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

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Cover Page



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8 | Conclusion

8.1 INTRODUCTION

Border control has significantly changed in recent decades. Whereas globalisation processes seem to have diminished the relevance of international borders, states have simultaneously sought ways to regain some form of control over cross-border mobility. In this process, alternative and novel means of border enforcement have emerged. This dissertation has studied some of these novel means of border enforcement, referred to here as bordering practices. 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. The main aim of the dissertation is to provide an understanding of what these bordering practices actually look like in practice. In particular, it looked at bordering practices in the Netherlands through the lens of crimmigration. Defined as the intertwinement of migration control and the criminal justice system, the dissertation aims to provide insight into *how* bordering practices are conducted, as well as *where* and by *whom*. Moreover, the dissertation examines *who* are subjected to contemporary bordering practices. More specifically, two bordering practices were empirically examined: intra-Schengen migration policing and criminal deportations. Building on a recent surge in criminological scholarship that concerns itself with border and migration control (Aas, 2011, 2014; Bosworth, 2012), the different empirical chapters of this dissertation examined the various ways these bordering practices are shaped by, and shape the criminal justice system. This final chapter brings the findings of the two case studies together and discusses them in light of the overarching conceptual and theoretical framework. Paragraph 8.2 first summarizes the main findings of the different empirical chapters. After this, the main research question will be answered in paragraph 8.3, followed by a discussion of the theoretical reflections and implications in paragraph 8.4.

8.2 SUMMARY OF EMPIRICAL FINDINGS

The first chapter after the introduction provided the broad discursive context for the two cases studies. Because public discourse is generally seen as influencing laws, policies, and practices, the chapter looked at media coverage of

unauthorised migrants. It took as a starting point a bill introduced in 2010 to formally criminalise illegal stay in the Netherlands – generally seen as the most far-reaching example of crimmigration. Based on the notion that the media play a crucial role in putting issues on the public agenda and discursively constructing certain migrant groups as disproportionately criminal, the study examined whether this bill was preceded by increasing amounts of media attention for crime committed by unauthorised migrants. It did so by examining all newspaper articles about unauthorised migrants by Dutch national newspaper during the period 1999 – 2013.

Several interesting and unexpected findings of the study stood out. First, the bill to criminalise illegal stay was introduced at what was practically the lowest point with regard to media attention for unauthorised migrants. The annual number of newspaper articles on unauthorised migrants was relatively stable between 1999 and 2006, but subsequently strongly decreased for four years in a row. Following the introduction of the bill to criminalise illegal stay in 2010 the number of annual newspaper articles started to increase again, but not enough to reach the same numbers as before. Second, the terminology employed by Dutch newspapers was noteworthy. In many Anglo-Saxon countries there is much debate about using the term ‘illegal’, as it is seen as stigmatising and criminalising. It is often argued that whereas behaviour can be illegal, this does not apply to individuals. Various press agencies and news outlets have therefore decided not to use the terms illegal migrants anymore. This was not the case for Dutch newspapers, as in more than 95 percent of the instances they use the term illegal – instead of irregular, undocumented, or other alternatives – to denote unauthorised migrants. Moreover, in most cases newspaper articles used the term as a noun (illegals) and not as an adjective (illegal migrant). Finally, the core question of the chapter was how unauthorised migrants are described by Dutch newspapers and whether there were any changes over time. The results showed that numerical terms were often used to describe ‘illegals’. This included both concrete numbers and more vague descriptions, such as ‘thousands’, ‘many’, and ‘groups’. The most significant finding was that ‘criminal’ was one of the most prevalent adjectives for the noun ‘illegals’. This signals that unauthorised migrants are relatively often described as criminals. However, most of these references occurred during the initial years that were studied and the number of times the term ‘criminal illegals’ surfaced gradually decreased over time. The conclusion of the study was therefore that the bill to criminalise illegal stay was not the result of growing and increasingly negative media coverage of unauthorised migrants. Instead, media attention on unauthorised migrants decreased in the years before the bill was introduced, while also focussing less and less on issues of crime. At the same time, media attention for other migrant groups, in particular from new EU countries such as Bulgaria and Romania, seemed to increase. It is likely that to a certain extent this has replaced news coverage of unauthorised migrants following the 2007 EU enlargement of the EU.

8.2.1 Intra-Schengen migration policing

The first case study focussed on the Mobile Security Monitor (MSM), a form of migration policing in Dutch border areas introduced following the implementation of the Schengen agreement, illustrating how in the Netherlands intra-Schengen border controls have been replaced by highly discretionary border checks. The MSM has a complex legal framework combining migration control with elements of crime control. Initially the checks were aimed at preventing illegal immigration; if RNM officers happen to detect a criminal offense, they would have to hand over the case to the Dutch police. However, since 2006 the official aim of the MSM expanded and came to include the fight against migrant smuggling and identity fraud. Any other detected criminal offenses would still need to be handed over to the police. This was later matched with an informal name change in the policy discourse around the MSM; whereas previously the full name of the instrument was Mobile Alien Monitor, this was changed to Mobile Security Monitor. Moreover, official policy documents started to describe the aim of the MSM as preventing illegal immigration and fighting different forms of cross-border crime. It is for this reason that I have argued that at least the policy framework of the MSM in many ways fits within the trend of crimmigration.

RNM officers carrying out the MSM have a high level of discretionary freedom in deciding whom to stop, as they do not need to have a reasonable suspicion of illegal stay or a criminal offense. This discretionary freedom is further increased by the ambiguous policy aims of the MSM and the unofficial name change, since officers can pick and choose from a wider array of powers, navigating between migration control and criminal detection. It also allowed officers to let their own ideas and beliefs about the aim of the MSM and their own tasks play a role in their decisions. Officers differed in what they considered more important or interesting. Much like regular police officers, RNM officers have different styles of work. Some of them primarily focus on migration control, while others are more focussed on fighting crime. This last group was strongly driven by a desire to make the Netherlands safer. For these officers 'catching criminals' was not only more exciting, it was also perceived as more rewarding than finding possible unauthorised migrants.

