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Detection, detention, deportation : criminal justice and migration control through the lens of crimmigration

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1 | Introduction

1 INTRODUCTION

1.1 Finding the border in a time of globalisation

Driven by a range of different processes commonly placed together under the broad banner of globalisation, borders have undergone significant changes (Gready, 2004). Whereas the 1990s saw widespread optimism about a borderless world, the terrorist attacks of September 11, 2001 are generally seen as ushering in a period of renewed attempts by many countries to strengthen control over their borders in response to transnational threats (Diener & Hagen, 2009). States have sought ways to appear to be in control of these various risks and threats emanating from an increasingly globalising world, intending to address public concerns and fears (Aas, 2007). As Gready (2004, p. 350) notes, “globalisation erases certain borders while entrenching, establishing and redrawing others.” We are thus witnessing simultaneously a process of ‘de-bordering’ and a process of ‘rebordering’ (Melin, 2016). Much has been written about the securitisation and criminalisation of migration that has been a result of this (Bosworth & Guild, 2008; Huysmans, 2007).

Security and protection are not the only, or even primary, reasons for this renewed focus on borders. Loader and Sparks (2002) claim that people’s sense of place and differences between ‘us’ and ‘them’ are particularly salient in times of big transformations. For many people, the transformations associated with globalisation – increased migration, transnational cultures, multiculturalism, and neoliberal economies – are deeply threatening to their sense of national identity, security and belonging (Aas, 2007; Bloemraad, 2015; van Houtum & van Naerssen, 2002). Borders are by their very nature tools for symbolic processes of inclusion and exclusion: they are a crucial instrument in shaping national identity and defining who belongs to the polity and who does not (Diener & Hagen, 2009; Weber, 2006). Bosworth and Guild (2008) therefore claim that migration control is a way for states to at least symbolically manifest their sovereignty at a time when state sovereignty and the relevance of national territory appears to be in decline (see also Weber & Bowling, 2004). Besides reaffirming sovereignty, border control is equally aimed at establishing the boundaries of belonging and creating a coherent sense of national identity (Momen, 2005).

Whereas borders were long seen as “the physical and highly visible lines of separation between political, social and economic spaces (Newman, 2006, p. 144)”, more recently scholars have started to reconceptualise borders, focussing instead on the more dynamic concept of *bordering practices* (Browne, 2006; Cote-Boucher, Infantino, & Salter, 2014; Moffette, 2018; Pratt & Thompson, 2008; Salter, 2008). For example, Motomura (1993, p. 712) already defined the border as “not a fixed location but rather where the government performs border functions.” In this dissertation, bordering practices are defined as all measures taken by a state to regulate and enforce its borders in order to determine who has the right to stay within its territory; this can be both at the external border and inside the national territory.

Geddes (2008), quoted in Weber (2019), makes a distinction between three types of borders. Territorial borders are the traditional physical demarcations between nation states. Yet, as Fabini (2019, p. 2) argues, “borders exist not only between states, but also within nation-states.” Geddes therefore identifies two other types of borders. Organisational borders are more bureaucratic bordering practices occurring inside national territories, such as denying migrants access to basic services. Conceptual borders, which Fassin (2011) refers to as boundaries, are manifestations of perceptions about who belongs or not and do not necessarily lead to formal exclusion. Weber (2018, p. 2) accordingly argues that “borders do not operate solely through territorial exclusion, but instead may create regimes of differential in/exclusion by controlling access to essential resources.”

Controlling mobility thus no longer takes the form of controlling every person at a fixed place in between two countries. Instead, facilitated by the rise of identification and surveillance techniques, it occurs at a wide range of different locations and by a wide range of different actors, both at the actual border, at external sites, and inside national territories (Loftus, 2015; Lyon, 2007; Weber & Bowling, 2004). The externalisation of bordering practices can be seen in visa policies, carrier sanctions, and cooperation with third states to prevent would-be immigrants from getting even near the territory of the state or leaving their country altogether. The internalisation of bordering practices manifests itself through migration checks at an increasing number of internal ‘border sites’ and punitive responses to unauthorised entry or stay, such as detention and deportation (Aas, 2013; Weber & Bowling, 2004). However, it can also manifest itself through socially excluding unauthorised migrants from a range of social services, aimed at achieving ‘voluntary’ departure (Aliverti, Milivojevic, & Weber, 2019; Bowling & Westenra, 2018; Leerkes, Engbersen, & Van der Leun, 2012).

In recent decades such internal border controls have intensified and diversified throughout the western world (Bowling & Westenra, 2018; Moffette, 2014). These numerous “borders behind the border (Leerkes, Leach, & Bachmeier, 2012)” have led some to argue that “the border is everywhere (Balibar, 2002, p. 80).” Others maintain that even though borders have become deterritorial-

ised, border functions still occur at specific sites (Salter, 2008). As Monforte (2015, p. 6) puts it, “borders become real through check points and barbed wires at the edges of territory. They also become real through police controls and measures of detention and deportation within and across territories.” Indeed, what is so particular about these contemporary forms of border control is not that the border is everywhere, but rather that borders manifest themselves in different ways for different groups of people (Weber, 2006). As contemporary bordering practices are increasingly risk-based, they are aimed at facilitating smooth and undisturbed passage to low-risk travellers, while allowing for interventions targeting high-risk individuals. Borders thus no longer apply on the basis of physical presence, but rather on the basis of individual characteristics. It has accordingly become commonplace to point out the paradox of the globalisation process when it comes to global mobility: instead of making everyone a ‘global citizen’, the world has become divided between a global elite that enjoys nearly unrestricted freedom of movement and an “immobilised global underclass” (Pickering & Weber, 2006, p. 8).

Perhaps nowhere are these transformations in the nature of border control more discernible than in the European Union. On the one hand, internal borders in the Schengen area are no longer supposed to be permanently controlled and all EU citizens – but not third country nationals – in principle enjoy freedom of movement within the continent. For individual Member States this meant a partial loss of sovereignty and reduced opportunities to monitor individuals entering their territory, but this has at least to some extent been replaced by increased migration control measures inside their territory. Moreover, the implementation of the Schengen agreement was matched by some of the most stringent asylum and refugee policies (Benhabib, 2002). As Casella Colombeau (2019, p. 2), “most of the articles adopted with the Convention are conceived as compensatory measures for this free movement (among them reinforcement of external border control, police and judicial cooperation, and common visa and asylum policies).” In recent years many EU Member States have also significantly increased their efforts to return unauthorised migrants to their countries of origin (Weber, 2014). Finally, following an unprecedented influx of migrants during the 2015 refugee crisis and a number of high profile terrorist attacks inside the EU around the same time, many states have sought ways to reinstate some form of control over their territorial borders, either through the reinstatement of temporary border checks or ongoing identity checks in their border areas (Casella Colombeau, 2019). This has led to some scholars even arguing that the Schengen area actually never got rid of its internal borders at all (Barbero, 2018).

