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# The Jungle of rights: The legal consciousness of migrant children in transit in Calais

Annalisa Lendaro<sup>1</sup> | Bastien Roland<sup>2</sup> 

<sup>1</sup>Researcher at the CNRS CERTOP, Toulouse Jean Jaurès University, Toulouse, France

<sup>2</sup>Research Engineer at the CNRS CERTOP, Toulouse Jean Jaurès University, Toulouse, France

## Correspondence

Bastien Roland, Researcher at the CNRS CERTOP, Toulouse Jean Jaurès University, Toulouse, France.

Email: [bastien.roland@univ-tlse2.fr](mailto:bastien.roland@univ-tlse2.fr)

## Abstract

This article aims to explore the legal consciousness of migrant children in transit at the France–UK border. Based on secondary analysis of legal measures to help ensure child protection, and on ethnographic fieldwork in Calais, this paper shows that the legal consciousness of migrant children is shaped by several factors such as their experience of migration, their previous interactions with public institutions in Europe, their living conditions in transit areas, the police's harassment strategy, the influence of migrant peers and by their own migration plans. We will show that these factors have a deep impact on the legal consciousness of unaccompanied minors and consequently on both their (non-)claim of protection and (non-)use of legal tools. By mobilizing biographical sets of data, we will also show that their legal consciousness results from the combination of these contextual factors with their individual experiences and sociological characteristics (education, origin, ...). From a methodological point of view, this contribution provides evidence of the importance of adopting a child-centred approach in ethnographic research. This approach highlights discrepancies between policy aims and children's needs.

## KEYWORDS

Calais, France–UK border, legal consciousness, transit, unaccompanied minor migrants

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## INTRODUCTION

When you are in Calais, you understand a lot about France. (...) Outside, people say that France has human rights. But in Calais, you can see that this is not the case.

Nassim, 16, Sudanese, Calais (January 2021).

Calais is a small French coastal town, only a few kilometres from Dover (UK). At this France–UK border, owing to the absence of legal entry paths, almost all migrants, adults and minors, accompanied or not, arrive without legal status. Since most plan to reach Great Britain, or as a result of the unfriendly attitude of French local institutions, many do not apply either for asylum or to a child protection program and instead remain undocumented in the region, sometimes for years (the same happens in other transit spaces, see Papadopoulou, 2004).

Following the Touquet agreements (2003), this external EU border functions as a filter for human mobility, with the main—and somewhat paradoxical—purpose of preventing migrants from leaving France via the Channel and of deterring these same migrants from staying in Calais and on the coast in the hope of reaching England (Atoui, 2020; Palmas, 2021). The French and British governments pursue these two objectives through a policy of control and pushback, which requires a strong presence of police forces and significant technological investments (video surveillance cameras, infrared cameras, and drones). Local public authorities make life even harder for people in exile on the ground, for instance with decrees periodically prohibiting the distribution of food by organizations (Agier et al., 2019). Thousands of migrants arrive every year, transit through or stay in Calais despite this repressive arsenal and despite alarming living conditions that are regularly reported by many national and international organizations (Défenseur des Droits, 2018) and court decisions condemning the French State (see among others: European Court of Human Rights—Khan v. France n. 12 267/16, 28 February 2019).

Despite the court's reminders, the French authorities are more concerned with sanctioning the irregular presence of migrants at this border than with improving their living conditions: evictions from migrant camps are at the heart of this public strategy of deterrence. Indeed, even if French institutions have an obligation to protect children in danger, police and institutional practices obstruct this obligation towards unaccompanied minors (UMs). This is the case in particular in border areas where migrants in transit live and are blocked and/or dispersed, as at the France–UK border. There is thus a tension between compassion and repression (Fassin, 2005) within institutional practices, and our hypothesis is that the experience of this tension by unaccompanied foreign minors impacts their life trajectories as well as their legal consciousness. But how, and with what consequences for their access to rights and protection? In this contribution, we will try to answer these questions by analysing the phenomenon of transit migration and its consequences for migrant children's access to basic rights from their point of view, with a focus on their legal consciousness and relationship to the law and public institutions.

In this article, we will first present the political and legal context of the Franco-British border (1) as well as the theoretical framework (2) and the fieldwork carried out (3); in the fourth section, we will present the contextual factors that can influence the legal consciousness of migrant children in transit (4); in the fifth part, we will discuss the findings and show how a combination of contextual factors and biographical experiences influences and helps the legal consciousness evolve, producing concrete effects such as not having recourse to formal protection as a child in danger (5). The conclusion stresses the importance of taking into account, with a child-centred approach, the experiences of young people and their retrospective views on them, with the aim of devising strategies to improve their situation, before, during and after their transit through border areas such as Calais.

