PART III – (De)Stabilisations

In this Part, I attend to the reflexivity of those enacting the asylum *dispositif* by tracing the meta-pragmatics of case-making. The notion of meta-pragmatics refers to the sensibilities and sense-making endeavours of officials in light of the complicated, burdensome, and at times contradictory governmental arrangements that impact the pragmatics of their work: their understanding, justifications, rationales, weightings, and critique of casework and its conditions (Boltanski 2010). I agree with Kelly's (2012) suggestion that it is crucial to understand why officials act the way they act:

> If we are to avoid oversimplifying denial as a product of crude political instrumentality, we must explore the epistemological conditions under which it is possible to doubt or deny the claims of others. The point here is not to argue that immigration decision-makers are cynical or confused. Rather it is to examine how otherwise compassionate and rational people can produce results that end up looking mean-spirited. (Kelly 2012, 755)

For this reason, I approach the widespread diagnostic of a "culture of mistrust", of "disbelief" or of "denial" (J. Anderson et al. 2014; Griffiths 2012a; Jubany 2011; 2017) from a somewhat different angle: by examining the convictions and rationalities that favour some approaches to case-making over others. I suggest that the convictions and rationalities are fundamental facets of stabilising the *dispositif*, while their fragmentation, contradictions and occasional overflows have the potential to destabilise and transform it.

Chapter 7 outlines key convictions I encountered of officials regarding 'knowing' truths and writing law. It suggests that occasional overflows of cases reveal the ambiguous epistemological renderings of both truth and law which should thus be considered as related to fragile "states of convic-

tion". Chapter 8 considers the rationalities officials raised in relation to their work. It suggests that the tensions between these rationalities, their uneven weighting and the modes of government they give rise to means that cases become assembled in fragmented "asylums of reason". Some of what I consider to be the central *aporias* of governing asylum through arrangements of stateness, administrations, and law are thus introduced and discussed in Part III. Juxtaposing the challenges of truth-telling and truth-writing of governing asylum in Chapter 7 (States of Conviction) with administrative rationalities and how they affect practices in the Chapter 8 (Asylums of Reason) allows me to attend to crucial facets of (de)stabilisation of the *dispositif*.

7. States of Conviction

In this chapter, I approach crucial questions about conviction in relation to case-making. In the welcome address of the basic training for new caseworkers, a senior official of the asylum office pointed out the centrality of this notion: "We apply the law, it's a judicial act. This is to say: it's not about finding out the truth, we cannot do this. It's about convincing us: 'you have not convinced me' – that's the crucial factor" (Fieldnotes, initial training for new caseworkers, autumn 2012). These statements aptly bring together what casework is about: the caseworkers enact the law, and applicants have to convince them about their persecution because they cannot know the truth. Another senior suggested: "Ultimately, you just have to be convinced of one or the other [that a story is true or not]. That's daily business" (Fieldnotes, basic training for new caseworkers, autumn 2012). Caseworkers thus have to arrive at what both in legal and scientific discourse has been called an 'intimate conviction'.[1]

However, to become convinced means for caseworkers in practice often to overcome a considerable indeterminacy inherent to the stories of flight and people's origin they are supposed to assemble or resolve (see also Cabot 2013) – which is, I suggest, a question of "truth-telling"[2] (Foucault 2014a;

1 The notion "intimate conviction" is derived from the French "*intime conviction*". It is a notion codified in the French penal judiciary system and considered to be the "foundation of the act of judgement" (Fayol-Noireterre 2005): it refers to a certitude established from the "innermost conscience" of the person judging and seems also common in asylum procedures in France (Greslier 2007) and Switzerland (Miaz 2017). It is sometimes circumscribed with "gut feeling" or "the fact of being convinced" (Greslier 2007). My analysis in this chapter indicates that the degree of how "intimate" caseworkers' convictions are in the end is unsure.

2 Foucault developed the notion of "truth-telling" [*dire-vrai*] in two of his later lectures "On The Government of the Living" (1979–1980) at the Collège de France (Foucault 2014a; 2014b) and "Wrong-Doing, Truth-Telling: the Function of Avowal in Justice" (1981-1982) at the Catholic

2014b; 2014c). But then there is again another indeterminacy to overcome: of how law relates to what I call "truth-writing". A senior official succinctly referred to the legal indeterminacy of many cases in the basic training I attended by stating: "This is one of the cases in which you can argue in both ways (fear well-founded or not): You will have innumerable such cases. Look what you can live with" (Fieldnotes, training for new caseworkers, autumn 2012).

But what does it take to 'live with' this indeterminacy? This is both a question of the ethics and pragmatics of case-making, which require assembling certain convictions. I argue that two different forms of convictions are to be nurtured in case-making. The first are convictions of caseworkers about how to 'know' and thus 'tell the truth' of a case; and second, convictions about truth-writing, about the scope and meaning of legal associations allowing to resolve a case. I moreover suggest that these convictions may be unevenly affected by overflowing cases of various sorts. The *dispositif* of asylum needs thus be considered as stabilised in provisional epistemologies[3] or "states of conviction".

7.1 Convictions of Truth-Telling

Various scholars have highlighted problematic facets of how credibility is approached and assessed in asylum adjudication (Affolter 2017; Bohmer and Shuman 2018; Dahlvik 2014; Good 2004; 2007; Miaz 2017; Noll 2005; Rousseau et al. 2002). Some, for instance, have questioned the use of reports produced by country experts as 'objective evidence' in British courts (Good 2004; 2007) and flawed assumptions about memory in light of traumatic experiences asylum seekers went through (Rousseau et al. 2002) or suggested that both embellishments or omissions in applicants' accounts "may [rather] be

University of Louvain (Foucault 2014c). According to the editors of the latter lectures, Foucault drew on this notion of truth-telling for "analysing the relation between truth games and games of power, where truth is seen as a weapon and discourse as an assembly of polemical and strategic facts" (Foucault 2014c, 3).

3 Epistemology is here used not in a philosophical, but in a pragmatic sense of people's ways of knowing, implying that epistemologies are performative and that "truths are practice-embedded" (Law 2015, [9]).

the result of cultural conventions of truth-telling" (Bohmer and Shuman 2018, 131) than of deceitful intentions.

I would like to amend such crucial contributions by suggesting that one has to be aware that the governing of asylum relies on a fundamental unknowability of 'what applicants really experienced in their home countries'. Credibility assessments have conventionally capitalised on, for instance, contradictions between statements in the (usually) two hearings, accounts being 'unfounded in critical points' or 'contradicting general experiences'. More recently, new techniques for assessing credibility have been derived from forensic psychology (see also section 6.4.4), which were also introduced in the training for new caseworkers I participated in during my fieldwork:

> In the meeting room "Prudence"[4] in the main building of the headquarters, I sit in a round of twelve new caseworkers who participate with me in the basic training. Today's topic, "credibility assessment and hearing technique", is taught by an experienced caseworker from one of the reception centres of the asylum office. After introducing us the to principles of dealing with the crucial question of credibility of applicants' assertions in hearings, she presents to us techniques to "assess the quality of assertions" derived from forensic psychology. She tells us that narratives can be assessed for the occurrence of "reality marks" – if a certain number of them can be found, this is an indication for the validity of applicants' assertions. A participant objected: "There's a massive problem with that: what if liars too know these 'reality marks'?" The caseworker teaching the module responded: "We had, for instance, for a while a lot of Mongolians, who told a long story, very detailed – they had been instructed by the human traffickers to do so. But in these stories various other elements were completely missing, they had no individual bearing at all, they did not express feelings and so on. That someone is as good that he considers all aspects is highly unlikely. If he is able to do so, he's so exceptionally gifted that he deserves asylum as well." – "But how can one know how many of those we really have?" – "We will never know the truth." After this excursus that led her to acknowledge the profound unknowability

4 All meeting rooms in the main building of the headquarters have the names of cardinal virtues.

> of who speaks the truth, she went back to the basics of assessing credibility. (Fieldnotes, basic training for new caseworkers, headquarters, autumn 2012)

This excerpt highlights the stakes that claimants have in re-cording of their lives – at least if they are "exceptionally gifted" in performing according to the expectations of credibility assessments. It also reveals the uncertain outcome of "truth games" (Foucault 2014c) and the "resource of the subject to resist power" (Sarasin, 2015, 5) even though participants of the asylum truth games cannot escape a certain "regime of truth".[5]

While the need to resolve cases – even in the face of such unknowability – requires caseworkers to take a more pragmatic stance, this is arguably significantly informed by their meta-pragmatic standpoint on the conditions and possibilities of truth-telling. Many caseworkers I met are aware of how delicate and decisive credibility assessments are for asylum cases, as this statement exemplifies: "This [credibility assessment] is extremely delicate [whispers], and so much depends on it" (Interview with caseworker, autumn 2013). For an analysis of how asylum is governed, this means to consider not only the pragmatics of authentication or credibility assessments (see Part II), but also the "enduring epistemological and 'technical' questions of truth and validity" (Ajana 2013a, 102).

7.1.1 The Alethurgy of Truth-Telling

> In courts of law, as in murder mysteries, looking for the local truth about an event usually involves both participants and spectators in theorizing about general truths, and even about whether truth can ever be found. (Valverde 2003, 63)

In his essay "The Precarious Truth of Asylum", Fassin (2013) emphasised the centrality of evaluating the truth in asylum procedures. He convincingly argued that various theories of truth (objective or subjective correspondence

5 The notion of the "regime of truth" is essential for grasping the *dispositif*. As Foucault (2004a, 39) highlighted in his lectures on governmentality and biopolitics, "the point of all these investigations concerning madness, disease, delinquency, sexuality, and what I am talking about now, is to show how the coupling of a set of practices and a regime of truth form an apparatus (*dispositif*) of knowledge-power that effectively marks out in reality that which does not exist and legitimately submits it to the division between true and false".

theories of truth, and a pragmatist notion of truth) could illuminate some of the facets of the complex – and precarious – relationship of asylum procedures to truth. The objective correspondence theory of truth locates truth in the (mis)match between applicants' account and 'facts', for instance, from COI (ibid., 54). The subjective correspondence theory of truth considers truth to manifest in the perceived coherence between an account and the person giving it (ibid., 56). The pragmatist theory of truth concedes that "truth is at the end of the enquiry" (James 1907 cited in Fassin 2013, 58). The 'truth' applicants 'tell' is thus fatefully entangled with the 'truth' of those who are supposed to 'test' and 'authorise' it (ibid.). But how can we make sense of their entanglement?

Resolving asylum cases, I suggest, involves techniques of truth-telling, what Foucault (2014a; 2014b) called "alethurgy". Alethurgy signifies "the set of possible verbal and non-verbal procedures by which one brings to light what is laid down as true as opposed to false, hidden, inexpressible, unforeseeable, or forgotten" (Foucault 2014b, 7). In short, it refers to the techniques mobilised for true and false to 'manifest'. Both processual events of encounters and authentications that lie at the heart of case-making draw upon such alethurgic techniques. Foucault (2014a; 2014b) developed this notion in one of his later lectures, "On the Government of the Living", by invoking the quest for truth in the story of king Oedipus.[6] He traced what it takes for truth to manifest and realised that the alethurgic procedure takes two halves to combine: a divine part in which the Delphi oracle and the seer Tereisias speak in prophetic manner that Oedipus had killed his father Laios; and another, human part, in which king Oedipus' and his mother Jokaste's memory contest the prophecy. The two parts need to be reconciled by the perspective of two witnesses. The first witness is a messenger who discloses to Oedipus that he was a foundling. The second is the slave who Oedipus had been entrusted with, when his parents – Laios and Jokaste – wanted to kill him. The alethury in the story of Oedipus thus involves gods, kings, and servants to 'tell the

6 According to Sarasin (2015, 5), Foucault develops this notion to provide an alternative reading to Freud's, which emphasised not Oedipus' fateful absence of knowledge, but the procedures and techniques mobilised by Oedipus for truth to manifest. He thus aimed at highlighting the "historicity of truth-games" and the "contingency of the association of truth and subject" (ibid.).

truth', but in the end, a residual of indeterminacy remains (Foucault 2014a, 46–53).

