The State versus the Alien: Immigration Control and Strategies of Irregular Immigrants

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In the past decade the Dutch state and the European Union have initiated a number of measures to make the strategies of irregular immigrants more visible in order to exclude, apprehend and expel them more effectively. These measures have limited the scope of irregular immigrants to manoeuvre in the legitimate institutions of society. As a consequence irregular migrants are pushed towards the fringes of legality and beyond. This article discusses three shifts in the residence strategies of irregular immigrants: (1) from formal to informal work, (2) from legitimate to criminal behaviour, and (3) from being identifiable to being unidentifiable. In reaction to these strategies, the state is countering again with new measures, especially with instruments to identify immigrants who do not reveal their true identity. There is a constant struggle in the field of migration, in which individual and collective actors involved respond to each other with different strategies.

Since the 1990s several studies have been published documenting the existence of irregular immigrants in large cities and rural areas in Europe (Engbersen 1996; Romaniszyn 1996; Alt 2003; Gryzmala-Kazlowska 2005; Düvell 2006; Bleahu 2007; Van Meeteren et al. 2008; Van Nieuwenhuyze 2009). Many of these revealed the existence of informal institutions that were crucial for the residence opportunities of these irregular immigrants. Important institutions are the informal economy, the informal housing market, the informal marriage market, and crime (see also Engbersen et al. 2006). Georg Simmel’s concept of ‘secret societies’ is very useful to emphasise that these informal institutions are products of the manifest society. Secret societies are characterised by direct connections with public worlds, or, as Simmel (1950: 330) puts it: ‘The secret society offers . . . the possibility of a second world alongside the manifest world. And the latter is decisively influenced by the former.’ The connections between secret and public worlds indicate that the underworld metaphor, frequently recurring in journalistic articles and academic studies on irregular migration, is not
very accurate. The unknown cities of illegal immigrants also feature numerous actors from the overworld: legal compatriots, employers, clergymen, lawyers, and public service workers, including police officials and mayors who sometimes turn a blind eye or assist illegal immigrants. The European studies into irregularity describe how informal institutions of irregular immigrants are interwoven with legitimate institutions. They also show other relevant dimensions of secret societies as described by Simmel (1950: 345–60), such as (1) patterns of reciprocal trust and protection, (2) the art of keeping silent, (3) cautious attitudes towards written communication (sans papiers), and (4) strategies aimed at protecting illegal immigrants from relevant others who may uncover their illegal status.

In the manifest and secret societies in which irregular immigrants are embedded there are all kinds of manifestations of what Bommes and Kolb (2002: 5) have defined as ‘foggy social structures’: ‘Social structures that emerge from efforts by individuals and organizations to avoid the production of knowledge about their activities by making them either unobservable or indeterminable; or, put another way, the practical production of fog.’ These foggy structures are the product of contradictory economic, social and juridical forces: economic demands of employers and humanitarian considerations of civil society and state actors on the one hand, and the political-juridical rejection of irregular immigration by the state on the other (Bosniak 2006; De Genova 2007). A variety of illegal and legal actors are active in the manufacturing of fog, such as regular employers employing irregular immigrants through illegitimate temporary work agencies; regular citizens and religious organisations housing irregular immigrants, irregular immigrants using false documents to get medical aid; public service workers using their discretionary power to give irregular immigrants access to public housing and education; municipalities supporting failed asylum seekers who do not want to leave the country; and private households employing irregular domestic workers. A lot of fog is produced, for different reasons, in order to make the activities of individuals and the organisations involved unobservable or indeterminable (Bommes and Kolb Bommes 2002). The state has three main strategies to deal with foggy social structures:

1. A first strategy is to accept and tolerate these structures for economic and humanitarian reasons. This policy of toleration was characteristic for most Western European countries in the 1970–90 period (Cornelius et al. 1994). This was not a formal, openly formulated policy but rather an informal policy based on a tacit consensus among policy-makers to deal in a pragmatic way with the economic interests of certain economic sectors, especially agriculture.

2. A second strategy is to convert the informal into the formal, or the illegal into the legal through regularisation programmes. Such programmes bring irregular immigrants out of the shadows of the secret society. They also transform them into regular denizens with
corresponding rights and duties, and make these immigrants less dependent on informal markets and crime. During the past few years, Italian, Spanish, and Greek governments have actively pursued policy strategies of regularisation programmes.

3. A third strategy is to break open the foggy social structures of irregular immigrants. Nowadays, this is a dominant strategy in Northern European welfare states. Since the beginning of the 1990s irregular immigration is increasingly considered a serious social problem in Nordic European countries as well as at the supranational level of the European Union (Cornelis et al. 2004; Broeders 2009a). As a consequence, a number of measures have been taken to combat irregular migration, such as employer sanctions, excluding immigrants from labour and public services, linking (immigration and public service) databases, introducing biometrics to identify immigrants, and a stronger emphasis on implementation and enforcement. This third strategy confirms the increased importance of internal border control (Andreas and Snyder 2000; Van der Leun 2006). It also shows that the existing gap between rhetoric rejection and pragmatic acceptance of irregular migration is more and more bridged.

