry office

invokes administrative laws from Ghana and Nigeria – two important countries of origin for migrants in city B – which prescribe that a birth has to be registered within the period of one year. In these cases, the registry office insists on verifying the person's identity. However, identity verification constitutes, from migrants' perspective, a lengthy and costly procedure with an uncertain outcome.

In practice, the registry office of city B sends the person's file to the German embassy in Accra (for Ghanaian citizens) or Abuja (for Nigerian citizens). The embassy then contracts a 'trusted lawyer' [Vertrauensanwalt] to do background research to verify the person's identity. In practice, the trusted lawyer travels to the person's place of birth to interview neighbours and other people familiar with the person concerned, such as former teachers, friends, and relatives. While people concerned experience this background research as deeply humiliating and damaging for their reputation, such identity verifications are also expensive and time-consuming. It is migrants who, even though they often live under financially highly precarious conditions, have to pay for the procedure, which costs 300-600 euros.[11]

Nevertheless, migrants concerned must undergo the procedure if they want to pursue their application for a resident permit. For as long as their identity has not been officially verified, the registry office will refuse to enter the parents – particularly the man acknowledging paternity – as the child's legal father in the birth register. Consequently, the child is not issued with a birth certificate with German citizenship which the child's mother would need to complete her application for a

resident permit under §28. In this way, the parents and their child are kept in a situation of legal limbo that can last for months or years and which entails the real threat of deportation in case the trusted lawyer does not confirm the parents' identities.

Again, registrars look for minor procedural mistakes and formal errors in migrants' documents to mobilise them as a pretext to bypass the prohibition to revoke German citizenship ex post as enshrined in article 16 of Germany's constitution. In the case of the parent's birth certificates they even invoke administrative regulations of migrants' countries of origin, although representatives of both the Nigerian and Ghanaian embassies confirm, that these regulations do not correspond to realities on the ground as it is common practice to issue birth certificates at a later stage.

The crucial point is that these informal practices of registrars are unlawful because they breach a landmark ruling of a high-level court. According to this ruling, registrars cannot refuse to enter the man acknowledging paternity as the child's legal parent in the birth register if a recognition of paternity has been issued, even if they suspect abuse and do not agree with the assessment of the case by the institution or notary that has issued the recognition of paternity (Oberlandesgericht Frankfurt 2019). The unspoken objective of these informally institutionalised practices of unlawfare is to push illegalised migrants – who are repeatedly issued tolerations with tight expiry dates during the identity verification procedure – towards going underground.

A lawyer summarises the implications of the registry office's refusal to enter the man acknowledging paternity as the child's legal father in the birth register as follows: the child will only be entitled to the mother's citizenship, because the German father does not appear in official records. The mother cannot apply for residency because her child neither has a German passport nor a birth certificate listing a German father. Hence, the foreigner's office will eventually reject the mother's application for residency and once the period of maternity leave has expired both the mother and her child become deportable. If the mother comes from Ghana, the foreigner's office can use a birth certificate without a father to apply for an emergency travel certificate for the child to execute the deportation. The lawyer concludes: 'It really depends on the case worker of the foreigner's office how much time the women have left after giving birth.'

What this conclusion highlights is the temporal dimension of the strategy to push migrants towards going underground. Importantly, it are street-level bureaucrats' practices which *create* legal temporalities by 'doing law with […] things' (Grabham 2016, 6). It is sociomaterial practices – that is: practices which feature material artefacts – through which legal temporalities, such as a shrinking window of opportunity to legalise one's status without running into the risk of being deported, are produced. In this case, it is the *scanning* of documents for minor errors and inconsistencies and the establishment of relationships between these materialities and legal norms through practices like the *writing* of administrative decision letters which create the legal

temporality of a looming deportation after the end of maternity leave. What street-level bureaucrats' strategy of pushing migrants towards going underground then illustrates is that the production of legal temporalities is intimately linked with the exercise of power and informal practices of government that frequently test, challenge and re-negotiate the limits of the legally permissible.

