Abstract

In Surveillance Studies, routinized surveillance systems are often regarded as public (and corporate) interference in the private lives of citizens. On the other hand, it is often recognised that surveillance of citizens is also often the counterpart of fundamental rights being guaranteed by the state, especially in fields of economic and social rights. Non-surveillance, and highly selective surveillance can thus be counterparts of efforts to exclude some urban residents from the ‘right to have rights’ in the first place. This paper considers how selective in- and out-screening of undocumented people in EU cities can produce regularised human rights abuses. Only punitive surveillance is routine in the case of this group of the population. Starting with the 2002 EU Directive ‘Strengthening the Penal Framework to Prevent the Facilitation of Unauthorised Entry, Transit and Residence’, across the EU the goal of policy has been to remove those redefined as unwanted or surplus humanity. The urban dispossessed are denied even the most basic rights through selective out-surveillance and non-collection of data, including, for example, the right to housing, healthcare, education and employment. At the heart of such selective non-surveillance and punitive screening-out is the deterrence logic of immigration policies across the EU. Data about the everyday lives of the undocumented is lacking, and even where there is such data it is not being fed into policy making at national and urban government levels. Undocumented people end up in the parallel economy, and on the streets, being ‘caught’ up in illegality, liable to the most punitive forms of screening-out surveillance. They are thus liable to detention, imprisonment and deportation. Self-exclusion, avoidance of public institutions, including schools, medical care and migrant support organisations, can be the result of such punitive screening-out. Redefined as ‘unwanted humanity’, about whom data is not even systematically collected, undocumented people are a ‘target group’ for policing, the media and law and order policies. Their selective non-surveillance is thus a strong indicator of their unwantedness. We illustrate our argument using examples from UK, The Netherlands and France. The article suggests that broad and general surveillance of all populations within the EU needs to be recognised as a public good for which states should be held accountable.

Introduction

State surveillance is commonly interpreted as interference—mostly unjustified—by the government in the private affairs of citizens. This article considers the selective non-surveillance of urban non-citizens across the EU. The arguments is that selective non-surveillance can be even worse, in terms of damaging basic rights, than more ‘routine’ comprehensive surveillance—such as that practiced with most citizens. Where there is no data, there is no policy. Where no data is sought, those involved are not a priority. They are effectively removed from the public policy agenda. When nothing is known—and no information is sought—about living conditions of a group of people, like destitute asylum seekers, then nobody feels responsible for their well-being. People who are ‘unwanted’ can be screened out of even the most basic human rights entitlements, including civil liberties, health, employment and education. When people’s situations are not known, then their protection will not be organised. More coercive forms of surveillance...
continue, however, to lock undocumented people in Europe’s cities into what Agamben calls a ‘state of exception’ (2004a). They exist, excluded from protection by laws and policies that regulate ‘normal’ urban life but render undocumented urban dwellers invisible.

Forms of surveillance that are confined to preventing some people from accessing basic welfare and other human rights entitlements are described in this article as ‘screening out’. As the ‘cradle to the grave’ norms across the EU have been eroded, more and more people potentially are subject to such selective forms of neglect through selective non-surveillance, including citizens with full residency rights. On a daily basis, human rights principles are being sacrificed across EU urban spaces, squeezed between the twin yet incompatible projects of: ‘a borderless economy and a barricaded border’ (Andreas 2000: x). Inside Europe’s cities, undocumented people inhabit a kind of no-man’s land, consistently being ‘screened out’ from basic human rights such as the right to work, to education or to health. This article focuses on how undocumented people in EU cities, especially failed asylum seekers are experiencing this selective non-surveillance and what is being done to challenge the ‘knowing-not-knowing’ that governments are engaged in.

What does screening out mean for them, and how can policies that now exclude some people later be applied to exclude all people—including citizens—from basic human rights? ‘Screening out’ has become part of normal surveillance, and undocumented people can be seen, from this perspective, as an experimental group in wider processes of selectivity and filtering using data collection, and non-collection. What is notable is that mostly punitive surveillance forms are being used with undocumented people. Urban environments thus embody systems of governance that punish some people without cause, and can end up justifying the punishment of all people without cause.

The logical conclusion of this paper is that closer, and less selective, surveillance is needed for failed asylum seekers and other undocumented people and neglected social groups. Punitive surveillance should be replaced by more enabling forms of surveillance that are more important than how much surveillance there is. The enabling side of surveillance—its protective function—is being separated from its punitive side, and this move should be resisted. How can the decision to place failed asylum seekers and other ‘illegals’—who exist outside the ‘social contract’ binding citizens to states across the EU—be challenged? I consider some examples of human rights advocacy for failed asylum seekers in the UK, The Netherlands and France. Some organised resistance to the ‘3-Ds’ is reviewed, and shows that surveillance practices can continue but, under the contemporary ‘detached coercive’ form of surveillance, operate almost entirely to screen people out, as they screen others in. A story, ‘Jill and John’, is included to illustrate some of the general points being made about the impacts of surveillance on failed asylum seekers’ lives. A similar fictional account is given of the ‘Jones’ family in the 2006 Surveillance Studies Network Report on the Surveillance Society, and was entitled ‘A Week of Life in the Surveillance Society’. This report has been a key source for me, since it synthesises many insights from across Surveillance Studies, which is still a new field for me compared with research refugees, migration or human rights.

**What kinds of Surveillance?**

Surveillance by states and private companies, the media, and even charities and entertainment companies is a marked feature of daily life in highly regulated urban societies (Surveillance Studies Network 2006: 6). A broad definition of surveillance from the 2006 Surveillance Studies Network Report specifies that

where we find purposeful, routine, systematic and focused attention paid to personal details, for the sake of control, entitlement, management, influence or protection, we are looking at surveillance.” (2006: 4)

This definition is a useful starting point for this paper, since it emphasises the dual nature—both control and enablement—inherent in surveillance processes. It is also important to realise that private actors are
part of the surveillance system. In her 1990s ethnography of Latin American refugees’ struggles for legalisation in the US, Coutin noted how surveillance involves:

…the myriad of practices, usually carried out by people who have no connection to the government (who) produce knowledge that constitutes individuals as citizens, illegal aliens, legal residents (asylum seekers), and so forth.

(Coutin 1993: 88)

This quotation shows how a range of data collection connects to governance and policy. Surveillance is also about who has access to social welfare services, employment rights, health and education. Surveillance technologies are not intrinsically good or bad, since; ‘(e)fficient national databases can be used for the provision of targeted health care or for the victimisation of political opponents’ (Surveillance Studies Network 2006: 17). Both provision and denial of access to rights can thus be tied through ways of gathering data that screen in some whilst screening out others.