The argument here is that the asylum *dispositif* involves a particular alethurgy: Similarly to the seer who speaks in the name of god, those speaking in the name of the state cannot see the future, but dispose of the "conaturalness" of power to say things and to let them happen (Foucault 2014b, 36). They declare and order at the same time (ibid., 39). In contrast, asylum applicants are, like the servants in Oedipus' story, interrogated: first, to examine whether they are whom they pretend to be, to authenticate their identity; and second, about the story that led to their flight, what happened, what they saw and how they acted.[7] Applicants have to assert their claim in a mixture of oath and witness statements for 'truth to manifest' in their account. The applicants thus find themselves in complicated associations with truth. They are supposed to speak the truth as independent witnesses. Yet they also need to advocate for this truth in the setting of testimonial encounters (see subchapter 6.2). Compared to Oedipus, who threatened the servants with torture and death to make them speak the truth (Foucault 2014a, 60), officials of modern administration appear rather toothless in their arsenal. They can only ask the claimant to reveal their identity and to give a truthful account. Nevertheless, each hearing opening contains not only a reference to the 'duty' to say the truth, but also what sounds like a vague threat: "You have a duty to tell the truth and the duty to collaborate when the facts are gathered for the evaluation of your application. You bear the responsibility for your statements. If you give untrue information, this can have negative consequences for you" (Set phrase, protocol of main hearing, 2013/14).

In the alethurgy of the asylum *dispositif*, 'truth' also requires combining two different halves: the truth of applicants and the truth of caseworkers. Despite the fact that new caseworkers are told that truth should not be sought because what truly happened could not be known, the notion of truth still looms large in practice. But what 'procedures and techniques of truth-telling' are involved in processual events of encounters and authentications?

7 Compared to Fassin's (2013) approach to truth in the asylum procedure, this view encompasses both what he called "truth-telling" and "authentication". I prefer the notion of alethurgy because it highlights how these two facets of truth are intertwined.

7.1.2 Procedures and Techniques of Truth-Telling

Applicants are asked to 'tell the truth' and the assessment of persecution stories still revolves around the question whether something 'is true'. A caseworker, introducing me to how she prepares her main hearings, said, "Before hearings I ask myself: What do I have to know for assessing whether it's true?" (Fieldnotes, internal training session, headquarters, spring 2014). But where does the truth manifest according to asylum caseworkers? The short answer is: in a comparison of applicants' account with 'facts', in their performance, and in forms of expertise (see also subchapter 6.4). Importantly, theories or convictions about where the truth manifests change over time:

> When I started to work in the office I paid a lot of attention to the body language. If someone did not look into my eyes, it was clear: he was lying. Of course, this is rubbish! That rather means maybe stress. [Today it is clear that] there is no significant relationship between body language/features and the truth [of accounts]. (Interview with caseworker, autumn 2013)

Asylum caseworkers I met thought the truth manifests not in body language but in various other domains. Importantly, in encounters, truth is not just sought, but rather actively produced:

> Researcher: That's interesting what you said: that some just insist on feelings [*pochen auf Gefühle*] and the others want facts and that you have to find your position somewhere.
> Caseworker: Yes, what shall I tell you about this?
> Researcher: What does it mean to "insist on feelings"?
> Caseworker: Ok, this is then to ask such questions like "How did you feel in doing so?" and "How did you react to this?", etc., etc. Others say maybe rather: "Describe the situation to me", this suits me more. We also learnt this in the basic training – maybe you can remember this [I attended the training with her] – you have to envision it like a movie. And that helps me a lot.
> Researcher: Did Lena [the teacher of the credibility module] say this?
> Caseworker: Yes, exactly. And then, you know, there is a gap somewhere [in the account] and then [you request the person] "describe it again to me" and if then nothing comes in the gap, then at some point it [the account] gets

> destabilised [*schwankt*] … I do a good deal with descriptions. And then always insist on the details [laughs] that if they don't come, you can work with that. (Interview with caseworker, reception centre, autumn 2013)

The technique of 'insisting on details' raised by the caseworker is closely associated with procedures of truth-writing – in which truth becomes inscribed in terms of criteria-based content analysis (CBCA) or the framings of credibility from Article 7 of the Asylum Act (see subchapter 6.5). Particularly in the more 'active' production of truth-indicators in encounters, but also in what caseworkers consider being their 'manifestation' in accounts or other forms of 'evidence', they may be affected by emotions of empathy, pity, admiration, or anger about the applicant. As a caseworker told me after a hearing with an applicant who had been diagnosed with cancer, "You have to write in your study that I am influenced in the way I look at the case, because the applicant is ill. I ask less and probe less" (Fieldnotes, headquarters, spring 2014).

But how is truth considered to manifest otherwise? Certainly in exemplars (see section 4.2.4), but also by comparing applicants' accounts with 'matters of fact' – what Fassin (2013, 54) subsumed under the "objective correspondence theory of truth". Such matters of fact regarding a 'persecution constellation' or a place of origin can be derived from various forms of not case-specific authoritative knowledge such as COI reports or various forms of expertise. These forms of knowledge are considered to convey a truth that may expose the falsehood of applicants' accounts, as the latter posit something that is considered impossible or unlikely in the view of that knowledge.

> Researcher: Can you also commission, for instance, social anthropologists for in-depth reports about a constellation that someone put forward?
> Caseworker: For this we only have our country analysts.
> Researcher: And then you resort to them?
> Caseworker: Yes.
> Researcher: Ok, this is interesting, because I think in England this is different. There you also have social anthropologists commissioned to make external reports.[8]

8 I asked this because I had come across Good's (2007; 2004) work on the role of social anthropologists and their expertise in asylum courts in the UK.

> Caseworker: Yes, and in Norway you have the Landinfo I think, and in England, there is something like that and even in some of the Benelux states. They have whole authorities that are independent from the procedure. And from these you can commission reports that are partially, frankly, used against the applicants. But to take Landinfo; (…) you see 99 per cent of all Nigerians come without any papers. And they say "I never had any passport and ID". And, err, there I found of these Norwegian, probably social anthropologists, who made some scientific country of origin report, for Landinfo, and they said: "does not exist in Nigeria, everyone has a passport or an ID".
> Researcher: Can you say this in such a generalised manner? I find this quite a tricky issue…
> Caseworker: Well, they said maybe not the nomadic population in the North or the destitute farmers in the countryside, but otherwise… governmental everyday life is clearly structured in a way that you can hardly survive a year without being registered somewhere and having papers. And those who come to Europe are rather from this environment. (…). And therefore, this appeared obvious to me, it almost disillusioned me a bit [laughs]. I got the feeling that probably I had been a bit too credulous in the past because I often thought, "this is often well possible that they don't have any papers". And they just found, "it is almost impossible".
> (Interview with caseworker, autumn 2013)

During our encounter, I remained somewhat sceptical about the generalisation, not only because I do not assume social anthropologists to have generated knowledge that lends itself to such generalisations. Neither did my scepticism arise from my reservations about anthropologists' involvement in reports that suggest such conclusions. I mainly was sceptical about how, according to the caseworker, a generalised statement – everybody needs to have papers in Nigeria – serves to denounce a Nigerian's individual experience regarding papers. I thus probed the caseworker a bit more on this:

> Researcher: What remains a problem, I think, is the connection of individual stories of flight with these rather general country assessments.
> Caseworker: Yes exactly, but for example, I once had an Afghan, of the Hazara ethnicity, who said the Taliban had tried to forcibly recruit him. And then, (…) [in] the UK … a country information institute … wrote a relatively long paper about forced recruitment by the Taliban in Afghanistan. And they said:

there's until now no single case in which a Hazara was forcibly recruited – for the simple reason that they are Shiites, and the Taliban are Sunnites and the inflow is high enough that they would not recruit sort of confessional adversaries to join them.
Researcher: But are the Taliban so uniform or might they not still be doing this in a certain regional or local context?
Caseworker: That's possible, yes.
Researcher: And then the question is: how can you exclude the possibility in your individual case that it was still possible on the basis of your information?
Caseworker: Sure, that's right.
Researcher: And then it again comes down to a question of probability, right?
Caseworker: That's true, but can we exclude that really, can we say with certainty that all humans are mortal? No, because not all of them have died yet [I laugh]. This is inductively deduced, I am sorry, but this is a purely inductive conclusion.
(Interview with caseworker, autumn 2013)

The caseworker, on the one hand, confirmed my objection that a report about the general recruitment practices and rationalities of the Taliban cannot exclude the possibility that the Hazara claimant told the truth: that he could have been forcibly recruited (against all odds). On the other hand, the caseworker refused my objection, as inductive conclusions can never be certain – there is always the possibility of a single case proving the conclusion wrong. He thereby evaded the thorny issue I had raised: that general assessments become a truth that overrides the applicants' truths about what they experienced. The caseworker turned to the question of responsibility related to this mode of truth-telling:

Caseworker: [The judge of the appeal court in a training session said] no matter how tough it sounds, it is really possible that someone is not persecuted 'on the balance of probabilities', returns home and walks straight into it [*ins Messer laufen*]. You cannot use that against the decision-maker or the judge.
Researcher: No, surely not. But the problem is still that the procedure seems somehow to be set out to produce certainties from probabilities for individual people.
Caseworker: But with the example that humans are mortal you had to say that no single case exists in which you can exclude with a hundred per cent

> probability that he is not still persecuted for some reason. And then you don't have to make a procedure anymore.
> (Interview with caseworker, autumn 2013)

In essence, the discussion about the difficulty associating the truth of individual experience with the truth derived from general report was: they cannot be fully reconciled, and, in case of being conflicted, the individual truth is overruled for the sake of the procedure. By consequence, the procedure rests on the premise that if truth cannot be directly read off applicants' accounts or authenticated pieces of evidence, it is fabricated as probability, likelihood and plausibility from various sources of authoritative generic knowledge about 'how things are in a place'.

The truth may also 'manifest' in case-specific expert reports such as medical examinations submitted by applicants or their legal representative (see Fassin and d'Halluin 2005). Caseworkers 'fear' the truth these medical examinations' declare since they (often) limit the scope of caseworkers' truth-writing (see subchapter 7.2):

> Caseworker: And then there are, for instance, medical reports. These are also experts that wield so much power. If a, well, a Dr med Psychiatrist says, he [the claimant] has a PTSD [posttraumatic stress disorder], then he has a PTSD, you cannot do anything about it.
> Researcher: You cannot question it?
> Caseworker: Even if you think that guy twitted us all and he is perfectly fine, I haven't seen any sign of a posttraumatic stress disorder. I cannot challenge it, I am not a medic. And it's correct like this. We both know how, especially in psychiatry, how extremely delicate diagnoses may be. But then I think, it's still fine. If he says so, it's like this. Then the only thing I can still do is: look whether that is curable in the country of origin. I cannot question the diagnosis.
> (Interview with caseworker, autumn 2013)

As the caseworker emphasised, such medical diagnoses leave no room for doubt. They come with their own authoritative associations that derive from the (scientific) expertise of those who wrote them. In general, 'power-wielding' experts of different sorts are crucial to the alethurgic procedure of asylum: they can be summoned to testify (see also Good 2007). However, doctors are a rare type of expert that can be summoned by the applicants themselves.

