‘They Don’t Beat You; They Work on Your Brain’
‘Regular Illegality’ and the Disciplining of Rejected Asylum Seekers

Giada de Coulon

In 2006, Swiss citizens approved new asylum legislation which excludes rejected asylum seekers living in Switzerland from conventional state aid. The aim was to deter their will to stay. This new law was part of a general trend in Europe that aims to exclude ever more asylum claimants from the welfare state’s benefits. Analysis shows that European public opinion, media and politics feared that access to welfare states would serve as a magnet for undesired aliens (Bloch and Schuster, 2002). Nevertheless, in Switzerland, the application of this new law has been made difficult by Article 12 of the constitution, which guarantees anyone present on Swiss territory and unable to provide for his or her basic needs the minimal assistance required to survive with dignity. Consequently, illegalized migrants living in Switzerland have also access to this social right, independent of any existing cooperation with authorities (Sanchez-Mazas et al., 2011, p. 303). After a long political and public debate, special public assistance for rejected asylum seekers still residing in Switzerland was instituted. Inspired by Article 12 of the Swiss Constitution, the aid is called “emergency help”, alluding to its fleeting and minimal character. As a result, since January 2008, cantonal authorities have been appointing semi-public or private organizations to manage the population of rejected asylum seekers in collective centres and to offer them shelter, food and the minimum needed to survive in kind. Through the institutionalization of disciplinary living conditions (which will be detailed below), authorities are transforming what was once thought of as a humanitarian ideal into a tool of deterrence.
in order to encourage rejected asylum seekers to leave the territory. (Gubler, 2009, p. 106). Nevertheless, several features reveal the apparent inefficiency of this measure. A recent report indicates that half of the population of rejected asylum seekers in Switzerland has asked to receive “emergency help” at least once and one beneficiary in ten is still present on Swiss territory after two years (Bolliger and Féraud, 2010; Efionayi-Mäder et al., 2010).

The following chapter seeks to analyse this poorly documented and paradoxical situation. Rejected asylum seekers are considered illegal as soon as their asylum claim is rejected if they remain on Swiss territory. If the illegalization process carried out by national authorities conventionally aims to encourage the departure of remaining undesired aliens, it often leads in reality to their marginalization. Illegalized aliens tend to disappear – make themselves invisible to national authorities – in order to escape deportation. Nevertheless, since the institution of the “emergency help regime”, the interplay between “being hidden” and “making oneself visible” is at stake. This is made possible through the disciplinary tool called “regular illegality”. If every illegalized alien has access to this public assistance as long as they remain on Swiss territory, it implies the sacrifice of a certain liberty. The “beneficiaries” of the “emergency help” must accept being continuously controlled and pressured by state authorities, which differs from that of most undocumented workers, who hide from state authorities as much as possible (even if – as will be detailed further – their “illegality” is also incomplete). This creates a contradictory situation, as they are considered illegal but live partially on public assistance at the same time. The relative smoothness that exists in the categorization into legal and illegal made by national legislation has been subject of different studies (e.g. Coutin, 2003; Menjivar, 2006). In this respect, examining particular case studies is interesting in order to show the variability of the construction of “illegality” (Walters, 2010).

This chapter argues that this fluidity is not innocent. It may be devised as an “ad hoc tool” that has emerged from the nation-state’s possibilities to regulate migration restrictively. Concerning the case study portrayed in this chapter, this porosity made the development of the “regular illegality” possible thanks to the application of the “emergency help” regime.

It is therefore proposed to contemplate the “emergency help” apparatus as a disciplinary tool. On the one hand, it permits the authorities to control the presence of rejected asylum seekers (and consequently their deportation). On the other hand, rejected asylum seekers, who subscribe to the “emergency help” regime, seem to look for this last possibility of