## THE LEGAL CONTEXT

In theory, France guarantees all the rights laid down in the Convention on the Rights of the Child to any minor present on its territory, regardless of nationality or administrative status.<sup>1</sup> Thus, a child should never be considered irregular in France (Slama, 2019) and cannot be deported or subject to Dublin regulations, except if it is in the child's best interest, such as for reunification procedures with family members or relatives.<sup>2</sup>

From a legal point of view, young people under the age of 18 are minors. If an adult does not accompany them, they have to be considered as being 'in danger': as such, they come under the responsibility of the local authority (the *conseil départemental*, and in particular the *Aide sociale à l'enfance*, ASE) who must protect them. In the Pas de Calais *département*, an institutional shelter managed by the ASE exists since 2012 to receive UMs living at the border. It is located in the town of Saint Omer, 45 km from Calais. A marauding team of mediators and interpreters from Saint Omer goes to the informal camps, known as 'Jungles' and attempts to meet minors and offer them shelter. However, the weakness of the system (only two employees to cover several camps over this vast urban and suburban area) means that many UMs are referred to the ASE shelter instead by voluntary organizations present on a daily basis in the Calais camps. In order to be sheltered, the person claiming to be a minor must be able to prove his/her minority.

To assess the individual situation of a person who asks for protection as a UM, a social worker has to be in charge of an interview.<sup>3</sup> Regarding the minority assessment, this procedure is often conducted under a regime of suspicion (Carayon et al., 2018) in which the young person is pressured by a stranger to lay himself or herself bare. The bulk of the interview revolves around several aspects ranging from family composition, life in the country of origin, schooling, reasons for leaving the country of origin and the journey so far, before an evaluator (Lendaro, 2020). This practice also requires the presentation of identity documents, the validity of which is often questioned by the assessing officer. In fact, assessors may disregard civil status documents if they believe that the civil status system in the young person's country of origin is corrupt or unreliable (even though these considerations are not part of their formal competence).<sup>4</sup> Similarly, they often share a very Western view of childhood. For example, a young person who claims to have worked to finance his or her journey may be suspected of being an adult (Carayon et al., 2018). As a result, individual stories must both reflect the image of the 'real victim' (Fassin & D'Halluin, 2005) and be credible in the eyes of institutions. Inconsistencies in the person's story or, conversely, too much coherence can appear as a sign of lying, thereby casting doubt on the age declared by the young person. Last but not least, this legal framework does not offer any possibilities for minors wishing to travel to the UK since Brexit came into force. Previously, Article 8 of Regulation 604/2013 of 26 June 2013, known as the Dublin III Regulation, opened up transfer perspectives for minors who had a family member in the UK and could demonstrate this.

As a result of this regime of suspicion and pressure, many minors do not ask for their recognition as unaccompanied minors. As such, the concrete possibility exists in Calais that rather than being provided with local authority support, young foreigners survive in a zone that is free of basic rights, waiting for an informal passage to the UK, without access to basic needs and services (e.g. health or education). Furthermore, even the children who succeed in being supported by local authorities have to face interactions with institutions through discretionary treatment, sometimes without the opportunity to express themselves in their own language and without the possibility to appeal against unfair treatment (Jones, 2001).

Our paper explores the reasons behind the phenomenon of transit migration and its consequences for migrant children's access to basic rights, from their point of view and with a focus on their legal consciousness and relationship to the law and public institutions.

## THEORETICAL FRAMEWORK

By combining a theoretical approach based on law and society scholarship (Calavita, 2016; Ewick & Silbey, 1998) with an ethnographic survey on UMs in transit in Calais, we highlight how different experiences of migration, and encounters with both institutions (police officers, social workers, and so on) and peers, influence the relationship these migrant children have with legal procedures and their agents: what do they think about formal child protection programs in Calais? Are they informed and aware of their rights as minors? Why do they not automatically request institutional protection in France? While it is clear to scholars and experts that, in theory, ‘protecting the innocent child’ is a ‘moral touchstone of society’ (Giner, 2007, p. 251), do UMs in transit in Calais feel that this protection is an accessible right? This paper aims to answer these questions by focusing on the UMs’ legal consciousness.