Creating Paper-Walls: Inventing Administrative Hurdles through Suspicion-by-Default

The informal practices that registrars and other street-level bureaucrats deploy to suspend and delay the issuance of the documents that migrant mothers need to legalise their status are driven by a second objective: they try make it very difficult for illegalised women to use the legal possibilities offered by §1592, namely the possibility to choose a legal father for their child. A registrar working in city A is quite open about this. When asked what motivates their time-consuming searches in registers and files for indicators of abuse and formal errors, they respond: 'With the recognition of paternity [under §1592] one makes it too easy for them. To let someone make you a child is probably a much bigger hurdle than asking someone to say: "This [child] is mine."'

This is confirmed by some illegalised women. In interviews, they emphasise that they would not want to get pregnant from a man they would barely know for obtaining residency. Yet, in city B illegalised women increasingly resort to have babies with the man acknowledging

paternity. In this way they try to avoid complications, interrogations and potential rejection of their application for residency because of suspicion of abuse under §1597a. The reason is that §1597a will not apply if the man acknowledging paternity is also the child's biological father. A lawyer confirms this development: 'Nowadays it is very rare that non-biological recognitions of paternity are accepted. Usually, the man [acknowledging paternity] is the child's biological father. It has been like that for two-three years by now.'

However, registrars in city B have invented a new practice allowing them to refuse entering the man acknowledging paternity as the child's legal parent in the birth register. They have begun to systematically suspect women that they are already married in their countries of origin. The reason is that a woman's husband automatically becomes the legal father of all of the woman's children, even if he is not the biological father. This is enshrined in §1592(1) which stipulates: 'The father of a child is the man who is married to the mother at the time of birth.'[12]

Registrars regularly invoke this clause and ask illegalised women in standardised letters to prove that they are not already married by providing divorce or celibacy certificates, or in rare cases a death certificate of their former husband, from their country of origin (Sillah 2022). In the meantime, they refuse to enter the man acknowledging paternity as the child's legal parent in the birth register with the effect that the child is only entitled to the mother's citizenship.

‘It is always about suspending the certification [i.e. the issuance of a birth certificate confirming German citizenship for the child] at different stages of the procedure. […] Now they have come up with a new thing. Now they claim that the women are married. I am just representing a woman who was previously in Italy and got pregnant by a German man. Now she is receiving her second child from the same man. And suddenly her identity is regarded as unclarified. Now they say: “We do not know if she is already married.” The child’s father is the child’s biological father but still they won’t enter him as the child’s legal father in the birth register. They just make up issues for which there is no evidence’, a lawyer summarises the situation.

For the women and their children the registry office’s suspicion-by-default results in prolonged periods of legal limbo (Sillah 2022). Even if women concerned manage in their difficult situation (highly pregnant or in charge of a new-born baby and only in possession of a toleration which does not permit to travel internationally) to provide the requested documents, these will be subjected to in-depth verification procedures, similar to the one described in the previous section.

In this way, the registry office creates a veritable obstacle course of additional paper hurdles illegalised women must clear. This allows the registry office to suspend and delay the issuance of birth certificates for the mother’s children, even in cases in which the man recognising paternity is the child’s biological father. All the while, illegalised women and their children have to live under precarious conditions of a

toleration and face difficulties to register their children for health insurance or claiming child benefits (Gerbig 2018).[13]

However, the registry office's suspicion-by-default approach is experienced as profoundly racist by people subjected to it. On a protest in front of the registry office one speaker declared: 'It is racism that is motivating the registry office to discriminate against us and our children. I guess many people working in this very office also have children. Can anyone of them come out and tell us that they waited for over a year to get their child's birth certificate? No! No because, it never happened to them. So, why us? I repeat this question, why us? There is only one reason and it is racism.' A lawyer representing some of the women concerned stresses that the registry office's suspicion approach is legally questionable: 'No, if a woman has declared under oath that she has never been married before then the registry office cannot just claim the opposite, especially if they cannot provide any evidence for their claim. This is legally not OK, and we will go to court to contest this practice.'