While the intra-Schengen borders are no longer supposed to be controlled, the European Union has increasingly strengthened its external borders, set up more sophisticated methods to monitor third country nationals inside the EU, and developed a range of externalisation policies to prevent unwanted third country nationals from coming even near the EU’s territory, leading to

fierce criticisms about the creation of a ‘fortress Europe’. This approach of relaxation of the internal borders while strengthening the external borders has been understood as a fundamental part of creating a common European identity (Green & Grewcock, 2002).

1.1.1 This dissertation

This criminological dissertation aims to provide a better understanding of the nature of contemporary bordering practices in the European Union, through an empirical examination of *how*, *where*, and *by whom* these practices are carried out in the Netherlands, as well as *who* is subjected to it and how it is experienced (cf. Weber & McCulloch, 2018). As a founding member of both the European Union and the Schengen area, the Netherlands makes for a particularly interesting case study. Long known for its tolerant attitude towards migrants, in recent decades the country has taken a lead in expressing concerns over European integration and asylum and migration issues, to the extent that the Economist referred to the Dutch as “the hipsters of European neurosis”.¹ What do such anxieties mean for the nature of bordering practices in the country?

This dissertation is a criminological examination of contemporary bordering practices (Loftus, 2015). For a long time criminological scholarship has concerned itself with the nation state as primary field of reference, assuming sovereign states with a bounded territory and relatively stable community (Aas, 2007). But as globalisation and migration started to pose new challenges to contemporary criminal justice systems, the field has had to adapt to new realities and reidentify some of the core elements of the discipline. As Hogg (2002, p. 195) already asked back in 2002:

“What happens to the conceptual apparatus of criminology and how salient are its taken-for-granted terms – crime, law, justice, state, sovereignty – at a time when global change and conflict may be eroding some elements at least of the international framework of states it has taken for granted?”

In his introduction to the edited collection ‘globalisation and the challenge to criminology’, Pakes (2013, p. 6) writes that “it is clear globalisation is forcing a drastic reconceptualisation of places of engagement for criminology.” One of those novel places of criminological engagement that has emerged in recent years is the border in its many forms and conceptualisations (Aas and Bosworth, 2013; Kaufman, 2014; Stumpf, 2006). Criminological scholarship has in the last years identified migration control as a central system of global social

1 <https://www.economist.com/europe/2016/01/07/early-adopters>.

control, next to the criminal justice system (Pickering et al., 2014). It has been observed that responses to unwanted mobility have increasingly employed criminal justice tools, and territorial exclusion has become a common response to criminal behaviour (Aas, 2013). As a result, criminological inquiries have needed to move beyond a narrow understanding of criminological concepts and to sites that are outside the traditional criminal justice system (Aas, 2007; Bosworth, 2012; Pickering et al., 2014; Stumpf, 2006). Recent research has accordingly dealt with criminalising discourse around migrants (Van Berlo, 2015), and administrative practices such as immigration detention and deportation (Bosworth, 2014; Stanley, 2017).

The dissertation builds on a recent surge in criminological literature that concerns itself with “the growing interdependence between criminal justice and migration control” (Bosworth, Aas, & Pickering, 2017, p. 35). It follows Weber and Bowling’s (2004) ‘sites of enforcement’ framework for studying migration control practices, in order to encompass the wide array of enforcement locations and actors involved in bordering practices. In particular, it examines two bordering practices – intra-Schengen migration policing and criminal punishment and deportation – through the lens of *crimmigration*. Crimmigration refers to the growing merger of migration control and the criminal justice system and has proven to be a useful framework for understanding contemporary forms of border control and the various ways it is both shaped by, and shapes the criminal justice system (Pickering et al., 2014; Stumpf, 2006; Van der Woude, Van der Leun, & Nijland, 2014). As Weber & McCulloch (2018, p. 5) highlight in a recent contribution discussing some of the key theoretical developments in the criminology of borders:

“While the concept of crimmigration does not capture all developments in contemporary border control, particularly outside the US, it provides a powerful and systematic framework for the examination of punitive practices such as criminal deportation, immigration detention and migration policing, and is particularly useful in framing analyses of *how* immigration controls are enforced (emphasis in original).”

The remainder of this introduction consists of three sections. The following paragraph discusses the concept of crimmigration in detail, from its inception more than ten years ago to the current state of play. It starts with a detailed examination of the original publication by Stumpf (2006), followed by an overview of the developments that have taken place in the field since then. This is followed by a description of the criminal justice and migration control systems in the Netherlands, as well as a brief discussion on existing studies on crimmigration in the Netherlands. Finally, paragraph four provides an overview of the different case studies that make up this dissertation.

1.2 Crimmigration

Stumpf (2006) introduced the term *crimmigration* to refer to the growing merger of criminal law and migration law. Traditionally these are two clearly distinct legal domains, each with their own aims, principles, and protections. Stumpf notes that at first it might seem odd that these two legal systems are becoming increasingly alike, “because criminal law seems a distinct cousin to immigration law” (p. 379). Whereas criminal law deals with harm committed by individuals or groups to other individuals or society in general, migration law deals with the question whether foreigners should be allowed to enter the state’s territory and stay there.

At the same time, both legal systems have always shared some similarities – including their distinctive dissimilarity from most other legal domains, namely that they deal with the relationship between individuals and the state. Both legal systems also have a gatekeeper function, dealing with questions about who belongs to society and who does not. As Stumpf (2006, p. 380) notes:

“Both criminal and immigration law are, at their core, systems of inclusion and exclusion. They are similarly designed to determine whether and how to include individuals as members of society or exclude them from it. Both create insiders and outsiders. Both are designed to create categories of people.”