The term ‘legal consciousness’ refers to the relationships of ‘ordinary’ people to the law, which implies a conception of ‘law as social practice’ (Ewick & Silbey, 1992; Pelisse, 2005; Sarat, 1990). As Calavita noticed, defining law is a ‘tricky business’ (2016, p. 24). Even if, of course, when speaking of law, most people and scholars refer to ‘a set of written rules governing the conduct of society’s members, which are propagated, interpreted, and enforced by agents of the state or local authorities’ (ibid.), socio-legal scholars have focused on the culturally biased side of this narrow definition, fitting modern Western societies best. Indeed, Law and society scholarship insisted more on the mutual influence between social and legal forms than on the effectiveness of the Law in books to shape the action of people. According to this literature, and far from the myth of law as transcendent, natural, or divinely inspired, our approach defines law as power, that is ‘a set of resources whose control and mobilization can in many ways (...) generate and exacerbate conflicts rather than resolving or softening them’ (Turk, 1976). As such, Law ‘shapes the way we live whether we notice it or not’ (Calavita, p. 34). This everyday and socially embedded nature of law is at the core of our approach and guides our main research questions: what do UMs<sup>5</sup> in transit think about the institutions and the rules which are supposed to protect them in this border zone? How do they deal with them?

Patricia Ewick and Susan Silbey, pioneers of legal consciousness studies (LCS), have focused on the ways in which people experience the law, its functioning, its usefulness (or lack of) and how it is understood by ordinary citizens when they choose to invoke it, avoid doing so or attempt to resist it (Ewick & Silbey, ibid.). Thus, legal consciousness does not necessarily mean the same thing as ‘rights consciousness’, as the latter term refers to actors’ awareness of their rights when they mobilize for access to rights and services. Legal consciousness, which therefore refers to different ways of relating to legality in everyday life, can instead be rooted in a lack of knowledge of one’s own rights, and/or lead to the non-take-up (Galanter, 1974; Van Oorschot, 1998) and avoidance of legal procedures. We will see that in the case of many UMs in transit, their legal consciousness closely resembles what Ewick and Silbey (1998) have described as a relationship ‘against the law’. In this category, the authors group together those who feel ‘caught’ by law, presenting it as an arbitrary power against which they feel powerless. The categories and resources associated with the life of the law exceed their own capacities, either to keep the law at a distance from their daily lives or to play with its rules. We will see that contextual and biographical as well as material and symbolic factors influence the ways in which these young foreigners in transit relate to the law.

Migrant children, when not accompanied by an adult, should be considered particularly vulnerable (Maegusuku-Hewett et al., 2007). Social scientists have produced a rich scholarship on asylum-seeking minors, in particular, by focusing on generalized contradictions between public policies for the protection of children, and laws and measures aimed at immigration control (Giner, 2007). While the views of children and the right to express themselves have been addressed in the literature on accompanied migrant children, including asylum seekers with their families (Lidén & Rusten, 2007), less

attention has been given to unaccompanied children in transit. Their ‘transit condition’ needs to be clarified too. The term ‘transit migration’ was first used in the 1990s, thanks to references to it by United Nations (UN) agencies who promoted the link between transit and the illicit movements of people (Düvell, 2012, pp. 415–416). This ‘ready-made grammar’ associates transit migration with illegal activities (to go further, see Alvarez Velasco, 2019). Rather than adopting a simplistic approach that would consider transit migration mainly as the temporary movement of unauthorized persons from one country to another, we define it as a strategic response to the ‘neoliberal border regime’ (Bigo & Guild, 2005; De Genova, 2016) and its increasingly strict migration legislation (Molodikova et al., 2014).

## METHODOLOGY AND FIELDWORK

Our fieldwork was conducted in Calais between October 2019 and January 2021. Twenty-seven biographical interviews with migrant minors were conducted: 25 UMs and two accompanied minors (seven of them were living in ASE facilities at the time of the interview, while the others were surviving in the Jungles or in temporary volunteer accommodation; none had a legal status). In this sample, Sudanese minors are over-represented because they constitute the most represented nationality in Calais’ Jungle when interviews were held.

The interviews focused on these young people’s experiences in Europe. We decided to avoid questions about the reasons for departure or their experience of transit outside Europe so as to limit trauma (Fresia et al., 2006) and to concentrate on the encounters with European institutions. Biographical elements (age, education, family situation and language proficiency) were collected aside through informal discussions or legal support. Data collection was completed by 17 interviews with people working with foreign minors within public institutions or organizations (educators, prosecutors, judges, and minority assessors).