State-designed internal controls on non-citizens are increasingly racially, religiously encoded and legally sanctioned to identify, control and exclude those defined as ‘undesirable’ (Bond 2004; Bauman 2004). The result is: ‘forcible isolation of people who are different’, in a process akin to colonial forms of segregation and expulsion (Richmond 1994: 206). Using selective out-screening, entire groups of people are excluded from basic entitlements to public services, meaning official enforcement of unequal life chances in order to deter future cross-border movements (Zureik 2001; Albrecht 2002). This paper illustrates the problem of screening which increasingly applies also to full citizens. Selective non-surveillance, as applied to ‘unwanted’ categories of people, can also be applied to full citizens. Whereas ‘older, twentieth century understandings of citizenship stressed the inclusion of all eligible persons in systems of health, welfare and legal protection, newer citizenship practices, including ID systems, seem to stress exclusion of undesirable elements’ (Surveillance Studies Network 2006: 43).

There is always a danger in replicating dominant classification systems, that we take for granted who is being protected, who should be protected, who is a threat, and who is not. An example from the popular media can illustrate how complex surveillance processes have become. When well-known News of the World ‘undercover’ journalist, Mazher Mahmood, entrapped and then handed 66 ‘illegal’ workers over to Colnbrook Immigration Removal Centre in the UK, his report in the paper the next day read as follows:

The News of the World has given bungling Home Office officials a lesson in catching illegal immigrants. They say they haven’t a clue how many are in Britain. And they can’t find hundreds who have gone on the run. But within a few hours we managed to round up TWO BUSLOADS of them. We drove them to an immigration detention centre with the message: ‘Try not to lose them this time’.

(Mahmood 2006, emphasis in original text)

In 2009, the same journalist again carried out an undercover operation, which he described this way: ‘a COACH full of foreign slave workers were driven straight into the hands of police yesterday by the News of the World’ (Mahmood 2009). In many ways, the work of someone like Mahmood is the less acceptable side of public and media surveillance, and his working methods have been censured. In a surveillance society, however, such practices are not that uncommon, and constitute the core of a kind of ‘reality comedy’ in the US, for example. The idea seems to be that the end (entertainment) justifies the means (entrapment) where ‘illegal migrants’ are concerned.

Official border guards are not supposed to use underhand methods to exclude people, but they use ‘profiling’ to decide which people to question and take aside. They will cross-check their databases for ‘indicators’ of a person’s intent to cross borders illegally, through systems similar to those used to screen
‘terror suspects’. Erratic use of credit cards and last-minute travel arrangements, for example, can be viewed as indicators of risk, but so too can skin colour and religious appearance. There is increasing police surveillance of pro-migrant organisations, and raids on businesses known to hire undocumented workers have increased in recent years. Stop and search policing has intensified, with spot-checks on cars and in public transport in many countries being intended also to detect ‘illegals’. Detention and deportation can result for those unable to present their legal papers. At Christmas time in the UK, police routinely stop cars to check for drunken drivers. When it came to be known that police were also looking for undocumented migrants, the National Coalition of Anti-Deportation Campaigns (NCADC) issued this warning:

If police stop a car…they will run the names through their national database; the database contains details of persons that the Border & Immigration Agency (BIA) has an interest in. If a name comes up as…of interest to BIA, that person may well be detained and taken to the nearest police station…BIA will (then) make a decision as to whether to instruct the police to hold the person pending transfer to a detention removal centre.

(NCADC 2007)

These two examples highlight how surveillance practices intended to benefit the general population (spuriously in the News of the World case) can be used specifically to target and rapidly screen out irregular migrants, depriving them of any possibility of regularisation of their status.

New forms of border and internal surveillance involve expanding biometric data bases on individuals. These are shared by officials—and professionals—across a range of professions and services to control the access of people considered not to be entitled to have access to such services or to cross-border movement. The SIS (Schengen Information System) and SIRENE (Supplément d’Information Requis a l’Entrée Nationale) are the main examples, and share information across the EU. They can be accessed by officials in many different sectors, and a ‘hit’ will lead almost automatically to refusal and even possibly arrest at the border (Broeders 2007: 78-81). Proving one’s innocence is next to impossible. Another system, EURODAC, stores fingerprints that can help facilitate deportations, since the database can provide: ‘information on the identity and country of origin of irregular migrants, without which expulsion is practically impossible’ (Broeders 2007: 84). ID cards are a hot issue in the UK, but compulsory carrying of identity papers has been the norm on the continent for some time. Electronic tagging is now used in the UK for specific categories of people, the main ones being ‘anti-social’ youth and ‘fast-tracked’ asylum seekers. Those considered at risk of absconding, if not placed in detention, are tagged as a less costly alternative. There is also the real possibility that micro-chips could soon be implanted in people subject to strict controls (Surveillance Studies Network 2006: 10).

Most databases used to help detect ‘illegal’ migrants fail to respect the basic principles of double-checking or of giving someone positively identified any right of appeal. There are few if any safeguards against false identification within such databases, and the emphasis is consistently on exclusion as a measure of ‘success’ rather than fair inclusion. In conclusion, surveillance practices aimed at undocumented people tend to follow a double logic, described in the case of The Netherlands as follows:

The first logic is ‘exclusion from documentation’ and the second is ‘exclusion through documentation and registration’. Policies operating under the first logic block irregular migrants’ access to documentation and registration in order to exclude them, while policies operating the second logic aim to register and document the individual irregular migrant himself in order to exclude him [or her].

(Engbersen and Broeders 2009: 871)
**Who is subject to the 3-Ds?**

To continue for a moment with the apartheid analogy, as people leave their ‘native reserves’, or ‘homeland Bantustans’ across the globe, for some getting into Europe or the US means they have reached their destination, gaining access to money, or maybe to sanctuary. Refugees, ‘scooped up’ with migrants, are like so many fishes in the net, and are likely to be prevented from making their claims by new extra-territorial security and policing systems that surround the EU. Migrants are redefined as smugglers or smuggled, traffickers or trafficked, and asylum seekers have a hard time reaching safety, whatever they pay for the journey (Loescher 1993). Costly navigational and security systems, specifically designed to detect ‘illegal’ aliens, will also ensure their rapid dispatch back to where they last came from (Bigo 2001, 2002; Maas and Truong 2011). Thus:

Borders have been strengthened with guards, watchtowers, concrete and fences. They have also been equipped with state-of-the-art technology, such as infrared scanning devices, motion detectors and video surveillance. Moreover, visa requirements have been stepped up, and the visas themselves have been modernized and are increasingly difficult to forge.