The Netherlands is a clear exponent – and in many areas even a front-runner – of the Nordic European welfare states that has introduced new legislation and new policies of law enforcement to deal more effectively with irregular migration. This third strategy demonstrates the power of the state to affect the life chances of irregular immigrants. This power is twofold. Firstly, there is the power of the state to define what is legal or illegal action and who is a legal or illegal person – classification power (Bourdieu 1994; Schinkel 2005). States not only have the monopoly over the control of the ‘legitimate means of movement’, but also over the allocation of citizenship and residence rights (Torpey 2000; Bauman 2004; Bosniak 2006). Secondly, one witnesses the increased power of the state to identify the undocumented – identification power – and consequently the increased potential to exclude the undocumented immigrants from the labour market and public services, and ultimately expel them from national territories (Broeders 2009a). The state strategy of detention and expulsion has become more important in the last decade. It is a policy strategy that is facilitated by the European Union through the construction of several databases in which information on identity and itinerary is stored on specific groups of immigrants (tourists, asylum seekers and irregular immigrants). These databases may ease the attempts of the state to identify irregular immigrants. The classification and identification powers of the state also underline that the nation state is not a zombie category, or has become obsolete under conditions of globalisation (Beck 2000; Schinkel 2009).

This article starts from the assumption that it is of vital importance to study ‘the crucial macro level’ of the nation state to understand the nature of
irregular migration. A second assumption is that the power of the state to classify and to identify immigrants limits the opportunities of regular and irregular actors to produce foggy social structures. However, it may be that the attempts to dismantle the foggy social structures may in fact contribute to the growth of more informal and illegitimate social structures. Classical examples are the prohibition policies in the United States (1920–33) and the current War on Drugs that have both contributed to a rise in organised crime. A final assumption is that irregular immigrants are not passive agents; they react to changing options and create new solutions for their problems (Black 2003; Broeders and Engbersen 2007). We take the Netherlands as a crucial case to document the third policy strategy of trying to break open the foggy social structures by an increased emphasis on internal migration control. The outline of this article is as follows. First, we give a short overview of the current Dutch and partly EU policies to fight irregular migration. Then we discuss the implications of these immigration policies for the residence strategies of irregular immigrants. Residence strategies are strategies that enable irregular immigrants to make ends meet and stay in the Netherlands. We will then analyse three important strategies: labour market participation, criminal behaviour and manipulation of identity in order to prevent expulsion. In the final section we will discuss the complexity of contemporary foggy social structures and we will answer the question whether the Dutch state is successful in dismantling the foggy social structures of irregular immigrants.

Fortress Europe and the Dutch Donjon

If the European Union can be characterised as a ‘fortress’, then the Netherlands can be seen as its donjon. A donjon, or a keep, is the fortified central tower that forms the heart of the fortress. As such it contains the most valuable supplies and the most important living quarters of the castle. Translated to immigration and immigration policies, the Dutch donjon is the heart of the matter: that which states want to protect and shield from (irregular) migrants. It is the welfare state, the labour market, and in essence the right of residence and all the other rights and privileges that it entails. Obviously a modern day donjon and fortress do not solely, or even predominantly, rely on walls, gates and a moat. Fortifications can be found at the fringes of Europe where some of the external Schengen borders have been strengthened with fences, surveillance equipment, guards and watchtowers, but the simple truth remains that the external borders of the EU are too long to be patrolled effectively (Groenendijk 2002; Carling 2007). Gradually states have realised that ‘keeping them out’ is only part of the possible answer to unwanted migration. One important policy shift in recent years has been the growing importance of internal control on irregular migrants in the Netherlands, but also in countries such as Germany and Denmark. This comprises a wide array of policy measures such as employer sanctions, exclusion from public services and surveillance by the police
Since the early 1990s the Netherlands has steadily developed a policy programme that is aimed at the exclusion of irregular migrants that have taken up residence inside the Dutch donjon. Exclusion of irregular migrants has become an explicit policy goal. The main instruments of exclusion are legislation, controls, documentation and registration and new forms of (digital) surveillance.