The knowledge of claimants about their purported place of origin is another crucial spot where caseworkers consider truth to manifest. Resonating with Valverde's (2003) book entitled *Law's Dream of a Common Knowledge* is the presumption amongst caseworkers that everyone needs to have a minimal amount of knowledge about certain things. This assumed universal common knowledge, or "knowledge we all ought to have" (Valverde 2003, 223), explains the kind of truth-telling sustaining, for instance, country of origin questions (section 6.4.1). An interview with a caseworker suggests still an alternative technique for truth-telling that avoids reference to some generic 'objective truth' altogether:

> Caseworker: For our language questions, it's a bit difficult sometimes: there is little news for certain countries, right? Well, I mean, I can ask for Sudan: "what does the flag look like?", which I can see on Wikipedia. But every Nigerian can look on Wikipedia too [and see] what the Sudanese flag looks like. Often it is more an appraising of how the answers come. Sometimes we pose really dumb questions like "tell me five neighbouring villages", right. And sure enough there are applicants who tell you "Oh, I don't know any" [smiles]. And then you indeed have to say, "how come you don't know your neighbouring villages?" And you maybe get an answer like "well, I always was the whole day the inside", and "I never went outside the village". Then it does not so much matter whether the answer is correct or not, it matters more how it is conveyed. When someone comes and just presents me, easily, five villages, and they, for all I care, lie thirty thousand kilometres away, yet it is conveyed in a convincing way, then I believe him. Thus, it is more like a test question: how is it conveyed? Except you are really lucky and find the village that he indicated on Google Maps and are also able to figure out the neighbouring villages, but otherwise, often it is like: how is it conveyed, how convincing. Or like, distance questions: "tell me how long does it take to the next city". And there are really some who tell you "I don't know" and then you say…
> Researcher: But still, the question remains: what do they have to know? … And the difficult thing about our perspective is that we assume that certain things must be known.
> Caseworker: Exactly! Exactly. And then it is about… I always try to consider: what did I know before I went to school? Like, what was I able to do? What could I have answered with eight years? Well, I don't want to insinuate that …

> But just because I assume, ok, maybe they really have no education. Or, what are things that you just come up in everyday life, right?
> Researcher: If they are an issue…
> Caseworker: Exactly, if they are an issue. And therefore, politics is already difficult, right. I find you can omit that. (…). What you somehow have to know is: you have to know the phone prefix of the country, as you have to call your relatives. I mean, no one can tell me they never called their family at home. Except someone says he has no family anymore. But you just have to know this, you really have to know this. This has nothing to do with education, since you just need this. And again, like, the neighbouring villages you have to know. If someone says he was a farmer there, he needs to know what is to be planted when. There it's again difficult to say whether it's true or not. But you need to know how much you get for a cow, if you are a herdsman. There is like, what is the price for an average cow? And then I don't care if he tells me the right price, but that he tells me like "if the cow is sick then you still get like so much". You know, if any answer comes where I feel, oh, well I can comprehend it, right? And the other thing is definitely a problem and we have often discussed this [amongst caseworkers]. If questions are asked like "what's the name of the national anthem of Gambia?" – Can you really expect a Gambian to know his national anthem? I don't know, right? That's quite difficult… Where I tell the people sometimes, from the case of Ghana [where she did ethnographic fieldwork]: "hey, for a Ghanaian, I wouldn't expect him to know this." (…). So, I always try to think what I feel people in Ghana would be able to know. But then I have again the problem that almost all people I was together with had higher education. You cannot [generalise] from them…
> Researcher: You have a certain bias…
> Caseworker: Sure, and I am aware of this. … But still I find there is everyday knowledge you can expect, right? But it is difficult to tell, which one. That's really difficult.
> (Interview with caseworker, autumn 2013)

In her reflections, the caseworker acknowledges the difficulty of finding a common knowledge one can expect all applicants to know. Yet, she – as most caseworkers I talked to – insists that such a 'common knowledge' exists. Valverde (2003, 21) linked this insistence on a 'common knowledge' in legal procedures to an "epistemology of the 'duty to know'". However, caseworkers cannot only infer a 'duty to know', but they may equally discover the 'truth' in

the performance of the applicant itself – as the caseworker above as well as Fassin's (2013, 56) "subjective correspondence theory of truth" suggest.

Both examples – of relating accounts to 'objective' or their performance to 'subjective' truths – moreover reveal the crucial role of the need to resolve cases despite a remaining indeterminacy in truth-telling procedures (Foucault 2014a, 53). Importantly, the asylum *dispositif's* truth-telling is not about unravelling a sort of 'reality on the ground'. Truth-telling rather refers to the nurturing of a conviction – through the procedures and techniques mentioned above – that is sufficiently strong to know how to resolve the case (in truth-writing, see subchapter 7.2) and thus enact the *dispositif*. This view explains why the practices of caseworkers related to truth-telling appear at times purely tactical and improvised (see also Jeffrey 2013, 35). In a discussion with a caseworker and an interpreter after a hearing in the reception centre, this came quite markedly to the fore:

> After the hearing, the interpreter tells the caseworker that about 160 million people are living in Nigeria. About one million of them have an ID card, the rest do not. The caseworker [who in the hearing pretended not to believe the claimant that he does not have an ID] replies that this is clear. But the thing with the identity papers is something political. One is looking for ways to be able to simply reject people. Europe is sealing off itself. It is resonating in the subtext that one does not want economic refugees. "Many of the questions are, I do not say sneaky, but… One asks them to be able to cover these points." – The interpreter insists on his point: "Many of the caseworkers are maybe unaware of the fact that you will be never controlled in your life in Nigeria, at the most maybe your driving licence once. But who you are, nobody is going to ask you this in Nigeria. (Fieldnotes, reception centre, spring 2013)

The question about the prevalence of identity papers in Nigeria is in this excerpt approached from to different alethurgic perspectives. The caseworker is not interested in the truth about IDs in Nigeria, but in the truth of the asylum procedure: He suggests that it is in fact about 'simply rejecting people' for which the insistence on Nigerians submitting their ID is instrumental. Hence, the alethurgy of the asylum *dispositif* appears limited by the pragmatist rationality of the need to resolve. This concurs with what Fassin (2013, 58) referred to as third, pragmatist alternative: "truth is at the end of the enquiry". The interpreter, however, insists on clarifying that the case-

worker's blanket assertion according to which everyone needs to have an ID in Nigeria does not bear comparison with (what he perceives as) the 'reality on the ground'. He thus calls for a more profound alethurgy that allows for uncovering and acknowledging 'how things really are'. But contrasting alethurgic procedures may yield *different* truths 'at the end of enquiries'. Notably, the 'truth' about the prevalence of IDs in Nigeria has been 'told' in two contradictory ways: there is the truth of Landinfo cited further above ("almost everyone has an ID") and that of the interpreter ("almost no one has an ID"). Hence, the pragmatics of case-making means that the asylum *dispositif* assembles multiple, "local epistemologies" (Valverde 2003, 15) or 'states of conviction'. Such 'states of conviction' mean not only that 'truth' about applicants' lives and origins are considered to manifest in contrasting and at times contradictory ways, but also 'the reality' rendered in 'facts' or 'expertise'.

Many caseworkers seem to have developed relatively strong convictions about the 'right' inductive conclusions to draw in the case constellations they already know well. This is not all too surprising: While at the beginning all case stories appear unique and personal, their reappearance makes them lose any personal touch: and if one was deceived about a story before, one tends to have doubts about any story that bears resemblance to it. Ultimately, one may become a convict of one's own heuristic convictions[9] (see also Tversky and Kahneman 1974, 1124). Another notion of doubt could play a crucial role in this respect, I suggest. In my view, to have doubts about claimants' accounts is not problematic per se, but it becomes so if those 'telling the truth' in a case lose any doubt about their own capacity of truth-telling. In an interview, a caseworker acknowledged his uncertainty and doubt, which he criticised others of having lost: "But from time to time, I have the feeling that I am totally floundering, and I don't see through at all. But I tell myself, all the others are floundering too, but they do not realise anymore that they are floundering" (Interview with caseworker, autumn 2013).

Caseworkers seem to face difficulty in balancing between the escape from the often-frightening impossibility to know the consequences of one's decision* and the preservation of a good portion of self-reflexive doubt.

9 This can also be related to what Granhag, Strömwall, and Hartwig (2005, 47) called "'wicked' learning structures" in asylum procedures for their lack of "feedback on veracity assessments".

What other scholars call a "culture of disbelief" or "mistrust" (J. Anderson et al. 2014; Griffiths 2012a; Jubany 2011; 2017) seems thus to be an effect of a lost balance of doubt: a balance that contrasts the doubt about applicants' truthfulness with caseworker's capability to doubt their own judgement. Currently, it appears all too easy to assemble/accumulate doubt of the first kind while obliterating the second kind of doubt. Restoring this balance means to replace "the attitude of suspicion toward the applicants with the benefit of the doubt" (Kobelinsky 2015b, 87) which involves suspending some of caseworkers' preassembled convictions. They need to be able to sleep well at night – but maybe not too well either. Restoring a sense of the human scope in everyday proceedings appears as an apt remedy against the proliferation of "bureaucratic indifference" (Herzfeld 1992) in the asylum administration. The account of truth-telling I have provided in this subchapter is thus not only about the convictions of how truth manifests, but equally about the *scope* and *locus* of doubt.

7.2 Convictions of Truth-Writing

In this subchapter, I am concerned with the epistemological status of law and legal associations in the view of those involved in enacting the *dispositif*. Truth-writing in the asylum decision* both enacts the legal order through the citational practices (see subchapter 6.5) and a certain truth about applicants and their lives. While I have offered a reading about the convictions relating to the 'regime of truth' of the asylum *dispositif*, I now turn to convictions about the law and its crucial 'regime of practices'. While an analysis of what law is and does in the eyes of people (see Valverde 2003) could fill a volume on its own, I limit myself here to two facets of law's epistemology: "juris-diction" (see Richland 2013, 212–14) and inscription. The first concerns the question of the scope of law in pragmatic terms – as literally 'telling the law', and thus of enacting the asylum *dispositif*. The second touches upon the question of the grasp of law – of the translation of lives into law – as a technology and rationality of inscription. To address the first question, I, on the one hand, foreground some of the convictions that caseworkers have about the legal landscape they enact – including its troubled relationship with justice (7.2.1). On the other hand, I provide a reading of the convictions of truth-writing raised in a concrete case I became involved in (7.2.2). For the second question,

I give a reading of an event to establish a new practice* in which the grasp of law is debated in light of an exemplary case. It reveals that for legal associations to become able to grasp and thus re-cord lives, their meaning needs to be translated into, and assembled with, the 'non-legal' (7.2.3).