I would like to argue that the registry office's suspicion-by-default approach is, in fact, informed by colonial racism. Just as the colonised, the women concerned are treated as subjects incapable of speaking the truth. As Frantz Fanon (2008) has shown, colonial rule hinges on epistemologies of oppression enabling the non-recognition of the colonized as full human beings. These epistemologies make it necessary to adapt mechanisms of domination and power. 'The colonized is by nature a suspect subject, whose conduct is necessarily

deceitful and [who is], as a consequence, incapable of telling the truth' (Lorenzini and Tazzioli 2018, 11). From this follows that the injunction to speak the truth – which Foucault (2015) has exposed as an essential mechanism of power in Western societies – becomes ineffective in colonial settings. Rather than being used as a source for revealing a hidden 'inner truth', the confession of the colonized subject is immediately 'translated into an untruthful conduct, that is, a behaviour which is constitutively deceptive […]' (ibid). It is this 'confession without truth' (Lorenzini and Tazzioli 2018, 12), which underpins the registry office's suspicion-by-default approach. The declarations of Western African women, even if given under oath, are considered as confessions without truths. They are framed as deceitful behaviour, and this framing is invoked to justify the suspension of the issuance of birth certificates and the subjection of women' accounts – as well as the documents they provide – to in-depth verification procedures conducted by 'trusted lawyers'.

The registry office's suspicion-by-default approach constitutes a profound 'testimonial injustice'. In her seminal work, Miranda Fricker understands testimonial injustice as the classical form of epistemic injustice in which 'a hearer wrongs a speaker in his capacity as a giver of knowledge, as an informant' (Fricker 2007, 5). It has also been denounced as such in an important ruling of a German administrative court. In their verdict the judges rule the registry office's suspicion-by-default approach to be illegal. They argue that 'a mother should only be required to prove that she was unmarried at the relevant point of time if

concrete evidence for a marriage existed. […] To impose on the mother, with no particular reason, the burden to provide the "negative proof" that she has not been married in her home country would be an unreasonable requirement' (Administrative Court Bremen 2021, 7 author's translation). The *German Institute for Human Rights* emphasises, in turn, in a report (Gerbig 2018) that the refusal of German authorities to issue birth certificates to some children of migrants living in Germany violates article 7 of the UN-convention on the rights of the child, which stipulates that 'the child shall be registered immediately after birth.'[14] However, as cases cited by lawyers interviewed at the end of 2022 illustrate, both the suspicion-by-default approach and the non-issuance of birth certificates continue to be practiced by registrars at the time of writing, despite the fact that this practice has been ruled to be unlawful. What these unlawful practices of registrars thus demonstrate once more is the contagious character of state practices of illegalisation.

Conclusion

This article has exposed various informal practices that state officials deploy to prevent illegalised women from legalising their status. What these practices share is that they bend and breach the boundaries of what is legally permissible. Similar to the more visible case of push-backs at Europe's external borders, this article has exposed a constellation in which state officials engage in illegal practices that aim at preventing

illegalised migrants from accessing legal procedures which would allow them to legalise their status.

By highlighting this paradoxical relationship between migrant and state illegality, the analysis demonstrates that the production and governance of migrant illegality imply an illegalisation of state practices. This contagious dynamic of practices of illegalisation concerns particularly practices of state officials – such as border guards or migration officials – who regard themselves as key protagonists in the EU's 'fight against illegal migration'.

The impetus of this argument is not to decry an 'abuse' of state-power to call for a realignment of state practices in the field of migration governance with what is lawful and legitimate. The point is rather that such a realignment is not possible because state officials are not able to satisfy the imperative of nation-state sovereignty to master and contain that which state laws render illegal without resorting to illegal practices themselves. State practices of illegalisation prove to be contagious as they create a double-bind for state officials who have to deal with the legal claims of people who are officially supposed not to be there. Consequently, state officials' engagement in *unlawfare* for governing illegalised migrants emerges as both an unavoidable consequence *and* a necessary complementation of state practices of illegalisation.