One of the primary struggles between irregular migrants and the Dutch state apparatus is the control over identity and identification. In matters of migration, control over identity (passports, visas) has always been one of the keys to inclusion and exclusion (cf. Torpey 2000), but in the age of computerisation, database technology and cross-referencing, identity control occupies centre stage. Moreover, in a constitutional state, such as the Netherlands, identification of irregular migrants is the key to any policy of exclusion. Guarding the Dutch donjon in the present day is a matter of internal migration control that revolves around three main concepts: exclusion, surveillance and identification. The link between the exclusion of illegal immigrants and policies of surveillance can follow two separate, and essentially contradictory, logics (see Broeders and Engbersen 2007; Broeders 2009b). The first logic is ‘exclusion from documentation’ and the second is ‘exclusion through documentation and registration’. Policies operating under the first logic block irregular migrants’ access to documentation and registration in order to exclude them, while policies operating the second logic aim to register and document the individual irregular migrant himself in order to exclude him.

Exclusion from Documentation and Registration

First, surveillance may be deployed to exclude illegal immigrants from key institutions of society, such as the labour market and the housing market and even from informal networks of fellow countrymen and family. Under this logic irregular migrants are (formally) excluded from legal documentation and registration, and are thus excluded from the institutions themselves as they lack the proper ‘entry tickets’. Without the proper papers and registrations they ‘bounce off’ the paper and digital walls of the welfare state. The state’s efforts are primarily aimed at the (formal) institutions and networks illegal immigrants use and need for their daily lives. It is a strategy of exclusion through the delegitimation and criminalisation of all those who may be employing, housing and aiding illegal immigrants. These strategies are prominent in the Netherlands and other north-western EU member states where registration is routinely used to exclude irregular migrants from (semi-)public institutions and the labour market.

Exclusion through Documentation and Registration

In the second type of logic, the state aims to document illegal immigrants themselves through a strategy of developing detection and identification.
tools aimed at exclusion. Identifying and ‘documenting’ illegal aliens is necessary for detection, but especially for expulsion, as states have gradually found out that ‘unidentifiable immigrants are constitutionally rather invulnerable to expulsion’ (Van der Leun 2003: 108). The expulsion of illegal aliens can only function when identity, nationality and (preferably) migration history can be established. If not, expulsion is likely to be resisted from within (lawyers and judges) and from abroad (countries of transit and origin) in addition to the personal resistance from illegal aliens themselves. It is therefore vital for the state to be able to connect illegal aliens with their ‘true’ legal identities. Policies operating under this logic of exclusion aim to document and register the irregular migrant himself, in his capacity as an irregular migrant. Documentation and registration are meant to establish (a) the illegal status of the migrant and (b) establish and (re)connect the irregular migrant with his legal identity. In other words, registration is used to identify or even re-identify irregular migrants (see Broeders 2007). This is needed in order to facilitate exclusion in the ultimate sense: expulsion from the state. Investment in this strategy is much more recent than the first and is again dominant in the advanced welfare states of Northern Europe.

In the Netherlands successive governments have enacted policies to close off Dutch society to unwanted migrants since the end of the guest worker era in the 1970s. As in most countries, the labour market was the first target. The first measures to curb (irregular) labour migration were taken in the 1970s in the field of employer sanctions. The primary aim then was to ‘demagnetise’ the labour market (Martin 2004). In other words, sanctions and policy were directed first and foremost at domestic employers while the irregular migrant himself was less ‘in the picture’. Resident irregular migrants did not become an explicit policy or public problem until the early 1990s. The period up to the early 1990s can be characterised as one of an increasingly strict regulation of entry through immigration law and policy and a simultaneous lax approach towards irregular residence and irregular work. Irregular migrants, once established, are able to find work even in the formal labour market. They can still obtain social-fiscal numbers (so-called sofi numbers), which allow them to hold regular jobs. The enforcement regime on irregular labour is lax and in a number of sectors such as agriculture and horticulture, where in spite of the high unemployment figures employers find it difficult to fill the vacancies, the authorities have often turned a blind eye.

In the early 1990s this informal policy of toleration changed drastically. In 1991 the government tied the social-fiscal number to a legal residence requirement, thus barring the route to legal labour market participation. Other measures followed, such as the Marriages of Convenience Act in 1994 and the Compulsory Identification Act of the same year. Also in 1994 the Aliens Act was amended in order to introduce new policies in the field of asylum policy. The centrepiece of the new policy of internal migration control was the Linkage Act of 1998, which was intended to exclude illegal aliens from the benefits of the welfare state. The Linkage Act amended the
Aliens Act and some 25 other acts dealing with social security, housing, education and healthcare and makes entitlements in these fields dependent on residence status (Pluymen and Minderhoud 2002). Parallel to these legal innovations the Dutch government has also invested heavily in database systems that are able to register, track and identify the resident migrant population.