(Broeders 2007: 72)

To understand how surveillance works to disenfranchise failed asylum seekers (and other ‘illegals’) of their basic liberties, their housing, their right to earn a living and their freedom of movement, the complex asylum process in EU states needs to be briefly explored. In the UK at least, there are literally dozens of different categories of status a person can have when he or she finds him- or herself at some stages in the asylum process. Some people are not clear on what their exact position may be at some moment. Letters are awaited for years, and then come out of the blue, with officers carrying out a deportation, for example. Not only are asylum seekers sometimes confused about their own entitlements and rights, but officials and lawyers too can make mistakes because the rules and regulations are constantly changing, and are so difficult to read and understand.

Officials, unable to clear backlogs of old cases, even when they have years to do so, need help, and eventually this means some categories of people are given permanent rights to remain, even without refugee status, in acknowledgement of the time they have already spent in the country. Unlike full refugees, those given temporary leave to remain, for example on human rights grounds, may not be entitled to full support with housing, benefits or health care. In higher education too, full-time enrolment is supposed to be limited to those with long-term leave to remain (5 years or more) or full refugee status. Undocumented people include a lot of different categories also, including some who are entitled (but usually need to request) basic accommodation, some food and perhaps some medical treatment for children. The many types of status include the trajectories of those who may have entered as legal migrants and then over-stayed. In this paper, however, we will deal only with those who have sought sanctuary—in other words, with asylum seekers who have failed. Otherwise the picture may become too complex for analysis. It is interesting that even lawyers have trouble keeping up with the latest provisions for entitlement of all the sub-categories of migrants, legal and otherwise. Since 2007, the UK government has taken the decision that anyone practicing immigration or refugee law and advice must take officially accredited exams to be allowed to do this work.

What this implies is that those who are selected for screening prior to being removed from formal surveillance, or those allowed to drop into random surveillance through detection, are in quite a different relationship—a conditional relationship—when it comes to even the most basic entitlement of ‘identificatory existence’. The anonymised ‘illegals’ who are subject to the 3-Ds of deterrence-based migration policies have to put up with: (i) destitution, (ii) detention and (iii) deportation. Whole groups of people in the EU are now screened out of the most basic human rights and denied any welfare, right to
employment, social protection or even basic service provision. The problem is not lack of surveillance, but selective surveillance which confines the subject’s relationship with the state to its most punitive aspects only. An example is the new proposed UK ID system, which is intended to be able to:

…sort between those eligible for services or access, and others. Less-than-visible mechanisms will also operate, that skew the system against those already likely to be disadvantaged…this ability to engage in social sorting…may in the long term be even more insidious.

(Surveillance Studies Network 2006: 31)

The 3-Ds of destitution (imposed), detention (without limits) and deportation (including using ‘reasonable’ physical force) provide a strong evidential basis for saying that migration policies in the EU today are based on deterrence principles. In other words, the desire to prevent migrants from coming to Europe to seek asylum in the first place lie behind the ‘tough measures’ used to enforce, or try to enforce, departures back to the home country or somewhere nearby and to prevent arrivals in Europe in the first place (Migreurop, 2007; Fekete, 2005). Campaigning for human rights needs to be done in an informed way or it can even lead to heightened surveillance for repressive ends, and to growing exclusionary state action. After years of demands, protests and campaigning, a Generaal Pardon (Dutch for an amnesty) was announced in The Netherlands in early 2007. The news was favourably reported inside and outside the country. However, within a few months, a different picture emerged, and less than half of the 26,000 people expected to benefit from being regularised proved to be ineligible. Behind the façade of an amnesty, there was the detection and ‘flushing out’ of ineligible failed asylum seekers.

An example can illustrate this point. An Afghani man, supported by a small Hague-based NGO, PRIME (Participating Refugees in Multicultural Europe), had already lived for several years in The Netherlands when he applied for asylum in 2000. He waited until 2005 to learn that he was refused. In despair, and fearing deportation, the Afghani man tried to enter the UK, where he had discovered his brother had full refugee status. He was immediately detained and held for four months in a UK detention centre before being returned to The Netherlands. Generaal Pardon was announced in 2008, and our Afghani man applied for it. As a former asylum seeker, he seemed to qualify, but fell foul of the condition that one not be out of the country (The Netherlands) for more than 3 months in 2006. Because he had spent almost four months detained in the UK, he did not qualify for regularisation. This man spent more than thirteen years in The Netherlands and remains subject to the 3-Ds. He has been destitute and is still not allowed to work, and this has continued for many years.

Some people are made destitute even when they cannot leave the country. In the UK, a mass hunger strike by Zimbabweans in 2005 resulted in an end to their deportation. But Zimbabweans continued to be made deliberately destitute, unless they signed a ‘Section 4’ agreement to go home voluntarily. Thousands of people from Zimbabwe, and also from Sudan, have been put in this impossible position. They are:

…refused asylum, destitute, prohibited from working and unable to safely return home.

The policy framework is seriously flawed if it is not safe to return individuals to their countries of origin, and yet they are denied any legal status in the UK and the ability to support themselves through work.

(Still Human, Still Here 2010: 4)

On failing their appeals, single people or couples without children are generally made homeless, are supposed to remain also jobless, and are left to fend for themselves. They become ‘clients’ of Red Cross, Shelter, Doctors without Borders and other charity and relief organisations like churches and local refugee charities. Destitute people are expected to remain within the rules, and even sign on fortnightly at a police station or immigration office. They are mostly advised to leave the country voluntarily, and may be
detained with a view to deporting them. People who have failed their asylum claims and have children can remain in accommodation, and will be given some vouchers to buy food. However they are liable to be picked up early in the morning in a van and taken to a detention centre, like Jill and John, whose story follows to bring home the complex mix of monitoring and neglect that constitutes the non-surveillance—or purely coercive surveillance—of failed asylum seekers.

**Jill and John**

Jill mostly stays at home these days, on the outlying council estate (it costs 10 per cent what she gets per week to travel once into town and back). She rushes to get John to school on time. John gets a free pass, or he’d have to walk the 2 miles. Jill worries as they have been late three times already, the buses are not reliable. If John is late again, she gets a letter from the Headmistress. After 9 ‘lates’ the letter comes from the Ministry of Education and she can start to be fined. She wants to avoid this. It could be used against her.