7.2.1 The Legal Scope – A Certain Justice?

> A convict is not a little bit guilty, a couple are not partially divorced, a forced migrant is not half a refugee. Legal processes come down on one side or the other, and have the institutional resources to make this stick. It matters little whether the general public, or even the lawyers and judges involved, are entirely convinced, or have had their doubts eradicated, reasonable or otherwise. What matters is that a decision has been reached. It is for this reason that the law is a particularly powerful technique for the management of doubt. (Kelly 2015, 188)

The law codifies, stipulates, purports and thereby provides a frame to act upon a certain sphere of relationships: legal relationships; this appears to be widespread view of law in the asylum office. In the case of asylum, law concerns relationships between the state and applicants – the sphere of *administrative* law. Applicants are noncitizens who invoke the refugee convention, nationally codified since 1981 in *asylum* law. Questions relating to the enforcement of expulsions and temporary admission emanate from *foreigner* law. These laws are written – and continuously re-written (see section 4.1.2) – by the legislator, the Swiss parliament. The latter thus provides the public administration with 'a basis for action' and may equally remove it: new statutory provisions enter into force; others are altered, or annulled. The legislator is conceived as standing above the administration, acting 'on behalf of the nation' [*in Vertretung des Volkes*]. As law is actively changed by the legislator – reformed, tightened, simplified or tested (related to the latest restructuring of the asylum procedure) – the legislator is attributed an intention, a will: "Take the paperlessness article, there it is evident that the legislator wanted to erect a [legal] bar in order to prevent some applicants from entering the regular procedure" (Interview with caseworker, autumn 2013). As the legal landscape officials encounter is not devoid of flaws, they not only acknowledge that the legislator "has its assumptions", but also criticise that it "runs on a slalom track", "takes missteps" [*macht Fehlgriffe*], or

"builds in contradictions" [*baut Widersprüche ein*] in its law-writing practices. For the latter, a senior jurist of the office provided an example in a discussion:

> There's the case of the applications for revision and re-examination that are not 'sufficiently justified'. There – and not only there – the legislator has built in contradictions: in one passage, it says one does not enter into the substance of such applications. In another passage, a "write off" [*Abschreiber*] is foreseen for such a constellation. The difference is that in the first case, the applicant has legal remedies, in the second not. But we found a legally correct and practicable solution. (Fieldnotes, headquarters, winter 2013/14)

The law written by the legislator thus needs to be specified in legal asylum regulations [*Asylverordnungen*] and translated into 'practical solutions'. The latter enter various binding guidelines (namely the asylum procedure handbook and APPAs), are conveyed in internal training sessions (through so-called *Vademecum* that list the practical consequences of legal revisions)[10] and become inscribed into the writing devices for cases' assembling and resolution (e.g. standard letters and boilerplates). The idea of legislation – law-giving practices – becomes forceful in its ability to postulate the grounds, means and scope for associating things and humans in legal terms. The idea of precedent – of an exemplar unfolding these legal terms in their meaning – is equally important: any relationship to 'reality' that is stabilised through a legal association in the form of a precedent becomes then performative, i.e., open for citational practices across time and space (see also Butler 2011).[11] Most caseworkers I talked to were glad to have a 'second instance' – the Federal Administrative Court – that could, if necessary, overturn their decision*. In the basic training, for instance, one caseworker related it to her mental hygiene: "I have to be able to sleep well. I calm myself by saying: there is still

10 If new legal provisions become effective, the jurists in the management of the office produce a *Vademecum* that offer a translation of the changes in the legal landscape and highlight the consequences for the practice* of the office. These are introduced to the caseworkers and their superiors in internal training events.

11 The legal notion of "subsumption" – cases and their facets subsumed under legal articles – implies a peculiar spatiality: that legal articles open up a semiotic space for cases to be put inside. I argue contra the notion of subsumption that the semiotic space is only produced in the practices of associating a legal notion with cases that write it and thus inscribe it "in the real" (see also Emmenegger 2017).

a higher instance, it can still decide differently. That's good for my mental hygiene" (Fieldnotes, basic training for new caseworkers, autumn 2012).

The scope of re-cording lives in terms of asylum is thus not only dependent on the truth-writing of caseworkers in the asylum office, but crucially mediated by the second instance, the Federal Administrative Court. Both the asylum practice* of the office and the leading decisions of the court are where the legal becomes associated with certain 'constellations' to re-cord lives in its own terms. The asylum practice* stands, moreover, in an ambiguous relationship with the court: the latter may back the former, but it may also close down common avenues for resolving cases. As a caseworker highlighted:

> Ultimately, we delegate a lot of responsibility to the competent court of appeal, and we say they have to quash our decision, take a leading decision. And otherwise, as mentioned, those with the country lead have a very large room for manoeuvre. I mean until, I think as late as 2004, there was hardly any leading decision that endorsed desertion in Eritrea as a reason for asylum, and also deflection did not automatically lead to a temporary admission as a refugee. Until then, one still executed expulsion orders to Eritrea. And then, from one day to another, it was decided in this leading decision that … this is not possible anymore. There, a committee of five people of the Federal Administrative Court[12] changed the lives of a few thousand people, saved them or at least changed their lives considerably. That's remarkable, isn't it? (Interview with caseworker, autumn 2013).

Lawgiving practices, case law, and administrative practice* are thus considered to be intimately connected and together compose an intricate landscape of law (which caseworkers have to learn to navigate, see subchapters 4.3–5).

For caseworkers involved in cases' resolution, the landscape of law is often understood to have a certain encompassment – a scope within which it

12 While a leading decision of today's Federal Administrative Court is taken by a committee of five judges, the leading decisions of the former Asylum Appeal Commission had to be discussed and formally endorsed by the commission assembly (29 persons including the president). The caseworker's statement is thus not entirely correct when it comes to the leading decision taken in the appeal commission regarding Eritrean asylum seekers. Yet, it rightly points to the weight of leading decisions and seems apt for the current constellation at the appeal court.

comes to matter. This means that applicants can, in this view, be completely 'out-of-place' in the legal sphere of asylum:

> Caseworker: Several times I had people who just wanted to finish their university studies here. That's just people who are in the wrong place [in the asylum procedure], right? Then you'd have to apply for a student visa, that's absolutely possible, it just takes a bit longer. But then you'd have to take this way and you'd have a chance to come to Switzerland legally and to build a future here. But you are definitely on the wrong track now. And this you have to tell them, right?
> Researcher: But would that be possible, if you already entered once on the asylum track?
> Caseworker: Then it becomes extremely difficult. Then it probably becomes extremely difficult.
> Researcher: That's the tough thing, right? If you are on the wrong track once …
> Caseworker: Yes, you cannot withdraw then and say "I try it on another track". Then you probably missed your chance. I cannot imagine that you would get another visa [of the Schengen area], if you entered illegally before… There one would say that the risk for abuse is just too high.
> (Interview with caseworker, autumn 2013)

However, being considered outside the legal scope of asylum does not prevent these applicants from being re-corded in terms of asylum as rejected claimants. As this interview excerpt indicates, threading the legal path of asylum may, moreover, close down some (if not all) other legal paths to a residence permit in the Schengen area.

But a consolation for caseworkers regarding the reality-producing side of their work is exactly that beyond the scope of asylum other possibilities and legal avenues exist. Take for instance the bottom line of this story, as a caseworker told me in an interview:

> Various cases, but mainly one, made me aware of the fact that there are many other possibilities to get a residence permit besides asylum. Since one has often the feeling if you begin here: either it is this [asylum track] or nothing. But I had this case – legally a simple case – but appeared to me quite interesting concerning the story. This was a pretty young Senegalese, born in 1986, who came to Switzerland and said, "I am persecuted because I am gay".

And he could, I felt he could tell and describe this very credibly. He didn't say "it happened and then three days later I left the country" – it developed over years. His family, for instance, poured hot liquid on his abdomen and one had the feeling: this somehow fits, they wanted to somehow eradicate that from him, in the literal sense. And he really told these stories, about a foreigner who opened a lodge and with whom he fell in love. And was again and again persecuted and sometime came to Switzerland, right? And then I had the feeling, yes, it probably was like this and then the inner pressure emerged in me: Senegal and positive [decision*], that's a bit of a no go. But then I thought, hey, I don't care, I will write a positive proposal. If they [his superiors] do not authorise this, then I will say to them "[if] you instruct me to break the law because I qualify this on the balance of probabilities as credible, then you have to take this case from me, make a complementary hearing; I will gladly process another case, but I won't do that [write a negative decision]". A few days later, a request for the inspection of records arrived from the register office in [canton]. The same person wanted to marry a Swiss woman. There I thought, well yes, that's possible and he's maybe desperate or what does that mean anyways, sexual orientation these days [laughs]. (…). Well, we started doubting a bit because he had submitted to them [the register office] an original Gambian passport, a certificate of origin, and a single status certificate. The cantonal police had examined the passport, forensic testing: no objective forgery marks. He is eight years older, has another name and then you think: oh, well [we laugh], that guy has been fooling us. And then I just gave him the right to be heard and it turned out that he had been in Italy for five years before. And in that hearing, he tried to correct his story and just said like "yes, I lied, but everything, ceteris paribus, is correct, except I am from Gambia" [we both laugh]. But I had to tell him, that's not possible either because you were for five years in Italy already: so, nothing was true. Until today I cannot exclude that he really maybe was homosexual and had these problems, but too many factors just did not fit. I wrote a decision* of non-admissibility for identity fraud; he appealed, but the appeal was rejected within about seven days. (…). Ultimately, I got a letter from this woman: "we are married now" and he now has a B permit, [and she asked] whether they could have his Gambian passport back. [We laugh.] (…). That was for me such an individual case where you can say: well there are still some other possibilities. (Interview with caseworker, autumn 2013)

This story is interesting in various respects: as a narrative of revelation, as a narrative of the important role of material documents, and as a narrative of a caseworker following her inner conviction and being ready to defend it against the current practice* (according to which a positive decision* for Senegal is practically a "no go"). But I cite it here because it points to the feeling of relief implied in the story which for the caseworker indicated that "still other possibilities" exist for becoming legally re-corded – beyond the sphere of asylum. This conviction on the one hand reinstates applicants' agency. It understands them as agents that actively seek legal associations to the state – beyond asylum. On the other hand, it helps to dissolve the unbearable weight of verdicts as reality-production, which is crucially affecting the lives of those whose cases one is (involved in) resolving.

What often has seemed to spark puzzlement in my conversations in the office was the law's appearance as a crucial moral force – particularly in the 'rule of law' discourse – and its ambivalent relationship with justice. Affolter, Miaz and I (2018) have argued that the idea of the "just decision" significantly influences caseworkers' moral evaluation of their work (see also Fassin and Kobelinsky 2012; Kobelinsky 2015b). Kobelinsky (2015b), who analysed asylum adjudication in the French administration and court, emphasised that "all of the rapporteurs [in the administration] attached great importance to the notion of justice" (ibid., 79) and that justice was a "constituent value of the[ir] professional ethos" (ibid.). She views their notion of justice closely linked to the impression of being "objective" (in contrast to subjective or arbitrary) but also linked to defending the institution of asylum by granting status only to those deserving it. Thus, the rapporteurs' and the judges' notion of justice is quite specific: whether a decision* is consider just is measured "in terms of correctness – the decision* must be appropriate to the situation being judged – and of fairness – the differences between tribunals should be as negligible as possible" (Fassin and Kobelinsky 2012, 470). It is thus not about doing justice to the applicant as a person and her or his story of suffering and flight (ibid.). Rather, it is, on the one hand, about attending to institutional values of equal treatment and the preservation of asylum as a "scarce good" (ibid., 465) and, on the other hand, taking the "appropriate" [*sachgerechte*] decision* in terms of the asylum practice or specific (e.g. LINGUA) or general evidence (e.g. COI). Caseworkers and their superiors also reflect upon the larger frames of their work and denounce injustices of

the 'system'. An excerpt from an interview with a caseworker with a social anthropological background and fieldwork experience in one of the regions where asylum seekers come from exemplifies this:

> Researcher: How does your experience from your fieldwork and this background help you to understand their perspectives?
> Caseworker: For the perspectives: very much. I mean, I understand every Nigerian that sits in front of me, right? That's just in this moment, he's just an applicant and I am an employee of the FOM and I can hide behind the Swiss law, in a way. That means, I act according to the Swiss law and that is fine. I understand the motives of everyone who – actually no, of the Arabs maybe less, but I can imagine that they are similar – but particularly of the [people from the region he did fieldwork in], I understand this totally: that he's here and I also understand the stress they have and the pressure at home and why the maybe do not want to specify [their travel route]. (…). And nevertheless, I have no problem, in a sense, to write a negative decision, because I am still that trusting in the state [*staatsgläubig*], that I can say, "ok, good, it's a system, I somehow work for this system and then I have to"; otherwise, you know, I had to think about this much earlier. Somehow, there is nonetheless the need for a migration policy, in my view. Although it would be nice, if it were more just. But the world is also not just in other respects and one requires some migration policy. That's just our migration policy, yes. But it's clear, … I sometimes think it's inherently extremely unfair.
> (Interview with caseworker, summer 2013)

These statements are interesting in many respects: for instance, for the notion of "hiding behind Swiss law" or the acknowledgement of comprehensible flight grounds beyond asylum. Yet I would like to point out one particular facet: many caseworkers I met seemed to preserve a state of conviction about the sense of 'this system' (or in the caseworker's words above, "trusting in the state"). These statements raise a certain ambivalence I encountered in various shapes: of caseworkers on the one hand justifying 'the system' and protecting it as well as justifying their participation in it (see also Affolter 2017); and of expressing compassion with (some of) those seeking protection and feeling obliged to acknowledge the general injustices of the (greater) 'system' (which are, notably, beyond their scope), on the other. It appears that one has to admit to being part of 'the system'. Consequently, the broader concerns of

justice have to be suspended in order to do this work. As the migration policy is not up for debate, one can lament its injustices in coffee breaks (or in an interview with me), but during casework one has to enact it.