One of the more recent chords in Dutch policy was the publication of the government’s white paper on Irregular Migrants (‘Illegalennota’) in 2004. In this white paper the policies of exclusion from institutions – up until then the dominant policy approach – are increasingly supplemented with policies that are aimed at the detection and identification of irregular migrants themselves. Priorities in this white paper include cutting off access to labour (intensifying labour market controls) and housing, stepping up the fight against identity fraud, increasing controls by the police, increasing the detention capacity for irregular migrants and expelling more apprehended migrants through the expulsion policy programme. The growing importance of the second logic of exclusion is evident from the emphasis that is placed on identification and the detection of identity fraud, the use of detention and the importance of expulsion policies. Some of these Dutch policy priorities are shared by other EU member states. Many (northern) EU members have for example been increasing their detention capacity for irregular migrants and rejected asylum seekers with the aim of facilitating expulsion (Jesuit Refugee Service 2005; Welch and Schuster 2005; Van Kalmthout et al. 2007).

More recently, the fortress Europe comes to the aid of the Dutch donjon in matters of the internal control on irregular migrants. The notion that the outer walls of the fortress lack deterrence if migrants who pass the hurdle of border controls – legally or illegally – are able to live an unimpeded life in illegal residence has sunk in with the EU ministers for Justice and Home Affairs (Lahav and Guiraudon 2006; Lavenex 2006). This is most clearly expressed in the European Commission’s Return Action Plan of 2002 which states that the message should get across that ‘immigration must take place within a clear legal procedural framework and that illegal entry and residence will not lead to the desired stable form of residence’ (quoted in Samers 2004: 41). The most important instrument that is being developed at the EU level is the emergent network of EU migration databases, consisting of the Schengen Information System, the Eurodac database and the Visa Information System (VIS), that may become an important tool for the (re-) identification of irregular migrants. These databases will store a massive amount of data, including biometric identifiers, on potential irregular migrants. They will register as many immigrants from ‘suspect’ legal categories (asylum seekers are registered in Eurodac) and ‘suspect’ countries of origin (visa applicants will be registered in the VIS) as possible, in order to get at the percentage of immigrants crossing the line into irregularity at a later stage. These systems can be used to re-identify irregular migrants that try to conceal their identity in order to avoid expulsion (for an analysis of
these data systems see Broeders 2007). In light of its value for domestic policies it is no surprise that countries such as the Netherlands and Germany are leading advocates of organising and equipping data exchange at the European level in matters of migration management (see, for example, Aus 2003, 2006).

**Shifts in Strategies of Irregular Immigrants**

Realising that ‘keeping them out’ (border policies) has to be supplemented with policies of ‘getting them out’ (internal migration control and expulsion) is a first step. Putting such policies into practice requires political determination, budget resources and delegating the task of exclusion to private and public agencies, especially to public service employees working in agencies that interact directly with citizens and that deliver public goods like education, health, welfare or public housing (‘street-level bureaucracies’) (Lipsky 1980). Other typical examples of street-level bureaucrats are police officers and other law enforcement personnel, such as labour inspection officers.

During the ‘toleration years’ there existed a big gap between the national level of policy-making and the actual implementation by municipalities and street-level bureaucracies. Professionals, public service workers and local officials used their discretionary and political powers to mitigate the social consequences of anti-irregular immigration or asylum policies for specific groups, thus enabling some groups to gain access to public services after all (Rusinovic et al. 2002; Van der Leun 2003). With the introduction of ever stricter policies, the policy gap seems to grow narrower in the Netherlands because the discretion of these professionals and workers in the execution of their work is bounded by new legislation and new technological equipment that make effective control of immigrants possible. Of course, both employers and irregular immigrants still develop strategies to get round exclusionary policies, often helped by illegitimate agencies. Public service workers, professional and local authorities also play a role in this respect (Jordan and Düvell 2002; Anderson 2005), but the margins for creating foggy social structures are getting smaller.

A crucial question is, however, how do irregular immigrants react to these new policies of exclusion and identification? Irregular immigrants have shown a remarkable creativity and inventiveness to develop strategies and informal institutions that enable them to stay and reside in the Netherlands. In other words: in response to changes in policy, they change tactics, look for ways of circumvention and move to other spheres and contexts. Irregular immigrants and the institutional surroundings to which they are related and embedded have a vested interest to resist the state’s efforts to make society ‘legible’ and thus more controllable (Scott 1998). The means to do this are less sophisticated than those of the state, but that is not to say that they are ineffective. Strategies of producing foggy social structures ‘from below’ can
be very effective indeed.¹ We will discuss three shifts in strategies of irregular immigrants in response to anti-irregular immigration policies: (1) the shift from formal to informal work; (2) the shift from legitimate to criminal activities; and (3) the shift from being identifiable to being unidentifiable.