The difference is of course that criminal law deals with internal security and the moral borders of society, while migration law is more focussed on external security and territorial borders (Aas, 2013). Traditionally both legal domains also have fundamentally different outcomes. Criminal enforcement results in the most extreme case in exclusion by means of imprisonment, usually aimed at an eventual return into society. Exclusion through migration law enforcement, on the other hand, usually has a much more permanent character, by denying entry to or removing an individual from the state’s territory.

However, these strict boundaries have begun to dissolve, as criminal law has started to adopt elements of migration law and vice versa. Stumpf (2006, p. 376) herself writes that “the merger of the two areas in both substance and procedure has created parallel systems in which immigration law and the criminal justice system are merely nominally separate.” This observation in itself was not entirely novel, as various American scholars had already observed and described at least parts of this trend (Kanstroom, 2000; Legomsky, 2005; Welch, 2004). Miller, for example, wrote already in 2003 about a “dynamic process by which both systems converge at points to create a new system of social control that draws from both immigration and criminal justice” (2003, p. 615). However, by coining the term *crimmigration* for this process, Stumpf managed to draw significant academic attention to this phenomenon and practically started a new field of study.

1.2.1 Crimmigration: a bi-directional process

Stumpf identifies three fronts of crimmigration (p. 381):

1. The substance of immigration and criminal law increasingly overlap;
2. Immigration enforcement has come to resemble criminal law enforcement;
3. The procedural aspects of prosecuting immigration violations has taken on many of the earmarks of criminal procedure.

Regarding the first ‘front’, she draws attention to the expansion of criminal grounds that are reason to deport non-citizens, the growing number of immigration law violations that have become criminal offenses, and the general trend in immigration enforcement towards detention and deportation of particularly risky individuals. Regarding the second front, she highlights how the two immigration enforcement agencies in the United States have come to resemble criminal law enforcement agencies, both in terms of mandate and enforcement powers. She also notes how police agencies in the country are increasingly involved in enforcing immigration laws. Regarding the third front, she particularly notes the vast differences in procedural protections. While immigration proceedings have become increasingly similar to criminal processes – and detention is now common sanction in immigration enforcement – this has not been matched by a similar transfer of the procedural protections that are an integral part of the criminal justice system.

Stumpf explicitly stated that crimmigration should be understood as a bi-directional process, as “the convergence of immigration and criminal law has been a two-way street” (p. 384). She argues that both domains have a ‘gravitational pull’ on each other, meaning that the transfer of procedures and substance occurs in both directions. In a later publication she notes more explicitly that crimmigration describes two trends: criminalising migration related activities, such as illegal entry and stay, and an increase in deportations of lawfully residing citizens on the basis of expanding criminal deportability grounds (Stumpf, 2013).

Most attention has generally been paid to the first development captured within crimmigration, the criminalisation of migration. Even Stumpf herself seems to take this as a starting point of the crimmigration trend: “I argue that the trend toward criminalizing immigration law has set us on a path towards establishing irrevocably intertwined systems: immigration and criminal law as doppelgangers” (p. 378). The criminalisation trend has become well established in a range of different academic disciplines, with many scholars highlighting how the language and practices of criminal enforcement are increasingly employed to address migration. Key examples are the criminalisation of various migration law violations, the use of immigration detention for unauthorised migrants, and the involvement of policing and even military actors in controlling migration (Marin & Spena, 2016).

The other crimmigration development, which has generally attracted less attention, is the increase of migration control related consequences for individuals in the criminal justice system (Chacon, 2009). This is what Miller (2003) refers to as the immigrationisation of criminal law. The most important example is the adoption of migration law measures, such as residence permit revocation and deportation, in response to crimes committed by migrants. It involves using criminal law to decide on who has the right to stay (Marin & Spena, 2016). This side of the crimmigration coin neatly fits within the more general trend of using administrative law to address criminal phenomena (Moffette, 2014).

1.2.2 Membership theory

One of the reasons behind the crimmigration trend identified by Stumpf is a change in societal perceptions of immigrants:

“Public perceptions of immigrants have tended to be more positive than perceptions of criminal offenders. (...) This vision, however, is in transition. Undocumented immigrants are increasingly perceived as criminals, likely to commit future criminal acts because of their history of entering the country unlawfully” (p. 395).

She also notes the increasingly common discursive link between immigrants and terrorism. In seeking to identify the underlying motivations for this change in perceptions, Stumpf turns to membership theory. According to membership theory, only people who are marked as full-fledged members of society are able to claim individual rights and privileges. Individuals who are not members of this social contract between the government and its citizens are exempt from these rights and privileges. Within membership theory the distinction between insiders and outsiders is based on societal beliefs about who belongs and who should be excluded.

Both criminal law and migration law are traditionally concerned with exactly this question of belonging, albeit on different grounds. Criminal law assumes membership, and places the burden on the government to prove that an individual is not worthy of inclusion. On the other hand, migration law assumes non-membership and does not place such a strong burden of proof on the government to deny inclusion to an individual. However, the bottom line is the same: both systems are concerned with making decisions about whether the actions and characteristics of individuals merit their inclusion in the national community (Stumpf, 2006, p. 397).

Stumpf sees membership theory acting in both immigration and criminal law decision making, noting that it is extremely flexible and the application of a whole range of constitutional rights is dependent on notions about who belongs. The state has the possibility to exclude individuals from society either

on a temporary or a permanent basis, and both criminal law and migration law offer plenty of opportunities to that end. As Stumpf (p. 402) writes:

“Government plays the role of a bouncer in the crimmigration context. Upon discovering that an individual either is not a member or has broken the membership’s rules, the government has enormous discretion to use persuasion or force to remove the individual from the premises.”

Whereas incarceration is the predominant method for temporary exclusion *within* society, deportation leads to a more permanent form of exclusion *from* society. Besides these very explicit forms of exclusion, there is a whole range of less intrusive processes that lead to more limited forms of social exclusion. In this regard, Stumpf mentions revoking the voting rights of ex-offenders, but one can also think of the limited rights that are extended to legal residents without full citizenship status.