Especially RNM officers who focussed more on fighting crime during the MSM often found their existing powers too limited to carry out their tasks. To deal with that they would regularly use their powers in what they called a 'creative manner', 'playing' with the different legal areas. In this way these street-level officers further contribute to the fading of the boundaries between migration control and crime control. This is in line with the notions of crimmigration and ad-hoc instrumentalism: officers make use of a range of tools that stem from both migration law and criminal law to target both undesirable migrants and criminals. They can first form a judgment about a certain individual or situation and subsequently find the most effective tool to base their

decision on. The result is that it is not always transparent on which ground certain decisions are made, especially not for the individuals that are stopped. Moreover, criminal law based enforcement generally comes with considerably more procedural safeguards than administrative forms of enforcement, such as migration control.

The ambiguity regarding the objectives of the MSM, in combination with organisational policies and the prevailing social climate in the Netherlands, also had an influence on who were stopped during the MSM by RNM officers. As officers generally had very little time to decide whether to stop a vehicle or not, and rarely received concrete and useful prior information, they relied primarily on their own beliefs and experiences to make decisions about whom to stop. These beliefs were primarily the result of knowledge shared among street-level officers, as on an organisational level there was little guidance or instructions on how to select vehicles during the MSM. The dual aim of the MSM means that crime- and migration-related indicators often freely interacted with each other in selection decisions.

Officers invoked several factors to recognise potential unauthorised migrants, with skin colour being one of the most important ones. During the controls primarily black and Arab-looking people were stopped, as the mostly white male RNM officers saw this as an indicator of 'foreignness'. Officers were aware of the sensitivities of using racial or ethnic categories, but argued that when trying to identify unauthorised migrants they had little choice than to rely upon these indicators. They also frequently made clear that a stop was always based on a combination of several factors, which included the national origin of the license plate, the state of the vehicle, the number of passengers, and clothing. At the same time, during observations it regularly seemed that a stop was based on perceived foreign appearance alone.

Officers also regularly stopped people because they believed they might be involved in crime. Such stops were often based on perceptions about the disproportionate involvement in crime of certain ethnic or national groups. First, Moroccans, or more generally North Africans, who were primarily identified on the basis of their appearance. Second, people from Central and Eastern Europe were often seen as a risk, in particular Bulgarians and Romanians, reflecting some of the discourses that were found in the media study. In this case, the origin of the license plate of the vehicle was the main indicator officers relied on. These profiles were not necessarily static: a Polish license plate was for a long time considered to be a reason to stop a vehicle, but in recent years most officers believed there was little chance they would find something wrong. Most officers perceived such selection decisions on the basis of national categories as less controversial than selection decisions based on ethnic or racial categories.

The different ethnic and national groups that were stopped during the MSM experienced these controls in different ways. The vast majority of non-Dutch citizens had few problems with the MSM controls or even perceived them as

positive. This included EU citizens from other countries, despite the fact that they believed they were stopped because they were foreign. The same was observed with Dutch majority group members, who on average perceived the MSM as even more positive than non-Dutch citizens. On the other hand, Dutch ethnic minority group members were considerably more critical about the MSM. This seemed to stem primarily from the perception that they were stopped on the basis of their skin colour and a lack of clarity about the reasons of the control. Although respondents in this group were generally not negative about their treatment by the RNM officers, this did not substantially effect their overall judgement of the MSM. These experiences occurred primarily among Dutch ethnic minority group members who self-identified as Dutch.

Officers emphasised the importance of treating the people they stop in a respectful and friendly manner, something generally corroborated by the observations. They were generally aware of the importance of explaining the aim of the MSM and the reasons for a specific stop. At the same time, our observations indicated that this was often done in such a brief way that people did not pick up on this, and respondents were often confused about whether this was a migration control or a police stop. Officers sometimes failed to take the communicative power of these controls into account. Whereas they saw the impact of being stopped in the context of the MSM as very limited, as it often took only a few minutes to carry out the check, for Dutch ethnic minority group members being selected for a stop, it felt like their status as a full citizen was denied. It was such contrasting perceptions that formed the basis of the negative legitimacy judgments of the Dutch minority group members.

8.2.2 Criminal punishment and deportation

The second case study focussed on the punishment and deportation of CCNCs. In the Netherlands, whether a criminal conviction results in withdrawal of a residence permit is decided on the basis of a sliding scale policy that takes into account the seriousness of the offense and the duration of legal residence. In recent years this sliding scale policy has repeatedly been restricted, generally motivated by an emphasis on crime control rationales. The most striking changes have been that migrants staying in the Netherlands for less than three years can lose their right to stay following a conviction to one day of imprisonment, and that there is no longer an end date when legally staying non-citizens cannot lose their residence permit anymore. Previously, anyone residing legally in the Netherlands for more than twenty years could no longer have their legal stay revoked. As a result, increasing numbers of legally residing migrants are targeted for deportation. This includes a growing number of long-term legal residents who have been living in the Netherlands for many years.

As CCNCs have been designated a priority group in the Dutch return policy, several policy measures have been adopted in the last year that are aimed

at increasing their return rate. Better cooperation between various agencies working in the criminal justice chain and migration control chain is intended to result in the detection of CCNCs in an early phase and ensure they are deported following their criminal punishment. To achieve the latter, nearly all CCNCs are placed in the designated all-foreign national prison in Ter Apel. As CCNCs are not supposed to return into Dutch society after completing their sentence, rehabilitation activities are largely absent in Ter Apel prison and prisoners are not entitled to a range of common prison privileges. Instead, departure supervisors of the DT&V are embedded in the prison to work on organising CCNCs' return to their country of origin upon finishing their sentence. The concentration of more than sixty different nationalities in one prison, the lack of meaningful activities, and focus on deportation all impacted on the experiences of both prison officers and CCNCs in Ter Apel prison.

Most prison officers already worked in the prison in Ter Apel before it became a dedicated foreign national prison and were therefore used to working in a regular prison. Despite having no prior experience in dealing with this specific sub-group of prisoners, they received no training to equip themselves to deal with the new circumstances. Prison officers sometimes struggled to have good contact and build up relationships with prisoners, primarily because of language barriers. They also found it hard to find meaning and satisfaction in their work, as preparing prisoners for their life after release was generally seen as one of the most fulfilling parts of their work. With the lack of resocialisation activities in Ter Apel prison and prospect of deportation for CCNCs, there was little opportunity for that. In theory they could work on preparing CCNCs for return to their country of origin, but officers lacked the know-how to do so in a meaningful way.