Our methodology follows a child-centred approach (Gornik, 2020). It suggests recognizing children as agents and not passive victims of their situation (James & Prout, 1990). Therefore, their point of view on their living conditions, the way they understand their past and present experiences, and the scenarios they perceive as desirable or not for the future, become an essential source of information in order to understand their legal consciousness and their relationship to the institutions in charge of their protection. To put it simply, an ethnography of the perceptions of these young people, in this case in legal matters, entails collecting their words: this implies to allow these young people to express themselves freely, without perceiving the expectations of an institution or the judgement of an adult. As such, we paid attention to the conditions that allow their speech not to be influenced by credibility issues: long-term immersion in an organization of volunteer legal advisors facilitated the trust between us and allowed us to measure the gap between these young people’s aspirations and the institutional possibilities offered to them. Our hypothesis is that the perceived or experienced mismatches between young people’s aspirations and the possibilities offered to them by institutions influence their legal consciousness and their (non-)use of legal tools.

## FACTORS THAT SHAPE THE LEGAL CONSCIOUSNESS OF MIGRANT CHILDREN IN TRANSIT

In this section, we will show how some contextual factors and biographical elements can progressively shape the legal consciousness of migrant children, understood as a way of invoking or not invoking, trusting or not trusting, resorting or not resorting to the law and its institutions (formally asking for protection, making a complaint and so on). Our hypothesis is that their relationship with legal procedures and protection programs is influenced by their previous interactions with administrations and

institutions in Europe by the police's harassment strategy (towards both adults and minors), but also by suggestions from migrant peers, and their own family situation and migration plans.

All these factors can play a role in enhancing migrants' aspirations and decisions—which might produce regularized movements and/or turn into illicit transit (Düvell, 2012; Hess, 2012).

## Living conditions and institutional encounters

As previously mentioned, Calais is a hostile transit zone for migrants, both adults and minors. Crossing options to England are extremely dangerous, whether people attempt to cross the Channel in fragile boats or rubber dinghy, or to hide in heavy trucks and other vehicles.<sup>6</sup> Because of those dangerous conditions and frequent controls and pushbacks to France, Calais becomes a long-term-transit zone for most of the young people living there. Thus, for many migrant children, arrival in Calais and the realization that many migrants live there for months or years in such harsh conditions is a shock. However, the illegal migrant camps, that is the Jungles, also represent fundamental sociability spaces for UMs, particularly because these places are also spaces where they can speak their own language, eat together and give each other advice. This sociability, despite the harshness of the living conditions in the camps, is often preferred even to the possibility of being sheltered in a home, with the possibility of sleeping and eating in the warmth and dryness:

If you have to choose between the jungle and Saint Omer?

The jungle! Let me show you what we did yesterday [shows me a video on his phone, where Sudanese are around the fire, ed.]

Ibrahim, 16, Sudanese.

Nevertheless, depending on the length of time spent in camps, the degree of personal resistance to multiple deprivations, and the level of exhaustion owing to repeated unsuccessful attempts to cross the Channel, young people who need respite may consider the ASE shelter for minors as an option:

Let me try please asylum, to see if they would accept me, because where we sleep, it's not a permanent place to sleep, and where I slept before [...] every time, I have this in mind, what do we do if the police comes now, where do we go?

Amir, 17, Mali.

The living conditions during the period of shelter are also likely to influence the minors' relationship with the law. The young person enters a facility with sometimes rigid collective rules. The freedom to organize one's own time in the Jungle is replaced by the strict timetables of the ASE hostel. In addition to the strong community sociability that life in the camps can provide, the move to an institutional shelter can result in significant isolation, reinforced by the language barrier with educators or young people who do not speak the same language. It is true that primary needs are covered (accommodation, warmth, food and hygiene). However, the specific constraints of being received as minors mean that it is impossible to cook for oneself and to have privacy (the sleeping area is a dormitory): as a result, hostels become 'both assistance structures and areas of control' (Kobelinsky, 2012, p. 160). In addition, minors face both boredom and meaningless waiting time. Indeed, until they have received the result of their assessment, they are not in school, which may give them the impression that they are not welcome, and that the country does not want to take them in.

- Did you do any activities with them (at the home)? Playing soccer for example?
- No! They don't have a ball. They don't even have a television.
- There is no television in St Omer?
- No. Where we were, there was none. No WiFi either. You can charge your phone and that's it.
- And what did you do all day?
- Well, nothing. There's nothing to do. You can sleep and that's it.

Djibril, 17, Sudanese.