My encounters with the legal in the office thus indicate that it stands in a rather uneasy relationship with justice (see also Douzinas and Warrington 2012). Testimony to this was how the senior official teaching a basic training module framed an answer a caseworker had given to the question, "What is a good decision*?": "Two funny answers at the end: [a decision* is good] if it is just. That's quite a philosophical question, right, when is a decision* just… The second one: [a decision* is good] if I can sleep well thereafter" (Fieldnotes, basic training for new caseworkers, autumn 2012).

At first, I was bewildered about this framing. Why are these answers kept outside the realm of serious possibilities and portrayed as funny by the senior official? I contend because they represent two fields of justification that stand in an awkward relationship with a 'purified' notion of law as a technology of government. The first field of justification – justice – is considered too lofty, beyond the scope of what can be achieved in an administrative procedure. The second field – alluding to one's mental hygiene – is in turn regarded as too personal for a notion of a "good decision*". Thus, although closely associated with a discourse of justice that saturates the legal domain with legitimacy, the legal association that is performed in asylum decisions* is considered to procure only "a certain justice" (see James, 1997).[13] In the case of governing asylum, law's uncertain relationship with justice may explain why one of the most plausible answers to the question of what renders a decision* 'good' in the asylum procedure in legal terms is self-referential again: it was the 'legally correct' decision.

After the applicants and their stories of persecution have been interpreted and associated with various forms of knowing (see 7.1), they become re-corded and resolved through their association with law. Those enacting the *dispositif* of asylum do not only 'tell the truth' but also have a preroga-

13 The murderer reminds Commander Dalgliesh at the end of the brilliant crime book *A Certain Justice* that "It is good for us to be reminded from time to time that our system of law is human and, therefore, fallible and that the most we can hope to achieve is a certain justice" (James, 1997, 481).

tive of truth-writing: making the truth manifest on paper, in records, and as exemplars in policies. This transition from truth-telling to truth-writing, however, closes down interpretation, pondering and deliberation and moves to judgement: the performative enactment of the life of law and legal lives. As Douzinas and Warrington (2012, 213) put it, "there is an imperceptible fall from interpretation to action, an invisible line that both fissures and joins the legal sentence. This trait divides and separates the constative from the performative." According to them, in this trait of the transition from interpretation to judgement lurks justice. In their view, justice is never to be found in the legal 'system' or prescriptions but only in the spatiotemporal conjuncture or 'momentary principle' of their enactment (ibid.). I earlier hinted at the importance of writing devices for inscribing these associations that provide a certain reality to both law and the lives captured in a decision* (see subchapter 5.2). Here, I focus on the convictions of caseworkers and superiors about law and justice – and on the effects for truth-writing these have. One could say that a sense of truth and doubt (Kelly 2015) consorts with a sense of law and justice.

7.2.2 From the Rule of Law to the Lure of Law

I suggest that there is a tendency in the asylum office to reduce law to the rationalities and technologies it provides for cases' resolution – usually talked about as "the practice*". As a reminder: it is a mixture of discourses of how to properly approach cases in general or certain case categories (see subchapter 4.2) and the technologies and devices for doing so (such as APPA, forms and standard letters, see subchapter 5.2). In effect, I suggest the "rule of law" risks turning into the "lure of law" if the interpretive space of law is denied and the particular 'approach' or 'reading' of law's notions in the practice* becomes somewhat rigid.

> At lunch, Thomas, a head of section, suggests that I write a decision* for one of Rita's cases. Rita is a decision-maker working in his unit. First, I say no, I cannot do this, but I in the end, I am persuaded. The decision* is for Issa, the applicant from Guinea-Bissau whose main hearing I attended the previous week [see section 6.2.4]. After the hearing, Rita and I discussed the case.
> Back in his office, Thomas prints out the minutes of both the first and the main hearing as well as the triage form and hands them to me. He also gives

> me Rita's and his versions of the decision*, but advises me not to consider them before taking my decision. I thus look at the foundations for a decision* and try to build up my own argumentation. I ultimately end up advocating for the granting of asylum. If granting asylum were not possible, then I would advocate at least for a temporary admission (for reasons of the removal order being 'unreasonable' [*unzumutbar*]). I present my version to Thomas. After I finish he smiles and says: "Exactly like a relief organisation representative". He likes the argumentation and tells me that "it is possible to argue like this". But he also objects that this is, of course, a 'totally different approach' to that of the office, and that his boss would bite his head off if he argued a case this way. Anton, he explains, the 'best' writer of decisions* in his team, had once tried to do so, but did not get away with it. They could, unfortunately, not pursue such a "do-gooder approach" (he instantly withdraws the 'do-gooder'). But this does not mean, he says, that it would not be possible to argue this way. He then goes on to explain: "It is like this in the office: The procedure is set out to reject asylum applications. This means that you look, first, whether the case falls within your scope of responsibility, then whether you can write a DAWES, and, [even] if you go into the substance of the case, there is still the premise that one decides negatively, if not required otherwise. That's just what the premise of the procedure is. And I can live well with such decisions. Even if it is clear that, this way, justice is not really done to all applicants". (Fieldnotes, spring 2013)

An academic peer of mine read this empirical example and disliked it.[14] He commented, "This is not a very useful example; the tensions are too obvious; it does not show the informant's ambiguity; but rather in a simple way that the institution's logic boils down the openness and ambiguity of the law down to a very simple and easy way to process cases. The open deliberation process of the law is reduced to a streamline and flowchart like thinking of the bureaucracy." I agree with him and yet I am puzzled: of course, he is right in pointing out that the example does not capture the ambiguity of law and that which my informant may experience. But in light of my fieldwork experiences, I wonder whether the image my colleague raises of an "open

14 Though, when the colleague commented on the empirical example (in written form), it was presented in another context: as the opening statement of a chapter draft I was writing with Affolter and Miaz at that time (Affolter, Miaz, and Pörtner 2018).

deliberation process of the law" is not closer to academic romanticism than to actual practices of enacting "the legal". Quite tellingly, the same head of section asked me much later, in a different discussion:

> "Do decision* trees exist somewhere in the office? I'd like to know that. Maybe they are stashed with a couple of aces in the FOM. But I could never get hold of a detailed decision* tree yet. If I want to get some information about a subject and read about, for instance, the 'density of justification' [*Begründungsdichte*], I only find a few general nice statements and then exemplary cases that had been quashed (he points at the SFH book)." – I object that, in my view, "case-making does often not work in a simple if-then manner." – He insists "but that would be good!"
> (Discussion with head of section, fieldnotes, spring 2013)

This short excerpt points out that, while we as analysts of legal practice might want to highlight the complexity and ambiguities of law, practitioners in the administration seem often keen to reduce complexities and brush over ambiguities to find a pragmatic pathway through the legal landscape. By telling me as a newcomer, in the first example above, "it is like this in the office", he introduced an authoritative reading – a truth about how the core terms of asylum law, here and now – have to be translated in procedural terms. Law is thus closely associated with the convictions of truth-telling of those invoking it: in the view of the senior official, the purpose of the procedure is not to provide protection but "to reject asylum applications". The interpretive scope of law can thus become narrowed to only allow for a specific 'approach'.

A close adherence to the rationalities laid out ready in practice* limit the scope of interpretation in concrete cases, as the initial example with Rita and Thomas indicates. The story went on:

> I repeat my version of the argumentation for Rita. She tells me: "you are right and I'd like to write a temporary admission, if only my superior agreed". I reply that I don't think he would agree – we smile at him. Thomas rolls his eyes and refers to his superior who would not tolerate it. I repeat the most important points for revising her decision: the threating of Issa with a machete must be added to the facts of the case* because that is a central ground for persecution. Furthermore, I see some of the things that are listed as contradictions in the asylum section not as contradictions: for instance, that I find it plausi-

> ble that Issa fled without his sister because he was threatened, and that the father did not see him dash away from the hut but still chased him with the machete. Thomas, after having consulted the relevant sections of the protocol, agrees with me and draws a small sketch for Rita to illustrate the situation. She consents. He then says that she does not need the weak contradictions in her decision*. The main contradiction would be enough: namely that it is absolutely not comprehensible that the applicant had waited until the decisive day and then chose a not very clever solution: to lock up his sister. I contradict him: this presupposes that everything was planned, but I think it should be rather read as a spontaneous reaction – in the heat of passion – to the imminent circumcision. Thomas has another opinion, but concedes that this version is conceivable. But then the FAC has to simply quash the decision. Rita cries out "no!" But he says "surely!" And if they then will write something about "in the heat of passion", that'd be incredible [*das wäre ja noch schöner*]! [laughs]. (Fieldnotes, spring 2013)

After this exchange I was puzzled and started asking myself whether it was necessary to limit the scope of the possible to keep cases resolvable. It appears that explaining actions as having occurred "in the heat of passion" is a rationality beyond the scope of the possible. Caseworkers I talked to often suggested that the practice* stipulates a lot – and that this was good to avoid diverging and thus arbitrary resolutions of similar cases. And thus, their scope in arriving at a certain conclusion in a case was often marginal. A caseworker, for instance, emphasised:

> Whether the decision* is negative or positive, this is in a great number of cases clear. – Really? – Yes, I think so. Because the scope you have is small according to the law. Since the law prescribes a great deal. – And where do you have a scope? – Well, there are certain situations in which you have to evaluate something that was experienced and whether *this* exactly substantiates a fear of future persecution. And then, depending on the country, you can maybe evaluate this differently. And there you have a minimal scope where you can let something tip.
> (Interview with caseworker, autumn 2013)

This quote reveals a frequent slippage I associated with the 'lure of law' to equate law with the law-in-practice*. What leaves little room for deciding

differently, I insist, is not law itself, but its preassembled and often country-specific interpretations. As another caseworker told me:

> What is extreme is how much depends on this practice*, you know, if a country practice* is that way or another. If you have a Nigerian and only want to argue for a temporary admission, there is a fuss. The head of section comes to you and asks you "well, but have you thought this through really well? Of course, this is a woman with a disabled child, but that's not a problem, there are children's homes" and so on. – Where you'd argue very differently in other places with the same requirements? – Yes, exactly. Like, in Eritrean cases everything is just 'waved through' [*durchgewunken*]. And there I just find it highly questionable how people are anxious to just think themselves and to say once: "well, yes, I examined this case". Since otherwise we don't have to make an individual case examination anymore, if we have a country practice* anyways. Then we could also just say: "sorry, wrong country", right?
> (Interview with caseworker, autumn 2013)

This problematisation of the tendency in the office to simply adhere to country practices* raises two crucial points in my view: first, it highlights the marked disparity between the practice* regarding different countries of origin. This was widely criticised by caseworkers but only occasionally defied in practice. Second, it suggests that caseworkers only very reluctantly trust and defend their own individual examination if its result contradicts the prevailing practice*. Yet, there was some controversy in the office about the scope one had of interpreting the law [*Gesetzesauslegung*]. Some saw it as the task of the appeal court to interpret, while the office would only 'apply'. This confines interpretation of cases to law seen through practice*. Others emphasised that interpretation of the law cannot simply be delegated to the judiciary, but is a crucial task of the executive.