For CCNCs the specific set-up and regime of Ter Apel prison had both positive and negative effects. Feelings of isolation and uncertainty about their migration status and possible deportation, which are commonly experienced by CCNCs, are to a certain extent mitigated by the presence of fellow prisoners who speak the same language and departure supervisors handling their migration case. At the same time, the relatively remote location of the prison exacerbate feelings of isolation. The fact that the prison acts as a precursor for deportation emphasises non-belonging, and CCNCs are constantly reminded of their permanent exclusion from society. How they responded to this depended largely on how they perceived themselves. Those who perceived themselves as foreigner primarily argued that all prisoners should enjoy the same rights, regardless of their citizenship status. However, they did not challenge their placement in an all-foreign national prison in itself. Those who perceived themselves as legitimate members of Dutch society primarily felt foreign and alienated in an institution where they believed they did not belong.

For departure supervisors, the increasing cooperation between various agencies in the criminal justice and migration control systems, as well as their embeddedness in the all-foreign national prison, helped to organise the de-

portation of CCNCs more effectively. Because in many cases CCNCs possess valid travel documents, the return rate of this population is relatively high in comparison with other groups of unauthorised migrants. At the same time, there was still a considerable group of CCNCs who could not be easily deported without their own cooperation, mostly because their country of origin was reluctant to take them back. To convince these CCNCs to cooperate with their own return, departure supervisors highlighted the negative aspects of life as an unauthorised migrant and emphasised that CCNCs could reduce their prison time if they leave the Netherlands. The latter is as result of the so-called SOB-measure, which was introduced in 2012. Under this measure, CCNCs only qualify for early release – something readily available to regular prisoners – if they leave the Netherlands directly from prison. In all other cases, they will need to serve 100% of their sentence. CCNCs who possessed some agency over their deportation thus need to make a trade-off between a longer prison sentence and life as an unauthorised migrant on the one hand, and deportation on the other hand. Whether imprisonment or deportation was considered harsher depended on several factors that were generally beyond the sphere of influence of departure supervisors, in particular the presence of family members and duration of stay in the Netherlands. Many long-term residents perceived their deportation as illegitimate and therefore refused to cooperate and return to their country of origin. They relied on two broad arguments why they should be allowed to stay in the Netherlands: their criminal offense was not serious enough, or they had been living in the Netherlands for so long that they had a legitimate claim to membership. This illustrates the limitations of responding to criminal behaviour with migration control tools and the need for a distinction between deportation as a form of border control and deportation as a form of social control.

8.3 ANSWERING THE RESEARCH QUESTION

The empirical findings of this dissertation have provided a rich insight in contemporary bordering practices in the Netherlands. The following section will use these findings to answer the overarching research question of this dissertation:

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?

This research question essentially consists of three sub-questions, which will be dealt with separately.

8.3.1 To what extent are contemporary bordering practices in the Netherlands characterised by crimmigration?

In order to answer the first part of the research question, it is necessary to analyse the identified bordering practices within the context of crimmigration. Two case studies, focussing on the beginning and the end of the migration control chain, were studied in-depth, on both the legislative and policy level as well as in practice.

The first case study focussed on a form of intra-Schengen migration policing that came into existence following the lifting of internal border controls as a result of the 1994 Schengen agreement. On the policy level, this bordering practice was initially aimed at controlling migration. However, as it became apparent over time that RNM officers regularly found cases of migrant smuggling and identity fraud, eventually the scope of the MSM expanded and came to include these types of crime. Whereas previously they would have to refer such cases to the regular police, RNM officers gained additional powers to act and investigate when they detect particular types of crime. Besides this actual change on the policy level, there was also the more cosmetic name change of the MSM from Mobile Alien Monitor to Mobile Security Monitor, thus placing immigration control under the banner of security. In other words, an instrument that initially almost exclusively focussed on migration control over time became an instrument that combined this focus with at least a partial focus on crime control. Stumpf (2006) highlighted this development – immigration enforcement coming to resemble criminal law enforcement – as the second front of crimmigration.

The crime control powers of the RNM are officially still limited to two types of migration-related forms of crime. As such, it could be argued that the MSM in its current form fits only partially within the definition of crimmigration. Yet, as chapter two and three have illustrated, the focus on crime fighting during the MSM seems to be more significant in practice than on paper. The way officers operated and reasoned was a key example of Sklansky's (2012) ad hoc instrumentalism. With officers regularly interpreting their mandate as wider than it officially is, the integration of crime control and migration control went further than what could be deduced from the legal and policy framework. As such, although the legal and policy framework might create only a limited form of crimmigration, in practice the MSM can be fully characterised by crimmigration. Within the context of this particular bordering practice the conditions for crimmigration are created on the legislative and policy level, but ultimately crimmigration is further stimulated by the practices of street-level officers.

The second case study focussed on the end of the migration control chain, looking at the punishment and deportation of CCNCs. In particular, three recent policy changes were analysed, all of which came into existence during the last decade. These policy changes illustrated how migration status has a

profound impact in the different phases of the criminal justice system, to the extent that an almost separate criminal justice system for non-citizens emerges. The first policy was discussed in both chapter six and chapter seven, and was the so-called sliding scale policy, which balances the duration of stay with the severity of a criminal offense to determine whether a CCNC loses his or her right to stay. The policy has repeatedly been restricted in recent years, making it much easier for immigrants to lose their residence permit. The main reason behind repeatedly restricting the sliding scale policy is to address crime by getting rid of individuals that are deemed to be a risk. As mentioned in the introduction, Stumpf (2006) herself highlighted the expansion of criminal grounds that are reason to deport non-citizens and the more general trend towards detention and deportation individuals that are deemed to be a particularly high risk as examples of the increasing overlap between criminal law and immigration law. The repeated restriction of the sliding scale policy is therefore a good example of this particular aspect of crimmigration. At the same time, the practical implementation of the policy is to a certain extent diminished by human rights protections.