Another factor that explains why state practices of illegalisation prove to be contagious is that migrants, and this includes illegalised migrants, are not reducible to deportable aliens. They are also workers, children, spouses, parents and so forth. As such, they are included in

various legal regimes – not only as those to be excluded, as Agambian accounts assert – but as rights-bearing subjects. Hence, illegalised migrants can enact themselves as legal subjects by invoking the law and initiating legal procedures, for example by applying for residency because they are about to become the mother of a child that is entitled to German citizenship. This capacity of illegalised migrants to engage in lawfare explains in turn why it is often street-level bureaucrats engaged in the 'fight against illegal migration' who feel disempowered by the law. It also explains why state officials try to counter migrants' tactics of lawfare with practices of *unlawfare*.

What the contagious character of migrant illegality ultimately suggests is that the real political problem is not illegal migration but state practices of illegalisation. One possibility to counter the contagious tendency of practices of illegalisation is then to design residency laws and citizenship regimes in such a way that they neither favour the illegalisation of migrants, nor impede migrants' strategies of self-legalisation. It should be emphasised that this is not an unrealistic, utopian proposal. Regarding the issuance of birth certificates to children of parents with unclarified identity, the *German Institute of Human Rights* points out that German law offers persons with unclarified identity the possibility to prove that they are not already married, or any other aspect of their identity, by providing a declaration in lieu of an oath, especially if the provision of paper-based evidence would require disproportionate cost and effort (Gerbig 2018). This example raises the hope that the de-criminalisation of the countless street-level bureaucrats

operating in the grey zones or outside of the law is indeed a feasible political project.

References

Administrative Court Bremen. 2021. 'Oberverwaltungsgericht Bremen, Beschluss Vom 10. Februar 2021, OVG: 2 B 335/20'. https://www.oberverwaltungsgericht.bremen.de/sixcms/media.php/13/2_B_335_20_Beschluss_Entscheidungsmodul.pdf.

Affolter, Laura. 2021. *Asylum Matters: On the Front Line of Administrative Decision-Making*. Cham, Switzerland: Palgrave MacMillan.

Alpes, Maybritt Jill, and Alexis Spire. 2014. 'Dealing with Law in Migration Control: The Powers of Street-Level-Bureaucrats at French Consulates'. *Social & Legal Studies* 23 (2): 261–74.

Andersson, Ruben. 2016. 'Europe's Failed "Fight" Against Irregular Migration: Ethnographic Notes on a Counterproductive Industry'. *Journal of Ethnic and Migration Studies* 42 (7): 1055–75.

Andreetta, Sophie. 2019. 'Writing for Different Audiences: Social Workers, Irregular Migrants and Fragmented Statehood in Belgian Welfare Bureaucracies'. *Journal of Legal Anthropology* 3 (2): 91–110. https://doi.org/10.3167/jla.2019.030206.

Asdal, Kristin. 2015. 'What Is the Issue? The Transformative Capacity of Documents'. *Distinktion: Journal of Social Theory* 16 (1): 74–90.

Bauder, Harold. 2013. 'Why We Should Use the Term Illegalized Immigrant. RCIS Research Brief No. 2013/1'. Toronto: Ryerson Centre for Immigration & Settlement.

Borrelli, Lisa Marie. 2022. 'Should (S)He Stay or Should (S)He Go? – Streetlevel Suspicion and the Construction of the "(Un)Deserving Migrant"'. *Geopolitics* 7 (4): 1093–1116.

Borrelli, Lisa Marie, and Sophie Andreetta. 2019. 'Introduction: Governing Migration through Paperwork'. *Journal of Legal Anthropology* 3 (2): 1–9.

Borrelli, Lisa Marie, and Annika Lindberg. 2024. 'Making (In)Formality Work in a Multi-Scalar European Border Regime'. *Journal of Ethnic and Migration Studies*, in this special issue.

Bundesverfassungsgericht. 2013. 'Leitsätze Zum Beschluss Des Ersten Senats Vom 17. Dezember 2013 - 1 BvL 6/10'. Germany's Constitutional Court.

Chandra, Uday. 2015. 'Rethinking Subaltern Resistance'. *Journal of Contemporary Asia* 45 (4): 563–73.

Chauvin, Sébastien, and Blanca Garcés-Mascareñas. 2012. 'Beyond Informal Citizenship: The New Moral Economy of Migrant Illegality'. *International Political Sociology* 6 (3): 241–59.