As an asylum seeker with a child, Jill gets about one third less than the minimum that a UK resident would get on benefit. She used to read the newspapers in the library in town once a week, but all the lies about rich asylum seekers creaming off the UK depressed her. Her allowance was cut again recently, so chicken is replaced with beans another two days every week.

John is the cleverest boy in his class. Even after he came back from the detention centre, he worked hard, and they say he could go to university. Jill just takes one day at a time and thanks God for John’s good health, and hers. She does not know what she would do if she was sick. She’s not sure she’d get medical treatment.

Jill and John returned from detention, three weeks after the 6 security guards turned up at 5 a.m. to take them to the detention centre. A lawyer wrote a letter, residents signed a petition, the MP even intervened. John was very disturbed by being in detention. He heard shouting and cruelty and has had nightmares ever since. John is almost 12, and tall for his age. He has started to stutter, and Jill decides to ask the GP to get John some counselling, as his nightmares are causing him great anxiety even in the day.

The GP says he is sorry, he cannot refer John to a psychiatrist because their status is unclear. There would be no point starting psychiatric treatment or counselling, he says, if Jill and John are to be deported. After the doctor tells her this, Jill cries. This country is cruel. First they traumatise her son, then they threaten to deport them and on that basis deny them help.

Jill distrusts the government and anyone working with the government. Some of her white friends feel so sorry for her after she comes out of detention that sometimes they treat her as if she’s already been deported. This makes her angry. She is not a walking ghost. They mean well when they ask her if she’d like them to arrange for someone to meet her at the airport in case she’s deported back home. She does not trust them anymore.

Last week she met Suleiman from home who has come more recently, having come from Italy. He has been sent back and forth between Italy and the UK and does not speak English. Neither country will even listen to his asylum claim; Italy claims he transited through Libya and want to deport him there. The UK says he came through Italy and send him there. She listens to his fears and he says, believe me Jill, things are even worse in Italy; he does not want to be detained there for the third time.

Suleiman’s cousin almost died of hunger inside a Libyan detention centre some years ago, and Jill is concerned. But she cannot visit him anymore. She has no money, and feels too depressed to go and see him. Suleiman invited her and John to eat. But Jill sees he is hungry, living off vouchers, and she is
disturbed by his ankle tag. He has to be home by six, and if he tries to remove the tag, an alarm goes off at the police station. He thinks the tag is better than being in detention. Even so, Suleiman is worried since he needs medicine, and the doctor and hospital say he’s not entitled to it since he’s subject to deportation. He does not understand much, even when his friend can interpret.

Suleiman is in the ‘fast track’ asylum system, and his case will be decided on within a few weeks at most. What is worse, wonders Jill, this speed or the years of delays she and John have faced. She has no answer. She has signed on religiously at the police station for so many years, that the faces are familiar, but she does not talk to them beyond hello goodbye. She also always lets someone in the Asylum Support Group know she is going to sign on. Later they phone her home phone to check she’s got back safely and not been detained.

Jill cannot work, or earn any money, cannot study for any degree or full-time qualification. She used to help look after children, and her bus fare was at least paid on Saturdays. Now she stays home, does some studying. John’s father is a good man and remained at home, and sends a little money if he can now and then. She used to collect it from the Western Union but she thought the woman behind the counter looked nosy. She might report Jill for receiving money from overseas.

Her papers are stamped with ‘seeking asylum in the UK’ all over them, so whenever she goes to any Western Union office, she wonders if they are keeping information on her. She sent money to her brother until last year when he was killed. He was killed not by the war ravaging their country, but by a ‘common’ criminal. She questions what future there is.

Although Jill can’t get counselling or psychiatric help for John, her doctor regularly suggests she go on anti-depressants. He understood her stress, and she once tried the tablets for a few months. She came off them, realising she needed her wits about her to get through life. She wishes she and John could have a normal life, like other people who have got refugee status and moved on, mostly to London. Jill is a talented business woman, but never practices her trade. She likes children, and often looks after her friends’ children for nothing.

Now Jill mostly stays home. She is scared to do even voluntary work in case it jeopardises her chances of staying. She knows they have tightened up on reporting of any kind of work, and she no longer trusts people around her. Awaiting the final decision, she cannot risk losing her case because she is somehow accused of doing something wrong (like working for money).

Her friends feel they have tried everything, the MP, a mass petition from the community, letters to the press, newspaper articles. Nothing seems to get the authorities moving on her case. Instead, she was detained and her life is passing by. She cannot provide for her son, though if she was allowed to, she could make good money. She is tired of wondering when the letter will come, and what it will say.

Jill is a good Catholic, and she would never commit a crime. She is a good mother, who would like to see the best for her son. She is always there for others if they need help. She cheers up people who have no real problems. Yet she feels completely invisible. Sometimes she wonders if she exists, then John comes home. They wait for the letter that will either mean the end or that life can start again.

**Theorising the EU State of Exception**

What are the lessons of this story and of the paper’s arguments so far? The screening out of unwanted migrants starts long before Jill and John, or others, arrive in the EU. As the Surveillance Studies Network 2006 report notes, ‘In border surveillance practices…(t)he proliferation of “smart borders” and “electronic borders”’ have been part of a move towards: ‘border guards as “the last line of defence and not the first”’
Physical checkpoints at border crossings are informed by SIS and other databases, so that those arriving can be assessed in terms of ‘risk’, screened out, and filtered at the point of embarkation.

Within the state, systematic discrimination against subject peoples has been theorised quite extensively in the literature. The term ‘state of exception’ was first coined by Giorgio Agamben (2004a), and other formulations like ‘new helots’, the ‘new untouchables’ or simply ‘unwanted humanity’ or ‘naked life’ are also used to refer to similarly extreme forms of exclusion (Cohen 1987; Harris 1995; Bauman 2004; Agamben 2004a). Also, it does seem worth pointing out that:

Citizenship and surveillance belong together in the modern world [since]…records on each individual are needed to inform government departments about who has a right to what.

(Surveillance Studies Network 2006: 32)

These are precisely the kinds of records that governments do not have for irregular migrants and those who have failed their asylum claims most specifically. EU governments lack information about the status and needs of irregular migrants, and do not make it a priority to get such information so as to ensure that their entitlements are met. Harmonisation of the EU has if anything worsened this problem. A kind of collective logic of exclusion seems to operate (Fekete 2001; Webber 2000). To quote Helton:

Cooperation…is not necessarily synonymous with generosity. In Western Europe it [i.e. cooperation] has been directed mainly at enforcement measures designed to frustrate the arrival of asylum seekers and to encourage them either to remain in their home country or locate in a nearby country of asylum.