My above-mentioned colleague seems to have moreover expected that the empirical example provides the basis for an ontological statement about what and how law actually *is*. However, I am rather interested in finding out how law becomes fabricated, mended and narrated in certain situations; and how people involved in this make sense of it. I take into account its role as a political technology (Barry 2001). Of course, we may end at a similar point as law's fragmentation, fragility and contestedness may exactly arise from the situatedness and positionality of what and who meet up (Massey 2005)

in the situated processual events of law's enactment. Nevertheless, I am very thankful to my colleague for his frank comment, because it hints at two crucial features of the "making of law" (Latour 2010) through the asylum *dispositif*. First, caseworkers and their superiors seem to seek simple 'rules to apply' to 'types of cases' when it comes to the process Fassin (2013, 57) termed "truth matching" as the evaluation of whether the 'reality' of the case conforms to the grounds* of the refugee definition. Second, caseworkers evaluate their own interpretive room for manoeuvre in "truth matching" according to what the practice* of the office prescribes, since the law is first and foremost needed for creating a 'basis for action' translated into a practice*. From a pragmatic perspective, (preassembled) legal associations of the practice* are what make cases resolvable. In that sense, deliberation or interpretation needs to give way to action, to writing a decision* or judgement (see Douzinas and Warrington 2012).

Overall, I suggest that the rule of law tends to be subverted by a lure of law: a tendency to both *formalistic* and *instrumentalist* approaches to case-making. The former make law tend to see law as an end in itself. They reduce the scope of law in case-making to 'taxonomic' order of cases in terms of practice*. And they tend to become (overtly) ensnared in legal technicalities. The latter tend to reduce law to a means to arrive at a certain end that lies outside law – providing protection to as many applicants as possible (as in the example with Tibetan cases raised above) or rejecting as many as possible. Both approaches defy in the view of many officials the principles of the 'rule of law'.

7.2.3 'The Making of Law' Revisited

Occasionally, important doctrinal shifts of practice* occur that have the potential for greater impacts on both the outcomes of cases and the politics of governing asylum. Such doctrinal shifts are negotiated in higher-level meetings. In the case of country practice*, changes involve 'country situation assessment' meetings with senior officials from other Federal Departments, notably that of Foreign Affairs, and senior staff of the UNHCR and the Swiss Refugee Council (SRC). Less far-reaching practice* changes, of thematic practices* for instance, are negotiated in internal meetings (see example of Syria APPA, section 5.2.3). Quite rarely, 'doctrine rapports' are organised so that a number of concrete cases are openly discussed amongst

senior officials to establish a new doctrine – asylum practice* – for a certain category of cases. I had the luck to be able to attend the first doctrine rapport in two years at the time of my field research. It was about the practice* regarding cases of gender-related persecution from various countries. All senior officials of the two asylum divisions of the headquarters had gathered in the meeting room *Prudence* to discuss the doctrine on the basis of seven current asylum cases which were 'ripe for a decision*' [*entscheidreif*]. The caseworkers having the lead in the asylum practice regarding gender-related persecution[15] had prepared the event. The large majority of seniors attending the event did not know the cases presented and had neither encountered the claimants nor the case files. But they received a handout before the meeting that consisted for each case of a short summary of the facts of the case*, (for some of the cases) the situation in the country of origin (sometimes with hyperlinked policy or COI documents), particular problems and questions that the case raised, and a proposition for its legal resolution in the decision*. In the introduction, they were introduced to four possible scenarios (A-D), to which each of the cases should be attributed in the end. They had to discuss for each case the question: "What are the determining criteria for admitting a well-founded fear of persecution upon return knowing that the adoption of discreet behaviour [namely hiding your homosexuality] cannot be required?" The first case they discussed was that of a homosexual claimant from Iraq. According to the summary of the 'facts of the case', the applicant had been in a covert homosexual relationship in his hometown in northern Iraq before fleeing to Switzerland. After a short introduction, the group started to openly discuss the case:

> Senior Official 1: He needs to prove a well-founded fear and intolerable psychological pressure [two criteria stated in the Asylum Act].
> Senior Official 2: I vote for a restrictive version [of the practice* in such cases]. Otherwise, you have to grant every gay Iraqi asylum, no matter whether *he lives it or not*. For me, there has to be a *confrontation, a 'lighting spark'*. You can compare this to the Eritrean conscientious objectors, where the Federal Administrative Court clearly states: [they are] not [considered persecuted] until they are confronted with a marching order or the prospect of military

15 *Federführung GespeVer* (*Geschlechtsspezifische Verfolgung*) in German.

draft, a contact with public authority; thus *a 'lighting spark'* is founding the fear of persecution and leads to recognition in Switzerland.

Senior Official 1: Objective grounds are needed, otherwise we arrive at the point, at which someone is granted asylum, if he merely says "I am an imam" or "I am homosexual". It is the parliament's task to define the law in this respect. But what we discuss here are *not black-and-white alternatives* anyways. According to the records as they stand, I would see this as a case of Article 54 [subjective post-flight grounds].

Senior Official 3: But we still have to ask the question of intolerable psychological pressure, which is given in the case at hand.

Senior Official 4: We don't have to answer this question. It is more about abstractly judging, which *conditions* have to be met that we assume a case to lie in category A to D. I imagine some kind of flow chart, where at each node of the chart you can determine for the single case whether the condition is met or not.

Senior Official 5: The intolerable psychological pressure has always to be considered, but the difficult question remains where to set the threshold for this intolerable psychological pressure.

Senior Official 1: For me, this means that *someone really suffered something, not just hypothetically*. This is crucial. Otherwise, also someone who cannot be politically active in a totalitarian state – that means everyone – is suffering intolerable psychological pressure and had to be recognized [as a refugee].

Senior Official 2: If you compare this with a more familiar political view: a Cuban who is longing for freedom which is not possible to achieve under these (political) conditions, is not granted asylum. It is thus always about *something happening, someone being imminently threatened*. If someone has a full-throated 'coming-out' against the Cuban regime in Switzerland, he would fall under Article 54 as well.

Senior Official 6: [summing up] Key is therefore the distinction of pre- and post-flight grounds…

Senior Official 3: I still would like to come back to the question of the intolerable psychological pressure – you could have this also *if you did not experience anything*. [Senior Official 1 and 5 object]

Senior Official 1: You need objective grounds in any case – objective and subjective ones that can be *reconstructed from the context*.

Senior Official 7: That's the crucial question for all cases!

Senior Official 6: [setting out to conclude] Thus, if the assertions are credible, then he shall be admitted as refugee TA [with temporary admission].
Senior Official 3: But if somebody also here has been *living discretely* like this Iraqi, nobody here knows anything about it and nobody there either, he thus not had an *actual coming-out*, nothing has changed compared to the state in Iraq: is it then correct to speak of post-flight grounds?
Senior Official 1: In my view, this is not a question of relevance here in light of Article 54.
Senior Official 5: The country lead [*Federführung*] also considers this to be *dependent on the situation*: what needs to be taken into account is the consequences in case of return, the behaviour and the individual circumstances of the applicant.
Senior Official 8: [objects] The way we judged the case now would mean, by consequence, that every Iraqi homosexual had to count as refugee, if *what he experienced* (*le vécu*) is credible.
Senior Official 1: That's the same for a Christian pastor in the analogous context – it's up to the parliament to change something, if it does not agree with this.
Senior Official 6: [seconds Senior Official 1] We are here at a doctrine rapport, the pull effect is not our concern here.
Senior Official 2: [as if to pacify those who obviously disagree] This is the same in other European countries, I would not expect a large storm flood.
Senior Official 1: In the end it is about what one is convinced of: if I had an Iraqi in front of me who I *have the feeling* has nothing to fear, then I would refuse him admittance. If, however, I *had the feeling*, he had to seriously fear a persecution, then I would grant him asylum.
Senior Official 5: The first question in my view is: shall we acknowledge the European case law?[16] And then it is clear that we have to train the caseworkers better in order to examine the credibility in such cases.
Senior Official 2: [somewhat oddly referring to the core of new "European case law", namely whether one should be able to openly live one's homosex-

16 She was referring here to a particular judgement of the Court of Justice of the European Union (C-199-12) which overturned a standard assumption in many asylum examinations of homosexual applicants: "When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation" (Dispositive, Judgement C-199-12).

> uality] In the core, this is an individual human right. [Addressing Senior Official 8 directly] *K., what would you say if we could live out our heterosexuality only in the private bedroom?*
> Senior Official 6: [determined] I would like to conclude this first case. Can we agree that in this case subjective post-flight grounds exist, that he has a well-founded fear of persecution?[17] [no objections]
> (Fieldnotes, headquarters, winter 2013/14)

What this empirical example offers is an intimate look behind the scenes of law-making in a public administration. It reveals the contested nature of law's categories – their (social) life – if their 'actual meaning' becomes discussed. Legal categories require imagination to work – their interpretation relies on metaphors such as the "lighting spark" one of the participants understands as founding a 'real' and thus relevant fear of persecution that should lead to protection.

As the interpretation of the law's categories is contested, the participants frequently refer to such framings that highlight the grasp of the law. They, for instance, define or deny competences, draw comparisons, introduce thresholds, and assign matters of concern to other authorities or speak in the name of an authority. Participants moreover invoke a sense of reality that, in their view, founds these legal notions. Or they allude to reality effects of interpreting law that way. The participating senior officials had negotiated what the doctrine rapport is all about. Is it about an interpretation of the Swiss law in light of a new type of case (indicated by the early statement of a participant that he is "voting for a restrictive version" of how to examine such a case)? Or is it about a reading of the case in light of new "European case law"? Furthermore, is it about "abstractly judging" which for some participants means to remove the 'intolerable psychological pressure' from view? Or is it about the threshold of such a 'psychological pressure' to become 'intolerable'? Negotiations also entailed whether "intolerable psychological pressure" means "someone really suffered something, not just hypothetically" or whether it can also occur "if you did not experience anything". Hence, whether a 'well-founded persecution' requires "a lighting spark", "a confrontation", as homo-

17 In the end, the conclusion was thus that the claimant has a well-founded fear of persecution, but it is a case of post-flight grounds. In such a case, the claimant is granted temporary admission as a refugee (according to Article 54 of the Asylum Act).

sexuality has to be 'lived' (either there or here) or the behaviour of the applicant does not matter (living discreetly back home and here too). Importantly, these interpretations in that particular case give rise to the question of what the scope of such a notion is if generalized: does that mean that "every Iraqi homosexual had to count as refugee" (if credibility is given) or does it furthermore "depend on the situation" of the applicant in case of return? Ultimately, these contested questions about generalization also raised the question what is within the scope of the doctrine rapport – and its representatives. As the politics of deterrence in the form of the discourse of the 'pull effect' was seeping in, the boundary between what Li (2007, 12) called the "practice of government" – sustaining a technical-legal reading of programs of governing asylum – and the "practice of politics" – introducing a challenge to this framing of governing asylum – became contested. In order to retain the "legal bracketing" (Blomley 2014) in this doctrine rapport, participants made attempts to either remove the politics (of the question "what does this mean if generalized?") from consideration (it is not of concern here) or enter into the politics but offer appeasement (a 'pull effect' is not to be expected). Yet this boundary remained fragile and resurfaced several times during this event of law-making. Significantly, one of the officials involved in organising the meeting asked self-critically in the informal setting after it had ended: "Do we make politics here? Are we political?" (Fieldnotes, headquarters, winter 2013/14)

Such negotiations, I suggest, can be understood as of form of collective re-writing of epistemological frames of asylum practice* (and thereby law). These negotiations are crucial events – for the doctrine as well as for the analyst – as participants raise the distinctions and classifications that they consider possible and legitimate in light of concrete cases. My argument in this respect is twofold: on the one hand, law needs to be associated with the exteriority that lies beyond it in order to be meaningfully invoked. On the other hand, the debate about the meaning of legal notions above reveals quite diverging convictions about these notions.