The second policy was primarily discussed in chapter six and was the designation of the prison in Ter Apel as a dedicated all-foreign national prison, the first of its kind in the Netherlands. Two main rationales were given for the creation of this prison. First, CCNCs are not supposed to return to Dutch society after their criminal sentence and many of the provisions available to regular prisoners are therefore not applicable to this group. Second, it enables the departure supervisors of DT&V – whom are embedded in the prison – to work more effectively on realising the return of CCNCs upon completion of their imprisonment. Imprisonment for non-citizens thus takes on distinct migration control aims. Indeed, various authors have highlighted these prisons as a prime example of crimmigration (Pakes & Holt, 2017), with some even explicitly referring to them as crimmigration prisons (Ugelvik, 2017; Ugelvik & Damsa, 2018). It mostly fits in with the second front of crimmigration that Stumpf identified: immigration enforcement has come to resemble criminal law enforcement. Yet in the case of the prison in Ter Apel, it is not so much resembling, as fully overlapping: immigration enforcement *has become* criminal law enforcement, as the two types of enforcement occur simultaneously and have become almost indistinguishable.

The third and final policy was analysed in chapter seven of this dissertation. The SOB-measure was introduced in 2012 to increase the number of CCNCs that return to their country of origin following their imprisonment. To that end, they only qualify for early release when they leave the Netherlands directly from prison. The policy was specifically motivated by the aim to increase CCNCs willingness to cooperate with the authorities and return to their country of origin. This is a key example of using elements of criminal enforcement to achieve migration control related aims. It fits within the instrumentalistic logic of crimmigration described before.

8.3.2 Who is targeted by these bordering practices?

As noted in the introduction, Stumpf (2006) already warned that crimmigration ultimately leads to a growing group of outsiders and that race and class were important factors in delineating the borders of belonging. Aas (2011) subsequently further developed the consequences of crimmigration for four different social groups, depending on their citizenship status and moral worth. However, citizenship status in her classification exclusively related to national citizenship. In the discussion below on who is targeted by the two bordering practices analysed in this dissertation, the additional layer of EU citizenship will also be taken into account.

The discretionary and proactive nature of the MSM means that citizenship status means relatively little about whether one is targeted or not. Instead, how one is perceived is of crucial importance here. Those perceived as full citizen can pass freely, but those perceived as subcitizen, supracitizen, or non-citizen will have to prove that they are, in fact, *bona fide* citizen. As the MSM targets people both for potential illegal stay and criminal activities, the groups of people targeted by this bordering practice are wide-ranging and diverse. As discussed in more detail in chapter four, specific categories of non-white people could be perceived as all three types of outsiders. Individuals within these categories were frequently Dutch citizens, but because they were perceived as potential criminals or non-citizens, they were nonetheless targeted by this bordering practice. EU citizens from countries associated with high levels of cross-border crime were also frequently targeted. These people are not Dutch citizens, but as EU citizens they legally enjoy unrestricted travel within the Schengen area. However, because they were perceived as potential subcitizens, these legal rights did not always translate into practice. They thus constitute somewhat of a new category, in between supracitizens and citizens, further complicating the picture of rights and privileges connected to different levels of membership.

At the end of the migration control chain, the categories of people targeted by bordering practices differ substantially from the beginning. Here, legal status is of crucial importance, as exclusion is no longer decided on the basis on the perceptions of officials with high levels of discretionary freedom. In fact, the nature of who is targeted by the MSM and who is targeted for criminal deportation is so different, that a direct comparison between the two case studies is futile. Instead, they should be seen in conjunction, highlighting the outcomes of two different bordering practices at completely different stages of the migration control chain.

The individuals targeted for criminal deportation are all non-citizens in Aas' categorisation; they have neither citizenship status nor are they deemed morally worth to stay in the Netherlands. Some of them were previously supracitizens, or denizens: individuals who stay legally in the Netherlands, but without full citizenship status. These people are not fully part of the polity,

but were allowed to stay on the basis of their moral worth. Following a conviction for a serious enough criminal offense, they became non-citizens. With the growing restrictions in the sliding scale policy, this group has considerably expanded in recent years. Chapter seven discussed in more detail which national groups are primarily targeted by this, which included some of the same ethnic groups targeted by the MSM. It demonstrated that EU citizenship is not enough to be exempt from this bordering practice, as citizens from other EU countries can still be targeted for deportation from the Netherlands. However, the consequences are less severe, as the entry ban only applies to the Netherlands and not the entire EU/EEA + Switzerland. Thus, criminal punishment and deportation exclusively targets non-citizens, but the bordering practice increasingly also targets supracitizens by removing their legal stay following a criminal conviction.

This illustrates that bordering practices at the beginning of the migration control chain cast a much wider net than bordering practices located at the end of the migration control chain. Much in line with the often used metaphor for the criminal justice, the migration control chain is characterised by a funnel model. Similarly to the criminal justice chain, the consequences become more severe further down the migration control chain. The biggest difference represents itself at the end of the chain: where the criminal justice chain ends with a return into society, the migration control chain ends with deportation.

8.3.3 How are these bordering practices experienced and understood by those implementing them?

This dissertation has looked at three different actors and how they deal with their mandates in light of a growing merger of crime control and migration control: RNM officers, prison officers, and departure supervisors. It is important to highlight the differences that existed within these groups of actors; while there was no general view that was shared by all, there were nonetheless broad trends discernible amongst all of them.

RNM officers often saw themselves as a special type of police officers and were generally less interested in purely combating unauthorised migration. Fighting crime was an important part of their motivation and as such, the gradual expansion of their mandate was generally welcomed, but for many officers this still did not go far enough. Perhaps not surprisingly, many officers believed there should be no limitations to the types of crimes they were allowed to act upon – they reasoned that if they were present anyway, it would make little sense to not counter other forms of non-migration related crimes. As such, these officers were generally in favour of crimmigration. As has been described above, in the case of the MSM the process of crimmigration was actually partly driven by the actions of street-level RNM officers.

Prison officers were most critical of the integration of crime control and migration control. Many of them had previously worked with regular prisoners and were used to work on preparing prisoners for their life after prison and their return into society. With the CCNC population, this element of their work has become practically irrelevant. What remained of their mandate was trying to keep order in the prison and ensuring that everyone made it through the day. Especially when they perceived a CCNC as Dutch, most prison officers perceived the system as unduly harsh and unfair. For some of them, an important reason for this was that they felt that Dutch society also had its obligations towards foreigners who had grown up in the country. As I explained in chapter six, this illustrates the fundamental difference between the two systems of social control.