Comaroff, John, and Jean Comaroff. 2006. 'Law and Disorder in the Postcolony: An Introduction'. In *Law and Disorder in the Postcolony*, 1–56. Chicago, London: University of Chicago Press.

De Genova, Nicholas. 2002. 'Migrant "Illegality" and Deportability in Everyday Life'. *Annual Review of Anthropology* 31 (3): 419–47.

Düvell, Franck. 2011. 'Paths into Irregularity: The Legal and Political Construction of Irregular Migration'. *Euopean Journal of Migration and Law* 13 (3): 275–95.

EC. 2006. ‘Communication of the Commission on Policy Priorities in the Fight against Illegal Immigration of Third-Country Nationals COM(2006) 402 Final, Brussels, 19.7.2006’.
Eule, Tobias. 2018. ‘The (Surprising?) Nonchalance of Migration Control Agents’. *Journal of Ethnic and Migration Studies* 16 (1): 2780–95.
Eule, Tobias, Lisa Marie Borrelli, Annika Lindberg, and Anna Wyss. 2019. *Migrants Before the Law Contested Migration Control in Europe*. Cham, Switzerland: Springer.
Fanon, Frantz. 2008. *Black Skin, White Masks*. London: Pluto Press.
FitzGerald, David Scott. 2019. *Refuge beyond Reach: How Rich Democracies Repel Asylum Seekers*. Oxford, New York: Oxford University Press.
Foucault, Michel. 2015. *The Punitive Society: Lectures at the Collège de France, 1972-1973*. London & New York: Palgrave.
Fricker, Miranda. 2007. *Epistemic Injustice. Power and the Ethics of Knowing*. Oxford & New York: Oxford University Press.
Gerbig, Stefan. 2018. ‘Position Nr. 18: “Keine Papiere – Keine Geburtsurkunde?”’ Berlin: Deutsches Institut für Menschenrechte. https://www.institut-fuer-menschenrechte.de/publikationen/detail/keine-papiere-keine-geburtsurkunde.
Grabham, Emily. 2016. *Brewing Legal Times. Things, Form and the Enactment of Law*. Toronto: University of Toronto Press.
Informationsdienst des Deutschen Notarinstituts. 2017. ‘Aus Der Gutachtenpraxis Des DNotl: BGB §1597a - Verbot Der Missbräuchlichen Anerkennung Der Vaterschaft’. *DNotl-Report*, no. 20, 153–56.
Karamanidou, Lena, and Bernd Kasparek. 2022. ‘From Exception to Extra-Legal Normality: Pushbacks and Racist State Violence against People Crossing the Greek–Turkish Land Border’. *State Crime Journal* 11 (1): 12–32.
Koinova, Maria. 2024. ‘Governing Transit and Irregular Migration: Informality and Formal Policies’. *Journal of Ethnic and Migration Studies*, introduction to this special issue.
Kraler, Albert. 2009. ‘Regularisation: A Misguided Option or Part and Parcel of a Comprehensive Policy Response to Irregular Migration?’ *IMISCOE Working Paper No. 24*, 1–39.
Lipsky, Michael. 1980. *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*. New York: Russell Sage Foundation.
Lorenzini, Daniele, and Martina Tazzioli. 2018. ‘Confessional Subjects and Conducts of Non-Truth: Foucault, Fanon, and the Making of the Subject’. *Theory, Culture & Society* 35 (1): 71–90.
Mezzadra, Sandro. 2011. ‘The Gaze of Autonomy: Capitalism, Migration and Social Struggles’. In *The Contested Politics of Mobility Borderzones and Irregularity*, edited by Vicky Squire, 121–42. London: Routledge.
Moffette, David. 2014. ‘Governing Immigration Through Probation: The Displacement of Borderwork and the Assessment of Desirability in Spain’. *Security Dialogue* 45 (3): 262–78.
———. 2018. *Governing Irregular Migration. Bordering Culture, Labour, and Security in Spain*. Vancouver: UBC Press.
Oberlandesgericht Frankfurt. 2019. ‘OLG Frankfurt Am Main, Beschluss Vom 19.09.2019 - 20 W 311/18’. https://openjur.de/u/2261753.ppdf.
Papadopoulos, Dimitris, Niamh Stephenson, and Vassilis Tsianos. 2008. *Escaperoutes. Control and Subversion in the Twenty-First Century*. London: Pluto Press.
Perna, Roberta. 2019. ‘Bound Between Care and Control: Institutional Contradictions and Daily Practices of Healthcare for Migrants in an Irregular Situation in Italy’. *Ethnic and Racial Studies* 42 (12): 2103–22.