On the first point regarding exteriority, negotiations highlight how interpreting law requires imagination, and that it needs to be associated with everyday language and discourse outside the legal register to make sense. Here some of the heuristics associated with legal notions appear (see section 4.2.3). But the empirical example reveals that these notions are not settled: the negotiations offer insights in the 'making of law' as the meaning of facets

of legal notions becomes contested, frames of reference multiply and various authorities are invoked. They reveal that law tends to lose some of the purifying self-referentiality Latour (2010, 255–56) saw as characteristic for it, if the meaning of legal notions becomes a matter of debate and thus associated with 'life out there'. Latour (2010, 267) may be right that law is endlessly superficial in its grasp of reality and therefore sheer unlimited in its scope to enrol objects and lives in the course of its formation. Yet, against this slightly totalising grasp of law, due to its need for association-with-not-law and imagination on the part of those enacting it, I agree with Dommann, Espahangizi and Goltermann (2015, 9) that it is still "profoundly open to interpretation, contested, dynamic and fragile".

On the second point, the diverging convictions all 'fitting into law' make perfectly sense if we attend to the 'practical function' of the legal – as a technology of government – and the need to resolve cases with it. I suggest that legal associations make 'collective action' conceivable as what Bowker and Star (1999, 293–94) called "boundary objects" exactly because they suspend these divergences in the moments of their invocation. If legal notions operate as boundary objects, this means that they enable concerted practices across offices in which they are invoked, inscribed, and thus enacted. But they do so without denuding actants of their capacity to make sense of them according to their dispositions and epistemic communities (see section 8.1.2). It appeared to me thus that these notions have a performative core that is reiterated as soon as they are invoked (such as the 'well-founded fear') but that the interpretations about what they mean is never settled. If events such as the doctrine rapport disclose 'wrong' or 'mislead' interpretations of legal notions, they thus enact the forceful assumption about law that a single correct interpretation exists.[18]

18 Even though asylum adjudication may be an extreme example of the divergence of what law's categories mean, because of the bureaucratic-legal character of the work and the non-legal professional background of many caseworkers, I would not limit the idea that such categories operate as boundary objects to the asylum office.

7.3 States of Conviction?

In this subchapter, I attempt to account for some of the (de)stabilisations of the asylum *dispositif* related to 'feedback mechanisms' about knowing the truth and law. For this purpose I turn to the notion of "overflows" introduced by Callon (1998; 2007a) in the context of processes of marketization. In my case, it is not market goods that are framed in ways that may overflow but asylum cases. Overflowing refers to "act unpredictably, transgressing the frames set for them and the passivity imposed on them" (Callon 2007a, 144). Generally, as long as no overflows occur, practices of case-making tend to stabilise convictions and governmental arrangements (in heuristics and technological devices, see Chapters 4 and 5). Overflows occur, if what is usually "bracketed out" (see Blomley 2014), externalities of their associations to the world resurface (ibid.). Such overflows lead me to conclude that although convictions stabilise the ways of knowing and doing asylum decisively, they are to be considered fragile "states of conviction" that may be toppled themselves. I introduce two forms of overflow in which the common framings of thought and practice of the *dispositif* become questioned and may give way to matters of concern (see Latour 2004). I distinguish between overflows of truth-writing (section 7.3.1) and of truth-telling (section 7.3.2) and their ambiguous relationship with "states of conviction". Both the stabilisation of convictions and arrangements and their occasional collapse furthermore points out how uncertain cases' closure remains and how their production nurtures and reshapes the *dispositif.*

7.3.1 Overflows of Truth-Writing

In overflows of truth-writing, associations in the 'legal' world are at stake: their meaning, grasp, and scope. In some ways, the doctrine rapport introduced above contains small overflows of truth-writing: where quite diverging notions surface about the legal associations potentially resolving the case discussed. Another example I already mentioned is that of a 'wrong' boilerplate that suggested a legal association that did not exist and was accidentally discovered by a caseworker (section 5.2.4). Further such stories of "legal mishaps" circulated at the time of my fieldwork in the office (also in Tsering's story in the Coda in Part II). Another example of 'getting the legal wrong' reveals this short episode a caseworker told me at lunch:

> I was teaching in this basic training module this morning about (…). One of the participants from an asylum section (…) answered on the rather rhetorical question in an exemplary case from (…) whether the refugee definition was fulfilled if applicants' grounds were relating to 'situations of general violence' with "yes". And it got even better: then I told him, "no", in order to fulfil the refugee definition persecution needs to be actually 'targeted'. He was surprised, "ah really, for fulfilling the refugee definition persecution needs to be targeted?" (Fieldnotes, headquarters, spring 2014)

Hence, not only truth-writing devices may overflow considering the way they 'know the law', but also caseworkers and their superiors. 'Wrong' heuristics certainly exist and may be dismantled in events as the one just introduced – or more likely in case the Federal Administrative Court quashes decisions* and discloses legally mistaken arguments, procedures, or connections. But also, the appeal court might occasionally 'get it wrong'. For instance:

> In a section meeting, the head of section mentions a recent judgement of the appeal court. It would not correspond to the hitherto practice* of the court in this kind of question: she calls it a "wrong judgement". And to make clear that this should not affect the current approach of the caseworkers to resolve such cases, she adds: "This is not our new practice!"
> (Fieldnotes, headquarters, winter 2013/14)

While overflows of truth-writing are not very frequent, they still highlight the fragile states of conviction about law and legal associations on which truth-writing is usually based.

7.3.2 Overflows of Truth-Telling

Overflows of truth-telling have to be understood in the context of the pervasive unknowability of whether approaches to 'knowing applicants and their stories' are adequate:

> According to a very experienced caseworker, "in the end neither the starry-eyed [*Blauäugige*] nor the rigid [caseworker] knows whether (s)he is right with her or his tenor [*Grundhaltung*]. (…) [Both the caseworker] who "means well" and therefore is called 'starry-eyed' as well as the one who approaches

> the matter with the attitude 'that anyway it's all made up' finally don't know, whether their approach is the right or the better one. (Fieldnotes, headquarters, spring 2014)

While associations to applicants' past usually precariously rest on administratively edited identifications and persecution stories, and thus anticipates their 'well-founded fear of persecution' upon return, applicants' actual future – what happens to them after the procedure – usually remains in the dark. But if it surfaces, it has the potential to turn upside down convictions of truth-telling. Overflows of truth-telling remain constricted to the rare occasions in which caseworkers are (accidently) confronted with 'another truth' about applicants' lives than they were convicted of in case-making. Two forms of overflows appear to be common: first, expert reports or other authoritative forms of knowing that deeply challenge or overthrow convictions about how things are. Second, interpretations about applicants and their histories that are turned on their head through some ways that truth manifests or seeps in from the outside.

Contested convictions about such overflows are to be read in relation to the practice* of the office. I distinguish here between overflows with quite different effects: stories of revelation that shake caseworkers' dear convictions; and stories of deception whose uncovering (re)produces pronounced convictions. A particularly nice example of a story of revelation that challenges dear convictions can be found in Affolter (2017, 70–71):

> Andrea and I are sitting together during a coffee break. She tells me that there's soon going to be a training session on credibility assessment that she recommends me to attend. She tells me that she would really like to go, but that she's not allowed to because only two people from each section can take part. She says she would have really liked to have gone, because she was going through a bit of a crisis at that time because she couldn't really trust her intuition anymore:
>
> "Not so long ago I had this woman from Turkey", she tells me. "She didn't know anything and she barely spoke any Turkish. I was so sure that she wasn't from Turkey. But then I asked for an 'embassy report' and it turned out that it was all true".
>
> Andrea explains that this has really thrown her off balance, because she had been so sure about it not being true. If she hadn't had this possibility for inves-

> tigation she would have said it wasn't credible. She tells me that, because of this, she currently feels so insecure about her assessments that the other day she told a colleague who had wanted her opinion on a 'case' because he thought he might be biased, to go and ask someone else for help (Fieldnotes).

This revelation Andrea experienced in this case of a Turkish applicant unsettled her trust in the heuristics and intuition of truth-telling. Realising that without this report she would have dismissed the application, she lost the crucial conviction in her ability to 'tell the truth' about applicants' accounts. Andrea's revelation let her feel the whole weight of truth-telling and the fragility of her dear convictions.

A senior in the basic training raised a contrasting framing of truth-telling overflows by stating, "Naturally, everyone once makes a mistake. There are a few cases in which I realized: I made a mistake – he was obviously not a refugee; that's part of it" (Fieldnotes, basic training for new caseworkers, autumn 2012). This is the opposite sort of revelation: of being convicted that someone is a refugee and it turns out s/he is not. This has obviously no grave consequences for the applicant and thus is rarely unsettling for the caseworker. Every caseworker in the office knows this type of overflow because it is usually widely shared amongst them: stories of deception – and their uncovering. Such stories were also amongst caseworkers' most memorable cases I sometimes asked about. Take for instance this response:

> Yes, I was a few times astonished about stories of deception. Once I had this Nigerian where I had the feeling he could really very credibly describe how he had been forced to prostitute himself [homosexually]. Had zero education, never went to school, single mother, no siblings. And he had to prostitute himself for that reason. Of course, he thereby violated Islamic law [which is] why he had to endure a forcible amputation of his legs. And then I started researching and realised: there are these Sharia tribunals in the North [of Nigeria] indeed (…) and forcible amputations had also occurred there. – And he had obviously endured that. – No, no. He had been able to escape from detention. And then I really thought, well. But then, out of a clear blue sky, I entered his name in my Facebook account and then the exact same picture appeared: it was obviously him. It said that he had completed his studies in Lagos, worked in a logistics company until two months before his departure –

> well according to his Facebook account. (Interview with caseworker, autumn 2013)

Stories like this did usually not overturn caseworkers' dear convictions either – deception was to some extent anticipated and rather confirmed them in their assumptions. Yet, in this case, the caseworker drew still another conclusion from the accidental revelation about the 'true' background of the applicant on Facebook: that "it's *incredibly* difficult to hide everything" and consequently if you just had enough time to investigate or could even "set a criminologist on the case", truth could be spoken with certitude.[19] Hence, the caseworker's conviction that truth can be found 'out there' – if just the resources were sufficient – was sustained by this revelatory case.

7.3.3 Overflows and 'States of Conviction'

In both overflows of truth-telling and truth-telling, associations of the *dispositif* to the 'outside' world may be at stake: the perception of the office, the destiny of the former applicant, the asylum practice*, the legal provisions, and the convictions of those engaged in truth-telling and -writing. They are rare, because usually no feedback about applicants' whereabouts reach the office after decisions* are legally effective. However, if feedback reaches the office, it often produces an overflow, i.e., a serious challenge to the frames of thought and practice. This is well illustrated in a historical case of overflow I encountered during my fieldwork, because a caseworker drew my attention to it. Erwin, a long-term caseworker, told me he had Stanley's case, of whom I had certainly heard before. I said "no", to which he responded:

> Stanley Van Tha,[20] that was likely the most significant case since World War II! It was constantly in the media for a very long time and occupied the office. That was an applicant from Burma. I processed the case at that time and wrote a negative decision. I didn't buy into his story and regarded his papers

19 According to Good (2007, 260), this is exactly the modernist presumption that social scientists have been calling into question as a consequence of their turn to reflexivity.

20 The case of Stanley Van Tha became indeed famous beyond Switzerland. A Swiss film-maker made a documentary about his story (Irene Marty, 2005, *Ausgeschafft –die unglaubliche Geschichte von Stanley Van Tha*) and there is even a Wikipedia entry about it (https://de.wikipedia.org/wiki/Stanley_Van_Tha).