Finally, the experiences and perceptions of the departure supervisors of DT&V were less explicitly addressed in the core chapters of this dissertation. However, especially in chapter seven their work was discussed in relation to the increasing reliance on the criminal justice system to effectuate return. In general, most departure supervisors did not see the far-reaching integration of punishment and migration control as something problematic. Whereas they were not convinced of the effectiveness of the SOB-measure in stimulating growing numbers of CCNCs to cooperate with their return, they perceived their placement inside the prison in Ter Apel as a key element to conduct their work in an effective way. The possibility to simply walk into the prison and engage with CCNCs in a more informal way was generally seen in very positive terms.

8.3.4 How are these bordering practices experienced and understood by those subjected to them?

The section above discussed who were targeted by the bordering practices studied in this dissertation. An important question for the impact and legitimacy of such practices is how they are experienced by those subjected to them. Although on many levels the two case studies are incomparable, they shared one important similarity. In both cases it was primarily individuals who perceived themselves as insiders who challenged the legitimacy of the bordering practice.

How the individuals targeted by the MSM understood and experienced this bordering practice was primarily discussed in chapter five. Respondents were divided between non-Dutch citizens and Dutch citizens. The results of the survey indicated that these people generally did not perceive it as problematic that they were stopped by the RNM for a check. As I argued, it is likely that this had to do with the fact that they did not see themselves as members of Dutch society and thus perceived it as reasonable that they were targeted by a form of border control upon entering the country. This was also the case

for citizens from other EU countries, suggesting that freedom of movement within the EU is not perceived as an absolute right.

The respondents who were Dutch citizens were divided in two groups: majority group members and ethnic minority group members. The first group was very positive about the MSM and the RNM officers. Minority group members were therefore the only respondents who were in general outspokenly critical about this bordering practice. As I argued in chapter five, an important explanation for this might be a form of uncertainty about their status and inclusion in society. The fact that they were targeted for an immigration control seems to confirm that they are not perceived and treated as a full member. Nearly all these respondents described themselves as being Dutch, but felt they were not perceived and treated as such. Most of them believed their physical appearance, in particular their skin colour, was the main reason for this.

A somewhat similar distinction could be observed in the experiences of CCNCs in the Netherlands. As outlined in chapter six, all CCNCs were aware they enjoyed fewer rights and privileges as a result of their status as non-citizen. Not surprisingly, this was generally perceived as unfair. However, there was a difference in their response depending on how they perceived themselves: as a foreigner or as a Dutch citizen. Both groups found the constellation of migration control and punishment problematic. However, those who saw themselves as foreigners primarily problematised the lack of rights and privileges in the prison in Ter Apel. Those who thought of themselves as Dutch also challenged their place in this particular prison. For these respondents, the biggest problem was not the prison regime itself. Instead, it was the underlying logic that they were classified as non-members and were thus supposed to be deported. As further discussed in chapter seven, since they perceived their deportation as fundamentally unfair, this also meant they heavily resisted it. These findings are further discussed in paragraph 8.3.3.

8.4 REFLECTIONS AND IMPLICATIONS

This dissertation has illustrated how crimmigration proves to be a useful framework to understand contemporary bordering practices. It has highlighted the importance of empirical studies to account for the nuances and complexities of the macro-level conceptual framework of crimmigration. This final section offers some theoretical reflections and implications of the findings of this dissertation. It discusses what these findings mean for our understanding of the concept of crimmigration and what this implies for contemporary notions of membership and belonging.

8.4.1 Defining and understanding crimmigration

As already discussed in the introduction, research on crimmigration has really taken flight since Stumpf introduced the term more than ten years ago. Figure 8.1 shows the annual number of publications in google scholar that include the term 'crimmigration'. It illustrates how popular this framework has become in recent years to study practices of border and migration control.

Two important reasons can be identified to explain this increase. First, it is an attractive term that works as an excellent catchphrase for any work that sits at the edge of crime and migration. As a result, the term appears to have become somewhat overused in recent years. Second, by broadening the definition of crimmigration, a wide range of scholars from different academic disciplines have been able to frame their research in terms of crimmigration. These explanations serve to make two observations about our understanding of the concept of crimmigration: the importance of emphasizing the bi-directional nature of crimmigration, and the need to have a broad perspective on crimmigration, both in terms of the multiple levels in which it occurs and the way it manifests itself.

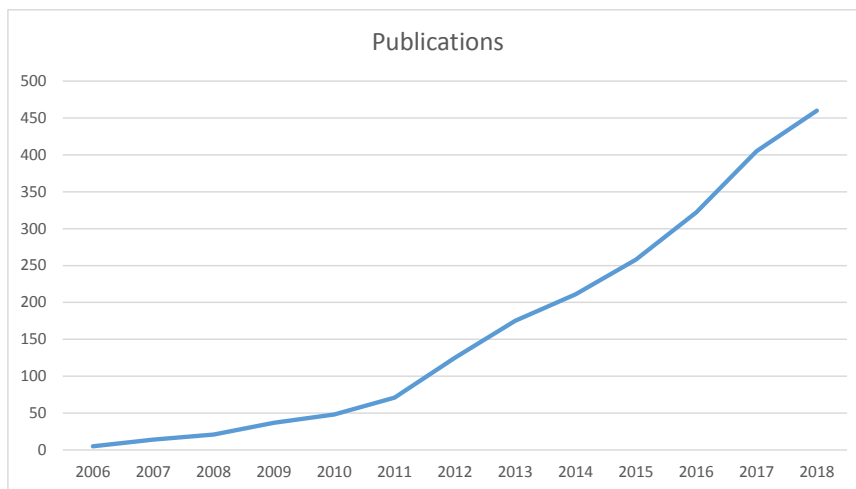


Figure 8.1 Crimmigration publications per year, 2006-2018 (source: own)

8.4.2 Crimmigration: a bi-directional process

Crimmigration has become somewhat of a buzzword in recent years, and the term has been widely used by scholars writing about migration. The downside of this is that the concept is frequently misunderstood and misused in the

academic literature. In particular, many scholars reduce the term to simply mean the criminalisation of migration. As the abstract of a recent academic book (Atak & Simeon, 2018) read:

“This book examines ‘cimmigration’ – the criminalization of migration – from national and comparative perspectives, drawing attention to the increasing use of criminal law measures, public policies, and practices that stigmatize or diminish the rights of forced migrants and refugees within a dominant public discourse that not only stereotypes and criminalizes but marginalizes forced migrants.”