Stumpf then continues to explore exactly how membership theory has pushed both legal domains closer to each other and identifies two developments that played a key role in this. The first development is the general development of the criminal justice system from a system based at least partially on the ideals of rehabilitation towards harsher punishments and underlying motives, such as deterrence, incapacitation, and retribution, echoing longstanding criminological discussions about the culture of control and new penology (Feeley & Simon, 1992; Garland, 2001). This includes removing certain rights and privileges associated with citizenship even after an ex-offender is released from prison. Stumpf sees a similar emphasis on harsh responses in immigration law, primarily through the growing use of deportation for both criminal and migration law violations. She argues that these parallel trends are ultimately the outcomes of more exclusionary notions of membership. At the same time, she emphasises the important membership differences between the two groups. Ex-offenders lose some of their privileges, but are still formally citizens, and can therefore better be characterised as pseudo-citizens. Non-citizens, on the other hand, lack membership completely, but in most cases still have membership status in their country of origin.

The second development she identifies is the reliance on sovereign power as a fundament of criminological policymaking. While sovereign power has long been used as a basis for immigration law policies, within the criminal justice field this is relatively novel. In the turn from rehabilitation towards retribution, criminal law also turned to the state’s power to impose harsh sanctions and express moral condemnation as the primary response to criminal behaviour. Such a strategy seems to stem from consistently high crime rates in combination with a gradual disbelief in the possibility of rehabilitation (Garland, 2001). The expressive dimension of punishment, with its focus on expressing society’s moral condemnation, is similar to the state’s expressive role in immigration law, communicating inclusion and exclusion. Under this

model, Stumpf (2006, p. 412) asserts, “ex-offenders and immigrants become the ‘outsiders’ from whom citizens need protection.”

Stumpf probes two explanations for this punitive turn. First, the growth of contemporary societies has made traditional sanctions based on public humiliation in front of the community less effective and thus created a need for punishment based on more formal state powers. Second, high rates of crime and unauthorised immigration have created a need for the state to show their citizens they are capable of controlling both crime and migration. Harsh sanctions to express moral outrage are therefore politically attractive, regardless of their actual effectiveness.

1.2.3 More outsiders, less rights

Stumpf warned that the crimmigration trend ultimately leads to an “ever expanding population of outsiders” who nonetheless might have strong connections to the society (p. 479). In the context of crimmigration, the non-citizen becomes a criminal and the criminal becomes a non-citizen. Noting that crimmigration tends to rely only on the harshest elements of both legal systems, she argues that “the undesirable result is an ever-expanding population of the excluded and alienated” (p. 378). Something similar is argued by Marin and Spena (2016, p. 150), who note that “[while] criminal law’s legitimacy largely depends on it being inclusive, [...] crimmigration instead is utterly exclusionary.” Stumpf also notes that class and race are often important factors defining who falls within the scope of both immigration and criminal law. Whereas in immigration law enforcement this is often explicit and legal, disparate treatment of certain categories of people within the criminal justice system is usually more implicit. For example, the use of race or ethnicity as a factor in deciding who to stop is often allowed during immigration controls, but not during criminal police controls.

This relates to a second problematic aspect of crimmigration: whereas the merger of migration law and criminal procedure leads to a more punitive approach towards migrants, in many cases this is not matched by an equal transfer of procedural and constitutional or human rights protection (Bosworth et al., 2017; Marin & Spena, 2016). Indeed, it has been argued that human rights often have limited legal value in crimmigration settings (Van Berlo, 2017). Legomsky (2007, p. 472) argued in this regard that “immigration law has been absorbing the theories, methods, perceptions, and priorities of the criminal enforcement model while rejecting the criminal adjudication model in favour of a civil regulatory regime.” For example, in the case of termination of legal stay and deportation following a criminal conviction, which is legally speaking only an administrative sanction and not a form of punishment, many scholars have argued that for those subjected to this measure, it certainly *feels* like punishment (Bosworth et al., 2017; Turnbull & Hasselberg, 2017). Chacon

(2009), on the other hand, highlights the reversed process, showing how the more relaxed procedural standards of the administrative migration law enforcement system find their way into the criminal enforcement system. Because criminal law enforcement generally comes with more protection, this has severe consequences for the legal position of migrants caught up in this system.

1.2.4 Ad hoc instrumentalism

Stumpf's paper has spurred a range of publications further examining and researching the process of crimmigration, leading to a dynamic and interdisciplinary research field around the themes of criminal justice and border control. Several years after Stumpf's publication, David Sklansky (2012) made a particularly important contribution to the crimmigration literature with the introduction of the concept of 'ad hoc instrumentalism'. Sklansky starts by ascribing to the view of Stumpf that immigration law and criminal law have become increasingly intertwined: "immigration enforcement and criminal justice are now so thoroughly entangled it is impossible to say where one starts and the other leaves off" (p. 159). He then goes on to note that scholars have placed the crimmigration trend within three larger developments, namely nativism, overcriminalisation, and an obsession with security:

"Although the rise of crimmigration cannot be attributed to a growing problem of crime committed by non-citizens, it plainly *does* have something to do with escalating *concerns* about immigration – and, more specifically, fear of 'criminal aliens'. Those concerns rose sharply after the terrorist attacks of September 11, 2001, but apprehensions about immigration were on the increase even before those attacks (p. 193, emphasis in original)."

Following this assessment, he outlines his aim of adding to the literature a better understanding of why crimmigration came about and how it actually operates at the enforcement level. In order to do so, he connects the rise of crimmigration to what he terms ad hoc instrumentalism – which both explains crimmigration and is an outcome of it.

Sklansky defines ad hoc instrumentalism as "a manner of thinking about law and legal institutions that downplays concerns about consistency and places little stock in formal legal categories, but instead sees legal rules and legal procedures simply as a set of interchangeable tools" (p. 161). Public officials on different levels – including specifically those at street level – can choose in each individual case which enforcement regime, criminal or civil, is most convenient and effective against a problematic individual. Whether that individual is a criminal suspect, an unauthorised migrant, or both is irrelevant, as long as the response is effective against that particular person. Although he highlights the importance of the discretionary decisions made by street-level officials, he also emphasises that this is the result of decisions

made at the policy level to equip these street-level officials with both a large amount of discretion and a whole range of different enforcement tools from different legal areas.

Such an instrumentalist approach offers clear benefits to the state, as different legal domains offer different 'advantages'. Administrative enforcement generally means there are less procedural guarantees and rights for the individual, while interventions based on criminal law are generally perceived as more severe and offering better deterrence. Crimmigration thus enables authorities to pick and choose from a whole toolbox of legal instruments to address problematic individuals. Whether these tools stem from criminal law or migration law is of secondary importance; what matters most is that the intended aim is achieved. Sklansky, too, notes these strengths, but also highlights fundamental concerns about the compatibility of ad hoc instrumentalism with the rule of law and accountability. The many different tools that authorities could use in any given situation diminishes the transparency of decisions made by government actors, potentially making it complicated for individuals to understand what certain decisions are based on. He concludes that the best way to address these concerns is to improve the transparency of the system, including the different responsible actors.