In this respect, the living conditions can be a factor in the renunciation of the protection measures from which the young person could benefit. Facing the violence and boredom of the institution pushes many minors to seek opportunities in England, even if this does not fit in with legal and institutional possibilities. Crossing the border illegally can then be seen as a strategy of resistance to legal protection measures that are incompatible with the wish to access education, and the aim of independence and autonomy.

Furthermore, the ordeal of the minority assessment can be a traumatic experience for the child: it is an examination that can be intrusive and humiliating (Bricaud & Thibaudeau, 2017) and potentially lead to refusal. Moreover, the possibility of appeal is often discovered at the time of notification of refusal. This possibility is further hampered by the fact that procedures remain complex for the young person. In addition, the urgency of everyday life takes over. All the needs previously covered by the institution are no longer covered. In this context of survival, appealing the decision to refuse minority status becomes a luxury that the urgency of survival hardly allows (Bruneteaux & Lanzarini, 1998). As a result, the number of referrals to the juvenile judge is extremely low compared with the number of refusals.

The relationship to the law of young minors in transit is partly influenced by the attitude of the institution they have to deal with. During their transit through Europe, young migrants may find themselves confronted with institutions that either take care of them, limit their autonomy or repress them, by refusing to recognize them as UMs. Far from being antinomic, these aspects are two sides of the same coin, namely the social control of a population considered both dangerous and at risk (Fassin, 2005).

## Peer influence

Nevertheless, the violence of homelessness, the poor living conditions in institutional shelters or the institutions' refusal to recognize them as UMs, are not the only reasons to leave Calais. In fact, from the onset, many minors' goal is to reach England:

The first time they sent me to St Omer [...] they told me that if I wanted to go to England, it's possible if I have family there. In family reunification procedure. But I told them that I have no one there. But I still wanted to go. So I thought it wasn't worth it, I stayed for two three days and left.

Ayman, 16, Sudanese.

In the example above, the young person is temporarily sheltered. He is informed about for instance his rights to be protected and to be sent to school. However, even if there is no legal possibility to reach England, he does not give up this project and therefore accepts temporary shelter before trying his luck

again in the United Kingdom. Peers' suggestions and migration projects are often important factors that push UMs to leave France and its legal protection system.

First, unlike institutional support, which is sometimes difficult to access and whose reasons seem unclear to migrant children, migrant peers are an important source of information. The information is all the more credible and the interlocutor is trusted if she/he shares the situation of the migrant in transit, nationality, language and goals (most of the time, to go to England).

When we were around the fire, they explained to us. They shared their experiences. They said it was hard to get on the trucks, that people were dying. They told us to be careful. Yes. Yes, they showed us everything.

Youssef, 16, Sudanese.

Moreover, as this extract shows, the information provided is primarily practical, tangible, concrete and easily verifiable through experience. It revolves around survival in Calais and the possibilities of crossing. Peers thus lend credibility to other information and rumours about more complex topics for migrants such as the French legal framework:

And during these 3 weeks, did you see the people from St Omer (the maraud team Ed.) Because they come every day to Calais.

- Yes, they come, but I didn't know who they were. I saw that they came and took people, but I didn't know why.[...].

- You didn't ask why they were coming?

- No. I asked a friend of mine. I asked a friend who told me that they were taking people to settle in France. And that you can't get out afterwards. If you go with them, they won't let you go. So I didn't want to go and see them.

Mohammed, 16, Sudanese.

The language barrier and the level of abstraction required by legal texts make it difficult to understand all one's rights and duties as well as the gap between the theory of legal texts and their concrete application. As such, a peer is often considered more credible than a foreigner belonging to an organization, which the young person cannot identify as being the authorities or an independent body, and whose aims are unknown (e.g. disinterested aid or migration control). Peers are more likely to guide the migration project of UMs, at least at first glance:

I don't know...Everyone wanted to go to France. And when I came to France, everyone wanted to go to England, so I decided to go there too.

Haroun, 17, Sudanese.

Contrary to the image of a trip prepared in detail, many young people do not always have a precise plan. Their choice is based on other criteria such as avoiding loneliness, as the peer group provides security. It also allows the young person to delegate a decision with potentially serious consequences and which commits his or her future, without it resting on his or her shoulders alone. The responsibility for any failure is thus shared with the members of the group. Knowledge of one's rights and the use of the law are part of the skills that are acquired during the journey, from peers and through confrontation

with institutions, but which can also be passed on to the family or community. Hearing the experiences of a relative on a previous journey can be fundamental for the minor:

My uncle didn't give me any advice, but my uncle's son told me that he had gone from Saint Omer to the UK via family reunion.

Abderazak, 16, Afghan.