Other scholars have criticised cimmigration as a suitable lens to view contemporary developments in crime control and migration control. Writing about migration law enforcement inside UK prisons, Kaufman (2015, p. 174) argued that “by foregrounding the process of criminalisation, the cimmigration framework can suppress this crucially non-criminal element of the relationship between crime and border control.” However, such a conclusion seems to be guided by an overemphasis on the criminalisation of migration, while neglecting the other important trend captured by the concept of cimmigration: the importation of migration control rationales into the criminal justice system. Many of the existing studies on cimmigration do tend to focus on the criminalisation of migration – perhaps also driven by the generally much larger body of research on this trend, even before the introduction of the concept of cimmigration. Indeed, even Stumpf (2006) herself in her seminal publication referred eight times to the ‘criminalisation of migration’, while only once mentioning the ‘immigrationisation of criminal law’ – in a footnote quoting Miller (2003). At least until recently, academic work exploring how criminals are cast into the net of migration control remained largely absent.

As this dissertation has shown in chapter six and seven, the enforcement of migration control during the punishment phase inside prisons can be seen as a key example of cimmigration. Indeed, the immigrationisation of crime control can have equally harsh consequences for unauthorised migrants as the much more discussed criminalisation of migration. The case studies in this dissertation thus illustrate that cimmigration should be understood as a bi-directional process, encompassing not only the importation of criminal law discourse and practices into migration control, but also the adoption of migration control rationales and aims by the criminal justice area. As Miller (Miller, 2003, pp. 617-618) already emphasised,

“the ‘criminalization’ of immigration law fails to capture the 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, but it is purely neither.”

It is for this reason that some authors have argued that we see the emergence of a novel system of ‘cimmigration control’ (Bowling & Westera, 2018). In this dissertation this was particularly visible in the second case study, with

non-citizens being exposed to an almost entirely separate criminal justice system.

8.4.3 Crimmigration: a broad concept

Another reason for the steep increase in publications on crimmigration is the evolution of the way the concept is understood by scholars. Whereas Stumpf (2006) merely spoke of the merger between criminal law and migration law, scholars nowadays see crimmigration as a much broader phenomenon, as evidenced by some of the definitions used: “the convergence between immigration and criminal justice policies” (Coutin, 2010, p. 357), “the convergence of the criminal justice and immigration enforcement systems” (Armenta, 2017, p. 82), “the growing interdependence between criminal justice and migration control” (Bosworth, Aas, & Pickering, 2017, p. 35), “the interconnections between crime and migration in the context of public authorities’ responses to irregular migration” (Marin & Spena, 2016, p. 147), and “a merger of features that were traditionally and doctrinally squared within the separate domains of criminal justice and migration control” (Van Berlo, 2015, p. 78). This much wider interpretation of the term crimmigration has opened up the term to a wide range of academics from very different disciplines and backgrounds, examining trends on various levels and in different manifestations.

Crimmigration encompasses a wide range of policies and practices that would not be captured by adopting a strictly legal interpretation of the phenomenon. It plays a role in *shaping* the boundaries of belonging as well as *enforcing* these boundaries. Indeed, the examples of crimmigration discussed in this dissertation sit at various levels and are driven by different processes. The bill to criminalise illegal stay and the repeated restriction of the sliding scale policy are key examples of the legal definition of crimmigration. The designation of Ter Apel prison as an all-foreign national prison and the introduction of the SOB-measure sit more at the policy and administrative level. In these cases, crimmigration sometimes simply stemmed from administrative reforms or changes in internal procedures and street level actors had little discretionary freedom to make key decisions. Finally, crimmigration within the MSM is facilitated by decisions on the legal and policy level, but is also at least to a certain extent the result of the actions and decisions on the street level.

The examples discussed in this dissertation illustrate the diverse and sometimes complicated ways in which crimmigration manifests itself. In short: crimmigration during the MSM is different from crimmigration in the punishment of CCNCs, but they are both examples of the same concept. Crimmigration during the MSM stems from one agency broadening its aim to include also tasks that are traditionally located within another agency in the other chain. It is a key example of Sklansky’s (2012) ad-hoc instrumentalism: officers rely on

one of these powers to achieve their aims. This highlights that crimmigration is not always a *merger* or *convergence* of criminal law and migration law. Instead, in some cases the two legal frameworks are used *interchangeably* in an instrumental manner and decision makers employ whatever legal framework offer the best possibilities to achieve their intended result. As Moffette (2018, p. 2) has recently argued,

“while much has been gained from researching where immigration law and criminal law converge to form a distinct realm of crimmigration law, we should pay more attention to where they diverge and how this separation is productive.”

On the other hands, crimmigration in the punishment of CCNCs did not stem from one agency taking on additional powers, but from one migration agency (DT&V) seeking closer cooperation with another criminal one (DJI) and locating itself at its sites in order to establish migration control related goals. Here we can clearly observe how the criminal justice system has been put to use to achieve migration control related aims, through the establishment of the all-foreign national prison and the introduction of the SOB-measure. Except for the SOB-measure, the two legal frameworks are not so much used interchangeably, but rather applied simultaneously or consecutively. After all, deportation formally occurs after the criminal punishment, but its implementation already takes place during the punishment phase.

The two case studies thus highlight the importance of seeing crimmigration as more than a legal process and more than merely the criminalisation of migration. It covers a broad range of discourses, laws, policies, and practices. Moreover, crimmigration can be a merger of crime control and migration control, but the two domains can also be used interchangeably in highly instrumental manners. They can reinforce each other, but also used individually according to their own strengths. While this means it might be hard to define what crimmigration exactly entails, it is important to not only be thorough, but also precise. Whereas there is a tendency to frame every type of restrictive migration policy in the context of criminalisation of migration, it is important to stress the overlap or interchangeability of crime control and migration control as the defining feature of crimmigration. This means that while there might be plenty of grounds to criticize restrictive asylum policies, this does not automatically mean it fits within the definition of crimmigration – after all, there does not have to be a crime control logic to such policies. Similarly, while the introduction of internal border controls in the Schengen area can be seen as a violation of important fundamental rights, it is not necessarily a form of crimmigration – even if in practice it will often be.