1.2.5 From criminal law and migration law to criminal justice and migration control

Initial scholarship on crimmigration consisted almost exclusively of legal analyses focussing on the United States. However, in recent years studies into crimmigration have become ever more diverse, in terms of both geographical scope and disciplinary approach. Two developments stand out in this regard. First, the study of crimmigration has found increasing resonance in other parts of the world, especially Australia (Grewcock, 2011; Stanley, 2017; Weber, 2019) and Europe (Aas, 2011; Van der Woude, Barker, & Van der Leun, 2017). While caution is needed to apply the same conceptual framework to different national socio-political contexts, these studies have made clear that the overarching trend of crimmigration can also be observed outside the United States. This is in part thanks to the second development that has taken place: the study of crimmigration has become increasingly interdisciplinary, especially since criminologists have started incorporating the crimmigration framework in their analyses. This has had an impact on how the term crimmigration itself is seen and understood, as especially European criminologists who have taken up the term have suggested it is necessary to have a much wider perspective on crimmigration than seeing it as merely a legal process (Pakes & Holt, 2017; Van der Leun & Van der Woude, 2012).

Aas (2011) was the first to suggest that the definition of crimmigration needs to be broader than the merger of criminal law and migration law, while

Van der Leun and Van der Woude (2012) make this point more explicitly. They note that European scholars tended to rely on the broader and more abstract framework of securitisation of migration instead of the crimmigration framework. As they see this as the result of the many different specific national contexts in Europe, they suggest there is a need for a broader understanding of the term crimmigration that goes beyond a purely legal merger of criminal law and migration law. They propose to define crimmigration as “the intertwining of crime control and migration control (Van der Leun & Van der Woude, 2012, p. 43).” In this way, the definition not only encompasses legal signs, but also what they call social signs of crimmigration. One example of such a social sign of crimmigration that they mention is ethnic profiling by law enforcement and other criminal justice actors.

Broadening the definition of crimmigration in this way offers the advantage of enabling more comparative and interdisciplinary research, including empirical studies into specific crimmigration phenomena. Moreover, by connecting the crimmigration trend to specific societal contexts it also becomes possible to start looking into the drivers of crimmigration. Van der Leun and Van der Woude (2012) highlight the question of how issues related to crime and migration are framed and perceived in political and public discourses. They argue that discourses based on fear and security, in which immigrants are framed as dangerous and (potential) criminals, are an important driver for the adoption of crimmigration tools as a form of social control. Pakes and Holt (2017, p. 74) also argue in favour of a broad perspective on crimmigration, “so that we are seeing what we need to see”. They point out that the term crimmigration brings together a whole range of processes that can be as much the result of policy changes as it can be the result of legal changes. Whereas formal criminalisation processes are easier to notice, they argue that it is equally important to pay attention to “the administrative, oblique and hidden processes that acquire their potency from the very fact that they evade scrutiny (p. 74).” These do not necessarily need to involve legislation changes, but can be integration of working practices or organisational changes.

Crimmigration can be seen at various levels – discourse, legislation, policy, and enforcement practices – and in various criminal justice contexts and sites, such as policing (Aas, 2011; Parmar, 2019; Weber, 2011), courts (Aliverti, 2012), and prisons (Aas, 2014; Kaufman, 2015; Ugelvik & Damsa, 2018). It can also be observed in sites that are traditionally less familiar to criminologists (Bowling & Westenra, 2018), such as airports (Blackwood, 2015), land borders (Pratt & Thompson, 2008), and immigration detention (Bosworth, 2014; Menjivar, Gómez Cervantes, & Alvord, 2018). Broadening the definition of crimmigration has created possibilities for more empirical studies into crimmigration, something that especially European criminologists have slowly started doing in recent years (Bosworth, Hasselberg, & Turnbull, 2016; Ugelvik & Damsa, 2018; Van der Woude et al., 2017). This has resulted in the emergence of a subfield sometimes referred to as ‘border criminology’ or the ‘criminology

of mobility' (Aliverti & Bosworth, 2017; Cote-Boucher, 2011; Pickering et al., 2014). Questions that have been explored are how policing changes when it involves checking people's immigration status, how the nature and aim of criminal punishment are altered when it is applied to non-citizens, and how such forms of social control impact on the lives of migrants (Kaufman, 2014; Ugelvik, 2017).

Besides examining *how* crimmigration influences migration control and the criminal justice system, many of these studies are concerned with the question *who* gets excluded and on what basis (Bosworth et al., 2017). A particular influential account in this regard is offered by Aas (2011), who looks at the nature of surveillance and crime control in the EU from a crimmigration perspective. She argues that besides controlling migration, contemporary surveillance is equally focussed on tackling crime, resulting in exclusionary outcomes that defy simplistic categorisations. Whether the gate opens or closes depends as much on legal citizenship as it does on (alleged) involvement in criminal activities. Aas concludes that "not all European citizens are entitled to the privileges and that, on the other hand, the privileges are extended to a group of bona fide global citizens" (p. 343). This results in four different social groups, depending on their citizenship and moral status. Of course, there is considerable overlap as well as considerable variation within these social groups.

	<i>Citizenship status</i>	<i>Morally worth</i>
Citizens (insiders inside)	Yes	Yes
Subcitizens (outsiders inside)	Yes	No
Supracitizens (insiders outside)	No	Yes
Non-citizens (outsiders outside)	No	No

Table 1.1 *Insiders and outsiders (based on Aas, 2011)*

Aas notes that borders have always been important sites for states to engage in 'social sorting' and distinguish the unwanted from the wanted immigrant. However, in recent times these processes have become globalised, reflecting stark global inequalities (Aas, 2007; Walters, 2002).