The young person adheres, without question, to institutional programs because he refers to the previous experience of his cousin who benefited from them. The latter has thus opened the way for him. His success serves as an example and assurance in the face of a procedure that is unclear to the young person.

## Police harassment

The wish to reach England is not the exclusive result of the absence of basic services in the camps, the limitation of autonomy in institutional shelters, the difficulty of homelessness and the influence of peers who want to cross the border.

This territory is also a zone of control and permanent harassment of migrants considered undesirable by the French state and local institutions, which accentuates the harsh living conditions at this border. Therefore, encounters between migrant children and the police can turn into traumas that generate at best incomprehension, at worst posttraumatic stress, and anger towards institutions and France in general.

-They (police officers, ed.) see four or five people walking, and they are in their cars and they approach us and gas us.

-Has this happened to you?

-Yes, twice. You're walking down the street, they stop the car next to you, they gas you and then they leave.

Ilyes, 14, Sudanese.

This indiscriminate violence, including against minors, is sometimes the direct cause of the abandonment of a procedure aimed at requesting a form of protection:

In fact, the worst thing that happened to me in France, and which made me not apply for asylum here, was one day, in a dougar [Sudanese term for traffic jams of trucks, which allow people to try to cross Ed.]. We got into a lorry, the police arrived, [...] they started gassing us inside [...] We couldn't breathe, but we resisted, and we didn't get out. We arrived at the French border post, and they took us out. They put us in a room, [...] And so I didn't want to go in, but the police hit me and locked me in the room with my fists tied. Then I asked them to open the door because of the smoke, I told them I couldn't take it anymore. And for a minute they sprayed me with their gas and hit me. That was the scene that really made me hate France.

Nassim, 16, Sudanese.

In addition to the violence suffered by adults and children as they attempt to smuggle themselves to England by lorry, train or other means of transport, encounters with the police are a constant feature of life in the camps. Indeed, the police's strategy of harassment in Calais consists, among other things, in evacuating all the people who have installed tents in an unoccupied area on average every 48 h. Police interventions are tough, often resulting in police arrests to identify the evicted people, but also in the deliberate damaging of tents and migrants' personal belongings.

-Sometimes they come at night. They shine flashlights on us to wake us up. At three in the morning. And they say to move the tents or they take them. That's it. So you take your tent and leave. No, they take it. Or break it.

-Did that happen to you?

-Yes, I'm like everyone else, it's happened to me even though I'm younger.

Farès, 16, Sudanese.

Finally, any public space in Calais can be a place for targeted checks on migrants, as the police carry out identity checks at any time, which can lead to the detention of people considered to be in an irregular situation, including minors:

They ask you for your papers, if you have nothing, they take you to the police station, you stay there for one or two days. That's what you call police custody in France. [...] Then they take you to a centre, and you are put back on the street... All this two, three, four, five times. So now, when I see a police car, I have the same reflexes as if it were war: I hide. But I didn't do anything. The only mistake I made was to be in this land without papers.

Karim, 17, Libyan.

Most of the minors in Calais define themselves as 'underage' or 'bambino' even in their mother tongue. The use of foreign words to define their minority raises questions regarding their perception of their minority before they arrive in Europe. However, if a lot of minors understand that they are minors, they rarely perceive that a different juridical frame applies to them (except for the matter of accommodation). Because they do not experience it, as the previous extract demonstrates. Without papers, a minor is always subject to the discretionary power of the agent he faces in order to determine his minority. It is hard for the migrant to determine the reasons behind the agent's choice. As a consequence, the law becomes difficult to understand and predict (Eule et al., 2018).

## DISILLUSION AND LEGAL CONSCIOUSNESS: DISCUSSIONS ON FINDINGS

We have seen that contextual factors (such as the harsh living conditions in the Jungles or the constraining accommodation in institutional facilities) and biographical experiences (e.g. violent police encounters, traumatic assessment of minority experiences) help the UM's legal consciousness evolve, producing concrete effects on the level of trust in public institutions and on the perception of being subjected to unfair treatments. Furthermore, legal consciousness also evolves based on how these factors intersect and resonate with individual sociological characteristics, such as family ties, and the endowment of social and financial capital.

Our fieldwork shows, for example, that young people who have been able to prepare their travel itinerary in advance and who have been able to count on the support of their families do not go through the ordeals of transit and life at the border in the same way, particularly because they do not tire as quickly. While some young people know that the possession of identity documents is crucial (particularly birth certificates or passports), and even though some of them have collected them in preparation for the journey ahead, others do not have them and have had to leave in a hurry or without anticipating the need to provide them afterwards, during controls or when applying for protection in Europe. Thus, some young people, even if they are travelling alone, are or have been supported by their families during their journey to obtain these documents and prepare for their expedition. It is also not uncommon for young people to have the documents sent to them during their journey once they understand the need for them.