8.4.4 The drivers of crimmigration

The examples of crimmigration studied in this dissertation showed significant differences in their political and public response. For example, the bill to criminalise illegal stay attracted much more political and public resistance than the repeated restrictions of the sliding scale policy. Perhaps not surprisingly, there appears to be considerably more resistance against using crime control techniques against immigrants than against deploying migration control techniques against criminals – both among the general public and government practitioners. Indeed, the creation of an all-foreign national prison and the introduction of the SOB-measure went largely beyond the public's eye. One of the reasons this might have generally escaped attention is that many of the developments in this area were the result of what Welch (2012) refers to as 'quiet manoeuvring' – as opposed to the 'loud panic' that sometimes accompanies law making in the areas of crime and migration. This is all the more surprising given that, as Pakes and Holt (2017) have previously noted, politicians tend to believe that being tough on crime and migration is a popular stance. It could therefore be expected that these developments were widely promoted among the general public. It illustrates the need for scholars to look beyond the criminalisation processes that are often at the forefront of political and public debates, and equally focus on the more administrative and technocrat processes that are implemented on the grounds of efficiency (Bowling & Westera, 2018; Pakes & Holt, 2017). As this dissertation has shown, the impact of such processes can be equally punitive.

In seeking to explain the drivers of crimmigration, many scholars have looked at negative views and concerns about migrants. While this undoubtedly plays a role, the examples studied in this dissertation show that this alone cannot adequately explain *why* states resort to crimmigration policies. It especially does not provide a satisfying explanation for the immigration of the criminal justice system. Especially many of the non-legal forms of crimmigration stem from administrative or organisational changes that are aimed at efficiency and effectiveness. As Pakes and Holt (2017, p. 70) claim: "states revert to non-criminal justice modes of operating because it is easier." This point is convincingly illustrated by Aliverti (2012), who shows that criminal law for immigration-related crimes is only used when deportation is not feasible. A similar logic underlies for example the SOB measure. What drives crimmigration is an instrumental logic applied to exclude those deemed undesirable – with little regard for formal legal categories. This raises important questions about the value of legal protections and fundamental rights.

Crimmigration control benefits from the strengths of two different systems of social control. The criminal justice system is less exclusionary than migration control. The migration control system is less condemnatory than criminal justice. Immigration control is administrative and entails less formal individual rights. It also allows differential treatment on the basis of nationality and,

although less explicitly because by proxy, on race or ethnicity. Criminal justice entails considerably more protections for the individuals it targets and explicitly prohibits differential treatment on any ground, especially race or ethnicity – although proactive profiling practices based on risk profiles are a grey area. Immigration control is based on privileges: no foreigner has the right to be included. Criminal justice is based on rights: citizens are free from its intervention, unless they misbehave. Yet exactly in these differences lies the strength of the crimmigration system. States can decide which legal framework to invoke depending on their own benefit. It highlights how the instrumental nature of crimmigration is of particular concern for issues of accountability and legitimacy.

In many cases there is a certain undeniable logic to crimmigration. After all, border policing officers ignoring any form of crime would appear to be a peculiar use of resources. Similarly, it makes sense than unauthorised migrants are not released back into society with a reintegration plan: this would undermine the state's migration control system. In some cases crimmigration even seems practically inevitable: CCNCs simply fall under both the criminal justice system and the migration control system. And as chapter six has highlighted, in some cases the application of crimmigration can even be beneficial for such individuals. This illustrates the complicated nature of contemporary governance of crime and migration and shows how assessments of crimmigration require careful analysis. And perhaps in some cases instead of outright rejection crimmigration, it is necessary to ask the question how to organise the simultaneous application of these two social control systems in a fair and just manner.

8.4.5 Borders, crimmigration, and membership

As noted in the introduction and throughout this dissertation, bordering practices play a key role in defining the boundaries of membership and shaping national identity, on both a symbolic level and the legal level. This dissertation has illustrated how these bordering practices in the Netherlands are increasingly characterised by crimmigration and take place at multiple 'sites of enforcement' (Weber & Bowling, 2004). Stumpf (2006) already highlighted that crimmigration results in growing numbers of excluded individuals, often based on factors such as class and race. As Barker (2013) argues, "membership matters most." This dissertation has highlighted how this comprises both *legal* membership and *perceived* membership. Not all migrants are targeted by the bordering practices studied in this dissertation, but only those classified or perceived as criminal or unauthorised. Through the integration of crime control rationales into these bordering practices, these categories are expanding and increasingly come to include long-term migrants and even citizens.

At the entrance of the migration control chain, exclusion primarily occurs on a symbolic and communicative level. Intra-Schengen borders did not so much disappear, but rather transform into highly selective border checks, targeting a very small percentage of the overall number of border-crossers (Van der Woude, Brouwer, & Dekkers, 2016). As noted, the highly discretionary nature of the MSM resulted in a range of different groups targeted for an identity control. Due to the infusion of the MSM with crime control rationales, this includes EU citizens from especially Eastern European countries and Dutch citizens from certain ethnic minority backgrounds, reflecting wider social attitudes about suspiciousness and belonging. Unless issues arise on the criminal level, these people are subsequently allowed to continue their journey and are thus formally recognised as insiders. Nonetheless, such an identity check is a clear signal that one is *perceived* as an outsider. In other words: their membership is questioned and this results in less rights and privileges than individuals whose membership is immediately accepted. As discussed in chapter five, such practices also have a communicative function, sending messages about who belongs. Experiencing such treatment can therefore reduce subjective feelings of inclusion and belonging. At the same time, and with the notable exception for individuals living in these border areas, in many cases this is likely to be a singular occurrence. As such, these practices are likely to be less harmful than repeated identity checks in one's own neighbourhood or city. Recent research confirms that especially experiencing *frequent* identity checks leads to decreased feelings of belonging and these feelings are most pertinent among people with a legal claim to membership, such as immigrant children born in the country or individuals from overseas territories (Terrasse, 2019). This is not surprising, as especially these individuals will experience such identity checks as a form of identity denial. The stops during the MSM should therefore rather be seen in a wider pattern of frequent identity checks by different policing actors, where crime control and migration control rationales have become blurred (Van der Leun & Van der Woude, 2011). Continuous differential treatment is a key example of a conceptual bordering practice, constructing boundaries for legitimate citizens (Weber, 2019).