Despite these significant developments in the study of crimmigration, the number of studies based on first-hand accounts and fieldwork are still quite limited, not in the least because of the difficulties of gaining access to the sites where bordering practices take place (Bosworth, 2012). Notwithstanding some notable exceptions, most work in this area is still primarily theoretical, often drawing on legal analyses or policy documents (Pickering et al., 2014). Authors from different academic disciplines have therefore called for more empirical examinations of the different enforcement actors involved in the implementation of bordering practices and the impact these have on those who are subjected to them (Bowling & Westenna, 2018; Cote-Boucher et al., 2014; Garip,

Gleeson, & Hall, 2019; Loftus, 2015; Pickering et al., 2014; Vega, 2019). This dissertation, an empirical examination of bordering practices in the Netherlands, can be seen as an answer to that call. Based on various forms of extensive fieldwork at sites where the criminal justice system intersects with migration control, it adds empirical richness to the existing body of literature on crimmigration.

1.3 CRIME, MIGRATION, AND CRIMMIGRATION IN THE NETHERLANDS

The Netherlands has long been described as a tolerant and liberal country, open towards foreigners and with a relatively mild criminal justice climate (Van Swaaningen, 2005). However, since the early 2000s various authors have observed increasingly repressive and punitive discourses, followed by matching policy and legislative reforms, both in the field of criminal justice and migration control. Crime and deviance were for a long time hardly considered as problematic. However, starting in the late 1980s a strong law and order discourse emerged in the Netherlands and criminal justice policies increasingly started to emphasise protection of the public (Van der Woude et al., 2014). Various authors have argued that these developments are akin to David Garland's (2001) hugely influential description of the culture of control (Downes & Van Swaaningen, 2007; Pakes, 2004). Moreover, Downes and Van Swaaningen (2007, p. 31) argue that as a result of these developments, "managerial, instrumental, and incapacitative measures took precedence over previous goals of resocialisation and restorative justice." Driven by discourses that fit within Feeley and Simon's (1992) new penology, crime control policies increasingly focus on identifying and targeting specific offender groups (Downes & Van Swaaningen, 2007). Moreover, the main aim of penal interventions has shifted to temporary or permanent exclusion of unwanted individuals, through practices described as "banishment modern style" (Van Swaaningen, 2005, p. 296). Whereas these broad trends have been identified in a number of countries, the discourse in the Netherlands stands out because of the explicit link that is often drawn between crime and ethnic minorities and migrants.

Since the turn of the century, issues of migration and integration have come to dominate political and public discussions (Van der Woude et al., 2014). Particular emphasis has often been placed on the (alleged) over-offending of certain ethnic minority groups. According to Pakes (2004), this is not only seen as a threat to individual and public safety, but also a rejection of the liberal and tolerant values that are characteristic of the 'Dutch way of life'. Van der Leun and Van der Woude (2012, p. 50) accordingly argue that "a key characteristic of the Dutch culture of control – besides concerns about property and petty crime – are growing concerns and negative sentiments about immigration policy and immigrants, both in public and political discourse." They explicitly

link this Dutch culture of control to the emergence of different manifestations of crimmigration in the Netherlands.

1.3.1 Crimmigration in the Netherlands?

A limited number of studies have been published in recent years that offer a variety of examples of crimmigration in the Netherlands (Staring, 2012; Van der Leun & Van der Woude, 2012; Van der Leun, Van der Woude, & De Ridder, 2013; Van der Woude et al., 2014). This includes examples of both sides of crimmigration.

Regarding the criminalisation of migration, it has been observed that although illegal stay is formally not criminalised in the Netherlands, repeated apprehensions for illegal stay or a conviction for a criminal offense can result in being declared an undesirable alien. Staying in the Netherlands as an undesirable alien is a criminal offense, thus creating an indirect form of criminalisation of illegal stay (Van der Woude et al., 2014). Moreover, the number of undesirable alien declarations has significantly increased since 2000 (Leerkes & Broeders, 2010). Since the implementation of the EU Returns Directive this has partly been replaced by re-entry bans for third country nationals. Attention has also been repeatedly drawn to the high number of immigration detainees and sober detention circumstances in the Netherlands, which highlights the use of traditional criminal justice tools to control immigration (Nijland, 2012). In this regard Leerkes and Broeders (2010) have argued that while immigration detention still primarily functions to effectuate return, it also serves to deter illegal stay and symbolically assert state control. However, in recent years the number of immigration detainees has considerably decreased.

Regarding the immigrationisation of the criminal justice system, most focus has been placed on the expansion of grounds for deportation of legally residing migrants on the basis of a criminal conviction (Stronks, 2013; Van der Woude et al., 2014); this is discussed in more detail in chapter six and seven of this dissertation. Finally, at the enforcement level it has been observed that the police now routinely checks the immigration status of every arrested suspect (De Vries, 2014). Moreover, it has been highlighted that both the Alien Police and the Royal Netherlands Marechaussee, who are in charge of monitoring and combating illegal stay, also have investigative powers for certain types of crime (Van der Woude et al., 2014). This is further examined in chapter three, four, and five.

Based on these examples it has been argued that “there are clear indications that crimmigration is occurring in the Netherlands (Van der Woude et al., 2014, p. 573).” Despite this handful of studies, empirical examinations of crimmigration in the Netherlands have so far been absent. The aim of this dissertation is to start filling that gap.

1.4 THIS DISSERTATION

This dissertation studies bordering practices in the Netherlands through a crimmigration lens.

To what extent are contemporary bordering practices in the Netherlands characterised by crimmigration, who is targeted by these bordering practices, and how are they experienced and understood by those implementing them and those subjected to them?

In order to answer that research question, the dissertation follows the approach proposed by Vollmer (2017), who argued that a comprehensive understanding of European bordering requires a combination of discourse analysis, legal and policy analysis, and empirical examinations of specific bordering sites. The dissertation starts with a comprehensive discourse analysis of media coverage of unauthorised migrants, followed by two empirical case studies of selected bordering sites. By taking into account specific local contexts, these case studies provide an in-depth and nuanced understanding of the large-scale patterns and meta-level theoretical work described above.

In the Netherlands, the different steps and associated actors of the criminal justice system are commonly referred to as the ‘criminal justice chain’. Similarly, in the migration control system this is commonly referred to as the ‘alien chain’. As this term becomes slightly awkward in an English translation, this dissertation will instead refer to the ‘migration control chain’. Both chains describe the different steps of the most common process from beginning until the end, as well as the various agencies and other actors responsible for these steps. Figure 1.1 illustrates both chains in a simplified manner.