From Formal to Informal Work

The first line of action governments took against irregular (migrant) labour was the introduction of employer sanctions. The penalisation of employers (and illegal employees themselves) varies in severity from country to country. In some countries fines are very high and some countries even allow for imprisonment of employers or for revoking licences (Robin and Barros 2000). In general the effectiveness of employer sanctions to deter irregular entry and employment is thought to have been declining since the 1990s. Martin and Miller (2000: 2) assert that the spread of false documents, the rise of subcontractors and other middlemen on the one hand, and inadequate labour and migration law strategies, enforcement budgets and insufficient cooperation between agencies on the other, undermine the effectiveness of employer sanctions. Shifting strategies of irregular migrants combined with inadequate implementation policies lie at the root of this ineffectiveness. Boswell and Straubhaar (2004: 5) suggest, however, that the Netherlands and some other governments are increasingly taking the ‘combat of illegal foreign labour’ seriously: ‘Germany, the Netherlands and France all have tough legislation, and have stepped up efforts at enforcement since the early 1990s’.

As said before, the Dutch government laid a protective ring of documents and documentary requirements around the formal labour market from the early 1990s, blocking access to stable legitimate jobs and cutting off any possibilities for people without valid documents to build up a quasi-legal position through the labour market (Engbersen 2003; Van der Leun 2003). With the easy routes into the labour market cut off, illegal aliens have been seeking new ways to become employable. Assuming, borrowing or buying a ‘legal identity’ has been a key strategy to regain access. Many countries have seen the emergence of a circuit, or more aptly an illegal ‘paper market’ (Vesta 2008), in which false papers are produced and sold. In addition, there is a widespread practice of lending legitimate documents (passports, social security numbers, etc.) to irregular migrants, either free or for money (Engbersen 2001).

As it became more difficult for an individual illegal alien to gain access to the labour market, intermediary organisations sprang up. Sub-contracting and temp agencies have become important institutions to facilitate a match between the demand and the supply of illegal workers. Interestingly, it is often official economic policies of deregulation and creating more flexible labour markets that provide the opportunities for these intermediary structures. According to Martin and Miller (2000: 16) the general trend towards deregulation and greater flexibility in labour markets tends to
undercut governmental policies aimed at curbing irregular entry and employment. More specifically in the Dutch case, the boom of legal, semi-legal and shady temp agencies was a direct result of the government programme that aimed at the deregulation of temp agencies (Van der Leun and Kloosterman 2006). Portes and Haller (2005: 409) point to a ‘paradox of state control’ meaning ‘official efforts to obliterate unregulated activities through the proliferation of rules and controls often expand the very conditions that give rise to these activities’. This does not mean that regulations create informality, but they do seem to enhance opportunities for engaging in irregular activities. They see a risk in too repressive and authoritarian a control on informal activities, as it would drive them further underground, depriving authorities of information and control on them. ‘The systematic withdrawal of information from government agents has proven by far the most effective tool in the hands of civil society to resist authoritarian rule’ (Portes and Haller 2005: 420).

Still, during the 1990s and into the 2000s the Dutch government tried to get a firmer grip on irregularity in the labour market. First, there were legal initiatives such as the extension of the Dutch Act on Chain Liability to the garment sector in 1994, which made retailers formally responsible for the illegal practices of their contractors. Secondly, labour market controls were intensified, inspections became more targeted (based on risk analysis) and in certain sectors and industries the government organised crackdowns. The introduction of a Clothing Intervention Team, which organised raids on Turkish sewing shops and especially targeted violations of the Foreign Nationals (Employment) Act (WAV), was one of the main reasons for the nearly complete disappearance of the garment industry in the Dutch capital (Raes et al. 2002). Comparable teams, in which all the relevant government agencies cooperate, were introduced for horticulture (Westland Intervention Team), and the new Social Security Inspectorate (the SIOD) targeted the temp agencies in the Netherlands. During the 2000s the Labour Inspectorate saw its ranks growing in size. Political priorities were finally converted into extra funds, more manpower – the number of inspectors grew from 80 in 1999 to 180 in 2006 – and a new legal basis for the fine system. Since 2005 the Labour Inspectorate can make use of an administrative fine, instead of a lengthy and cumbersome route through the Public Prosecutor’s Office, resulting in much more frequent and higher fines (Arbeidsinspectie 2006).

Another trend in labour market inspections is the growing use of computerised and networked checks on identities and other documentary requirements, sometimes even on site. Though these efforts to improve the state’s grip on the labour market are certainly not without flaws, they do seem to have had some effect. During the period 1992–93, 170 illegal immigrants were interviewed in the city of Rotterdam. One-third of them proved to be unemployed. In 2001, 156 illegal immigrants were interviewed in the Netherlands. Again, one-third proved to be unemployed, and a remarkable shift from the formal to the informal economy had taken place. While in the
early 1990s, 30 per cent of the illegal immigrants had worked within the formal labour market, almost none of them still did so ten years later (see Engbersen et al. 2002; Van der Leun and Kloosterman 2006). It is also striking that many of them were moving towards the restaurant and catering sector and into the domain of personal services. These are sectors in which illegal labour is more difficult to control as compared to traditional sectors such as construction and agriculture and horticulture.