Also, for some, and in our case most Afghan minors, family support translates into the possibility of using smugglers along the way. In fact, if the journey was no less dangerous, it was quicker. If they still have contact with their families, they can rely on them for money to move on.

These differences in social and financial capital also make it possible to use the opportunities offered by the law, by benefiting from the experience of an authority figure: a relative, as in the case of Abderazak, or a smuggler who can thus designate a home for the young person to rest in or an organization to help him to initiate proceedings. What is at stake here is the young person's ability to seize the opportunities and resources provided by the law. However, as we have seen, there is nothing automatic about these rights. They presuppose that the young person initiates the process and engages with the institutions. However, UMs who have recently arrived in Europe (from a few days to a few months) often do not speak the language of the country in which they find themselves and are confronted with numerous actors (police officers, magistrates, social workers, volunteers and activists) whose objectives they have difficulty identifying.

In this context, and in light of testimonies collected during the fieldwork, two legal consciousness' ideal types emerge. UMs may position themselves 'against the law', defying institutions (Silbey, 2005), and not considering the possibilities that the legal framework offers them—for instance by refusing to set up a family reunification file to cross the border legally. In the second case, they take decisions, often without knowing either the logic or the consequences, such as making a minority assessment. These young people then place themselves in a situation of pragmatic dependency characterized by a surrender of themselves to the institution (Dubois, 2010). Relying on authority figures, such as smugglers or family members, allows them to rely on their experience in order to seize opportunities offered by the legal framework. On the other hand, when young people do not have this experience, they are more likely to be suspicious of institutions, which they perceive as reducing their agency.

These two situations are neither mutually exclusive nor irreversible: the longer the transit period, the more experiences and encounters can reinforce distrust in French institutions, or lead to a pragmatic dependency of the UM on child protection actors (even though they are distrusted in other ways). For example, many young people in Calais have been in Europe for a long time and have encountered legal procedures when applying to regularize their situation in other European countries (e.g. Germany or Italy). Following the procedure's failure, they set off again and arrive in Calais, with a first experience and some legal notions that reduce the fear of formally requesting help as a UM. This is typically Amir's case: initially, following a failed procedure in Germany, he tries to move to the UK, as he grows tired of having to start the umpteenth procedures with new institutions he distrusts. However, in a second phase, having been made aware of the possibility of regularization in France, he asks to be officially taken in charge by the ASE as a UM.

Finally, it appears that a legal consciousness 'against the law' (Ewick & Silbey, *ibid.*) is likely to develop and replace an initial and naive positive vision of France and its opportunities. Beyond family

configurations and individual sociological characteristics (education, language skills) that may help to 'hold on' in very precarious living conditions, UMs often turn to institutions when they are out of breath.

Indeed, for all the young people in our sample, their arrival in Europe is their first time on European soil. They then discover the violence of the European migration regime, through the experience of fingerprinting, detention and sometimes physical violence. The discrepancy between the hopes of these young people upon arrival in Europe and the reality in Calais, and even before arriving in this border area, is enormous (Tazzioli, 2018). This experience leads to defiance in institutions in general, including paradoxically those whose purpose is precise to protect them as children at risk.

## CONCLUSION

The ethnographic study we conducted at the Franco-British border shows, if there was any need to do so, that it is not enough to be an unaccompanied child to be able to benefit from the care guaranteed by the legal texts. Being a UM is therefore not an absolute condition that automatically opens up rights, but rather a status that is acquired all too easily following ordeals that are often experienced as injustices by children. These ordeals faced during the assessment process of the young person's situation (the feeling of not being believed, waiting in uncertainty, lack of activity and lack of schooling), combined with the harshness of life in transit (e.g. life in camps, police violence, etc.), sometimes make the institutional protection process itself unintelligible. Furthermore, they contribute to the decision to refuse any official protection to which the young person may be entitled (non-take-up) in favour of attempting to cross to England, at all costs.

Data analysis shows, first, that children's (non-)use of legal opportunities to obtain basic services such as accommodation, health assistance and education is the result of a specific set of biographical experiences and contextual factors (Bumiller, 1987; Edlins & Larrison, 2020; Reynolds et al., 2006) which leaves them frustrated, frightened, disillusioned, sometimes angry. Second, even when minors in transit are accepted in shelter facilities, the young people admitted that they had never been asked about their wishes and future objectives. The institution, therefore, considered them to be passive subjects who were expected to be satisfied with the accommodation.