The criminal justice chain deals with criminal behaviour and starts with arrest by the police of an individual on suspicion of having committed a criminal offense. This is subsequently determined in court and, if found guilty, the individual is then punished. If this punishment entails imprisonment, this is carried out by the Custodial Institutions Agency (DJI). Upon completion of the punishment, an individual is released into society again (notwithstanding sanctions that include placement in a forensic psychiatric centre).

The migration control chain is slightly more complex, due to the many different types of migrants it covers. For example, for an asylum seeker the chain will look completely different than for a foreign drug trafficker who is arrested at the airport. The Immigration and Naturalisation Service (IND) is the agency responsible for deciding on all residence applications in the Netherlands. The chain illustrated above is therefore specifically applicable to migrants who are staying unauthorised in the Netherlands: this can be either because the IND has rejected their asylum or residence application, because their legal stay has expired and they did not leave the Netherlands, because

their legal stay has been revoked, or because they never applied for legal stay in the first place.

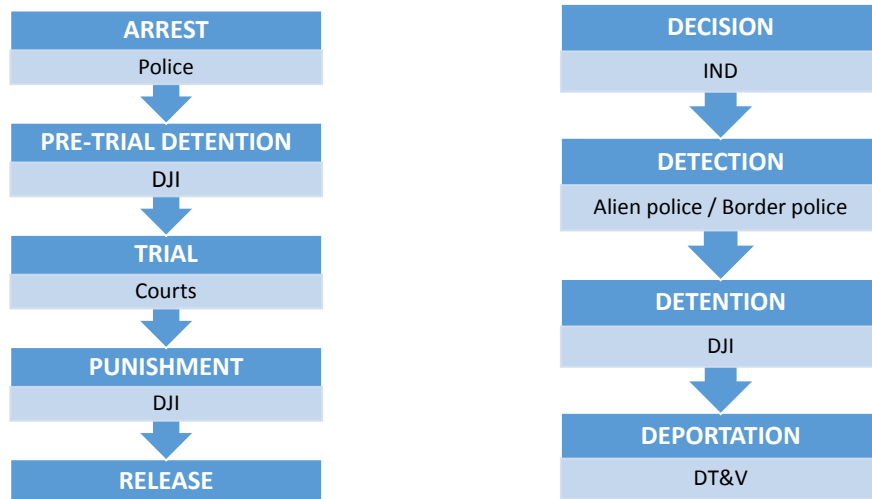


Figure 1.1 Simplified representation of the two chains of social control (source: own)

In this specific chain an unauthorised migrant is first detected at the border by the Royal Netherlands Marechaussee (RNM), the Dutch military and border police agency, or inside the national territory by the specialised immigration policing agency (AVIM). If a migrant is subsequently placed in immigration detention, this is administered by DJI again. Finally, the Repatriation and Departure Service (DT&V), a specialised agency created out of the IND in 2007, is responsible for organising the departure of unauthorised migrants from the Netherlands.

Traditionally the two different chains are part of two distinct policy fields, each with their own actors, aims, and logic. One of the aims of this dissertation is to see whether the two chains increasingly intersect and what this means for the individuals within one of these chains. The core of this dissertation therefore consists of three different case studies dealing with crime, migration, and borders. All of these are based on extensive and unique empirical data. A strong focus is placed on those actors at the front line: enforcement staff carrying out bordering practices and the individuals subjected to them. Front-line officers operate in all domains of the social control system. They are the police officers, prison guards, and immigration officers that deal directly with the public on a daily basis. They are responsible for implementing the official policies, but also enjoy varying degrees of discretionary freedom. It was Lipsky (1980) who therefore famously argued that these street-level bureaucrats are actually the real policy makers. At the same time, their work and decisions

cannot be understood without taking into account the wider social surroundings and policy frameworks they operate in. The dissertation therefore covers the various levels – discourse, law, policy, and enforcement – that are of relevance for understanding crimmigration and bordering.

The first chapter after this introduction focusses on the media and the public discourse around unauthorised migrants, providing a broad picture of the public discourse around crime and unauthorised migration. Media discourses have been found to influence public perceptions, including those of enforcement officers, of non-belonging and suspiciousness (Weber, 2019). This is followed by two case studies of specific steps and their associated actors within the two chains of social control. The first case study consists of three chapters and focusses on the entry point of the migration control chain, by examining bordering practices carried out by the RNM in the Dutch border areas with Belgium and Germany. The second case study focusses on the end phase of both social control chains. The two chapters of this case study look into the punishment and subsequent deportation of criminally convicted non-citizens (CCNCs). The case studies have been chosen based on the fact that they are situated at opposite ends of the chains of social control, representing the beginning and the end of the chains. Moreover, policing and punishment are key instruments of social control and it is precisely those practices that have been fundamentally altered by recent changes in border control (Pickering et al., 2014). Of course, this also means that other parts of the chains are not covered by this dissertation, in particular the criminal trial phase and immigration detention. An overview of the different case studies, the articles they consist of, and the empirical data collected can be seen in table 1.2. Below the different case studies and chapters are described in more detail.

	<i>Case study</i>	<i>Data 1</i>	<i>Data 2</i>	<i>Data 3</i>
Chapter 2	Media	Newspaper articles		
Chapter 3	Intra-Schengen migration policing	Observations	Focus groups RNM officers	
Chapter 4		Observations	Focus groups RNM officers	
Chapter 5		Observations	Focus groups RNM officers	Survey people who are stopped
Chapter 6	Punishment & deportation	Interviews prison officers	Interviews CCNCs	
Chapter 7		Interviews departure supervisors (DT&V)	Interviews CCNCs	

Table 1.2 Overview case studies

Parts of the data for this dissertation were collected in collaboration with other researchers, with the author being fully involved in all stages of the data collection process. Furthermore, despite various other research outputs stemming from the same underlying data involving which the author of this dissertation was involved as co-author (Di Molfetta and Brouwer, 2019; Van der Woude & Brouwer, 2016; Van der Woude, Brouwer, & Dekkers, 2016; Van der Woude, Dekkers, & Brouwer, 2015), the different chapters of this dissertation are all based on original analysis and writing done independently by the author.

Several chapters of this dissertation have already been published elsewhere or are currently under review. Chapters two, three, four and five have all been published in peer-reviewed journals, with the author of this dissertation as first author. Chapter six and seven are currently under review in peer-reviewed journals as solo-authored articles. Footnotes at the beginning of the individual chapters provide more details about these different publications.