(Helton 2002: 272)

Competitive games of ever-tighter surveillance aimed at exclusions are played, with those fleeing war and political unrest being snared in the ‘nets’ set out to trap ‘other’ illegal (mostly economic) migrants (Harvey 2000; Collyer 2007). Transitory camps across ‘border zones’ are thus ‘made permanent by a blocking of their exits’ (Bauman 2007: 45). Through their own border control and policing systems, governments collect just that limited data they need to ensure that exclusion of ‘undesirables’ is still possible.

Categories of people considered ‘undeserving’ are simply being excluded from access to citizenship-related entitlements and rights, in ways that can also usefully be described as ‘colonial’ (Zureik 2001). The ‘deserving’ are screened in or given some entitlements, at least on a temporary basis ‘while they wait for a decision’. The rule of law should in principle ensure that overt and sustained, deliberate social exclusion should not be possible. However, people with irregular migration status have far fewer recognised human rights than other people, and for them the state of exception is almost a state of siege. As Agamben puts it: ‘a situation in which the emergency becomes the rule, and the very distinction between peace and war (and between foreign and civil war) becomes impossible’ (Agamben 2004a: 22). There is, in a sense a ‘war’ on illegals, just as there is a ‘war on terror’, and almost anything, it seems, goes (Hintjens 2007).

Not Knowing, or Not Wanting to Know

In the state of exception, as in a war, collection of data is very selective. Thus, in the UK today, there is very reliable and precise data on refusal rates and numbers, and on deportations, both of which are related to ‘public performance targets’ under the ‘Tipping the Balance’ guidelines for Border Agency and Home Office staff (Home Office 2007). Detention figures are also published regularly and announced in...
Parliament. But there are no reliable estimates on the numbers forced into destitution, or those who have no health care provision, or on how many failed asylum seekers ‘disappear’ from the radar (as it were) (Woodbridge, 2005). Apart from social researchers and maverick journalists, nobody seems interested in gathering data about deported or destitute migrants. Once they leave the UK, there is similarly no official information gathered (at least not openly) on what happens to former asylum seekers. Such people are often ‘undocumented’, and some are sent back to the UK, The Netherlands or France because they do not have proper papers. Being researched is not the same as official data being collected. The undocumented are thus without legal identity in more sense than one.

Apart from voluntary organisations like Medecins sans Frontieres, Medecins du Monde or the Red Cross, which do gather data about those who use their services, very little is known about the health of undocumented migrants or failed asylum seekers in the EU. There are simply no official figures available, and the little data available is very selective and localised. In the UK, Medical Justice, an NGO established after Zimbabweans went on hunger strike and were refused proper medical care, helped to publicise reports of abuse and medical neglect inside UK detention centres. Released by a law firm with the NCADC (National Coalition of Anti-Deportation Campaigns) in July 2008, the report was appropriately entitled Outsourcing Abuse (Birnberg Pierce & Partners, Medical Justice and NCADC 2008). Over 300 cases of serious abuse and assault were documented, including denial of medical treatment.

Following publication of the Outsourcing Abuse report, through civic pressure and reports in newspapers like The Independent and The Guardian, the UK government finally agreed to appoint former police ombudsman for Northern Ireland, Nuala O’Loan, to conduct her own independent investigation into the allegations. She found the UK Border Agency, and hence the government, had not investigated allegations that asylum seekers held in detention between 2002 and 2008 were being abused (O’Loan 2010). In the words of the report: ‘On occasion there quite simply had been a failure to deal properly with the complaints which had been made and this was acknowledged’ (O’Loan 2010: 4). The investigation was complicated by the poor state of record keeping, which meant that only 48 of the 300 cited cases could be investigated, since she found many of the files of detainees to have been destroyed by rats (O’Loan 2010). Even in detention, failed asylum seekers’ records are poorly maintained.

As Medical Justice reports, the UK government is also seeking to enforce its exclusion of ‘illegal immigrants’, which includes those who fall into the category of ‘failed asylum seekers’, from the NHS, which provides free healthcare to the resident population of the whole of the UK. The debate centred on how to enforce this policy. As reported:

The government says failed asylum seekers or others without permission to be in the UK should only get limited free care, including emergency aid. But doctors and NHS trusts said there was no definite way of ensuring illegal immigrants were not getting free care.

(Medical Justice 2007)

EU governments do not contribute much time or effort to seeking out the needs and entitlements of ‘illegal immigrants’, but they do spend a great deal of money on screening them out. A worrying example of surveillance that fails to screen in destitute and undocumented migrants is the failure to prevent re-emergence of resistant strains of TB. Sometimes sufferers can be deported in the middle of treatment, or disappear back onto the streets. Whilst what is needed, ‘(c)early detection with nonidentifying tuberculosis tracking systems’, as well as ‘screening and unspecialized clinics’ and ‘free treatment with adequate administrative measures’, these steps are not being taken in order to ‘…reduce the spread of resistant tuberculosis’ (CDC 2005). There are real risks to public health of such ‘screening out’. In a study by Leigh Anne Mathews on health rights of irregular migrants in France, French deputy, Gerard Bapt, is cited asking Parliament in December 2003:
Have you calculated that it will cost much more, since the first time the State sees the patient will be when they are in the Emergency Room, already in a bad state, and maybe already too late: hospitalization would be more serious and more costly. It would require longer care, too. And what about contagious infections? The resources that you propose to provide to reimburse hospitals for the cost of emergency care are insufficient. At the cost of a monstrous situation for public health, you introduce a reform that will not even save the money you expect.

(Bapt 2003, cited in Mathews 2009: 24)

As Mathews’ study shows, in France as elsewhere in the EU, the government does not seem to want to know about the scale of the problems it is creating. This is significant, since seeking out knowledge about the health needs of irregular migrants, for example—whether failed asylum seekers or not—might imply that data exists which shows a problem, in turn engendering a moral obligation on the government to act to solve the problem through policies and resources. As Mathews puts it: ‘…there is a lack of any official data on the life expectancies of the undocumented migrants who are denied health care’, making it ‘difficult to determine if life expectancy of this social group are lower than that of the French national population’ (Mathews 2009: 27-8). This lack of data is a real, practical problem for researchers, but for policy makers it is a lack of data that has been willed, and as it were, constructed over time.