The Rise in Subsistence Crime

Apart from the shift from formal to informal work, there is also a shift taking place from legal economic activities to criminal activities. There are serious indications that under the influence of stricter policies, irregular immigrants are more likely to become involved in specific forms of crime, such as theft and possession of false documents. These indications are based on a number of studies conducted in different periods on the interrelation between irregular migration and crime. The empirical basis of these studies is police data concerning the apprehension of irregular immigrants between 1989 and 1994 (figures relating to Rotterdam) and on data regarding the apprehension of irregular immigrants between 1997 and 2004 (figures relating to the Netherlands). These studies supported the ‘marginalisation thesis’: a restrictive illegal aliens policy marginalises irregular migrants by excluding them from the labour market and public provisions, and contributes to forms of ‘subsistence crime’. Through criminal activities irregular immigrants are able to continue to reside in the Netherlands (see for an overview Engbersen et al. 2006). In other words: the legal construction of illegality by the state, and the measures being taken to combat illegality more effectively, stimulates the involvement of specific groups of irregular immigrants in criminal activities.

The marginalisation thesis builds on the premise that the exclusion of irregular immigrants from formal employment and public services has a criminalising effect on those who are excluded. The empirical analysis suggests that the intensification of the restrictive illegal alien policy since 1997 has instigated a rise in the number of illegal crime suspects. Whereas in 1997 31 per cent of the apprehensions of irregular immigrants concerned criminal offences (Engbersen et al. 2002), this had reached 45 per cent by 2003 (Leerkes et al. 2004), and 49 per cent in 2004 (Boekhoorn et al. 2004: 156). These studies also reveal that the majority of offences of irregular immigrants are theft and burglary. Especially the strong increase in offences such as theft, shoplifting and burglary is in accordance with the marginalisation thesis. It appears that it has become more difficult for irregular immigrants to support themselves in a legitimate manner. Recently, the marginalisation thesis was put to a critical test (Leerkes 2009). It turned out that the strong increase in crime could be partially ascribed to other factors, especially the rise in ‘criminal migration’ due to open borders and the
stronger focus on detection and registration of irregular immigrants by the state. However, this analysis did not refute the marginalisation thesis. Even when Leerkes (2009) controlled for other explanations, marginalisation effects appear to be responsible for at least one-third of the total increase. These theoretical and empirical findings were confirmed in a research project on asylum migration and crime in the Netherlands (De Boom et al. 2006). This research was based on an analysis of all persons who applied for asylum in the Netherlands between 1995 and 2004 ($N = 235,000$). In this research project a distinction was made between (1) asylum migrants who were in the Netherlands legitimately (their requests had been granted); (2) asylum migrants who are still awaiting the (final) decision; and (3) asylum migrants whose request has been refused and remain in the Netherlands illegally. There are significant differences in the legal and social position of these three categories. Recognised asylum migrants have full access to the labour market and access to public services such as social housing, health care, education and social security. The position of asylum migrants still involved in the procedure is much weaker. Their living conditions are restricted (they cannot live where they choose) and they have limited access to employment. They are in fact restricted to seasonal work because they are allowed to work only 12 weeks per year. In addition, their financial position is poor. The weakest legal and social position is, of course, that of irregular asylum migrants.

The empirical results showed a positive correlation between the weakness of the status and the involvement in (subsistence) crime. The relative number of (crime) suspects among failed asylum migrants residing illegally in the Netherlands is much higher (9.9%) compared to asylum migrants whose applications are pending (5.4%) or to asylum migrants possessing a legal residence permit (3.4%). The analysis also revealed that the majority of offences of which (failed) asylum migrants are suspected concern theft and burglary. These types of offences are closely connected to their social position, particularly of those who are illegal. These economic offences are often a strategy for gaining sufficient income to be able to stay in the Netherlands. The rise in subsistence crime is a typical example of an unintended consequence of internal immigration control. In the international literature most attention is on the unintended consequences of external border control, such as human smuggling organisations and migrant deaths along the borders (Kyle and Koslowski 2001; Carling 2007; Carter and Merrill 2007). Our analysis shows, however, that internal border control is generating specific forms of subsistence crime.