1.4.1 Crimmigration and the media

The first chapter after this introduction deals with crimmigration and the media. It takes the introduction of a bill to criminalise illegal stay as a starting point. Based on the notion that the media play a central role in the discursive construction of migrants, thereby shaping public views and justifying policies, the study examines whether the introduction of this bill was preceded by increasingly negative media coverage of unauthorised migrants. In particular, it seeks to find out whether unauthorised migrant are often discursively framed as criminals. On a broader level, the chapter provides an understanding of the prevalent discourses in the media regarding unauthorised migrants since the turn of the century. As such, it provides a context to better understand the bordering practices discussed in the subsequent case studies.

The study is based on a so-called corpus linguistics approach. This means computer-aided analysis of large bodies of textual data. Such an approach has the advantage that it offers a comprehensive understanding of media coverage of a certain topic over a prolonged period of time, thus also enabling the identification of trends over time. It also reduces the impact of a researcher's bias on the outcomes of the study. In this study, all newspaper articles in Dutch national newspapers on unauthorised migrants between 1 January 1999 and 31 December 2013 were analysed: a total of 28.274 articles. By analysing the frequency of certain words, the strength of a link between two specific words, and a comparison of different data sets, the chapter provides insights in the role of the media on linking unauthorised migrants to crime.

1.4.2 Crimmigration and intra-Schengen migration policing

The first case study focusses on the intra-Schengen borders between the Netherlands and Belgium and Germany. Whereas these borders are no longer supposed to be permanently controlled, Member States have the right to carry out police controls in their border areas, as long as these are not equivalent of border checks. In the Netherlands these type of controls were introduced soon after the implementation of the Schengen agreement in the form of the so-called Mobile Security Monitor (MSM). These controls are carried out by the RNM, the agency taking a central place in this case study. Initially the spot checks were aimed at countering illegal entry and stay only, but over time this came to include tackling identity fraud and migrant smuggling. Moreover, the name of the instrument changed from Mobile Aliens Monitor to Mobile Security Monitor. This expansion raises questions about how the controls are understood and implemented by street-level officers of the RNM, who enjoy high levels of discretionary freedom in deciding who to stop, as well as how they are experienced by individuals who are stopped.

The case study is part of a larger research project into discretionary decision-making in border contexts (Van der Woude, Brouwer, & Dekkers, 2016). As Van der Woude and Van der Leun (2017, p. 28, emphasis in original) argue, “despite the different macro-level explanations that can account for the process of crimmigration, many scholars directly or indirectly refer to the central role of *discretionary decision-making*.” Examining the work of frontline officers, their decisions, and the reasoning behind these decisions is thus crucial to understand *how* actual practices of crimmigration control take place on the ground. After all, “immigration officers operating at the border are of vital importance in the decision-making process of who belongs, and subsequently can cross the border, and who does not, thereby continuously differentiating ‘insiders’ from ‘outsiders’ (Van der Woude & Van Berlo, 2015, p. 61).” Of course, such practices can only be understood by taking into account the wider legislative and policy context as well as the perceptions of individuals that are targeted by these practices.

The case study draws on different types of qualitative data collected by a small team of three researchers. In particular, it relies on over 800 man-hours of observational study, thirteen focus group discussions with eight to ten different street level officers, and 167 interviews or filled-out surveys by people stopped in the context of the MSM. During observations, many informal conversations with officers also took place in a non-structured way. These different types of data offer the advantage that they combine observed activities of RNM officers in a natural setting with an examination of how these respondents understand and explain these activities. Moreover, findings obtained during observations could be cross-checked for validation during the focus groups discussions, which took place during the latter part of the research project.

A more extensive description of the different research methodologies can be found in the Annex.

The first chapter of this case study deals with the question how RNM officers reconcile the two aims of the MSM, as a tool for both crime control and migration control, and how this affects their decisions. The second chapter also focusses on discretionary decisions, but takes a different approach by seeking to understand how RNM officers decide to stop, and sometimes search, a vehicle. Using research on street-level decision making processes, the article focusses on the use of ethnic, racial, and national categories and how they interact with other factors in these decisions. Finally, the third chapter brings together the perceptions of RNM officers and those of the people who are stopped during the MSM. Drawing on literature on procedural justice and legitimacy, it examines how officers try to ensure they conduct their duties in a fair manner and to what extent different social groups perceive these controls.

1.4.3 Crimmigration, punishment, and deportation

The second case study of this dissertation focusses on the final stages of both social control chains, by taking a closer look at the punishment and deportation of CCNCs. Two agencies are relevant for this case study: DJI (imprisonment) and DT&V (deportation).

Throughout Western Europe the number of foreign national prisoners has surged, creating novel challenges for the criminal justice systems of the countries concerned. One common response has been to increase efforts to return CCNCs to their country of origin. This has resulted in a range of different policy measures to make this process more effective. In the Netherlands, two measures stand out. First, the policy stipulating when a legal resident loses his/her right to stay following a criminal conviction has been repeatedly restricted over the last decade. Second, a special all-foreign prison has been established for CCNCs who do not have a legal right to stay in the Netherlands. The focus in this prison is on deportation instead of resocialisation. To make sure these CCNCs are returned to their country of origin immediately upon completion of their criminal sentence, officers of DT&V are based inside this prison.

The aim of the case study is to understand what this form of 'bordered penalty' (Aas, 2014) means for the nature and experience of punishment and to what extent it succeeds in returning CCNCs to their country of origin. To that end, it draws on empirical data collected in the all-foreign prison, consisting of qualitative interviews with 37 CCNCs, 15 departure supervisors, and 8 prison officers. These interviews provide rich insights into how these policies are implemented, experienced, and understood by the different groups involved: CCNCs, prison officers, and departure supervisors. It shows how these

developments affect perceptions of fairness and justice and whether they succeed in achieving their aim. The annex discusses in more detail the methodological approach taken.

Chapter six studies the prison experiences of both CCNCs and prison officers in a crimmigration prison. Grounded in literature on the pains of imprisonment, it provides insight into the regime and daily life in the all-foreign prison and examines what this means for prison officers' professional identity and prisoners' experiences. Chapter seven focusses on the aim of returning these CCNCs to their country of origin upon completion of their sentence. It outlines the various policies aimed at motivating CCNCs to cooperate with their own return and discusses whether these policies indeed result in a greater willingness among CCNCs to return.