The government’s response is to fail to identify needs, so that it has nothing to respond to. Across the EU, therefore, it does seem, in health as in other areas of public provision, that increasingly: ‘(i)gnorance, incredulity and indifference may be as significant hurdles ... as disagreement or hostility’ (Bhabha 2002: 158). When it comes to changing social policies, indifference may also not be as removed from hostility as this quotation implies, especially with groups like failed asylum seekers or ‘illegal’ (i.e. irregular) migrants. The difficulty for the authorities of countries like the UK, The Netherlands and France, countries from which we draw some examples in this research, is how to identify and screen out failed asylum seekers and other irregular migrants, without simultaneously being drawn into acknowledging any human rights entitlements on their part. Surveillance aimed at screening out is thus based on denial of any corresponding obligation to protect, and the lack of any notion of a social contract between some people and government. The problem is not new. The example of Romani is instructive in this respect. Even in countries where they are long settled, like The Netherlands, there is little desire to know more of their situation. A report on racism noted:

The lack of statistics about Roma and Sinti in the Netherlands raises the question of why the Dutch government does not do more to monitor them. What finally needs to be said is that accountability for a marginalised population group in a country cannot only be placed with the group itself, especially when the government has played (and still plays) a considerable role in that marginalisation.

(Rodrigues and Matelski 2004: 54)

More surveillance is thus needed, in some respects, more and also ‘different’ surveillance; with the purpose of reducing rather than increasing the resulting harm done to people. Those who have experienced torture, rape, genocide, and all sorts of traumas arising from extreme poverty, police brutality and social exclusion, need protection.

This climate of the denial of basic rights is reinforced by a style of media reporting that places ‘illegal immigrants’ alongside: ‘…criminal organizations, terrorists and drug traffickers [that] threaten the citadels of civilization’ (Nederveen Pieterse 2004: 110). All these groups are seen as suitable subjects for specifically punitive forms of surveillance, that have become both notably more militarised and tied in with detention and sanctions regimes (Bauman 2007: 128; Bhabha 2002: 161-2). These areas (detention
and deportation) are also run by private security companies with international reach (Bacon 2005). Agamben said of those in Guantanamo: ‘They are subject only to raw power; they have no legal existence’ (Agamben 2004b). This can also be true ‘both and outside detention centres.

The State of Exception in Action

Migration regimes in EU countries, including in the UK and The Netherlands, now operate according to a wider political logic of ‘deterrence’. Recently The Netherlands was taken to task for its policy of evicting families with children from detention centres and leaving them to live on the streets. In spite of this ruling: ‘Junior justice minister Nebahat Albayrak has also ordered local councils to close their emergency accommodation for failed asylum seeker families’ (Dutch News 2010), thus cutting off the statutory provision of accommodation by public bodies, and throwing such families on the mercy of the ‘informal’ sector.

This means that the purpose of mistreatment is to ‘make an example’ of failed asylum seekers, for example, and other migrants classified as undesirable or ‘illegal’. The screening-out process through detection and identification is both preventative—happening before people get anywhere near the EU—and post-factual, after they have been forced into destitution and chosen to disappear (Webber 2000). The implications of this ‘function stretch’ are not confined to failed asylum seekers alone, but may be significant for society as a whole:

…many surveillance practices have a direct effect on the nature of the society in which they are embedded, in terms of categorical discrimination (or empowerment), social exclusion, and other outcomes.

(Surveillance Studies Network 2006: 93)

Health policy is nominally good in The Netherlands, and yet here too surveillance is tending to work towards deterring undocumented people from seeking health surveillance (for example for TB) because of the fear of detention and deportation. In practice, undocumented people (especially adults) inhabit a grey zone where their knowledge of their legal health rights is filtered by intermediaries, including NGOs and public health practitioners. National and local health governance institutions play a critical role in screening in and also screening out health care for undocumented people. Although Public Health Departments (GGD) exist in each city in The Netherlands, their role is mainly surveillance in the interest of the general public. And it is doctors who decide on the precise meaning of ‘medically necessary care’ provided for under the law. Since 2006, all Dutch healthcare providers are expected to check patients’ identity papers, which quite obviously could deter undocumented people in general from being proactive in seeking medical attention. Meanwhile, moves to criminalise undocumented status in the country mean that problems of non-presenting sick people will increase. Not only does this undermine further the health status of undocumented people; it presents a public health risk too. The fear of identification, insensitivity and the conditions of destitution all constitute part of the complex web of screening out at health facilities, obstructing medically necessary medical care, especially for those not detained.

These problems have remained largely invisible to researchers, and current knowledge and provisions put in place by policy makers who design health governance systems are based on little systematic data. Studies of undocumented migrants’ health status in the Netherlands and UK have identified obstacles, but most such studies lean heavily on the expertise of professional healthcare providers (e.g. Grit et al. 2012; Kulu Glasgow et al. 2000). Fortunately, more studies are starting to emerge in which undocumented people are key informants (e.g. van den Muijsenbergh and Schoevers 2009; Schoevers 2011; Staring and Aarts 2010). The reasons why undocumented patients do not follow-up on initial healthcare consultations are still not clear. Van den Muijsenbergh and Schoevers (2009: 62) conclude that undocumented people’s limited access to healthcare in The Netherlands has mainly been due to obstacles on the side of the
undocumented themselves. Researchers thus talk of ‘self-exclusion’, ignoring the interface between punitive surveillance and ‘benign’ medical surveillance. Even where the law provides for health care, exclusion is more often the rule (Straßmayr et al. 2012). PICUM (2007: 65) points to another, more institutional, problem: the lack of knowledge of official policies among the healthcare providers and health administrators themselves, who may adopt a ‘victim blaming’ analysis of the screening out process.

Exclusion is sometimes justified in terms of unequal membership or loyalty to the citizenship obligations that bind others to the state. Those who do not work, first of all, even because they are not allowed to, do not get included in the most significant variant of the obligated citizens both in a UK and US context, the ‘tax payers’. Clearly if one is not permitted to work, then one cannot pay tax, and one is forced to be a ‘net tax consumer’. This is the result of policies imposed, for example, on those claiming asylum, rather than of preferences of those migrants themselves. Selective disconnection can result from exclusionary surveillance processes, so that in specific political contexts some people, citizens or not, are simply defined as ‘unwanted’. Surveillance for unwanted people, of whom failed asylum seekers are one group, results in:

…the creation of disconnections for those people and places deemed in some way unprofitable or risky. Crucially, then, the new surveillance technologies can thus forcibly slow down certain people’s lives, making them logistically more, not less, difficult.