At the end of the migration control chain, exclusion is much less symbolic, as migrants convicted of a serious enough criminal offense are formally excluded through deportation – arguably the most extreme form of exclusion. In particular, the restrictions in the sliding scale policy have a direct effect on the number of individuals permanently excluded from Dutch society – although this effect is somewhat diminished by the application of European human rights law. Nonetheless, increasingly long-term members are formally excluded from the Dutch polity. Anyone who is not a formal citizen can be permanently excluded and this has become increasingly common in recent years. In other words, non-citizens are 'probationary members', who can have their membership revoked following a criminal conviction (Stumpf, 2006). For a long time, legal permanent residents were exempt from legal precarity, as

opposed to non-citizens and temporary legal residents (Ellermann, 2019). However, nowadays any legal migrant who does not obtain legal citizenship is never fully included in the polity. More recently, even citizens have had their inclusion revoked as a result of convictions for terrorism. Such practices seem to reflect societal notions about migrants who, despite having lived in the Netherlands for almost their entire life, are still perceived as foreign (Gibney, 2019). Exclusion is subsequently further institutionalised in the criminal justice system through differential treatment in terms of punishment. The different prison, prison regime, and release policies that are reserved for non-citizens add to the feeling of being an outsider.

Crimmigration blurs the boundaries between citizens and non-citizens and amplifies the impact of bordering practices on legal residents and citizens. The introduction of crime control elements in bordering practices means that denizens and even citizens are increasingly targeted by these practices, based on alleged or actual criminality. As Ellermann (2019, p. 2) claims,

“far from reflecting a linear progression from alien to denizen to citizen, status can travel along downward trajectories that – even for permanent residents and certain citizens – can result in legal precarity and loss of status.”

For some members of society, their access to full and equal citizenship is hampered on the basis of their identity. Ultimately this has an effect on the legitimacy and effectiveness of these bordering practices, when self-perceptions of people collide with how they are perceived and treated by authorities, especially in the absence of proper accountability and transparency. As chapter five discussed, legal citizens targeted by the MSM challenged the legitimacy of this bordering practice. Similarly, chapters six and seven highlighted how those migrants who perceived themselves as members were most critical of their classification and related treatment as outsiders. As a result, they were also less likely to cooperate with the authorities. Crimmigration thus creates a growing group of outsiders, who nonetheless feel like they should belong and often stay in society. This illustrates the problematic nature of using bordering practices in response to criminal behaviour.

As Bowling and Westetra (2018) argue, crimmigration “has the effect of widening the net of social control”, as non-citizens are increasingly perceived and treated as criminals and criminals are increasingly perceived and treated as non-citizens. As has been illustrated by this dissertation, these processes intersect in familiar – and sometimes less familiar – “various axes of social stratification”, in particular race/ethnicity, nationality, class, and gender, to “closely map onto social group membership” (Ellermann, 2019, pp. 3, 2). Benhabib (Benhabib, 2002, p. 37) already observed more than fifteen years ago, that “what is emerging in contemporary Europe is a mixed bag of rights, entitlements, and privileges, distributed quite unevenly across resident populations, in accordance with varying principles.” The citizen and non-citizen are not binary categories, but rather two ends of a continuum with many different

legal *and* social categories in between (Ellermann, 2019; Wonders & Jones, 2018). These different categories are shaped by practices of territorial, organisational, and conceptual bordering (Geddes, 2008; Weber, 2019). The case studies in this dissertation have illustrated what this means in practice. In particular, it matters whether one has national citizenship, EU citizenship, or legal membership, as all these categories come with a set of legally defined rights, entitlements, and privileges. It also matters whether one is *perceived* as having national citizenship, EU citizenship, legal membership, as this has an effect on how one is treated by authorities, and therefore also on one's rights, entitlements, and privileges. These different categories are increasingly shaped by the criminal justice system. What we are observing is a hierarchy of membership on the basis of citizenship and moral worth, as well as *perceived* citizenship and moral worth.

8.4.6 Globalisation, migration control, and criminology

As already noted in the introduction, globalisation forces criminologists to see beyond their traditional research sites and subjects. This dissertation has illustrated that it is not only desirable for the field of criminology to engage with questions of migration control and citizenship, but that it has become crucial to properly understand contemporary criminal justice systems and social control.

First, the case study of the MSM has illustrated how, in the absence of real border controls, novel forms of border policing have emerged around the intra-Schengen border areas. These practices are aimed at controlling migration as well as controlling criminal suspects and should therefore be of key interest to criminologists (Pickering, Bosworth, & Aas, 2014). Second, it barely needs to be argued that the punishment and deportation of CCNCs warrants attention from criminologists. Chapter six and seven have highlighted how contemporary criminal justice is crucially shaped by issues of citizenship and migration, as the nature and impact of criminal justice strongly depends on someone's legal status. With nearly one in every four prisoners being a foreigner, it is clear that penal scholars cannot study the prison anymore as a purely national institution. As processes of globalisation and increased international mobility are likely to keep presenting significant challenges to traditionally domestic criminal justice systems in the near future, we cannot understand the how and why of contemporary punishment practices without engaging with issues of citizenship and migration control (Bosworth, 2012; Kaufman & Bosworth, 2013; Turnbull & Hasselberg, 2017).

The recent criminological turn towards borders as a key site of engagement has raised the questions who should be included in criminological enquiries. Migrants and non-citizens have long been excluded from mainstream criminological research (Pickering et al., 2014; Wonders & Jones, 2018), but with

growing numbers of migration related act being criminalised and increasing numbers of foreigners inside the prisons, at least in many western countries, this has started to change in recent years. This has also forced a reconceptualisation of who are seen as included and excluded. As Aas (2007, p. 289) notes, even those who are considered as outsiders by mainstream criminology “in many ways are still ‘insiders’ of the privileged club of western citizens.” By opening up criminological analysis to include migrants, non-citizens, and foreigners, the contours of a more global system of crimmigration control start to emerge.