Therefore, the methodological choice of using the individual child's viewpoint as a way of interpreting what the world means to him/her is heuristic in highlighting the discrepancies between, on one side, public policy goals on paper, and on the other, the effective rights they can enjoy, which are far away from the wishes of these children in limbo.

These main pieces of evidence from fieldwork reveal the lack of awareness of public policies regarding child-specific needs and suffering. Indeed, such lack of awareness is partly the result of routine practices in the child protection system that fails to consider children's experiences (Lidén & Rusten, 2007).

Our study wishes to suggest some ways to improve this dramatic situation: first, European governments should increase the legal possibilities of mobility and long-term settlement for migrants, whether adults or minors, as the situation of adults directly impacts minors' perception of their possibilities of stabilization. A policy based on hospitality should replace the logic of repression of immigration that is deemed illegal.

This policy would also result in reducing the stakes of minority assessment since minority would no longer be the only route to regularization. This would mean that these young people would no longer be considered first as migrants but as minors to be protected by institutions. This is not just wishful thinking. It is a way of reconciling the spirit of the *International Convention on the Rights of the Child* with the practices of institutions responsible for protecting these young people in Europe.

These child measures should be conceived by including children in the definition of their needs and wishes so that they are more involved in their own development. In other words, institutions need to adopt a child-centred approach in order to avoid failure of protection measures. It seems obvious to us that it is impossible to design effective public policies without involving the beneficiaries, and unaccompanied minors in transit are no exception.

We are currently very far from such an approach in Calais. Yet it is necessary if we want to reduce the tragedies at the border, protect children, meet their needs and ensure that they develop positive legal consciousness.

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## CONFLICT OF INTEREST

No potential conflict of interest was reported by the authors

## DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available on request from the corresponding author. The data are not publicly available due to privacy or ethical restrictions.

## ORCID

Bastien Roland  <https://orcid.org/0000-0003-4163-8871>

## ENDNOTES

- <sup>1</sup> Article 2 of the Convention on the Rights of the Child and Article L112-3 French Social Action and Family Code (Code de l'action sociale et des familles).
- <sup>2</sup> Article 611-3 of the Code of Entry and Residence of Aliens and the Right to Asylum (CESEDA) and Article 8-4 of Regulation 604/2013 of 26 June 2013, the so-called 'Dublin III Regulation'.
- <sup>3</sup> Decree of 17 November 2016 on the modalities of the evaluation of minors temporarily or permanently deprived of the protection of their family. NOR: JUSF1628271A
- <sup>4</sup> Inter-ministerial Circular of 25 January 2016 on the Mobilization of State Services to the Departmental Councils Concerning Minors Temporarily or Permanently Deprived of Family Protection and Persons Presenting Themselves as Such. NOR: JUSF1602101C
- <sup>5</sup> According to this theoretical framework, we will focus on unaccompanied minors, rather than on accompanied minors, in this article. As previously mentioned, an accompanied minor is juridically dependent on the legal situation of his parents or legal representatives. Consequently, his relationship with the law and with the institutions is constantly mediated by the adult who takes care of him/her.
- <sup>6</sup> From 1999 to 2021, 336 people died at the Franco-British border, map of N. Lambert: <https://neocarto.hypotheses.org/3358>

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## AUTHOR BIOGRAPHIES

**Annalisa Lendaro** is permanent Research Fellow in Political Sociology at the CNRS (France). Her main interests deal with migration policies, their application in border territories and their effects on migrants, and especially on asylum seekers. By using ethnographic methods, her studies shed light on the mechanisms that transform the circumvention of the law in an ordinary practice. Annalisa is also the project coordinator of DisPow, financed by the National Agency for Research (ANR-2018/2022): the project studies the forms and the effects of the Discretionary Power of the State at three borders (the Calais region, the southern French-Italian Border and the Basque border between France and Spain).

**Bastien Roland** is a research engineer within the European project « Migrate ». Through the use of ethnographic methods, his research work focuses on unaccompanied foreign minors in transition in Calais, at the French-British border. Within the Dispow project, he is studying the impact of State practices on the life courses of unaccompanied minors present at this border. He speaks Arabic and is an activist in different pro-refugees associations like La Cabane Juridique (Legal Shelter), since December 2015. He will start a PhD in sociology of law in October 2022 at the university of Toulouse Jean Jaurès.

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