*Detention, Expulsion and the Importance of not being Earnest*

A third shift that is taking place is the shift from being ‘identifiable’ to ‘unidentifiable’. Up to the early 1990s irregular immigrants could obtain a social-fiscal number which authorised them to get legitimate jobs. Therefore, it was necessary to identify themselves. This category of
immigrants later became classified as ‘white illegals’ (being irregular, but doing regular work). In the early 1990s the Dutch government closed off this ‘legal loophole’, making it increasingly important for irregular immigrants to be ‘unidentifiable’ in order to shield themselves from state control. As the risk of detention, apprehension and deportation looms large in the lives of irregular migrants they develop various strategies to change and mask their personal identity and illegal status. There are three main variants (Engbersen 2001). First of all, there is the structural or situational adoption of a false identity, for example through the acquisition of false papers or the use of legitimate documents – such as passports, social security numbers and medical insurance cards – from legitimate others. Secondly, they obliterate their legal identity – more specifically, their identity documents – mostly in order to prevent and obstruct deportation by the authorities. Unidentifiable irregular migrants are the ‘unmanageable’ cases that the immigration authorities have difficulty coping with and they are seldom deported. Thirdly, they conceal their irregular status from others, such as employers, public officials and even members of their own ethnic community. They do so out of fear for repercussions and to hide their inferior position in their own community (Staring 1998).

A fairly recent development has been the determination of a number of countries to create an effective expulsion policy for irregular migrants. An important instrument in executing these expulsion policies has been the increased use of incarceration in detention centres, which in turn has everything to do with the highly effective strategy of lying and hiding identities among irregular migrants. These deportation centres focus on the organisation of forced return programmes, on the one hand, and establishing the identities and nationalities of the apprehended ‘unidentifiable’ immigrants, on the other. Identification of the ‘unwilling’ very much resembles a struggle between the state and the immigrant. Migrants who do not want to leave the territory, refuse to cooperate, and frustrate the progress of procedures (for example, by stating a false name or incorrect country of origin) force the authorities to enter into a complicated bureaucratic process of identification of aliens, determination of their nationalities, and ‘presentation’ of aliens to embassies for the purpose of obtaining travel documents (laissez passer).

The use of administrative detention – a general European trend – is justified by and based on the assumption that a prison regime will encourage immigrants to reveal their true identity. Detention is also considered to be a deterrent to prevent immigrants coming to Europe through irregular channels. There are now nearly 200 detention centres in the EU located at strategic sites, such as traditional prisons, islands, airports, seaports and detention boats in large cities (Jesuit Refugee Service 2005). If there is a lack of detention capacity, apprehended irregular migrants who are difficult to remove are not sent back out on the streets as used to be the practice in countries such as the Netherlands (Van der Leun 2003) but are often brought
to these detention centres. In 2006 nine penitentiary institutions with a capacity of 2,100 beds were in use for irregular immigrants. In 2007 this capacity has increased by the use of three ‘detention boats’ (in addition to the two detention boats that were already in operation) and the opening of a new penitentiary institution with a capacity of approximately 1,300 beds. This means that in 2007 approximately 13 per cent of the total Dutch penitentiary capacity was intended for the detention of irregular immigrants (Van Kalmthout 2007: 103) Dutch studies reveal, however, that less than half of the apprehended and detained irregular migrants are effectively expelled from the country and that, in contradiction to what the political rhetoric suggests, the share of effective expulsions is in fact decreasing over the years (Engbersen et al. 2002; Van Kalmthout et al. 2007). According to Van Kalmthout (2007: 123), who studied alien detention in two Dutch prisons for the period 1994–2003, the effective removal percentage is probably no higher than 35 per cent. The ineffectiveness of expulsions has several causes. One major cause is the reluctant cooperation of countries of origin that do not want to take back their irregular migrants (Noll 1999; Lavenex 2006; Ellermann 2008). Another major cause is still the difficult identification of illegal aliens. Strategies of non-cooperation and hiding the truth are very effective and many immigrants are still able to frustrate the administrative processing of return programmes.

Governments are obviously aware of the effectiveness of these simple strategies and have been working on an answer for quite some time. EU member states have been investing heavily in new methods of identification, both domestically and at the EU level. As the struggle over identity is in essence a struggle over documents (only a documented legal identity facilitates expulsion) states have turned their attention towards the traces irregular migrants themselves have left in official administrations and registers during the course of their migration into Europe. In general, illegal aliens have three possible ‘migration histories’. They either crossed the border illegally (with or without help), they were asylum seekers and stayed after the claim was rejected, or they came on a legal visa and stayed after its validity expired. Especially the two latter categories leave traces in the administrations of migration authorities.