Peutz, Nathalie, and Nicholas De Genova. 2011. 'Introduction'. In *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*, edited by Nathalie Peutz and Nicholas De Genova, 1–29. Durham: Duke University Press.
Rozakou, Katerina. 2017. 'Nonrecording the "European Refugee Crisis" in Greece. Navigating Through Irregular Bureaucracy'. *Focaal—Journal of Global and Historical Anthropology* 77:36–49. https://doi.org/10.3167/fcl.2017.770104.
Scheel, Stephan. 2019. *Autonomy of Migration? Appropriating Mobility within Biometric Border Regimes*. London & New York: Routledge.
Scheel, Stephan, and Vicki Squire. 2014. 'Forced Migrants as Illegal Migrants'. In *The Oxford Handbook of Refugee and Forced Migration Studies*, edited by Elena Fiddian-Qasmiyeh, Gil Loescher, Kathy Long, and Nando Sigona, 188–99. Oxford: Oxford University Press.
Scheel, Stephan, and Martina Tazzioli. 2022. 'Who Is a Migrant? Abandoning the Nation-State Point of View in the Study of Migration'. *Migration Politics* 1 (1): 1–23. https://doi.org/10.21468/MigPol.1.1.002.
Schuster, Liza. 2011. 'Turning Refugees into "Illegal Migrants": Afghan Asylum Seekers in Europe'. *Ethnic and Racial Studies* 34 (8): 1392–1407.
Schweitzer, Reinhard. 2022. *Micro-Management of Irregular Migration Internal Borders and Public Services in London and Barcelona*. Cham, Switzerland: Springer.
Sciortino, Guiseppe. 2004. 'Between Phantoms and Necessary Evils. Some Critical Points in the Study of Irregular Migrations to Western Europe'. *IMIS-Beiträge*, no. 24, 17–43.
Sigona, Nando. 2012. '"I Have Too Much Baggage": The Impacts of Legal Status on the Social Worlds of Irregular Migrants'. *Social Anthropology* 20 (1): 50–65.
Sillah, Falou. 2022. 'Racial Profiling Im Standesamt. Wie Schwarzen Kindern Ihre Staatsbürgerschaft Verwehrt Wird'. In *Recht Gegen Rechts Report 2022*, by Nele Austermann, Andreas Fischer-Lescano, Heike Kleffner, Kati Lang, Maximillian Pichl, Ronen Steinke, and Tore Vetter, 131–38. Frankfurt am Main: Fischer Verlag.
Spire, Alexis. 2009. *Accueillir Ou Reconduire: Enquête Sur Les Guichets de l'immigration*. Paris: Raisons d'Agir Éditions.
Squire, Vicki. 2011. 'The Contested Politics of Mobility: Politicizing Mobility, Mobilizing Politics'. In *The Contested Politics of Mobility: Borderzones and Irregularity*, edited by Vicki Squire, 1–30. London: Routledge.
Tsianos, Vassilis, and Serhat Karakayali. 2010. 'Transnational Migration and the Emergence of the European Border Regime: An Ethnographic Analysis'. *European Journal of Social Theory* 13 (3): 373–87.
UNHCR. 2010. 'Text of the 1951 Convention Relating to the Status of Refugees and Text of the 1967 Protocol Relating to the Status of Refugees with an Introductory Note by the Office of the United Nations High Commissioner for Refugees'. Geneva: UNHCR.