> as forged. The asylum appeal commission [AAC, the appeal body at that time] backed my decision. Then he was deported, with an airplane to Thailand first. But the Burmese policemen were already prepared. In Rangun, he was received by them and sentenced as "traitor to the nation" to 17 years. He disappeared for four years in an infamous prison there. That was obviously a catastrophe. The media prominently reported about the case and if the AAC had not backed my decision, I would have certainly been dismissed. At some point, his wife and their kid entered Switzerland and were of course immediately granted asylum. And the FDFA [Federal Department of Foreign Affairs] took pains to get Stanley released in Burma. When he was finally released after four years, he was flown to Switzerland and granted asylum. The then-head of the asylum office had been sitting on the 'red chair' for quite some time and had to answer inconvenient questions [to his superiors and the public] about this case. For me, it wasn't easy either. Many were hostile to me, to some extent also in the office. (Fieldnotes, discussion with caseworker, spring 2014)

Erwin later ordered the two-volume case file of Stanley's case for me from the archive. I had never seen such a voluminous case before (about 520 pages altogether). The case turned out to be interesting rather for the effect the enforcement of the expulsion sparked in terms of media and public attention than for the actual asylum case. The asylum decision* appeared inconspicuous and did not foreshadow any of the later events. Erwin also later emphasised that the asylum decision* was ordinary and according to the practice of the office at that time – the more contested part was that Stanley was the first of rejected applicants to be actually deported to Burma. Most records in the case file concerned internal and external communications that occurred after Van Tha's imprisonment in Burma. Several reports in the Swiss national television and newspaper had sparked letters of indignation by private persons and institutions throughout the country that were filed and answered by the asylum office. One interesting record concerns the request of a journalist who asked what impact the arrest of Van Tha had on the practice of the asylum office concerning Burma. The record documents email correspondence between officials in the asylum office and provides an English translation of the general practice* (two years after Van Tha's imprisonment):

> When in June 2004 it become [sic] known that Mr Stanley Van Tha had been arrested, all executions of removal to Myanmar were stopped. In the meantime, the Swiss Federal Office for Migration (FOM) has resumed the processing of asylum applications filed by Burmese nationals. (Record from case file)

In this abbreviated statement, two elements of the crisis or 'suspension management' of the office are indicated: a marked a change in the practice of the enforcement of expulsions (moratorium of enforcement) and asylum practice* (moratorium of decisions*) until after a while the situation in the country is assessed, the asylum and enforcement practice* were adapted, and the processing of asylum applications (and depending on the assessment enforcements) ultimately resumed.

A similar example of an overflow was caused by two 'disastrous cases' (see section 4.2.4) of Tamil applicants widely reported in the media. These interrupted the enforcement of removal orders to Sri Lanka as well as the processing of cases during the time of my fieldwork in 2013/2014. The applicants had been rejected asylum and deported to Colombo, where they were interrogated by the authorities, detained and tortured. Consequently, an independent commission led by the UNHCR was established to look into the practice* of the asylum office and provide recommendations to avoid similar harm in the future. Consequently, the appeal body wrote off* [*schrieb ab*] all Sri Lankan appeals (several hundred at that time) and sent them back to the asylum office for re-examination. Several officials of the asylum office went on a field mission to shed light on the circumstances of the arrests and re-evaluate the situation in Sri Lanka. In one of the two cases, according to the insights of the investigation, the applicant had not told all the relevant facts. He had omitted about half a year in his narrative, exactly the time for which he was accused by the Sri Lankan secret service to have been particularly active for the communications division of the LTTE (Liberation Tigers of Tamil Eelam, a secessionist movement and militia of Tamils in Northern Sri Lanka). A caseworker I was discussing this incident with told me that this would probably happen quite often: applicants would omit parts in their story which could potentially lead to an exclusion from asylum (see section 4.1.2) or which were secret for another reason, but which made the basis for the evaluation of their removal order incomplete (Fieldnotes, headquarters, winter 2013/14).

The two cases lead to a heated debate within the asylum office about whether the assessment of the human rights situation in Sri Lanka before the incidents had been appropriate – and thus whether it should be considered an overflow of truth-telling practices at all. The suspension of enforced removals was considered by some premature. It could have just occurred by misfortune – unlikely events happen as well – and they would see it tantamount to an admission of guilt. Others perceived the two shocking incidents over a short period as an indicator for an overly optimistic assessment of the human rights situation – the suspension of enforced removals was the logic consequence of this view.

Two broad camps thus emerged: the first portrayed it as inevitable because of the indeterminacy of the procedure in which an element of "risk always remains". A caseworker, for instance, suggested, "you can never really exclude these cases [in which bad things happen after rejected asylum seekers return]. And it also depends on what was the reason: if it was a case of non-credibility and they just did not tell us what had actually happened, then we cannot decide differently. We cannot save them from things we don't know about" (Interview with caseworker, autumn 2013). The other camp, in contrast, saw the events as "something that must not happen" (Fieldnotes), and implied that either the practice* or case-making in these particular cases must have been flawed (but in other cases is not). Both camps acknowledged the *exceptionality* of such cases in that they either saw it as a rare policy flaw or individual mistake in decision-making *or* as rare anomaly of the unpredictable happening that is implicated in correct decision-making. I argue that it is partly in such a reading of overflows in terms of exceptionalism that law's operation as an associating force for case-making is *normalised*. In other words, the modus operandi is stabilised by defining the overflows as exception. Yet, as such exceptional overflows provoke outcry and debate, they are also moments in which some of the foundational limits and the inherent contradictions – the *aporia* – of the *dispositif* of governing asylum surface and matters of concern raised (Callon 2007a, 144). Overflows thus spark some momentum for the transformation the arrangements of the *dispositif*. They recover the political in a seemingly technical matter – the disinterested implementation of law by means of case-making – and make space for substantial critique within and outside the administration.

Such transformations of the practice* in light of overflows are often profound. In the example of the practice* regarding cases from Sri Lanka, it

took a complete reversal after the disastrous cases surfaced. An encounter with a caseworker in the headquarters illustrates this:

> The caseworker shows me a printed mail from last August, which stated the practice* before the events led to its reversal: every decision* that was not negative [positive or temporary admission] was controlled in the section having the lead on the country practice*. Today he says, it's exactly the opposite: every negative decision* with enforcement of removal has to pass the desk of this unit's head. (Fieldnotes, headquarters, spring 2014)

Another caseworker mocked this striking reversal from "quite strict to very lax" and suggested that "one has to almost expect a pull effect again" (Fieldnotes, headquarters, winter 2013/14). It appeared that, despite the diverging internal reading of such events of overflowing, the caseworker called for a strong and visible reaction, a performative gesture of having things under control and to remain 'credible'. As a different caseworker emphasised, "We now have to properly clarify what exactly went wrong in the two cases. That was quite shortly in succession. And yes, it is awful if something like this happens. It makes us lose all our credibility. (…). You know, we have also to stand up to a credibility assessment ourselves" (Interview with caseworker, autumn 2013). Showing that one 'takes these events extremely serious', as she moreover said, resulted in the overturning of the practice*. For some people in the office, however, such a reaction sent out the "wrong signal". To them, the "exaggerated" reaction and discontinuous practice* was the *actual* overflow, because it implied that the former practice* had been completely wrong.

One crucial outcome of the investigation on these cases was that truth-writing cannot be disentangled from the consequences which caseworkers anticipate their decisions* to have. In other words, caseworkers adopt a (slightly) different yardstick between negative decisions* for which they know that they likely result in the deportation of applicants and negative decisions* that become suspended with a temporary admission. The latter form of decision* arguably feels like an intermediate decision* between a positive and a negative one: it takes a lower 'density of justification' [*Begründungsdichte*] to be written. It is a type of decision* that leaves caseworkers a back door in cases of doubt. Moreover, there are countries for which over a certain period no negative decisions* with enforcement of removal can be

written for countries in civil war, like Sri Lanka was for some time (as applicants' removal was 'unreasonable'). For again other countries, negative decisions* with enforcement of removal can be written, but caseworkers know that removal is in practice not enforceable. Such decisions* may cause an overflow once the temporary admissions are lifted or the removal becomes enforceable. I witnessed in a coffee break a short encounter of Samuel, a vice-head of an asylum section with Thomas, the head of one of the return sections which highlights this:

> Samuel tells me he met Thomas when queuing for coffee in the cafeteria of the headquarters. Thomas had asked him to check all the decisions* of case files from [country] again. The enforcement of removals to [that country] would be now again possible, somehow. But one was afraid after the Sri Lanka cases that the decisions* might likely turn out more negatively if they had been taken under the premise that the enforcement of the removal was not possible rather than if one expected the enforcement of removal. This should of course not be the case, Samuel emphasised: "that's not correct, a decision* has to withhold that". But in practice it is imaginable that people sometimes decide like this, Samuel admitted, if "only in borderline cases". (Fieldnotes, headquarters, spring 2014)

My impression was, however, that this effect was not limited to "borderline cases", not least since the positive decision* and the negative decision* with temporary admission both meant, for the time being, that the person could remain in Switzerland. Additionally, caseworkers knew well that the 'temporariness' of a temporary admission was in many cases a rather long-term state – that could ultimately lead to a more permanent admission as well. In effect, writing a negative decision* with temporary admission was considered psychologically much easier than writing a negative decision* without – and at the same time in light of restrictive practices* much simpler than a positive decision. Consequently, truth-writing* must be considered fundamentally shaped by the associations between the options perceived to exist and the consequences anticipated. What such overflows more generally reveal is that enacting the *dispositif* of asylum in practices of governing is not a purely technical matter, but involves *reflexive* and *affective* humans (see also Gill 2016; Graham 2002) which makes the spaces that are the effect of these practices even more intricate and unpredictable.

Truth-telling and truth-writing appear to rest on fragile grounds due to the dissociation of practices of case-making from the 'consequences' of case resolutions. This is why convictions flourish and need to be sustained in order to retain caseworkers' capacity for truth-telling. Overflowing cases can either shatter or amplify such convictions. Asylum procedures are certainly a very particular setting for "giving an account of oneself" (Butler 2005). Yet I consider Butler to be right in pointing to the potential for the unsettling of governmental "schemes of intelligibility" by all "speaking beings". She suggested that "when we do act and speak, we not only disclose ourselves but act on the schemes of intelligibility that govern who will be a speaking being, subjecting them to rupture or revision, consolidating their norms, or contesting their hegemony" (Butler 2005, 132). This means that the encounters of asylum procedures, in which applicants are asked to give an account of themselves can have both stabilising and destabilising effects on the schemes of intelligibility of the asylum *dispositif*.

What I have tried to illuminate in this Chapter 7 is that case-making and its associative practices (like law-making, see Latour 2010) have their own peculiar referentiality. Truth-telling and truth-writing involve "truth games" (Foucault, 2014) that belong to the realm of – and are mediated by – different "regimes of truth": the first to a regime of truth rooted in expertise (and relatedly in scientific ways of knowing such as medical or linguistic ones); the second to one rooted in law. My analysis of convictions in these different regimes of truth can thus be read in terms of Foucault's notion of "regimes of truth". As Lorenzini (2015, 2) suggested, "according to Foucault, under every argument, every reasoning and every 'evidence', there is always a certain assertion that does not belong to the logical realm, but is rather a sort of commitment". And he continues to state that participants in a regime of truth submit to this (often implicit) commitment, which I consider in terms of the notion of conviction. Regimes of truth can thus be seen as related to certain states of conviction. These states of conviction can reveal themselves in the meta-pragmatics of those involved in enacting the regime – in debates amongst each other or with a researcher like me. On occasions of overflows – of another 'truth' revealing itself – they may become, somewhat paradoxically, both revised and stabilised.