In a Europe without borders the effective use of such data has to be organised at the level of the EU. In recent years, European governments have been developing a network of immigration databases at the EU level aimed at documenting these migration histories in order to ‘re-identify’ illegal aliens found on the territories of the member states (Broeders 2007). These European databases seek to register as many immigrants from ‘suspect’ legal categories (asylum) and ‘suspect’ countries of origin (visa) as possible, in order to get at the percentage of immigrants that crosses the line into irregularity at a later stage. The Eurodac system registers all asylum applications in the EU and the Visa Information System will register all visa applications for entry into the EU when it becomes operational. Any irregular migrant that is apprehended in one of the EU member states can furthermore be registered in the Schengen Information System (II). All the
entries into these systems consist of both the application data and the fingerprints of the applicant, making the link between a dossier and an irregular migrant – no matter how uncommunicative and uncooperative he or she may be – a matter of cross-referencing.

Potentially, these systems undermine the most effective strategy – lying – irregular migrants have to resist their expulsion. A potential side effect of this new policy approach that closes off the ‘identity routes’ of asylum and visa may be an increasing dependence of irregular migrants on smuggling and trafficking organisations in order to use the direct route of illegal entry.

**From Light to Heavy Foggy Social Structures**

The previous section analysed contemporary efforts of the Dutch state to fight illegality. The Dutch state has initiated a number of measures to make the strategies of immigrants more visible in order to exclude, apprehend and expel them more effectively. As a result, the scope of irregular immigrants to manoeuvre in the legitimate institutions of society is increasingly limited. Stricter policies and enforcement push irregular migrants towards the fringes of legality and beyond. This is a serious side effect of these control policies. Other European countries are also investing in policy programmes to strengthen their internal migration control and are stepping up the implementation thereof.

We have documented three shifts in the residence strategies of irregular immigrants: (1) from formal to informal work; (2) from legitimate to criminal behaviour; and (3) from being identifiable to being unidentifiable. We have also argued that in reaction to these strategies, the state is again countering with new measures, especially with instruments to (re-)identify immigrants who do not reveal their true identity. The state is also trying to dismantle illegitimate organisations (such as temporary work agencies, and markets for false documents) that have been established in reaction to restrictive policies and that were sometimes aided by the introduction of policies of liberalisation. So there is a constant struggle in the field of migration, in which individual and collective actors involved respond to each other with different strategies (Black 2003; Vesta 2008). It is clear that in this struggle the state is the most powerful party, and in the long run may gain and keep the upper hand.

However, there is empirical evidence that the attempts by the state to fight irregular migration is pushing irregular immigrants further underground. The same mechanisms that play a role in external border control are occurring with internal border control. Both forms of control are creating incentives for illegitimate actors to organise illegal entry and residence (including illegal employment, housing, false documents) which results in greater victimisations of aliens. ‘The result is sometimes’, writes Miller (2001: 329), ‘that the medicine makes the illness worse.’ One could make the argument that the former (informal) toleration policies ‘from above’ in combination with the toleration practices ‘from below’ by public service
workers led to less foggy social structures, whereas the current policies may in the end produce more foggy social structures.

However, the informal toleration policies and practices were not tenable in the long run for political reasons. Too many 'white' illegals having regular jobs raised serious questions of displacement of native workers (in an era of serious unemployment among regular citizens), and too many irregular immigrants getting access to public services contributed to the image of irregular immigrants as 'welfare abusers' and, potentially, to a legitimation crisis of the (welfare) state. Dutch citizens are increasingly distrustful of a state that is unable to enforce the law. On the other hand, the current restrictive policies also produce negative side effects, among which is subsistence crime. The challenge of immigration control will be to find the right balance between closedness and openness, and also between effective law enforcement and practical toleration policies that can deal with the economic and social ambiguities of advanced immigration societies. Another challenge will be to prevent large informal markets becoming more prevalent in advanced societies. This requires a combination of inclusive policy strategies of regularisation (including temporary labour and amnesty programmes) and toleration, and exclusionary policy strategies of law enforcement (including border control and effective employer sanctions) and return programmes. The Netherlands has not yet found the right combination to deal effectively with irregular migration, nor has any other immigration country.

Notes

1. In a similar vein Scott (1985) refers to everyday popular resistance to state policies in situations of extreme inequality as the 'weapons of the weak'. Hardly impressive, but nonetheless effective in certain contexts.

2. There are also ‘legal shifts’ that have a great impact on irregular migrant labour in the Netherlands. For example, with the extension of the free movement of people to some of the new member states (including Poland) the number of irregular migrants in some sectors – such as construction – dropped drastically overnight. The border is indeed everywhere.

3. Leerkes (2009) took five alternative interpretations into consideration. The increase in crime could also be due to 1) practices of status reclassification by the state, 2) an increase in criminal migration, 3) a rise in crime detection and reporting, 4) a simultaneous rise in crime among regular immigrants, or 5) demographic changes with regards to the composition or size of the irregular population.

4. The allowance for food, clothing and spending money is far from generous: adults receive around €40 per week. Their income thus lies far below the statutory minimum income in the Netherlands.

References