Notes

[1] In this article, I use the term 'illegal' in connection with migrants or migration only if using the EU's official terminology is unavoidable. The criminalising connotations of this adjective have prompted scholars to use alternative terms like 'irregular', 'unauthorised' or 'clandestine' migration. Yet, these alternative terms conceal the role that state institutions and the law play in the illegalisation of migrants (De Genova 2002). In the following I therefore speak of 'illegalised migrants' to highlight the processes of illegalisation that make people 'illegal' (Bauder 2013).

[2] The possibility to appropriate legal residency by acknowledging paternity is also open to illegalised men. The case constellations are however different, particularly in terms of legal norms and gender dynamics. For example,, men have to provide evidence that they fulfil their social obligations as a father, which has to be confirmed on a regular basis by the mother whenever the man's temporary residency permit has to be renewed.
[3] This burden-sharing mechanism stipulates that each of Germany's 16 Federal States accommodates the same share of asylum seekers and illegalised migrants in relation to its population size. In practice, an algorithm in the so-called EASY-system decides, based on daily quotas, if and to where an asylum seeker is relocated.
[4] The notion of 'safe countries of origin' is a juridical concept which assumes that there exists, by default, no political persecution in these countries because they are formal democracies and citizens can avail themselves to authorities in cases of persecution by non-state actors. While citizens of these countries can still apply for asylum in Germany, their cases are most likely to be rejected as unfounded.
[5] Compare the German version of the law: https://www.gesetze-im-internet.de/bgb/__1597a.html (08.11.2022).
[6] This duty to strict confidentiality is emphasised in a comment published by the chamber of notaries of Germany's most Northern Federal State *Schleswig-Holstein*: 'Notaries are neutral, impartial and are obliged to observe a strict duty of confidentiality against any party.' See: https://www.notk-sh.de/rechtstipps/10-02-2016-notare-haben-strenge-verschwiegenheitspflicht-nur-einige-behoerden-haben-recht-auf-auskunft/ (27.10.2022).
[7] I return to this temporal aspect of tactics of migration control in the next section.
[8] Among others, §95 of Germany's residency law stipulates that any person 'providing incorrect or incomplete information to procure a residence title or toleration for themselves or for another person or to avert the expiry or subsequent restriction of the residence title or toleration or knowingly uses a document procured in this way to deceive in legal transactions' will be punished with a prison sentence of up to three years or a penalty. (author's translation, original legal text see: https://www.gesetze-im-internet.de/aufenthg_2004/__95.html (10.06.2023).
[9] §203(3) of German Criminal Law stipulates that 'any person who unauthorizedly discloses another person's secret, namely a secret belonging to the personal sphere of life or a trade or business secret, which has become known to them due to their work as a [...] notary, defence counsel in proceedings governed by law [...] or which has otherwise become known to them shall be liable to a custodial sentence not exceeding one year or to a monetary penalty' (author's translation, original legal text see: https://www.gesetze-im-internet.de/stgb/__203.html (10.06.2023).
[10] I would like to thank the anonymous reviewer for the suggestion to develop the argument on the contagious character of state practices of illegalisation in this direction.
[11] Anecdotic evidence suggests that some of the 'trusted lawyers' are corrupt and demand payment from the relatives of the person concerned for a positive verification of their identity.
[12] See: https://www.gesetze-im-internet.de/bgb/__1592.html (18.11.2022).
[13] For personal accounts of the practical implications for illegalised women and their children of not having a birth certificate see the webpage: https://born-twice.de/birth-certificate-denial/access-to-basic-rights-denied (09.02.2024).
[14] See: https://www.unicef.org/child-rights-convention/convention-text (23.11.2022).

Acknowledgements
I would like to thank all research participants for their time and the insights they shared with me. I would also like to thank Maria Koinova, the guest editor of this special issue, as well as the anonymous reviewers for the constructive comments which have helped to strengthen the arguments of this article. Moreover, I would like to acknowledge funding for this research: Stephan Scheel's work was co-funded by the European Union (ERC-StG project: DigID - Doing Digital Identities, grant number: 101039758). Views and opinions expressed are however those of the author only and do not necessarily reflect those of the European Union or the European Research Council. Neither the European Union nor the granting authority can be held responsible for them.