(Surveillance Studies Network 2006: 43)

This important point is what we seek to capture in this paper; how the deliberate governmental use of surveillance and its absence can serve to limit—and to disable or prohibit—access of some people to resources and services vital to surviving at a basic decent minimum level of life. Failed asylum seekers find themselves caught between the necessity of being surveilled in order to survive, to work or to get health care, and their fear of detection through linked surveillance data bases. Both in the UK and The Netherlands, much important data about failed asylum seekers is simply not collected, and therefore not known. Most will not be aware of any danger in using a store card, but they cannot easily open bank accounts or get credit cards, they may or may not be able to get treatment from the GP, the hospital may refuse to treat them, and some cannot risk taking their children to school. If they have children, even if they are in school, a family in some cases can still be made destitute (in The Netherlands, but not in the UK, for example).

Those defined as expugnable, as ‘unwanted’ humanity are detected through spot-checks by police and transport authorities, raids on catering and construction businesses, deportation of victims of trafficking, especially from the 1990s onwards. The ‘security industry’ is a major player in the migration policy field (Bacon 2005; Bigo 2001, 2002; Surveillance Studies Network 2006: 15). Complex public-private partnerships are as relevant to deportation and detention services as they are for feeding the troops or running prisons for ‘regular’ criminals. What can be termed the ‘migration-military-industrial complex’ has at its core detention and deportation services to governments. More ‘intelligence’ oriented forms of warfare associated with the ‘war on terror’, like border and internal control systems of surveillance in the EU, are ‘intelligence-led’ and rich.

Plans to expand ‘reception centre’ capacity in the UK have been resisted by pro-asylum groups, but capacity has already grown. In The Netherlands, deals with private companies are on the agenda, as across the EU. The ‘detention estate’ is closely linked to the prison estate, and private security companies run both. Security companies also help to exaggerate the threats that exist to society, for example through negative reporting on protests inside detention centres, helping to reinforce fears and reinforcing a public demand for ‘criminals’ to be locked up (Bacon 2005; Bigo 2001, 2002).
Many people in the Netherlands were involved in trying to help undocumented people get regularised in 2008, including lawyers, activists, church people and teachers, among others. They observe how the climate worsened after announcement of the Generaal Pardon. There were police raids against many organisations that work with undocumented people, and people were picked up in raids and detained as irregulars even before the screening process could begin (Rian Ederveen, Stichting LOS—an organisation providing support for those working with the undocumented, The Hague, May 2007). As Lia Matheu, a refugee and migrant worker put it: ‘They are chasing people out: deportation has become explicitly linked to the Generaal Pardon ruling’ (Lia Matheu, migrant activist, The Hague, June 11 2007). As further evidence that this was the case, Matheu explained that the central government was looking to local governments to provide them with lists of illegal or undocumented migrants living in their area. Most local authorities refused to cooperate or hand over such lists, and the plan soon became unworkable, but the intention was there (Edestad 19.7.07; Matheu, Interview 11 June, 2007). This reinforced distrust for the authorities among many ‘illegal’ people living in The Netherlands and reduced the number who came forward to ask for regularisation.

Generally, undocumented migrants are not in a strong position in relation to legal defence of their human rights, not even children (Bhabha 2009; Black 2003). However, asylum seekers are protected by the Geneva Convention, and have rights that can be protected by lawyers, in spite of the ‘logic of exclusion’ that currently operates at EU-wide level (Fekete 2001; Webber 2000).

**Confronting the Military-Migration-Industrial Complex**

Ever since C. Wright Mills wrote of the ‘Military Industrial Complex’, it and similar terms have been used by scholars to try to understand the complex connections and collaborations, and also the conflicts reconciled between certain businesses and politicians. Security companies: ‘along with traditional security providers and the large military suppliers form part of what might broadly be called “the security industry”’ (Surveillance Studies Network 2006: 15). The military has of course been pivotal in developing most forms of surveillance technology, and ensuring their wider application commercially and through government policy.

The 3-D deterrence regime imposed on migrants thus ties in with the corporate profits of a whole sector. It seems: ‘[t]he development of surveillance technologies and processes result from a complex interaction between military and economic logics’ (Surveillance Studies Network 2006: 14). The ‘war on migrants’ can be related to wider ‘wars’, including the war on terror, since it operates outside of the ‘social contract’ or ‘rule of law’, where citizenship exchanges with the state are regulated by some norms. Instead, transactions between undocumented people and state and private corporate agencies are removed from oversight, away from the normal sphere of the policed, surveilled and ‘cared for’ citizen.

Post-arrival, the consequences of being screened out of entitlement and basic consideration of, for example, the right to travel, are even more tangible for some groups of people, like Romani from Eastern Europe arriving in UK, or like Muslims across Europe and the US. In either case: ‘…crude profiling of groups, especially Muslims…has produced inconvenience, hardship and even torture’ (Surveillance Studies Network 2006: 8).

This situation has come about partly because of policy decisions to set the bar for protection at the highest level permissible in law, and partly because of problems with a decision-making process that too often denies protection to individuals who are in need of it (Still Human, Still Here 2010: 4).

Screening out is not irrelevant to the abuses that are widely reported to take place in detention centres and in the process of forced deportation, for example, including even against children and disabled people, or those who are critically ill. In Australia, when the doctor who used to treat the sick inside one of the
former detention centres in the desert, Woomera, revealed his concerns to government about the serious psychological damage to children and other detainees, he was told that the government did not want conditions in Woomera and other similar camps to be too comfortable (Youtube 2007). His trauma on finding that deterrence was the basis for the camp’s existence led to his exposing the system as being based on the illegitimate use of high levels of physical and psychological force by the state and by private companies on the government’s behalf, constituting a form of torture. In the 2007 video footage on Youtube, this doctor, formerly in the detention centre, reads from his diary.

In the UK, Nuala O’Loan completed her report on abuse in the detention system in March 2010. The report found evidence of mistreatment, but declined to describe this as ‘systematic’ within the asylum detention centres she investigated. Nuala O’Loan previously reported on torture of prisoners in Northern Ireland. As The Observer, a UK Sunday paper, reporting on the findings of her report, observed, the system of quotas—where public performance targets revolve around removing more failed asylum seekers per year than are refused in that year—is heartless. The Observer editor noted: ‘Tony Blair's targets did not create the culture of callous scorn that seems to have spread through the institutions that police Britain's borders. Both are symptoms of a society that sees asylum seekers as likely frauds. That prejudice is woven routinely into media reports and policy pronouncements’ (Editorial in The Observer, 14.03.2010). Distrust is normalised for those considered ‘bogus' and described as such almost every day in the media. Like other undeserving ‘scroungers’ on the dole, for instance, asylum seekers are seen to ‘get what they deserve’ and ‘deserve whatever they get’.

**Coming Full Circle: Between Legality and Illegality**

People considered by the state to be a security risk are rarely aware of the nature of the threat they are said to pose. They may have the legal right to see data held about them, but ‘large numbers of people do not know their rights, fail to exercise them, and receive little help from others in doing so (Surveillance Studies Network 2006: 47). Making use of legal processes depends on types of knowledge and knowing what the problem is, ‘where to take the complaint and how to find redress’ (Surveillance Studies Network 2006: 6). This is not widely shared, accessible information, not even for pro-asylum advocates, many of whom are familiar with the basic principles of the law.

Legal opinion has often concurred that the destitution, detention and deportation of undocumented migrants violates some very fundamental human rights principles. For example, in the UK Limbuela case of 2003, Judge Bingham agreed there was no obligation on government to house the destitute, but added:

> ... I have no doubt that the threshold may be crossed if a late applicant with means and no alternative sources of support, unable to support himself is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life. (JCHR 2007: 31)

The same report noted: ‘We are concerned that there is currently no maximum time limit for which asylum seekers can be detained’ (JCHR 2007: 116) and goes on to observe in relation to deportation that:

> We understand that removal is a difficult, sometimes very difficult, process, particularly when asylum seekers do not…wish to return to their country of origin. We remain concerned by the many reports of excessive use of force and, in many cases, the lack of access to possessions. (JCHR 2007: 117)

On the other hand, those who advocate for undocumented people and failed asylum seekers now find themselves subject to ‘creeping criminalization’. In France it is illegal to assist undocumented migrants,
and across the EU solidarity-based pro-asylum advocacy is starting to be defined as undesirable or even illegal (Black 2003; Fekete 2009). Pro-asylum advocates who work with irregular migrants, supporting destitutes, trying to keep and get people out of detention, and assisting those about to be deported, are being seen as ‘facilitating’ illegal residence, as if they were gang bosses themselves! A shift towards surveillance of solidarity networks was justified by a 2002 EU Directive and Framework Decision entitled: ‘Strengthening the penal framework to prevent the facilitation of unauthorised entry, transit and residence’. As Liz Fekete comments, even outside of France, there are moves to control what is being defined as ‘unacceptable solidarity’ towards undocumented people:

…the threat of prosecution now hangs over those who take part in direct action in support of the refugee sanctuary movement or hunger strikers, those who provide housing for the undocumented or refuse to provide information to the authorities on their residence status, those who expose conditions within detention centres or simply defend the rights of detainees.

(Fekete 2009: 84)

If she is right in her assessment, then advocacy for rights of the undocumented is starting to be surveilled punitively, and viewed as bordering on the criminal, or is criminalised already. In The Netherlands in particular, grassroots pro-asylum advocacy seems to be the poor relation in the NGO world, and criminalisation is a threat that silences more radical advocacy work, sapping the energy of those committed to fighting the 3-Ds. In France, it is already illegal to work with undocumented migrants, to house them or help them with their most basic needs. Across the EU, partly as an unanticipated consequence of such severe forms of screening-out surveillance regime, there are forms of resistance to such policies, and of civil disobedience. Such ‘resistance movements’ are still poorly documented, but have emerged in several countries, including the UK and France in particular. Ordinary people, including refugees themselves, are working to house and protect undocumented migrants from the 3-Ds (Hintjens 2007; Engbersen 2001). Networks of support built up over decades are now needed more than ever, yet come under assault. There is more research to be done on how delegitimisation of pro-migrant and pro-asylum work is affecting organisations that work with the undocumented. When ‘clients’ cannot pay, when they are destitute, in detention or due to be deported, then fire-fighting interventions needs to be combined with fund-raising and book-keeping, in ways that will elude the capacity of many small, pro-migrant organisations in the EU. Longer-term strategic campaigning on legal and policy issues will continue, but the fire may not be put out often enough to prevent the fuelling of far-right racism, already institutionally embedded in the state of exception. It is already becoming difficult for advocacy networks and organisations to work against the 3-Ds in the UK and The Netherlands, and almost impossible in France.

**Conclusion**

This paper has tried to explain how the selective surveillance of failed asylum seekers deprives them of their basic economic, social, civil and political rights. Those responsible for operating surveillance practices systematically de-select failed asylum seekers from basic entitlements, ‘screening out’ through the ‘3-Ds’ of destitution, detention and deportation, for example. Governments across the EU seem to have given up the responsibility for this category of persons living within their borders. Surveillance systems across the EU work according to a logic of ‘detection’ and deterrence, first by screening out unwanted people prior to and on arrival, and then later by ensuring their destitution, detention and deportation. For national citizens and legal residents, the state appears involved in: ‘the management of fear’ by encouraging the media-driven view that undocumented people leech employment, income and cause crime and disease (Bauman 2004: 58). Since: ‘...the institution of asylum has become a key pressure point, complicating the filtering process that is designed to separate eligible from ineligible travelers’, the implications of this are that fluid boundaries can be redrawn to illegalise undesirable social groups of non-
nationals, almost at will (Bhabha 2002: 161). Some minority groups in Europe—like the Romanies—have been experiencing such rights violations for centuries. This ‘state of exception’ has thus existed since rights were first conceived; for women, for slaves, and now for the undocumented. What is novel is how social exclusion is serving to erode and shrivel welfare provisions for the ‘legal’ populations of Europe as well, by setting precedents of neglect and state indifference to suffering and need. EU states are devising more and more ingenious ways to prevent and detect ‘fraud’, resulting in practical problems of access to benefit for many legal residents in EU cities. The ‘ricochet’ effect that is engendered may risk making the state of exception the rule (Agamben 2005; Webber 2000; Fekete 2001, 2009; Bauman 2004). Arguably, within the EU the divide between citizens and non-citizens has never been as harshly enforced as it is today. Human rights principles suffer damage as the EU is torn between the twin liberal goals, incompatible as they are, of: ‘a borderless economy and a barricaded border’ (Andreas 2000: x). Internal surveillance must be redefined as a public good, which can only be ensured by government behaving responsibly, avoiding the temptation to screen out those defined as unwanted through means that violate everyone’s human rights, such as arbitrary detention, cruel deterrence-based treatment, and deportation to danger. Adequate social and economic rights, including health care, housing, education and employment are the necessary starting point for undocumented people recovering their basic human rights within the EU in the future.

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